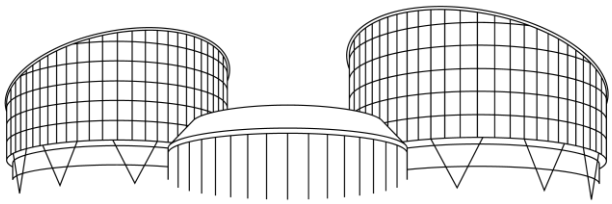

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MELIKYAN v. ARMENIA

(Application no. 9737/06)

JUDGMENT

STRASBOURG

19 February 2013

FINAL

19/05/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Melikyan v. Armenia,

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Corneliu Bîrsan,
Ján Šikuta,
Nona Tsotsoria,
Kristina Pardalos,
Johannes Silvis, *judges,*

and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 29 January 2013,

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

PROCEDURE

1. The case originated in an application (no. 9737/06) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Armenian national, Ms Emilia Melikyan ("the applicant"), on 9 March 2006.

2. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia at the European Court of Human Rights.

3. The applicant alleged, in particular, that she was unable to challenge the legality of a Government decree before the domestic courts.

4. On 7 January 2009 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1949 and lives in Yerevan.

6. From 1986 to 2005 the applicant worked at Paren Scientific Production and Planning State Closed Joint-Stock Company (hereafter "the Company").

7. On 27 July 2001 a law was adopted defining the programme of privatisation of State property for the period from 2001 to 2003, which listed the Company as one of many State companies subject to privatisation.

8. On 5 February 2004 the employees of the Company applied to the Government with a request that the Company's property be privatised through a direct sale to them. This request was admitted and was being examined by the Government at the time of preparation of the draft Government decree concerning the privatisation of the Company's shares.

9. On 10 June 2004 the Government adopted a decree (hereafter, the Decree), paragraph 1.2 of which set out that the Company's shares were to be privatised through a tender procedure. The Decree was submitted to the President of Armenia for approval.

10. By a letter of 7 July 2004 the Department for Management of State Property (hereafter the "DMSP") informed the Company's employees that the relevant tender procedure was open to them.

11. On an unspecified date, before the approval of the Decree by the President, a number of amendments were introduced, including amendments to paragraph 1.2.

12. On 8 October 2004 the President of Armenia approved the Decree, whose amended paragraph 1.2 stipulated that the Company's shares were to be privatised through a direct sale to a third person, A.K.

13. On 1 December 2004 the Company's employees, including the applicant, lodged jointly several claims with the Kentron and Nork-Marash District Court of Yerevan against the Government and the DMSP seeking, *inter alia*, prohibition of the application of certain provisions of the Decree and recognition of their pre-emptive right to acquire the Company's shares. On the same date the claims were admitted for examination.

14. In the proceedings before the District Court, the plaintiffs lodged an additional claim, contesting the legality of the Decree and seeking partially to annul it. In particular, they claimed that the Decree had been adopted in violation of Sections 27 § 2, 38 § 2 and 68 §§ 4 and 7 of the Law on Legal Acts, Section 10 § 1 of the State Property Privatisation Act (hereafter "the Act"), and Articles 1, 5 and 8 of the Constitution. They also filed a motion requesting the court not to apply Article 160 of the Code of Civil Procedure (CCP) to their claim for annulment, arguing that this provision violated their right of access to court, was unconstitutional and was incompatible with the requirements of Article 6 of the Convention. They also filed another motion requesting the court, in the alternative, to initiate constitutional review proceedings to examine the constitutionality of that provision. According to the applicant, the District Court never addressed those motions.

15. On 25 January 2005 the Kentron and Nork-Marash District Court of Yerevan decided to dismiss all the claims as unsubstantiated except for the claim for annulment, in respect of which the District Court decided under Article 109 of the CCP to terminate the proceedings on the ground that it

was not subject to examination by the courts of general jurisdiction. In doing so, the District Court referred to Article 15 § 2 of the Civil Code and paragraph 2 of Article 160 § 1 of the CCP.

16. On 8 February 2005 the applicant lodged an appeal.

17. On 6 June 2005 the applicant filed motions with the Civil Court of Appeal similar to those filed before the District Court.

18. On 22 June 2005 the applicant also requested the Court of Appeal to order the DMSP to provide the originals or certified copies of certain documents relating to the preparation of the Decree. The request was granted but the Government apparently failed to comply with it.

19. On 28 June 2005 the Court of Appeal examined all the claims, including the claim for annulment, and decided to dismiss them as unsubstantiated. In doing so, the Court of Appeal concluded that the Government of Armenia, as the owner of the Company, acted within its powers by disposing of it in a lawful manner, through adoption of the Decree subsequently ratified by the President.

20. On 13 July 2005 the applicant lodged an appeal on points of law.

21. On 9 September 2005 the applicant filed a motion similar to those filed before the lower courts.

22. On the same date the Court of Cassation quashed the judgment of the Court of Appeal in its part relating to the claim for annulment and decided to terminate the proceedings in that part on the same grounds as the District Court.

23. On 16 November 2006 the Constitutional Court found paragraph 2 of Article 160 § 1 of the CCP to be unconstitutional and declared it invalid.

II. RELEVANT DOMESTIC LAW

A. The Constitution of Armenia of 1995

24. The relevant provisions of the Constitution, prior to the amendments introduced on 27 November 2005, read as follows:

Article 38

> "Everyone has the right to defend his rights and freedoms by any means not prohibited by law.
>
> Everyone has the right to judicial protection of his rights and freedoms guaranteed by the Constitution and laws."

Article 39

"Everyone has the right to a public hearing of his case by an independent and impartial court within a reasonable time in conditions of equality and with respect for all fair trial requirements in order to have his violated rights restored, as well as the validity of the charge against him determined. ..."

Article 100

"The Constitutional Court, in accordance with a procedure prescribed by law, shall: (1) decide on the conformity of laws, the resolutions of the National Assembly, the decrees and directives of the President of [Armenia] and the decrees of the Government with the Constitution; ..."

Article 101

"Applications to the Constitutional Court can be submitted by: (1) the President of [Armenia]; (2) at least one third of the deputies of the National Assembly; (3) candidates for the office of the President of [Armenia] and for the National Assembly in connection with disputes related to election results; [and] (4) the Government..."

25. The above Articles 38, 39 and 101, as amended on 27 November 2005 with effect from 6 December 2005, read as follows:

Article 18

"Everyone has the right to an effective remedy to have his rights and freedoms protected by the judicial and other public authorities.

Everyone has the right to defend his rights and freedoms by any means not prohibited by law. ..."

Article 19

"Everyone has the right to a public hearing of his case by an independent and impartial court within a reasonable time in conditions of equality and with respect for all fair trial requirements in order to have his violated rights restored, as well as the validity of the charge against him determined. ..."

Article 101

"Applications to the Constitutional Court can be submitted, in a procedure prescribed by the Constitution and the Constitutional Court Act, by: (1) the President of [Armenia] ...; (2) the National Assembly ...; (3) at least one third of the deputies of the National Assembly ...; (4) the Government ...; (5) the bodies of local self-government ...; (6) any person in respect of a particular case, if there has been a final judicial act and all the judicial remedies have been exhausted and when the dispute concerns the constitutionality of a legal provision applied to that person by such act; (7) the courts and the General Prosecutor on questions of constitutionality of legal

provisions relevant to a particular case dealt with by them; (8) the Ombudsman ...; [and] (9) candidates for the office of the President of [Armenia] and for the National Assembly... . The Constitutional Court examines cases only on the basis of a relevant application."

B. The Civil Code (in force from 1 January 1999)

26. The relevant provisions of the Civil Code read as follows:

Article 14: Means of protecting civil rights

"Civil rights shall be protected: ... (6) by annulling acts of public authorities or local self-government bodies; ..."

Article 15: Annulling unlawful acts of public authorities or local self-government bodies

"1. The acts of public authorities or local self-government bodies which are incompatible with laws or other legal acts and which violate the civil rights and lawful interests of a citizen or a legal person may be annulled by a court..."

2. The Constitutional Court of Armenia shall, under Article 100 of the Constitution of Armenia, decide on the compatibility of laws, the resolutions of the National Assembly of Armenia, the decrees and directives of the President of Armenia, and the decrees of the Government of Armenia with the Constitution."

Article 163: The notion and substance of the right to ownership

"2. The owner has the right to carry out at his discretion any action in respect of the property belonging to him, including alienating his property to the ownership of other persons, transferring to such persons the rights to use, possess and dispose of the property, pledging or otherwise disposing of it, provided that such action does not contradict the law or violate the rights and statutory interests of other persons."

Article 171: Privatisation of State property (denationalisation)

"The State may transfer the property it owns to the ownership of citizens or legal entities in accordance with the procedure as provided for by the laws on privatisation (denationalisation) of State property."

C. The Code of Civil Procedure (in force from 12 January 1999)

27. The relevant provisions of the Code of Civil Procedure, as in force at the material time, read as follows:

Article 109: Grounds for terminating the proceedings

"The court shall terminate the proceedings, if ... [*inter alia*] the dispute is not subject to be examined by the courts..."

Article 159: Grounds for annulling unlawful acts of public authorities, local self-government bodies and their officials or for contesting their actions (inaction)

"Unlawful acts of public authorities, local self-government bodies and their officials can be annulled or their actions (inaction) can be contested (hereafter, annulling the unlawful act) if the act in question contradicts the law and if there is evidence that the applicant's rights and (or) freedoms guaranteed by the Armenian Constitution and laws have been violated. ..."

Article 160: An a**pplication seeking to annul unlawful acts of public authorities, local self-government bodies and their officials**

"1. An application seeking to annul unlawful acts of public authorities, local self-government bodies and their officials shall be submitted to a court dealing with civil cases or the Commercial Court, pursuant to their jurisdiction over cases.

The court cannot examine applications seeking to annul those acts, the determination of whose conformity with the Constitution of Armenia falls within the exclusive jurisdiction of the Constitutional Court.

2. The application may concern the unlawful act itself or any part of it. ..."

D. The Law on Legal Acts (in force from 31 May 2002)

28. The relevant provisions of the Law, as in force at the material time, read as follows:

Section 27: Elaboration of draft legal acts

"2. At the beginning of activities for the elaboration of a draft law or another regulatory legal act which is significant for its scale or importance, the body elaborating the draft may prepare its concept paper. The concept paper shall include the description of the relations subject to regulation and the objectives of the future legal act, shall state the main provisions, analyse the anticipated consequences of implementation of the norms being elaborated, and may present the preliminary structure of the legal act."

Section 38: Day of adoption of a legal act

"2. The reference number of a legal act shall be established by the body adopting the legal act, only in Arabic numerals. The sequence of numbers shall restart from 1 January of each year. Agency regulatory legal acts must be numbered only in whole numerals."

Section 68: Fulfilment of the requirements of legal acts

"4. If the fulfilment of a requirement of a norm provided for in a legal act may be achieved only by the adoption of another legal act provided for by that legal act, or its fulfilment is directly conditional upon the adoption of another legal act, the legal act

shall be operative in respect of that norm upon the entry into force of the other appropriate legal act.

7. State and local self-government bodies or their officials shall be obliged to assist, within the scope of their powers, persons in the exercise of their rights and fulfilment of their responsibilities, to take appropriate measures provided for by the legislation of the Republic of Armenia to restore their violated rights, as well as to eliminate the obstacles to the exercise of the rights and fulfilment of responsibilities of persons, if the exercise of those rights or fulfilment of those responsibilities is not in conflict with the interests of the state security and public safety, public order, public health and morals, or if it will not result in an infringement of the rights and freedoms, honour and good reputation of others."

E. The State Property Privatisation Act (in force from 10 February 1998)

29. The relevant provisions of the Act, as in force at the material time, read as follows:

Section 3: The notion and objects of privatisation

"1. ...In accordance with the procedure provided for by the present Act, the Government of Armenia shall issue a decree on privatisation of State property (except for movable property allocated to a public institution)."

Section 10: The right of members of staff to participate in the privatisation of companies (enterprises) and "small" privatisation units

"1. The members of staff of the companies (enterprises) or "small" privatisation units being privatised shall have equal rights in buying the property of the companies (enterprises) or "small" privatisation units in question. ..."

Section 14: Procedures for privatising State property

"1. State property shall be privatised through the following basic procedures: ... (c) tender process; [and] (d) direct sale...

2. The decision on the procedure through which State property is to be privatised shall be taken by the Government of Armenia, in accordance with a procedure prescribed by this Act. ..."

Section 18: Privatisation of State property through direct sale

"1. State property shall be privatised through direct sale to: the staff of the company; the leaseholder of the State property; the holder (holders) of the company's share not owned by the State; or the potential buyer of a given property, if [the buyer] is known in advance.

2. ...An application submitted by the staff of a given company to the competent public authority may serve as a ground for privatising the State property included in the privatisation programme through direct sale to the staff."

F. Concept Paper on Privatisation and Optimisation of Scientific Research and Planning/Design Organisations

30. On 13 September 2001 the Government approved the Concept Paper on privatisation of scientific research and planning/design organisations, which were divided into three categories. The third category included organisations carrying out model design work and involved in experimental manufacturing, such as the Company, whose privatisation was found to be expedient. It was stated that such organisations were to be privatised through direct sale to their staff and the approach to be applied was that the privatisation should not merely pursue the aim of purchase and sale of State property.

G. The decision of the Constitutional Court of 16 November 2006 on the Conformity of Article 160 of the Code of Civil Procedure with the Constitution, adopted on the basis of applications lodged by citizens Sofik Gasparyan and Artak Zeynalyan

31. The Constitutional Court found paragraph 2 of Article 160 § 1 of the CCP incompatible with Articles 18 and 19 of the Constitution, as amended on 27 November 2005, and invalid because it failed to guarantee balance of power, created a serious gap in terms of judicial control of legal acts and endangered the implementation of an individual's right to judicial protection of his rights and freedoms as guaranteed by paragraph 1 of Article 18 of the Constitution. In doing so, the Constitutional Court held that there existed a judicial practice in accordance with which paragraph 2 of Article 160 § 1 of the CCP was applied by the domestic courts to deny court examination of claims contesting the legality of a number of legal acts including decrees of the President and the Government.

THE LAW

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

32. The applicant complained under Articles 6 and 13 of the Convention that she was deprived of the right to challenge the legality of the Decree before the domestic courts. The Court considers that this complaint

essentially raised an issue of access to court and must be examined from the standpoint of Article 6 § 1 of the Convention only which, in so far as relevant, provides:

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

A. Admissibility

Compatibility ratione materiae

33. The Government submitted that Article 6 was not applicable to the proceedings in question. In particular, the Government, being a sole shareholder of the Company and enjoying ownership rights, acted within the scope of their authority by adopting the Decree whereby they disposed of their property. The applicant had no right under Armenian law to buy shares in the Company and the alleged unlawfulness of the Decree could not have any effect in that respect. Consequently, the applicant's claim to buy the Company shares had no legal basis in the domestic law and therefore there was no dispute over a "right" in the present case. Besides, the result of the annulment of the Decree was not directly decisive for the applicant's alleged right to buy the Company.

34. The applicant claimed that Article 6 was applicable to her case. In particular, her case concerned a "dispute" within the meaning of Article 6 of the Convention, as with her claim she challenged the legality of the decisions and actions of the public authority. Furthermore, such dispute related to a civil right under Article 6 as the disputed right was recognised under the domestic law.

35. The Court reiterates that, according to the principles laid down in its case-law, it must first ascertain whether there was a "dispute" (contestation) over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. The outcome of the proceedings must be directly decisive for the right in question. Lastly, the right must be a "civil" right (see, for example, *Mennitto v. Italy* [GC], no. 33804/96, § 23, ECHR 2000-X).

36. The Court notes, firstly, that the applicant instituted proceedings whereby she claimed that the Decree had been adopted in violation of laws and, in particular, of her right to buy shares in the Company that was sold by the Decree to another individual. There was therefore a dispute in the present case which was genuine and serious.

37. Secondly, as to the question of whether there was a dispute over a "right", the Court observes that in the present case the Government, as the

owner of the Company, disposed of its property by selling it to a third person. It may therefore appear that the contested Decree was delivered in the exercise of discretionary powers by the authorities (see *Bozhilov v. Bulgaria* (dec.), no. 41978/98, 22 November 2001). However, the Court notes that the direct sale of a company to its staff was envisaged by Article 18 of the Act as one of the forms of privatisation of State property (see paragraph 29 above). Furthermore, Article 10 of the Act explicitly provided that the members of staff of companies being privatised had equal rights to buy the property of such companies (see *ibid*.). Based on the above legal provisions, the Court considers that the applicant's contention that she had a right to buy the property, namely shares in the Company during its privatisation, was not devoid of legal basis and that such right could be said, at least on arguable grounds, to be recognised under domestic law. Hence, there was a dispute over a "right" in the present case.

38. The Court then notes that the possible recognition of the Decree as unlawful and its annulment in the part relating to the sale of the Company to A.K. was directly decisive for the applicant's right subsequently to acquire shares in the Company. It can therefore be held that, although the proceedings in question did not have the determination of the applicant's right as their purpose, they were nevertheless directly decisive for such right.

39. Lastly, the Court notes that the applicant's right to acquire and own shares in the Company involved a distinct pecuniary interest and was undoubtedly "civil".

40. To sum up, the Court considers that the proceedings whereby the applicant sought to annul the Decree fell within the scope of Article 6 under its civil head. The Government's objection as to incompatibility *ratione materiae* must therefore be dismissed.

41. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

42. The Government submitted that the domestic courts did not refuse to examine the applicant's claim seeking partially to annul the Decree. In particular, based on the applicant's claim, civil proceedings were instituted during which the applicant was given an opportunity to challenge the legality of the Decree. Both the Kentron and Nork-Marash District Court and the Court of Appeal examined the claim and dismissed it as unsubstantiated, finding that the Decree had been adopted in accordance with the law. Furthermore, the applicant's claim for annulment concerned the alleged unconstitutionality of the Decree rather than its unlawfulness as

the applicant, in substantiation of her claim, alleged before the District Court that it had been adopted in violation of several Articles of the Constitution.

43. The Government further claimed that, at the material time, Article 160 § 1 of the CCP was still in force and was found unconstitutional more than one year later, namely on 16 November 2006, and only in the context of the judicial practice, according to which that provision had been applied by the domestic courts to deny examination of claims raising the issue of legality of President or Government decrees. As in the present case, the domestic courts applied Article 160 § 1 of the CCP in the context of the applicant's claim of the alleged unconstitutionality of the Decree, as opposed to its unlawfulness. The fact that paragraph 2 of Article 160 § 1 of the CCP was found unconstitutional by the Constitutional Court was irrelevant for the examination of the present case.

44. The applicant submitted that she was deprived of the right to challenge the legality of the Decree before the domestic courts. Despite the fact that the domestic courts admitted her claim, they decided to discontinue the proceedings and thus failed to examine it on the merits. There was no judicial body under the domestic law where she could seek redress. Therefore, she was deprived of her right to access to court as guaranteed by Article 6.

45. The Court reiterates that the right to a court, of which the right of access constitutes one aspect, is not absolute but may be subject to limitations in the form of regulation by the State. In this respect the State enjoys a certain margin of appreciation. Nevertheless, the limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, among other authorities, *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, § 59, Series A no. 316-B; *Papon v. France*, no. 54210/00, § 90, ECHR 2002-VII; and *Boyajyan v. Armenia*, no. 38003/04, § 42, 22 March 2011).

46. Turning to the circumstances of the present case, the Court notes that under Armenian law at the material time individuals enjoyed the right to seek annulment of unlawful acts of public authorities (see above Article 15 § 1 of the Civil Code and former Article 159 of the Code of Civil Procedure, paragraphs 26 and 27). However, paragraph 2 of Article 160 § 1 of the CCP, as applied by the domestic courts to the applicant's case, imposed a total restriction on the applicant's possibility to seek judicial protection against a decision of the executive authorities, namely the Decree, irrespective of whether the alleged unlawfulness of the Decree or its alleged unconstitutionality was invoked. The Government alleged that the

domestic courts had not refused to examine the applicant's claim for annulment and that the applicant's claim concerned the alleged unconstitutionality of the Decree rather than its unlawfulness. In this respect, the Court notes that the applicant's claim for annulment was left unexamined by the final decision of the Court of Cassation on 9 September 2005 (see paragraph 22 above). The Government's allegation that the domestic courts had examined the claim is therefore not based on the facts of the case.

47. Similarly, as it appeared from the case file, the applicant, in substantiation of her claim for annulment, submitted that the Decree had been adopted both in violation of law, namely Sections 27 § 2, 38 § 2 and 68 §§ 4 and 7 of the Law on Legal Acts and Section 10 § 1 of the Act as well as Articles 1, 5 and 8 of the Constitution (see paragraph 14 above). Therefore, the Government's allegation that the applicant's claim concerned the alleged unconstitutionality of the Decree rather than its unlawfulness is not based on the facts of the case either. In this respect, the Court points out that the domestic courts did not indicate whether Article 15 § 2 of the Civil Code and paragraph 2 of Article 160 § 1 of the CCP was applied to the applicant's claim only in its part concerning the alleged unconstitutionally of the Decree and, if that was the case, what the reasons were for leaving unexamined the part relating to the alleged unlawfulness of the Decree. It can therefore be concluded that paragraph 2 of Article 160 § 1 of the CCP was applied to the applicant's claim as a whole. In this respect, the Court takes note of the fact that, as was mentioned by the Constitutional Court in its decision of 16 November 2006, there existed a judicial practice in accordance with which paragraph 2 of Article 160 § 1 of the CCP was applied by the domestic courts to deny court examination of claims contesting the legality of a decree of the President or the Government (see paragraph 31 above). Lastly, as far as the decision of the Constitutional Court is concerned, the Court notes that paragraph 2 of Article 160 § 1 of the CCP was found incompatible with the Constitutional provisions guaranteeing judicial protection of rights and freedoms of individuals, and declared invalid.

48. Based on the above, the Court considers that the domestic courts, by imposing such indiscriminate restriction on the applicant's right to seek judicial protection against an allegedly unlawful act of the executive, violated the very essence of the applicant's right to access to court.

49. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

50. The applicant also complained under Article 6 of the Convention that the domestic courts failed to examine her motions and that the

Government failed to comply with the Court of Appeal's order to provide certified copies of documents. She further complained under Article 1 of Protocol No. 1 about her impossibility to buy shares in the Company.

51. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicant claimed 165,000 euros (EUR) in respect of both pecuniary and non-pecuniary damage.

54. The Government objected to this claim.

55. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. At the same time, the Court considers that the applicant has suffered non-pecuniary damage as a result of the impossibility to contest the legality of the Decree before the domestic courts. Ruling on an equitable basis, it awards the applicant EUR 3,600 in respect of non-pecuniary damage.

B. Costs and expenses

56. The applicant did not submit any claim under this head.

C. Default interest

57. The Court considers it appropriate that the default interest rate 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. *Declares* the complaint concerning the alleged violation of the right of access to court admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention with respect to the right of access to court;

3. *Holds*
   (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 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 19 February 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President