CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIFTH SECTION

CASE OF IVERSEN v. DENMARK

(Application no. 5989/03)

JUDGMENT

STRASBOURG

28 September 2006

FINAL

28/12/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Iversen v. Denmark,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Mrs S. BOTOUCHAROVA, *President*,
Mr P. LORENZEN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr M. VILLIGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 4 September 2006,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 5989/03) against the Kingdom of Denmark lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Danish national, Mrs Lise Donald Iversen ("the applicant"), on 11 February 2003.

2. The applicant was represented by Mr Tyge Trier, a lawyer practising in Copenhagen. The Government were represented by their Agent, Mrs Nina Holst-Christensen of the Ministry of Justice.

3. The applicant alleged that civil proceedings initiated by her had not been determined within a reasonable time within the meaning of Article 6 § 1 of the Convention.

4. The application was originally allocated to the First Section of the Court.

5. By decision of 29 September 2005 the Court declared the application admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

7. On 1 April 2006 the case was assigned to the newly constituted Fifth Section (Rule 25 § 5 and Rule 52 § 1 of the Rules of Court

THE FACTS

A. The circumstances of the case

8. The applicant was born in 1948 and lives in Hundested.

9. Subsequent to having suffered severe problems with her jaw, resulting in her being able to open her mouth only 5 millimetres, on 19 April 1988 at a hospital in Hillerød the applicant underwent a jaw operation which entailed implanting Teflon in both her jaw-joints.

10. Following the surgery, the applicant's ability to open her mouth was improved. She could thus open her mouth up to 20 millimetres. However, she experienced a lot of complications. Having regard thereto and due to a debate among doctors as to the potential danger related to the use of Teflon, in April 1990, the applicant had it removed.

11. She continued to experience problems, and on 20 February 1992, alleging mal-practice, she complained to the National Patients' Complaints Board (*Sundhedsvæsenets Patientklagenævn*) which is an impartial public authority which may express criticism of the medical staff or submit particularly serious cases to the public prosecutor with a view to taking the cases to court. In support of her complaint she maintained that subsequent to the operation in 1988 she had suffered from headache, and constant pain in the jaw-joints and the masticatory muscle.

12. Before deciding on the issue, the applicant's complaint was sent for preliminary examination with the Medical Officer of Health of Frederiksborg County (*Embedslægeinstitutionen for Frederiksborg Amt*), the Medio-Legal Council *(Retslægerådet)* and the National Board of Health *(Sundhedsstyrelsen)*. The Medico-Legal Council submitted their opinion on 5 March 1993 and the National Board of Health submitted their recommendation on 23 November 1993.

13. By decision of 16 February 1994 the National Patients' Complaints Board found against the applicant.

14. Consequently, on 4 March 1994 the applicant submitted a number of questions to the National Board of Health, which in return requested the Medico-Legal Council to prepare an opinion.

15. Also, alleging malpractice, on 7 March 1994 the applicant instituted proceedings before the City Court of Hillerød *(Retten i Hillerød)* against the County of Frederiksborg *(Frederiksborg Amt)* being responsible for the hospital. The applicant claimed compensation for her medical costs, loss of working capacity and disablement.

16. On 7 April 1994 the applicant's counsel notified the court that he had requested that the National Board of Health submit the case to the Medico-Legal Council. Also, he enclosed a letter that he had written to the defendant, i.e. the County of Frederiksborg, in which he informed them that

he had issued the writ on a slightly incomplete basis owing to lack of time and suggesting that it postpone filing their defence until the reply from Medico-Legal Council had been submitted.

17. By letter of 11 April 1994 the County of Frederiksborg informed the court that it would comply accordingly.

18. On 3 June 1994 the Medico-Legal Council submitted their opinion to the National Board of Health.

19. Due to the fact that shortly thereafter the applicant submitted various American articles on the issue, the case was re-submitted to the Medico-Legal Council on 17 June 1994 with further questions. Having received more material from the parties, on 21 September 1994 the Medico-Legal Council submitted their opinion.

20. The National Board of Health issued their opinion on 10 October 1994.

21. Also, at some time during 1994, the applicant was awarded anticipatory pension.

22. By letter of 16 March 1995 the City Court requested that the parties inform it of what was holding up the case, and indicated that it would be set down for trial should the parties not reply within three weeks.

23. On 20 March 1995 counsel for the County of Frederiksborg informed the court that he had send a reminder on 10 February 1995 to the applicant's counsel asking about his position on the opinions submitted by the Medico-Legal Council and the National Board of Health.

24. On 24 March 1995 the applicant submitted a supplementary claim invoking also product liability, and counsel explained that the case had been awaiting his examination of the basis of the liability.

25. On 16 May 1995 the Court asked the County of Frederiksborg what was upholding the case, which resulted in the submission of their rejoinder on 8 June 1995.

26. On 9 June 1995 the City Court informed the parties that the pre-trial proceedings depended on the parties, who were expected to complete them without the assistance of the court.

27. A reply was filed with the City Court by the applicant on 29 August 1995 and a rejoinder by the County of Frederiksborg on 3 November 1995.

28. On 20 December 1995 the court asked the applicant's counsel what was upholding the case, to which the latter replied on 5 January 1996 that due to vacation his pleading could not be expected until early February.

29. On 5 March 1996 the City Court ordered that the applicant file a pleading within three weeks.

30. The applicant's pleading no. 1 was filed on 9 April 1996, following which the court ordered that the applicant's counsel file a pleading within fourteen days stating the applicant's claim for compensation, including

particularly the losses involved. Upon receipt, the court would arrange a hearing to discuss the case.

31. Thus, the applicant's pleading no. 2 was submitted on 13 May 1996, and a court hearing was held on 6 June 1996. During the hearing the applicant's counsel specified that he wished to change his writ and only invoke product liability. Consequently, counsel for the County of Frederiksborg was granted a postponement to submit his pleading, which was eventually filed on 3 September 1996.

32. In October 1996 the parties informed the City Court of their intentions anew to put questions before the Medico-Legal Council, for which reason they requested an adjournment of the proceedings pending their drafting those questions.

33. On request, in December 1996 the City Court was informed that the parties' counsel had met and agreed to obtain the applicant's patient files from three hospitals and to draft questions to the Medico-Legal Council, when the material was available. Thus, the parties requested an adjournment of the proceedings.

34. In May 1997 the applicant's counsel informed the City Court that he had requested the National Board of Industrial Injuries *(Arbejdsskadestyrelsen)* to issue an opinion concerning the applicant's degree of disablement and loss of working capacity. During the months to follow the applicant's pension case file was consulted, and the case was brought before a dental consultant and a neurological specialist of the National Board of Industrial Injuries. On 19 March 1998 the National Board of Industrial Injuries delivered their opinion.

35. On 28 April 1998 the City Court asked the applicant's counsel, whether the National Board of Industrial Injuries had delivered its opinion. The latter was forwarded to the City Court on 7 May 1998 and at the same time the applicant's counsel stated that he would now calculate the final claim.

36. A hearing was scheduled for 19 June 1998 to discuss the further proceedings, including the time necessary for any further pre-trial procedures. Also, the Court ordered that the applicant's counsel file a pleading within fourteen days, stating the applicant's final claim.

37. On request by the applicant's counsel the hearing was re-scheduled for 21 August 1998. Counsel was also granted an extension of the time-limit to submit the final claim. The latter was submitted as pleading no. 3 on 10 August 1998. The applicant's claim amounted to 908,996 Danish kroner (DKK).

38. During the hearing on 21 August 1998 a number of problems were discussed, *inter alia*: the lack of documentation as to the applicant's income situation and medicine expenses and whether to obtain further material from the applicant's patient files The City Court suggested that the parties reviewed the patient file material together and selected the relevant material.

At the same time, the Court ordered the applicant's counsel to file a pleading no later than 21 October 1998, stating the applicant's amended claim and providing an account of her income situation and medicine expenses. During the hearing the parties also discussed whether to hold a separate hearing of parts of the case and adjourn other parts while awaiting a preliminary ruling from the European Court of Justice in another case before the Supreme Court *(Højesteret)*. Thus, the City Court ordered that counsel for the applicant in his pleading specify which parts of the case he wanted to be heard and adjudicated separately, and which parts he wished adjourned awaiting the European Court of Justice. The City Court indicated that when the applicant's pleading had been filed, it would impose a fairly short time-limit on the counsel for the County of Frederiksborg to reply. Moreover, the City Court suggested that the parties expedite the proceedings as much as possible and indicated that the court expected the pre-trial procedures to be complete by the end of 1998. Finally, the case was set down for trial on 22 and 23 February 1999.

39. The applicant's pleading no. 4 was filed on 22 October 1998, according to which the applicant's amended claim amounted to DKK 908,583 in compensation. Moreover, she waived her request for having part of the case heard separately in order to await the ruling of the European Court of Justice. The County of Frederiksborg's pleading no. 2 was filed on 24 November 1998.

40. The trial was held on 22 and 23 February 1999 and the case was set down for judgment.

41. By decision of 6 April 1999, however, the City Court decided to re-open the pre-trial proceedings. It found that a basis of liability existed, and that compensation could be granted for the pain, but not for the applicant's reduced ability to open her mouth, since the applicant before the jaw operation was able to open her mouth only 5 mm, whereas after the operation her ability to open her mouth had actually improved, although still reduced compared to normal. As the applicant's previous request that the National Board of Industrial Injuries determine her degree of disablement and loss of working capacity had presumed liability for her reduced ability to open her mouth the City Court found that it was necessary to require supplementary information from the National Board of Industrial Injuries in order to obtain an assessment of the applicant's degree of disablement and loss of working capacity in which her reduced ability to open her mouth was disregarded.

42. When the parties had agreed to the contents of a submission letter, on 2 June 1999 the case was submitted to the National Board of Industrial Injuries, before which a dental consultant was heard twice and a special medical certificate was obtained. The National Board of Industrial Injuries issued their opinion on 13 January 2000.

43. On 31 January 2000 the applicant's pleading no. 5 was filed increasing the claim for compensation to DKK 1,147,035. The County of Frederiksborg submitted their pleading no. 3 on 10 February 2000; and the case was set down for judgment, which was expected to be passed on 29 May 2000.

44. Shortly thereafter, the deputy judge responsible for the case became ill and the case was therefore adjourned. She resumed work on 4 July 2000 on a part-time basis, and by judgment of 21 August 2000 the City Court found for the applicant, who was granted compensation in the amount of DKK 676,900. The defendant was ordered to pay the applicant's costs and expenses in the amount of DKK 54,000.

45. On 2 September 2000 the County of Frederiksborg appealed against the judgment to the High Court of Eastern Denmark (*Østre Landsret*).

46. On 20 December 2000 a hearing was held, during which counsel for the County of Frederiksborg produced a number of questions to the Medico-Legal Council, and the proceedings were adjourned pending a reply from the Council.

47. On 10 January 2001, the case was submitted to the Council, and during its examination a couple of months passed with exchange of letters between the two counsel due to doubt as to whether there had been a mistake in the applicant's patient file.

48. During a court hearing held on 4 December 2001 the parties were granted leave to put further questions to the Medico-Legal Council in accordance with the applicant's proposal, and the proceedings were adjourned until 1 February 2002.

49. On 5 March 2002 the Medico-Legal Council issued their opinion after four deliberating experts had had the case submitted three times.

50. During a hearing held on 8 April 2002 the applicant's counsel wished to put supplementary questions to the Medico-Legal Council. Noting that a reference solely to the length of the proceedings could not constitute a sufficient basis for barring the request, the High Court granted it. Subsequently, also counsel for the County of Frederiksborg produced a number of supplementary questions and the proceedings were adjourned until 6 July 2002 awaiting the reply to these questions.

51. The Medico-Legal Council's reply was submitted on 19 August 2002 after three deliberating experts had assessed the case.

52. On 22 November 2002 the proceedings were terminated before the High Court as the parties had entered a friendly settlement according to which the County of Frederiksborg was to pay the applicant DKK 477,503 plus VAT in compensation. The High Court ordered that each party should pay their own costs and expenses.

B. Relevant domestic law and practise

53. According to Danish law it is not a requirement for instituting civil court proceedings that administrative appeal proceedings have been exhausted beforehand, unless specifically provided.

54. A Supreme Court judgment printed in the Weekly Law Review (*Ugeskrift for Retsvæsen*), 2005, page 2390, concerned a patient who died due to medical malpractice. Without pursuing the case before any administrative bodies, the surviving spouse brought an action directly before the City Court, claiming compensation for pain and suffering, and for permanent injury and loss of working capacity, and loss of dependency.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

55. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

Period to be taken into consideration

56. The Government submitted that the proceedings commenced on 7 March 1994, when the applicant brought the case before the City Court of Hillerød, and ended on 22 November 2002, when the High Court registered in its court records the friendly settlement obtained between the parties.

57. The applicant maintained that the proceedings commenced on 20 February 1992, when she complained to the National Patients' Complaints Board.

58. The Court recalls its case-law according to which the proceedings before an administrative body are to be included when calculating the length of the civil proceedings for the purposes of Article 6 if under the national legislation an applicant has to exhaust a preliminary administrative procedure before having recourse to a court. In such cases, the relevant period starts running as soon as a "dispute" arises (see, among other authorities, *König v. Germany*, judgment of 28 June 1978, Series A no. 27, pp. 33-34, § 98; *Janssen v. Germany*, no. 23959/94, § 40, 20 December 2001; *Gavrielides v. Cyprus*, no. 15940/02, § 38, 1 June 2006; *Hellborg v. Sweden*, no. 47473/99, § 59, 28 February 2006;

Nowicky v. Austria, no. 34983/02, § 47, 24 February 2005; and *Morscher v. Austria*, no. 54039/00, § 38, 5 February 2004).

59. In the present case, it follows from Danish law that it was not a requirement that the applicant filed a complaint with the National Board of Patients' Complaints before she brought the case before the courts. This understanding is confirmed by the Danish Supreme Court, *inter alia*, in the judgment printed in the Weekly Law Review, 2005, page 2390. Accordingly, the proceedings commenced on 7 March 1994, when the applicant brought the case before the City Court of Hillerød, and ended on 22 November 2002, when the High Court registered in its court records the friendly settlement obtained between the parties. Thus, the relevant period to take into consideration lasted almost eight years and nine month.

Reasonableness of the length of the proceedings

The Parties' submissions

60. The Government maintained that the case was complex which influenced the length of the proceedings considerably. They recalled *inter alia* that it was necessary to submit the matter to the Medico-Legal Council five times with several questions to be answered, and that the latter had to involve more deliberating experts than usual. Also, it was necessary to procure an opinion twice from the National Board of Industrial Injuries.

61. Moreover, they contended that to a considerable extent the applicant's conduct had caused the length of the proceedings. In particular, her counsel had delayed the proceedings by preparing the action very poorly, of which the Government gave the following examples; he issued the original writ on a incomplete basis, which resulted in counsel immediately suggesting that the defendant postpone its filing until a reply from the Medico-Legal Council had been submitted; he filed a supplementary claim one year after lodging the case; he changed the writ more that yet another year thereafter, invoking only the supplementary claim; he failed in due time to obtain income statements from the applicant; throughout the proceedings he requested various expert statements; he submitted new information after an opinion had been procured by the Medico-Legal Council so that a re-submission was necessary; and he failed to prepare specific and concentrated questions to the National Board of Industrial Injuries taking various options into account, e.g. that there might not be liability for the applicant's reduced ability to open her mouth, which resulted in the City Court having to re-open the preparation of the case and request another opinion from the Board.

62. The Government also submitted that there were no periods of inactivity during the proceedings which could form the basis of criticism of the authorities involved. They pointed out that the City Court carefully

monitored the progress of the proceedings by ensuring that any time-limits were observed and, if they were not, by reminding the parties to respond.

63. Finally, they found that "special diligence" was required in the case, but that it was not of such a nature that the case-law of the Court required "exceptional diligence" or a similar degree of urgency.

64. The applicant submitted that the facts of the case disclosed a serious violation of Article 6 of the Convention.

65. She contested that the case was complex and that she had had any responsibility in the proceedings being protracted.

66. Moreover, emphasising that she was suffering dramatic consequences, including a high level of disability and constant pain, she maintained that the national authorities, including the defendant, the National Board of Industrial Injuries, the Medico-Legal Council, the courts and other public bodies should have shown "special diligence" in handling her case without delays. In her view, a proper management of the case could and should have resulted in a final judgment within a period of less than four years.

67. The applicant maintained that the constant formal and technical arguing by the defendant was a very significant factor in the prolongation through the entire trial period. Moreover, she found excessive both the length of the proceedings before the City Court, which she recalled lasted almost six and a half year, and the length of the appeal proceedings. With regard to the latter she pointed out that the proceedings before the High Court were stayed for almost fourteen months awaiting an opinion by the Medico-Legal Council, although the council at the relevant time already had answered questions regarding her case three times before, even during the period at the administrative level, i.e. before she filed the lawsuit.

The Court's assessment

68. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

69. The Court observes that the case was certainly medically complex and necessitated several hearings before the Medico-Legal Council and the National Board of Industrial Injuries, which unavoidably prolonged the proceedings before the courts. Thus, for the purposes of Article 6 of the Convention the case was to some extent complex and time-consuming.

70. Moreover, the Court recalls that the applicant's lawyer at no time objected to questions being put to either the Medico-Legal Council or to the National Board of Industrial Injuries, or in general to adjournments of the proceedings, on the contrary, the lawyer often requested the adjournments

himself. More importantly, with reference to the examples provided by the Government, the Court agrees with their contention that the conduct of the applicant's counsel significantly contributed to the delay in the examination of the case. Thus, in the Court's view, the applicant and her counsel were responsible for prolonging the proceedings considerably.

71. As to the conduct of the relevant authorities the Court recalls that before the City Court the case was pending almost six years and six months, and before the High Court almost two years and three months.

72. Moreover, although it was not imputable to the City Court that before it the case was submitted twice to the Medico-Legal Council (from March 1994 until June 1994, and from June 1994 until September 1994) and twice to the National Board of Industrial Injuries (from May 1997 until March 1998 and, subsequent to the re-opening of the pre-trial proceedings, from June 1999 until January 2000), those authorities were public, and their involvement did prolong the court proceedings by almost two years.

73. Likewise, although it was not imputable to the High Court that during the proceedings before it, the case was submitted to the Medico-Legal Council twice (from January 2001 until March 2002 and from April 2002 until August 2002), the court proceedings were prolonged by at least one year and six months.

74. Lastly, the Court considers on the one hand that what was at stake in the litigation at issue undoubtedly was of crucial importance for the applicant since she had been personally injured and the damage inflicted had a detrimental impact on her life. Thus, special diligence was required by the national authorities.

75. Consequently, having regard to the circumstances of the case and taking into account the overall duration of the proceedings, which were terminated with a friendly settlement after almost eight years and nine month, the Court finds that the "reasonable time" requirement laid down in Article 6 § 1 of the Convention was not complied with in the present case.

76. There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

78. The applicant claimed 180,000 Danish kroner (DKK) (equal to 24,130 euros (EUR)[1]) in compensation for having her right to a fair trial within a reasonable time violated, combined with the trauma and depression suffered, which she alleged was directly linked to the uncertainty and frustration endured owing to the excessive length of the legal proceedings.

79. Subject to the Court finding a violation, the Government agreed that generally compensation should be awarded. They found, however, that the applicant's claim was excessive and disproportionate.

80. The Court considers that the applicant must have sustained non-pecuniary damage. Having regard to its finding above, notably as to the complexity of the case and the conduct of the applicant (see, for example, *Kyriakidis and Kyriakidou v. Cyprus*, no. 2669/02, §§ 29 and 38, 19 January 2006), and ruling on an equitable basis, it awards her EUR 6,000.

B. Costs and expenses

81. The applicant claimed reimbursement of costs and expenses in an amount of DKK 87,392 (equal to EUR 11,652), (plus DKK 4,000 in damage, set out below under item (i)). She provided the following details:

(i) DKK 4,000 inclusive of VAT for estimated expenses incurred during the domestic proceedings relating to travel, telephone, postage and "other expenses";

(ii) DKK 1,662 inclusive of VAT for travel expenses during the proceedings before the Court (from her home address to Copenhagen)

(iii) DKK 77,630 plus VAT for work carried out by counsel in the proceedings before the Court, comprising at least fifty-three hours used by counsel and at least forty-three hours by his legal assistants.

82. The Government contested the claims for the following reasons:

(i) With regard to expenses before the City Court, those had already been paid by the defendant in the amount of DKK 54,000 in accordance with the City Court judgment of 21 August 2000. With regard to expenses before the High Court the latter decided on 22 November 2002 that each party should pay their own costs and expenses. Hence, the claim in question could only relate to the appeal proceedings. However, unless the applicant could provide supporting documents for her claim, the Government contested it.

(ii) Since this claim also lacked supporting documentation as provided by Rule 60 § 2 of the Rules of Court it should, in the Government's view, be rejected.

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[1] On 13 January 2006, the date on which the claim was submitted.

(iii) The amount was excessive. The Government noted in this respect that if the work performed was converted to a normal working week of thirty-seven hours, the hours spend corresponded to more than two and a half weeks. They found such time consumption disproportionate, in particular because the applicant's counsel previously had dealt with several other cases before the Court concerning the length of proceedings, including cases concerning medical injuries.

83. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum.

84. The Court considers that these conditions have not been met as regards the costs and expenses claimed under (i) and (ii). It therefore rejects these claims.

85. Moreover, as regard the claim under (iii), the Court notes the existence in Denmark of a Legal Aid Act (*Lov 1999-12-20 nr. 940 om retshjælp til indgivelse og førelse af klagesager for internationale klageorganer i henhold til menneskerettighedskonventioner)* according to which applicants may be granted free legal aid as to their lodging of complaints and the procedure before international institutions under human rights conventions. It notes that the applicant has received EUR 5,365 (equal to DKK 40,000) pursuant to the said Act. In these circumstances, and having regard to the nature of the present case, the Court is satisfied that the applicant has been reimbursed sufficiently under domestic law, and it sees no reason to award her further compensation for costs and expenses (see, among others, *Vasileva v. Denmark*, no. 52792/99, § 50, 25 September 2003).

86. It rejects the remainder of the claim for costs and expenses which has not been specified by the applicant.

D. Default interest

87. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;

2. *Holds* unanimously
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros) in respect of non-pecuniary damage plus any tax that may be chargeable on this amount;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

3. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 September 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Snejana BOTOUCHAROVA
President