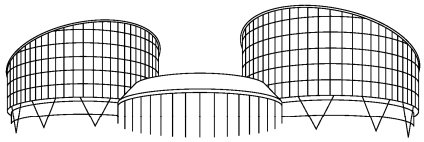

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF DIMOVIĆ v. SERBIA

(Application no. 24463/11)

JUDGMENT

STRASBOURG

28 June 2016

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 Dimović v. Serbia,

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

Luis López Guerra, *President,*
Helena Jäderblom,
Johannes Silvis,
Branko Lubarda,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 7 June 2016,

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

PROCEDURE

1. The case originated in an application (no. 24463/11) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Serbian nationals, Mr Ivica Dimović and Mr Jožef Dimović ("the applicants"), on 5 March 2011.

2. The applicants were represented by Mr V. Juhas Đurić, a lawyer practising in Subotica. The Serbian Government ("the Government") were represented by their Agent, Ms V. Rodić.

3. The applicants alleged a violation of the rights of the defence with respect to witnesses.

4. On 5 January 2015 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1980 and 1964, respectively, and live in Hajdukovo.

6. On 12 February 2007 the applicants and their friend S.K. were indicted for allegedly having stolen a wine press (*presu za grožđe*).

7. On 25 January 2008 the Subotica Municipal Court acquitted all three defendants of these charges. In so doing, it explained that while there was evidence that they had been in possession of a press, there was nothing to

suggest that they had obtained it through any criminal activity. The applicants themselves maintained that they had found the press abandoned, while S.K. denied the charge and thereafter exercised his right to remain silent. No material evidence was introduced during the trial and, apart from the statement by the alleged victim – who maintained that the press worked and had been kept in a locked yard – the statements of two witnesses supported the applicants' defence.

8. On 8 April 2008 the prosecution lodged an appeal against this judgment, emphasising, in particular, that the first-instance court had failed to take into account a statement given to the police by S.K. on 26 January 2006 (albeit in the absence of the applicants and their counsel, who had not been invited to attend).

9. On 12 May 2008 the Subotica District Court quashed the impugned judgment and ordered a retrial. The court explained that the statement referred to by the prosecution was particularly important because on this occasion S.K. had confessed – in the presence of his counsel – that he had stolen the press together with the applicants. S.K. had subsequently revoked this confession claiming that it had been given under the influence of alcohol and then refused to answer any further questions, and all of these circumstances needed to be reconsidered by the Municipal Court, even though the prosecution itself had initially failed to request that S.K.'s statement of 26 January 2006 be admitted as evidence. The court found this failure by the Municipal Court to be "unclear and inexplicable".

10. On 12 October 2008 S.K. died and on 29 December 2008 the Municipal Court discontinued the proceedings against him.

11. On 19 February 2009 the Municipal Court, having held a hearing and read out S.K.'s statement of 26 January 2006 before the parties, found the applicants guilty. The first applicant was sentenced to an effective prison term of six months while the second applicant was sentenced to six months' imprisonment, suspended for a period of two years. In its reasoning the court primarily relied on S.K.'s statement of 26 January 2006. No evidence different from that admitted during the first trial was introduced during the retrial.

12. On 29 July 2009 the District Court upheld this judgment on appeal, and on 7 October 2010 the Supreme Court rejected the applicants' further appeal on points of law (*zahtev za ispitivanje zakonitosti pravosnažne presude*).

13. In the meantime, on 11 September 2009, the applicants lodged a constitutional appeal with the Constitutional Court, alleging that their conviction had been based on the testimony of a person whom they had never had a chance to cross-examine and who had, in any event, revoked it subsequently.

14. On 14 October 2010 the Constitutional Court rejected the applicants' appeal as manifestly ill-founded, adding that – as a consequence of the

death of S.K. – the lower courts had had no choice but to accept his prior statement given to the police and, clearly, could no longer accommodate the applicants' objection regarding his cross-examination.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. Article 226 § 9 of the Code of Criminal Procedure (*Zakonik o krivičnom postupku*, published in the Official Gazette of the Federal Republic of Yugoslavia – OG FRY – no. 70/01, amendments published in OG FRY no. 68/02 and in the Official Gazette of the Republic of Serbia nos. 58/04, 85/05, 115/05, 49/07 and 122/08), provides that a statement given by a suspect in a police station in the presence of his lawyer may be used as evidence in a subsequent criminal trial against him. While this provision further requires that the public prosecutor be invited to attend this interrogation, there is no additional obligation to invite any co-defendants or their counsel.

16. Article 337 § 1 (1) of the Code of Criminal Procedure provides, *inter alia*, that statements given by "co-indicted persons" (*od strane saoptuženih*) may be read out in court, and hence admitted as evidence, if the person concerned has died in the meantime.

17. Any such statements given in a non-judicial context (*van krivičnog postupka*), as well as those given to a court of law prior to a remittal, may not be taken into account (see *Komentar Zakonika o krivičnom postupku*, Prof. dr Tihomir Vasiljević and Prof. dr Momčilo Grubač, IDP Justinijan, Belgrade, 2005, p. 555, paragraph 1; see, also, the Federal Court's ruling Kzs. 2/79 of 19 January 1979).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 OF THE CONVENTION

18. The applicants complain, under Article 6 §§ 1 and 3 (d) of the Convention, about the overall fairness of the aforementioned criminal proceedings, in particular their convictions, which had been based on the testimony of a person whom they had never had a chance to cross-examine and who had, in any event, revoked his statement subsequently. The relevant part of Article 6 reads as follows:

> "1. In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:

...

(d) to examine or have examined witnesses against him ...

A. Admissibility

1. Abuse of the right of individual application

19. The Government asked the Court to declare the application inadmissible as an abuse of the right of individual application. In particular, they first pointed out that the "conduct of the applicants' defence counsel should be taken into account in particular for, on the one hand, he claimed costs for all three accused in the criminal proceedings, which were awarded to him on the account of the budget. On the other hand, he tries on the basis of the present application ... to benefit from the fact of the death of one of the accused". They further maintained that the applicants' representative had misinformed the Court by stating that their convictions had been based solely on S.K.'s statement.

20. The applicants disagreed. They maintained that it had been their legal representative's duty to pursue their interests both before the domestic courts and before this Court, irrespective of the fact of their co-defendant's death.

21. The Court has consistently held that any conduct of an applicant that is manifestly contrary to the purpose of the right of individual application as provided for in the Convention and impedes the proper functioning of the Court or the proper conduct of the proceedings before it constitutes an abuse of the right of application (see *Miroļubovs and Others v. Latvia*, no. 798/05, §§ 62 and 65, 15 September 2009). However, the rejection of an application on grounds of abuse of the right of application is an exceptional measure (see *Miroļubovs and Others*, cited above, § 62) and has so far been applied only in a limited number of cases. In particular, the Court has rejected applications as abusive under Article 35 § 3 of the Convention if they were knowingly based on untrue facts or misleading information (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014; *Pirtskhalaishvili v. Georgia* (dec.), no. 44328/05, 29 April 2010; *Khvichia v. Georgia* (dec.), no. 26446/06, 23 June 2009); *Keretchashvili v. Georgia* (dec.), no. 5667/02, 2 May 2006 and *Řehák v. Czech Republic* (dec.), no. 67208/01, 18 May 2004), or if they manifestly lacked any real purpose (see *Jovanović v. Serbia* (dec.), no. 40348/08, 7 March 2014), or if they contained offensive language (see, for example, *Řehák,* cited above) or if the principle of confidentiality of friendly-settlement proceedings had been breached (see, for example, *Popov v. Moldova (no. 1)*, no. 74153/01, § 48, 18 January 2005).

22. Turning to the present case, the Court observes that the impugned conduct of the applicants and their representative cannot be considered as

being contrary to the purpose of the right of individual application. The Court agrees with the applicants that their representative's decision to lodge their application before the Court amounted to nothing more than the fulfilment of his duties in the very exercise of the applicants' right of individual application. The death of the co-defendant in the applicants' criminal case before domestic courts cannot be regarded as a factor contributing to their abuse of the right of individual application but rather as an issue which gave rise to their bringing the application before the Court in the first place.

23. As to the Government's argument that the applicants had misled the Court by stating that their convictions had been based solely on S.K.'s statement, the Court finds that this is the applicants' legal argument as to the alleged violation of their right to a fair trial. It is for the Court to assess that argument on the merits after examining all the available material, including the impugned decisions of the domestic courts which were duly disclosed by the applicants.

24. For these reasons, the Court rejects the Government's objection as to abuse of the right to individual application.

2. Six-month rule and non-exhaustion of domestic remedies

25. The Government contended that the applicants had failed to exhaust the available domestic remedies and that their complaints had been lodged out of time. In particular, the Government argued that a constitutional appeal was not an effective legal remedy in the applicants' case. They should, therefore, have lodged their application with the Court within a period of six months after the Municipal Court had admitted S.K.'s statement as evidence on 19 February 2009. In the alternative, the Government claimed that the complaint lodged by the applicants before the Constitutional Court was not substantially the same as the complaint raised before the Court. According to the Government, they had actually complained in respect of the decision of the Subotica District Court of 12 May 2008, whereby the applicants' acquittal had been quashed and the retrial had been ordered. They, had not, therefore, seized the Constitutional Court in an appropriate manner, thus failing to exhaust the available domestic remedies.

26. The applicants disagreed.

27. The Court has already held that a constitutional appeal should, in principle, be considered as an effective domestic remedy within the meaning of Article 35 § 1 of the Convention in respect of all applications introduced against Serbia after 7 August 2008 (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 84, 25 March 2014 and *Vinčić and Others v. Serbia*, nos. 44698/06 and others, § 51, 1 December 2009). It sees no reason to depart from this practice under the circumstances of the present case. This being so, the six-

month period should be reckoned from the moment when the applicants received the decision of the Constitutional Court on 21 February 2011 – fourteen days prior to the lodging of the application.

28. The Court further finds that it is apparent from the copies of the applicants' constitutional appeal and the decision of the Constitutional Court that, contrary to the Government's argument, the applicants explicitly raised a complaint which is identical to the complaint raised before this Court. In substance, they complained about the fairness of the proceedings conducted upon the order for retrial because of the admittance of S.K.'s statement as evidence.

29. For these reasons, the Court rejects the Government's two-pronged objection regarding the non-exhaustion of domestic remedies and the six-month rule.

30. The Court further notes that the application 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

1. The parties' arguments

31. The applicants maintained that they had not had a fair trial, as they had not been given the opportunity to question S.K. after his statement had been admitted as evidence during the retrial. They further argued that their conviction had been based solely on S.K.'s statement, stressing that the statement had not been given before the court and that it had been revoked in the later stages of criminal proceedings.

32. The Government disagreed. They argued that the domestic courts had not based their decision solely on the S.K.'s statement but had also taken into consideration the statements of various other witnesses. They further maintained that, although the relevant statement by S.K. had not been given before the courts but to the police, it had been recorded in a proper form. The Government also invited the Court to take into consideration the fact that, at a later stage of the proceedings, S.K. had given statements before the court.

2. The Court's assessment

(a) General principles

33. The Court reiterates at the outset that the admissibility of evidence is primarily a matter for regulation by national law and as a general rule it is for the national courts to assess the evidence before them. The Court's task under the Convention is not to give a ruling as to whether witness

statements were properly admitted as evidence, but rather to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (see, among many other authorities, *Gäfgen v. Germany* [GC], no. 22978/05, § 162, ECHR 2010).

34. The Court further notes that the guarantees in paragraph 3 (d) of Article 6 are specific aspects of the right to a fair hearing set forth in paragraph 1 of this provision which must be taken into account in any assessment of the fairness of proceedings. In addition, it is the Court's primary concern under Article 6 § 1 to evaluate the overall fairness of the criminal proceedings (see *Taxquet v. Belgium* [GC], no. 926/05, § 84, ECHR 2010).

35. Article 6 § 3 (d) enshrines the principle that, before an accused can be convicted, all evidence against him must normally be produced in his presence at a public hearing with a view to adversarial argument. Exceptions to this principle are possible but must not infringe the rights of the defence, which, as a rule, require that the accused be given an adequate and proper opportunity to challenge and question a witness against him, either when that witness makes his statement or at a later stage of proceedings (see, for example, *Solakov v. the former Yugoslav Republic of Macedonia*, no. 47023/99, § 57, ECHR 2001-X).

36. According to the principles developed in the Court's case-law, it is necessary to examine in three steps the compatibility with Article 6 §§ 1 and 3 (d) of the Convention of proceedings in which statements made by a witness who had not been present and questioned at the trial were used as evidence (see *Schatschaschwili v. Germany* [GC], no. 9154/10, § 107, ECHR 2015 and *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, § 119, ECHR 2011; see also the summary of the law in *Seton v. the United Kingdom*, no. 55287/10, §§ 58 and 59, 31 March 2016, not yet final).

37. Firstly, the Court needs to examine whether there was a good reason for admitting the evidence of an absent witness, keeping in mind that witnesses should as a general rule give evidence during the trial and that all reasonable efforts should be made to secure their attendance (*Schatschaschwili*, cited above, §§ 110-111 and 117-118). The Court normally accepts as self-evident that the death of a witness constitutes a good reason for allowing their previously-given statements to be admitted as evidence without the defence being given an opportunity to cross-examine this witness in person (see, for example, *Al-Khawaja and Tahery,* cited above, §§ 103, 121 and 153; *Ferrantelli and Santangelo v. Italy*, 7 August 1996, § 52, Reports 1996-III and *Mika v. Sweden* (dec.), no. 31243/06, § 37, 27 January 2009). This acceptance is not unconditional, however. In all of these cases, the death of a witness occurred shortly after the statement had been given at a pre-trial stage of proceedings or, in any event, prior to the conclusion of the first-instance trial. The analysis of these

cases clearly shows that the inability of the defence to examine such witnesses could not have been reasonably attributed to a lack of diligence on the part of domestic courts.

38. Secondly, it is necessary to determine whether the evidence of the absent witness was the sole or decisive basis for the defendant's conviction (see *Schatschaschwili*, cited above, § 107 and *Al-Khawaja and Tahery*, cited above, §§ 119 and 126-47). According to the "sole or decisive rule", if the conviction of a defendant is solely or mainly based on evidence provided by witnesses whom the accused is unable to question at any stage of the proceedings, his defence rights are unduly restricted. In this context, the word "decisive" should be narrowly understood as indicating evidence of such significance or importance as is likely to be determinative of the outcome of the case (see *Schatschaschwili*, cited above, § 123 and *Al-Khawaja and Tahery*, cited above, § 131). Where the untested evidence of a witness is supported by other corroborative evidence, the assessment of whether it is decisive will depend on the strength of the supportive evidence: the stronger the other incriminating evidence, the less likely that the evidence of the absent witness will be treated as decisive. However, as Article 6 § 3 of the Convention should be interpreted in the context of an overall examination of the fairness of the proceedings, the sole or decisive rule should not be applied in an inflexible manner. In particular, where a hearsay statement is the sole or decisive evidence against a defendant, its admission as evidence will not automatically result in a breach of Article 6 § 1. However, because the admission of such evidence carries a significant weight in the assessment of the overall fairness of the proceedings, the Court must subject these proceedings to the most searching scrutiny.

39. This is the role of the third step in which the Court needs to establish whether there were sufficient counterbalancing factors, including strong procedural safeguards, to compensate for the handicaps caused to the defence as a result of the admission of the untested evidence and to ensure that the trial, judged as a whole, was fair (see *Khawaja and Tahery*, cited above, § 147). These counterbalancing factors include measures that permit a fair and proper assessment of the reliability of the untested evidence. This would permit a conviction to be based on such evidence only if it is sufficiently reliable given its importance to the case. The extent of the counterbalancing factors necessary in order for a trial to be considered fair will depend on the weight of the evidence of the absent witness. The more important that evidence, the more weight the counterbalancing factors will have to carry in order for the proceedings as a whole to be considered fair.

40. As the Grand Chamber clarified in its *Schatschaschwili* judgment, the three steps are interrelated and, taken together, serve to establish whether the criminal proceedings at issue have, as a whole, been fair (see *Schatschaschwili,* cited above*,* § 118). The absence of good reason for the non-attendance of a witness cannot, of itself, be conclusive of the lack of

fairness of a trial, although it remains a very important factor to be weighed in the balance when assessing the overall fairness, and one which might tip the balance in favour of finding a breach of Article 6 §§ 1 and 3(d). Furthermore, given that its concern is to ascertain whether the proceedings as a whole were fair, the Court should not only review the existence of sufficient counterbalancing factors in cases where the evidence of the absent witness was the sole or the decisive basis for the applicant's conviction, but also in cases where it found it unclear whether the evidence in question was sole or decisive but nevertheless was satisfied that it carried significant weight and its admission might have handicapped the defence.

(b) Application of these principles to the present case

(i) Whether there was a good reason for the non-attendance of S.K. at the trial

41. The Court first observes that S.K. died before the retrial. However, S.K. was available for questioning during the entire proceedings at the first trial. The domestic court had therefore had ample opportunity to introduce the statement he had given on 26 January 2006 as evidence, should they have wished to do so, which would have given an opportunity to the defence to challenge it in person. However, the prosecution neither requested that the court admit this statement as evidence, nor did the court do so of its own motion during the first trial. As a consequence, the statement was not admitted as evidence until the retrial, by which time S.K. had already died and could not be cross-examined by the defence.

42. The Court also notes that the District Court, in its decision of 12 May 2008 whereby the retrial was ordered, described the failure of the Municipal Court to admit S.K.'s statement as evidence as "unclear and inexplicable". The Court concludes that the inability of the defence to examine the impugned evidence by personally confronting the witness as required by Article 6 §§ 1 and 3(d) of the Convention was due primarily to the lack of diligence on the part of domestic courts. For these reasons, the Court holds that there was no good reason for not admitting S.K.'s statement as evidence until after his death.

(ii) Whether the evidence of the absent witness was the sole or a decisive basis for the applicants' conviction

43. As regards the question of whether or not the statements of an absent witness which were admitted in evidence constituted the sole or a decisive basis for the defendant's conviction, the Court notes that S.K.'s statement, as the sole new evidence introduced during the retrial, was sufficiently important to make a difference between the applicants' acquittal and their conviction, which can clearly be seen from the comparison of the Municipal Court judgments of 25 January 2008 and 19 February 2009 (see, *mutatis mutandis, Mild and Virtanen v. Finland*, nos. 39481/98 and 40227/98, § 47,

26 July 2005). The Court further notes that the only other evidence to some extent complementary to the prosecution's version of events was a statement given by the alleged victim regarding whether the wine press was abandoned and in working condition, while all the other witness statements contradicted it (see paragraph 7 above). The Court finally notes that no material evidence was introduced at the trial. That being so, the Court is satisfied that the S.K.'s statement was a decisive basis for the applicants' conviction.

(iii) Whether there were sufficient counterbalancing factors to compensate for the handicaps under which the defence laboured

44. The Court must further determine, in a third step, whether there were sufficient counterbalancing factors to compensate for the handicaps under which the defence laboured as a result of the admission of the decisive evidence of the absent witness. The Court first notes that in the national courts' judgments there is no indication that they approached the statement given by S.K. with any specific caution or that the fact that he was an absent witness prompted the national courts to attach less weight to his statement (compare, for instance, *Al-Khawaja and Tahery*, cited above, § 157).

45. The Court further observes that the national courts did not have before them any additional incriminating evidence supporting the statement by S.K., with the exception of the previously given statement by the alleged victim. Most importantly, the Court notes that the national authorities did not make any serious attempt to collect further evidence in order to establish crucial facts for the determination of the applicants' criminal responsibility, specifically whether the wine press was abandoned and whether it was in working condition.

46. The Court also observes that the applicants had the opportunity to give their own version of the events during the trial and to challenge the credibility of the S.K.'s statement. However, the domestic courts did nothing to investigate the claims made by S.K. himself during the first trial and repeated by the applicants' defence lawyer during the retrial that the statement, if indeed made by S.K., must have been given while he was under the influence of alcohol.

47. In view of the above, the Court holds that no sufficient counterbalancing factors were in place to compensate for the handicaps under which the defence laboured due to the admission of the untested witness statement as evidence which served as a decisive basis for the applicants' conviction.

(iv) Conclusion

48. In assessing the overall fairness of the trial, the Court notes that the applicants' conviction was decisively based on the untested evidence and that insufficient counterbalancing factors were in place to compensate for

the handicaps under which the defence laboured. The Court also attaches significant weight to the fact that the lack of diligence on the part of the domestic authorities was a primary reason for the admission of the S.K.'s statement as evidence only after his death and, consequently, the inability of the defence to cross-examine him at the hearing. It therefore finds that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicant Ivica Dimović claimed 3,500 euros (EUR) in respect of non-pecuniary damage, explaining that as a consequence of the violation of his rights he had been convicted of a criminal offence and had had to spend six months in prison. The applicant Jožef Dimović claimed EUR 2,500 in respect of non-pecuniary damage.

51. The Government submitted that, should the Court find a violation of the applicants' rights, "the mere establishment of the violation would be enough just satisfaction in this case."

52. The Court considers that the applicants must have suffered distress and anxiety on account of the violations found. Ruling on an equitable basis, it awards the applicant Ivica Dimović EUR 3,000 and the applicant Jožef Dimović EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

53. The applicants also jointly claimed EUR 4,182.30 for the costs and expenses incurred before the domestic courts and EUR 1,100 for those incurred before the Court.

54. The Government maintained that the applicants' joint request is excessive.

55. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 5,282.30 covering costs under all heads.

C. Default interest

56. 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 application admissible;

2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention, taken together;

3. *Holds*
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicant Ivica Dimović;
      (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicant Jožef Dimović;
      (iii) EUR 5,282.30 (five thousand two hundred and eighty-two euros thirty cents), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
   (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.

Done in English, and notified in writing on 28 June 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Luis López Guerra President