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JUST SATISFACTION (Article 41)

7.1 Summary

If it finds a violation of the Convention, the Court may in its judgment order the respondent Contracting Party to pay the applicant a sum of money – just satisfaction – under Article 41 of the Convention. As pointed out elsewhere in this *Handbook*, the Court may also conclude that the most appropriate form of redress is for the respondent Contracting Party to take a specific action, such as to grant the applicant a re-trial,[470] to release him or her from prison,[471] or to stop his or her removal from the territory of the Contracting Party.[472] For purposes of the Convention proceedings, the term "just satisfaction" includes monetary awards to compensate an applicant's 1) pecuniary damage, i.e. financial losses which have actually been sustained by the applicant as a direct consequence of the violation; 2) non-pecuniary damage, i.e. those based on the applicant's mental suffering and distress stemming from the actions that violated the Convention; and finally, 3) the costs and expenses associated with bringing the Convention complaints to the attention of the national authorities and the Court in Strasbourg.

Just satisfaction is a major subject in its own right and, as such, the scope of the present *Handbook* does not allow for a comprehensive analysis of the issue. However, the general requirements and strategic considerations it entails will be examined below in so far as they are relevant for Article 3 claimants.[473]

7.2 Discussion

According to Article 41 of the Convention,

> "[i]f 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".

470 See *Üküng and Güneş v. Turkey*, cited above, § 32.

471 See, for example, *Assanidze v. Georgia* [GC], cited above, § 203.

472 See, *mutatis mutantis*, *N. v. Finland*, cited above, § 177.

473 For just satisfaction related issues, see Leach p. 397 *et seq*. and Reid p. 542 *et seq*. As an example of just satisfaction claims, see Appendix No. 12 for the applicants' observations in the case of *Akkum and Others v. Turkey*.

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It must be stressed at the outset that awards for just satisfaction are an equitable remedy and that they are made in discretion of the Court.[474] That is to say that, although the Court will undoubtedly have regard to the claims made by the applicant, it will make an award that it considers equitable or reasonable under the circumstances.

The issue of just satisfaction is also dealt with in Rule 60 of the Rules of Court, which provides as follows:

> "1. An applicant who wishes to obtain an award of just satisfaction under Article 41 of the Convention in the event of the Court finding a violation of his or her Convention rights must make a specific claim to that effect.
>
> 2. The applicant must submit itemised particulars of all claims, together with any relevant supporting documents, within the time-limit fixed for the submission of the applicant's observations on the merits unless the President of the Chamber directs otherwise.
>
> 3. If the applicant fails to comply with the requirements set out in the preceding paragraphs the Chamber may reject the claims in whole or in part.
>
> 4. The applicant's claims shall be transmitted to the respondent Government for comment".[475]

If the Court has decided to examine the admissibility and merits of the case simultaneously in accordance with Article 29 § 3 of the Convention and Rule 54A of the Rules of Court (the joint procedure), the applicant will be required to submit his or her claims under Article 41 of the Convention at the same time as submitting observations in reply to those of the Government. Presumably, the Court will adopt a similar course of action following the entry into force of Protocol No. 14, pursuant to which separate admissibility decisions will become the exception. As long as Protocol No. 14 has not yet entered into force, and if the Court has not applied the joint procedure in a particular case, the applicant will be required to submit his or her just satisfaction claims following the admissibility determination. In any event, the Court will always let the applicant know when he or she is supposed to submit just satisfaction claims, and will provide him or her with more information on the matter along the following lines:

> "… according to the Court's established case-law, failure to submit quantified claims within the time allowed for the purpose under Rule 60 § 1, together with the required supporting documents, entails the consequence that the Chamber will either make no award of just satisfaction or else reject the claim in part. This applies even if the applicant has indicated his wishes concerning just satisfaction at an earlier stage of the proceedings. No extension of the time allowed will be granted.

474 See Leach, p. 397.

475 It is expected that the President of the Court will issue a practice direction on filing just satisfaction claims; see paragraph 13 (b) of the "Practice Direction on Written Pleadings" at Appendix No. 3.

> The criteria established by the Court's case-law when it rules on the question of just satisfaction (Article 41 of the Convention) are: (1) pecuniary damage, that is to say losses actually sustained as a direct consequence of the alleged violation; (2) non-pecuniary damage, meaning compensation for suffering and distress occasioned by the violation; and (3) the costs and expenses incurred in order to prevent or obtain redress for the alleged violation of the Convention, both within the domestic legal system and through the Strasbourg proceedings. These costs must be itemised, and it must be established that they are reasonable and have been actually and necessarily incurred.
>
> You must attach to your claims the necessary vouchers, such as bills of costs. The Government will then be invited to submit their comments on the matter".

The Court thus requires applicants to submit their claims for just satisfaction regardless of whether they have already claimed them in the application form.[476] Furthermore, applicants should also include the details of their bank account in their claims for just satisfaction.

7.2.1 Criteria for Adjudicating Just Satisfaction

a) Pecuniary Damage

In claims for pecuniary damage – referred to in some jurisdictions as "material" or "financial" damage – applicants may claim compensation for financial losses they have actually sustained as a direct consequence of the violation. In the context of Article 3, such claims may include loss of income for the period during which the applicant was prevented from working as a result of the ill-treatment and the costs of medical care. For example, in the case of *Dizman v. Turkey* the applicant claimed:

> "after being assaulted by the police officers, he had been given medical treatment in a hospital for a period of 90 days. During that time, and a further period of three months, he had been unable to work. His six months' loss of income amounted to 1,571 pounds sterling (GBP). He had a wife and three children, aged between 6 and 9 years old, for whom he was financially responsible. He also claimed that his hospital expenses amounted to GBP 3,492.84".

In finding an Article 3 violation, the Court observed a "direct causal link" between on the one hand, the injuries inflicted on the applicant and, on the other hand, the applicant's medical expenses and loss of earnings. It held the following:

476 See Section 4.2 above.

> "… the applicant needed an operation and was unable, according to the Forensic Medicine Directorate's report of 7 October 1994, to work for a period of 25 days... The Court, deciding on an equitable basis in the absence of any hospital bills, awards the applicant the sum of 5,000 euros (EUR) in respect of his pecuniary damage".[477]

Thus, in upholding the applicant's claim for pecuniary damage, the Court referred to the "direct causal link" between the injuries which it found to have been inflicted on the applicant in violation of Article 3 of the Convention on the one hand, and the medical expenses and a certain loss of earnings on the other.[478] Had the applicant submitted his hospital bills, the Court might have awarded him the full amount claimed.

By contrast, in the case of *Mathew v. the Netherlands*[479] the Court held that no "causal link" had been established between the pecuniary damage claimed by the applicant in respect of his medical treatment and the violations the Court found on account of an extended period of solitary confinement:

> "[The Court's] findings of violation of Article 3 of the Convention relate only to certain aspects of the conditions in which the applicant was detained. They do not impute responsibility for the applicant's medical condition to the respondent Party, from which it follows that the costs thereby caused cannot be recovered from the respondent Party under Article 41 of the Convention".

It is noteworthy that in this case the respondent Government had not objected to an award being made for medical expenses.

Claims for pecuniary damage must be supported by adequate evidence, e.g. by submitting hospital bills, documents showing the costs of medicines, etc. In a claim for loss of earnings, documents showing the income of the applicant must be submitted to support the claim, together with medical documents showing the period during which the applicant was unable to work. A failure to substantiate claims for pecuniary damage is very likely to lead the Court to reject the claim or to accept only part of it. The Court may, however, consider any inability on the part of the applicant to provide evidence due to circumstances beyond his or her control, and compensate the applicant when awarding non-pecuniary damage.[480]

Pursuant to Rule 60 § 4 of the Rules of Court, the applicant's claims will be transmitted to the respondent Government for comment. Where – even

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477 *Dizman v. Turkey*, no. 27309/95, 20 September 2005, §§ 105-107.

478 See also *Messegué and Jabardo v. Spain* (Article 50), nos. 10588/83, 10589/83, 10590/83, 13 June 1994, §§ 16-20.

479 *Mathew v. the Netherlands*, cited above, §§ 220-224.

480 See *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, 26 October 2000, § 118.

though extremely unlikely – the respondent Government does not comment on the applicant's claims or does not dispute the amount claimed or the factual basis for the claim, the Court may award the applicant the full amount claimed. For example, in the case of *Aktaş v. Turkey*, the respondent Government did not comment on the applicant's detailed claims for pecuniary damage in respect of the loss of earnings of his brother who had been killed in custody, apart from its argument that the sums claimed by him were excessive. The Court, having found the respondent State responsible for the death of the applicant's brother, concluded that the loss of his future earnings was also imputable to the respondent State and awarded the applicant the full amount claimed, i.e. 226,065 EUR.[481]

The Court's review of its case-law in paragraphs 352-353 of the *Aktaş* judgment illustrates its approach when calculating damages and explains to a certain extent the reasons behind the greatly varying amounts awarded by the Court, even in cases involving similar facts:

> "352. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention and that this may, in the appropriate case, include compensation in respect of loss of earnings…
>
> 353. In addition, it is recalled that a precise calculation of the sums necessary to make complete reparation *(restitutio in integrum)* in respect of the pecuniary losses suffered by an applicant may be prevented by the inherently uncertain character of the damage flowing from the violation (*Young, James and Webster v. the United Kingdom*, judgment of 18 October 1982 (former Article 50), Series A no. 55, § 11). An award may still be made notwithstanding the large number of imponderables involved in the assessment of future losses, though the greater the lapse of time involved the more uncertain the link between the breach and the damage becomes. The question to be decided in such cases is the level of just satisfaction, in respect of either past and future pecuniary loss, which it is necessary to award to an applicant, the matter to be determined by the Court at its discretion, having regard to what is equitable (*Sunday Times v. the United Kingdom*, judgment of 6 November 1989 (former Article 50), Series A no. 38, p. 9, § 15; *Lustig-Prean and Beckett v. the United Kingdom* (just satisfaction), nos. 31417/96 and 32377/96, §§ 22-23; ..."

b) Non-pecuniary Damage

Non-pecuniary damage – also referred to as "moral" damage – may be loosely defined as an award to help alleviate an applicant's mental suffering and distress stemming from the actions which led to a violation of the

481 *Aktaş v. Turkey*, no. 24351/94, 24 April 2003, §§ 349-355.

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Convention. The following judgments give an idea of the amounts awarded by the Court for non-pecuniary damage in cases in which there have been violations of Article 3.

- *Mathew v. the Netherlands*: violation of Article 3 on account of the length and circumstances of solitary confinement: 10,000 EUR[482]
- *Dizman v. Turkey*: violation of Article 3 on account of the applicant's chin having been broken by police officers: 15,000 EUR[483]
- *Ostrovar v. Moldova*: violation of Article 3 on account of the "frustration, uncertainty and anxiety" suffered by the applicant due to the conditions of his detention in prison: 3,000 EUR[484]
- *Labzov v. Russia*: violation of Article 3 for the distress and hardship suffered by the applicant on account of prison conditions: 2,000 EUR[485]
- *Balogh v. Hungary*: violation of Article 3 on account of the "distress and suffering resulting from [the applicant's] ill-treatment by the police": 10,000 EUR[486]
- *M.C. v. Bulgaria*: violation of Article 3 on account of the "distress and psychological trauma resulting at least partly from the shortcomings in the authorities' approach" in investigating the applicant's allegations of rape: 8,000 EUR[487]
- *McGlinchey and Others v. the United Kingdom*: violation of Article 3 on account of the prison authorities' treatment of Ms McGlinchey – the applicants' daughter and mother. Because Ms McGlinchey died in prison, her two daughters and mother were awarded a total sum of 22,900 EUR[488]
- *Nazarenko v. Ukraine*: violation of Article 3 on account of conditions of detention: 2,000 EUR[489]
- *Mouisel v. France*: violation of Article 3 on account of the continued detention of the applicant – a cancer sufferer – which "undermined his dignity and entailed particularly acute hardship that caused suffering

482 *Mathew v. the Netherlands*, cited above, § 229.
483 *Dizman v. Turkey*, cited above, § 110.
484 *Ostrovar v. Moldova*, no. 35207/03, 13 September 2005, § 118.
485 *Labzov v. Russia*, cited above, § 59.
486 *Balogh v. Hungary*, no. 47940/99, 20 July 2004, § 85.
487 *M.C. v. Bulgaria*, no. 39272/98, 4 December 2003, § 194.
488 *McGlinchey and Others v. the United Kingdom*, no. 50390/99, 29 April 2003, § 71.
489 *Nazarenko v. Ukraine*, no. 39483/98, 29 April 2003, § 172.

beyond that inevitably associated with a prison sentence and treatment for cancer": 15,000 EUR[490]

- *Peers v. Greece*: violation of Article 3 on account of the prison conditions which "diminished the applicant's human dignity and aroused in him feelings of anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical or moral resistance": 5,000,000 drachmas[491]

- *Egmez v. Cyprus*: violation of Article 3 on account of the intentional ill-treatment to which the applicant was subjected by police officers at the time of his arrest and in the immediate aftermath but "over a short period of heightened tension and emotions": 10,000 GBP[492]

The Court has awarded higher sums in cases where the violation was particularly serious. For example, in *Selmouni v. France*, the Court found that the applicant had been tortured while in police custody and it found that he had suffered non-pecuniary damage for which the findings of violations alone did not afford sufficient satisfaction. It therefore awarded him 500,000 French francs.[493] Similarly, in the case of *Tomasi v. France*, in which the applicant's body:

> "had borne marks which had only one origin, the ill-treatment inflicted on him for a period of forty odd hours by some of the police-officers responsible for his interrogation: he had been slapped, kicked, punched and given forearm blows, made to stand for long periods and without support, hands handcuffed behind the back; he had been spat upon, made to stand naked in front of an open window, deprived of food, threatened with a firearm and so on,"[494]

the Court awarded the applicant 700,000 French francs.

In its judgment in the case of *Aydm v. Turkey*, the Court,

> "having regard to the seriousness of the violation of the Convention suffered by the applicant while in custody and the enduring psychological harm which she may be considered to have suffered on account of being raped,"

decided to award a sum of GBP 25,000 by way of compensation for non-pecuniary damage.[495] Reference may also be made to the more recent case of

490 *Mouisel v. France*, cited above, § 48.
491 *Peers v. Greece*, no. 28524/95, 19 April 2001, §§ 75 and 88.
492 *Egmez v. Cyprus*, no. 30873/96, 21 December 2001, §§ 78 and 106.
493 *Selmouni v. France*, cited above, § 123.
494 *Tomasi v. France*, no. 12850/87, 27 August 1992, § 108.
495 *Aydm v. Turkey*, no. 23178/94, 25 September 1997, § 131.

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Ilaşcu and Others v. Moldova and Russia, which was brought by four applicants. The Court found it established that two of the applicants had been subjected to treatment amounting to torture and the remaining two applicants to inhuman and degrading treatment. The ill-treatment in question consisted of the time spent on death row (seven and a half years in the case of one of the applicants), having been "savagely" beaten by prison wardens, withholding of food, protracted periods of time spent in solitary confinement, and unacceptable conditions of detention. On account of these allegations the Court found violations of Articles 3, 5, and 34 of the Convention. The Court awarded 190,000 EUR to each of the applicants on account of the "extreme seriousness of the violations of the Convention of which the applicants were victims".[496]

In cases which concern expulsion or extradition of applicants to a country where they would run a real risk of being subjected to treatment in violation of Article 3 of the Convention, the Court will not usually make any awards for pecuniary or non-pecuniary damage but only for costs and expenses incurred by the applicant in having the application examined by the Court, e.g. lawyer's fees and costs, etc. The Court's logic is that if the applicant has not yet been physically removed from the territory of the respondent Contracting Party, no violation will have occurred. For example, in its judgment in the case of *N. v. Finland* the Court held the following:

> "Having regard to all the elements before it, the Court considers that the finding that the applicant's expulsion to the Democratic Republic of Congo at this moment in time would amount to a violation of Article 3, constitutes in itself sufficient just satisfaction in respect of any non-pecuniary damage suffered by the applicant"[497]

Because of the wide spectrum of circumstances in which mental suffering may occur, the variation in the amounts awarded by the Court for non-pecuniary damage is even greater than that among awards made for pecuniary damage. Nevertheless, awards made by the Court for non-pecuniary damage are the only source of information on which an applicant may rely when claiming non-pecuniary damage. It must be stressed that the Court will not look favourably upon six-digit claims. For this reason, parity of the sum claimed by an applicant with the sums awarded by the Court in its judgments in previous cases against the same Contracting Party, concerning similar facts and complaints, may increase the chances of success of obtaining the claimed sum.

496 *Ilaşcu and Others v. Moldova and Russia*, cited above, § 489.
497 *N. v. Finland*, cited above, § 177.

c) Costs and Expenses

The Court will award a successful applicant all or part of the costs and expenses incurred by him or her in order to prevent or obtain redress for the alleged violation of the Convention, both within the domestic legal system and in the Strasbourg proceedings.

The claims for costs and expenses must be itemised, and it must be established that they are reasonable and have been actually and necessarily incurred. For this reason, at the time of introducing the application, practitioners must start recording their costs and expenses and the time spent by them on the case in the course of the proceedings, such as the preparation of the application form and the drafting of the observations and other submissions. Costs of any translation, postage, telephone and fax, stationeries, etc., must be itemised with as much detail as possible. In calculating their fees practitioners may have regard to the domestic fee scales issued, for example, by their own bar association. It must be stressed, however, that such fee scales, although relevant, are not binding. A survey of the Court's judgments reveals that when making awards for legal fees, the Court takes into account the earnings of legal practitioners in the respondent Contracting Party. For this reason practitioners should consult the Court's jurisprudence concerning the relevant Contracting Party when making claims for fees, just as they would when calculating damages. Furthermore, when awarding legal fees, the Court will take into account the complexity of the case and the extent to which the applicant has succeeded in his or her application. Needless to say, if the Court finds no violation of any of the Articles invoked by the applicant, it will not make an award for costs and expenses. Any money already received from the Council of Europe in legal aid will be deducted from the sum awarded for costs and expenses, but if the Court does not find a violation, the applicant will not be asked to repay the sum received in legal aid.

Applicants may also make a claim in respect of costs incurred in efforts made at the national level to prevent the violation from occurring or, when it has already occurred, in obtaining redress from the national authorities for that violation. As the Court held in its judgment in the case of *Société Colas Est and Others v. France*:

> "…if it finds that there has been a violation of the Convention, it may award the applicant the costs and expenses incurred before the national courts for the prevention or redress of the violation… In the instant case the Court notes that the point at which the applicant companies first relied on their right to respect for their home – the right which it has found to have been violated – was when the case was remitted by the Court of Cassation to the Paris Court of Appeal".[498]

498 *Société Colas Est and Others v. France*, 37971/97, 16 April 2002, § 56.

7.3 Concluding Remarks

Awards for just satisfaction will be in euros, but the judgment will stipulate that the sums awarded are to be converted into the official currency of the respondent Contracting Party at the rate applicable at the date of payment and that they are to be paid into the applicant's bank account. If the applicant is not living in the territory of the respondent Contracting Party, the Court may, on the applicant's request, stipulate that the sum is to be paid into the national currency of the country in which the applicant is living and into the applicant's bank account in that country.[499]

Any sums awarded by the Court are to be paid within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention.[500] The judgment will also stipulate 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".

Finally, when making an award for costs and expenses, the Court will often stipulate that the sum awarded is to be paid together with any value added tax (VAT) that may be chargeable.

Should any problems arise as to the payment of the awards by the respondent Government – such as non-payment, late payments, and part payments – applicants are advised to contact the Committee of Ministers as it is not the Court's duty to supervise the execution of judgments.[501]

If a legal representative encounters problems in recovering his or her legal fees from the applicant, as per the award in the judgment, this is a matter for domestic courts and not for the Committee of Ministers or the Court. When making the claim for just satisfaction, legal representatives may request the Court to stipulate in its judgment that sums awarded in respect of legal fees are to be paid into the representative's bank account and not that of the applicant's.

499 See *Süheyla Aydın v. Turkey*, cited above, § 228 where the applicant was living in Switzerland and where the Court stated that the sums awarded were to be converted into Swiss francs.

500 See Section 9.2 below.

501 See Section 9.3 below.