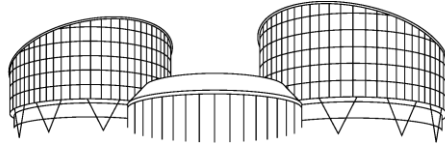




UNIVERSITY OF PERUGIA  
DEPARTMENT OF PUBLIC LAW  
“The Effectiveness of Rights in the Light of European Court of Human Rights  
Case Law”



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

SECOND SECTION

**CASE OF SÖYLER v. TURKEY**

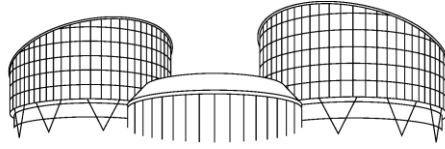
*(Application no. 29411/07)*



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

STRASBOURG

17 September 2013

**FINAL**

**20/01/2013**

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



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**In the case of Söyler v. Turkey,**

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

Guido Raimondi, *President*,

Danutė Jočienė,

Peer Lorenzen,

András Sajó,

Işıl Karakaş,

Nebojša Vučinić,

Helen Keller, judges,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 27 August 2013,

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

## PROCEDURE

1. The case originated in an application (no. 29411/07) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, Mr Ahmet Atahür Söyler (“the applicant”), on 12 July 2007.

2. The applicant, who had been granted legal aid, was represented by Mr Serkan Cengiz, a lawyer practising in İzmir. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicant alleged, in particular, that his inability to vote in the general elections while he was serving a prison sentence was in violation of Article 3 of Protocol No. 1 to the Convention (hereinafter “Article 3 of Protocol No. 1”).

4. On 31 March 2010 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 1966 and lives in İzmir.

6. The applicant, a businessman, was convicted for having drawn a number of cheques without having sufficient funds in his bank account, an offence defined in the now repealed Law No. 3167 on Cheques (see “Relevant Domestic Law and Practice”). He was sentenced to a prison term of four years, eleven months and twenty-six days. He started serving his sentence on 11 April 2007.

7. While he was serving his prison sentence in Buca Prison in İzmir, the applicant wrote to the High Council for Elections on 28 June 2007 and stated that his name was on the electoral roll for the forthcoming general elections of 22 July 2007. He added that this was possibly due to an error on the part of the High Council for Elections which must have overlooked the fact that he, as a convicted prisoner, was unable to vote. Referring to the judgment in the case of *Hirst v. the United Kingdom (no. 2)* [GC] (no. 74025/01, ECHR 2005-IX) the applicant requested that he should nevertheless be allowed to cast his vote in the July 2007 elections. He added that the right to vote was a right guaranteed in, *inter alia*, Article 3 of Protocol No. 1. He argued that the *Hirst* judgment, when read in conjunction with section 90 of the Constitution (see “Relevant Domestic Law and Practice” below), meant that the High Council for Elections was under an obligation to make the necessary arrangements in order to enable him to vote.

8. On 29 June 2007 the High Council for Elections replied to the applicant’s letter, and informed him that pursuant



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to section 7 § 3 of Law No. 298 (see “Relevant Domestic Law and Practice” below) it was not possible for him to vote. The High Council for Elections added that it was in the process of correcting its records to reflect the applicant’s status as a convicted prisoner.

9. A similarly worded letter was sent to the applicant by the Chairman of the High Council for Elections on 2 July 2007.

10. On 22 July 2007 general elections took place and the applicant was unable to cast his vote.

11. Although the applicant’s prison sentence was to end on 1 April 2012, he was released from prison on probation on 9 April 2009 pursuant to Law No. 647 for good behaviour (see “Relevant Domestic Law and Practice” below). However, in accordance with the applicable legislation, the applicant’s inability to vote continued until 1 April 2012.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

12. Relevant parts of the Turkish Constitution provide as follows:

“Section 67:

In conformity with the conditions set forth in the law, citizens have the right to vote, to be elected, and to engage in political activities independently or in a political party, and to take part in a referendum.

Elections and referenda shall be held under the direction and supervision of the judiciary, in accordance with the principles of free, equal, secret, and direct, universal suffrage, and public counting of the votes. However, the conditions under which the Turkish citizens who are abroad shall be able to exercise their right to vote, are regulated by law.

All Turkish citizens over 18 years of age shall have the right to vote in elections and to take part in referenda.

The exercise of these rights shall be regulated by law.

Privates and corporals serving in the armed services, students in military schools, and convicts in prisons excluding those convicted of negligent offences cannot vote. The High Council for Elections shall determine the measures to be taken to ensure the safety of the counting of votes when detainees in penal institutions or prisons vote; such voting is done under the on-site direction and supervision of authorized judge. The electoral laws shall be drawn up in such a way as to reconcile the principles of fair representation and consistency in administration.

The amendments made in the electoral laws shall not be applied to the elections to be held within the year from when the amendments come into force.

...

Section 90:

...

International agreements duly put into effect bear the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.”

13. Section 7 of the Law on Basic Provisions Concerning Elections and on Registers of Voters (Law No. 298 of 1961) provides as follows:

“7. The following persons cannot vote:

(1) Privates, corporals and sergeants performing their military service (this provision is applicable also to those



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on leave, whatever the reason for their leave),

- (2) Students in military schools,
- (3) Convicts in penitentiary establishments.”

14. Relevant provisions of section 53 of the Criminal Code (Law no. 5237 of 2004) provide as follows:

“(1) As the statutory consequence of imposition of a prison sentence for an offence committed intentionally, the person shall be deprived of the following [rights]:

- a) Undertaking of permanent or temporary public duties, including membership of the Turkish National Assembly and all civil service and other duties which are offered through election or appointment by the State, city councils, town councils, village councils, or organisations controlled or supervised by them;
- b) Voting, standing for election and enjoying all other political rights;
- c) Exercising custodial rights as a parent; performing duties as a guardian or a trustee;
- d) Chairing or auditing foundations, associations, unions, companies, cooperatives and political parties;
- e) Performing a self-employed profession which is subject to regulation by public organisations or by chambers of commerce which have public status.

(2) The person cannot enjoy the [above-mentioned] rights until the completion of execution of the prison sentence to which he or she has been sentenced as a consequence of the commission of the offence.

(3) The provisions above which relate to the exercise of custodial rights as a parent, and duties as a guardian or a trustee shall not be applicable to the convicted person whose prison sentence is suspended or who is conditionally released from the prison. A decision may [also] be taken not to apply subsection 1 (e) above to a convict whose prison sentence is suspended.

(4) Sub-section 1 above shall not be applicable to persons whose short term prison sentence is suspended or to persons who were under the age of eighteen at the time of the commission of the offence.

(5) Where the person is sentenced for an offence committed by abusing one of the rights and powers mentioned in sub-section 1 above, a further prohibition of the enjoyment of the same right shall be imposed for a period equal to between a half and the whole length of the prison sentence...

...”

15. According to section 49 § 2, a prison sentence for a period of less than one year shall be regarded as a short term prison sentence.

16. According to section 19 of the Law on the Execution of Punishments (Law No. 647) which was in force at the time of the calculation of the length of the applicant’s prison sentence, prisoners sentenced to a term of imprisonment could be conditionally released from prison for good behaviour after having served half of their sentences. However, for the purposes of section 53 (2) of the Criminal Code, the date of completion of the prison sentence is not the date of the conditional release, but the last day of the prison sentence handed down by the criminal court.

17. According to the Explanatory Report of the Criminal Code, the rationale behind section 53 of the Criminal Code is as follows:

“Society’s trust in the person is damaged on account of the offence committed by him or her. For that reason the convicted person is prevented from exercising certain rights which necessitate a relationship of trust...This deprivation cannot be indefinite. Since the rationale behind punishment is to ensure that the criminal comes to regret committing the offence and that he or she is reintroduced into society, deprivations imposed for the commission of the offence shall continue until the end of the execution of the punishment. Thus, the person will be



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behaving in accordance with the needs of the execution of his punishment and, when he has done so, he will be declaring to society that he has once again become a trustworthy person...”.

18. According to Law on Cheques (Law No. 5941) which entered into force on 20 December 2009 and which was amended by Law No. 6273 on 3 February 2012, drawing cheques without having sufficient funds in the bank account no longer carries a prison sentence. Instead, the person is prevented from having a cheque book until he has paid his debt together with its interest.

19. In its decision handed down in an unrelated case (decision no. 2006/11-183 E., 2006/216 K.) the Grand Chamber of the Criminal Division of the Court of Cassation held the following in relation to section 53 of the Criminal Code:

“...Although no mention was made of the restrictions mentioned in subsection 1 of section 53 of the Criminal Code in the judgment [convicting the appellant], [those] restrictions are the natural consequence of the conviction and do not have to be mentioned in the judgment for them to be applicable. Therefore, when [the judgment] is enforced, section 53 will be applied and the restrictions mentioned in subsection 1 (a-e) will come into play. Although after his conditional release from the prison the [appellant] will be able to exercise his powers [mentioned in 53 § 1 (c) of the Criminal Code], restrictions placed on his other rights will continue until his sentence has been executed fully...”.

### III. RELEVANT INTERNATIONAL MATERIALS

20. A description of relevant international materials and comparative law can be found in *Scoppola v. Italy (no. 3)* [GC] (no. 126/05, §§ 40-60, 22 May 2012).

## THE LAW

### I. ALLEGED VIOLATIONS OF ARTICLE 3 OF PROTOCOL NO. 1

21. The applicant argued that his disenfranchisement breached his rights guaranteed in Article 3 of Protocol No. 1 which provides as follows:

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

22. The Government contested the applicant’s arguments.

#### A. Admissibility

23. 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

24. The applicant complained that his disenfranchisement was in breach of Article 3 of Protocol No. 1. He maintained that he had not only been unable to vote in the general elections held in July 2007 while he was being detained in the prison, but also in the general elections of 2011 held after his conditional release. The reason for this was that, even though he was conditionally released from prison on 9 April 2009, the official date for the completion of the execution of his sentence was 1 April 2012 (see paragraph 11 above).

25. The applicant submitted that he had been a businessman and owned a company at the beginning of the 2000s.



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He had been convicted as a result of several unpaid cheques which had been drawn by him when his business was affected by the severe economic crisis in Turkey which eventually bankrupted him. Thus, the offence committed by him did not mean that he was so morally or mentally untrustworthy as to be prevented from exercising his civic duties.

26. The applicant considered that the national legislation on disenfranchisement did not take into account the nature of the offence or the severity of the punishment. As such, it was wholly disproportionate in its application. The only criterion taken into account when imposing the ban was the element of “intention” in the commission of the offence.

27. Referring to the judgment in the case of *Hirst (no. 2)* [GC] (cited above, §§ 71 and 82), the applicant argued that he had been the victim of an automatic ban. Referring to the statistics issued by the Ministry of Justice, the applicant added that the blanket ban on voting did not reflect the principles of today’s democratic society, and affected a great proportion of the 80,448 convicted inmates in prisons in Turkey (November 2010 figures).

28. The Government acknowledged that Article 3 of Protocol No. 1 guaranteed individual rights, including the right to vote and to stand for election, and that the applicant’s right to vote had been restricted in the present case.

29. The Government referred to the Explanatory Report of the Criminal Code where the rationale behind section 53 of the Criminal Code is set out (see § 17 above in “Relevant Domestic Law and Practice”), and submitted that the legitimate aim of the restriction was the applicant’s rehabilitation. They maintained that the restriction on the right to vote in Turkey was not a ‘blanket ban’ because the applicable legislation limited the scope of the restriction in accordance with the nature of the offence. Referring to the judgment in the case of *Hirst (no. 2)* [GC] (cited above), the Government argued that, unlike the situation in the United Kingdom, the Turkish legislation restricting the right to vote was only applicable to persons who has committed offences intentionally. In the United Kingdom the legislation was applicable to all convicted prisoners detained in prisons, irrespective of the length of their sentence, the nature or gravity of the offence, and their individual circumstances.

30. In Turkey the constitutional provisions concerning the issue of prisoners’ voting had undergone two amendments in 1995 and 2001. In 1995 the Constitution had been amended to exclude remand prisoners from the scope of the restriction because disenfranchising a person detained in prison pending the outcome of the criminal proceedings against him was considered incompatible with the principle of presumption of innocence. In the 2001 amendment, persons convicted of offences committed involuntarily had been excluded from the restrictions on voting. As it stood today, the national legislation was applicable only in respect of offences committed intentionally. In the opinion of the Government, the offences committed intentionally were “stronger” in nature as they included the element of “intention”.

31. The Court notes that the general principles applicable in the present case can be found in *Mathieu-Mohin and Clerfayt v. Belgium* (2 March 1987, § 46-54, Series A no. 113); *Hirst (no. 2)* ([GC], cited above, §§ 56-71, 74-77 and 82); *Frodl v. Austria* (no. 20201/04, §§ 28 and 33-35, 8 April 2010), and *Scoppola v. Italy (no. 3)* ([GC], cited above, §§ 82-84, 96, 99 and 101-102). The Court will examine the applicant’s complaints in the light of the principles identified in those judgments.

32. The Court observes at the outset that the applicant, who had been sentenced to a prison term of four years, eleven months and twenty-six days, began serving his sentence on 11 April 2007 (see paragraph 6 above). In accordance with the applicable legislation, his disenfranchisement did not end when he was conditionally released from prison on 9 April 2009, but continued until the initially foreseen date of release on 1 April 2012 (see paragraphs 11, 14 and 19 above). Between 11 April 2007 and 1 April 2012 two general elections were held and the applicant was unable to vote in either of them. Having thus established that the applicant was directly affected by the measure foreseen in the national legislation which prevented him from voting on two occasions, the Court will proceed to examine whether the measure in question pursued a legitimate aim and did so in a proportionate manner.

33. According to the Court’s established case-law referred to above, the rights enshrined in Article 3 of Protocol No. 1 are not absolute. There is room for implied limitations and the Contracting States must be afforded a wide margin of appreciation in this sphere. There are numerous ways of organising and running electoral systems and a wealth of differences, *inter alia*, in historical development, cultural diversity and political thought within Europe which it is for each Contracting State to mould into its own democratic vision (see *Scoppola (no. 3)* [GC], cited above, § 83 and the cases cited therein).





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34. However, it is for the Court to determine in the last resort whether the requirements of Article 3 of Protocol No. 1 have been complied with; it has to satisfy itself that the conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate. In particular, any conditions imposed must not thwart the free expression of the people in the choice of the legislature – in other words, they must reflect, or not run counter to, the concern to maintain the integrity and effectiveness of an electoral procedure aimed at identifying the will of the people through universal suffrage. Any departure from the principle of universal suffrage risks undermining the democratic validity of the legislature thus elected and the laws it promulgates. Exclusion of any groups or categories of the general population must accordingly be reconcilable with the underlying purposes of Article 3 of Protocol No. 1 (*ibid.* § 84 and the cases cited therein).

35. Furthermore, an indiscriminate restriction applicable automatically to prisoners, irrespective of the length of their sentence and irrespective of the nature or gravity of their offence and their individual circumstances, must be seen as falling outside any acceptable margin of appreciation, however wide that margin might be, and as being incompatible with Article 3 of Protocol No. 1 (*Hirst (no. 2)* [GC], cited above, § 82).

36. As it appears from the relevant national provisions summarised above in the “Relevant Domestic Law and Practice”, persons convicted of having intentionally committed an offence are unable to vote. Moreover, their disenfranchisement does not come to an end on release from prison on probation, but continues until the end of the period of the original sentence handed down at the time of their conviction. In fact, pursuant to section 53 § 3 of the Criminal Code, even when a prison sentence which is longer than one year is suspended and the convicted person does not serve any time in the prison, he or she will still be unable to vote for the duration of the suspension of the sentence (see paragraph 14 above).

37. Having regard to the Government’s submission that the restrictions on the applicant’s right to vote pursued the aim of rehabilitating him, and having further regard to the rationale of section 53 of the Criminal Code set out in the Explanatory Report (see paragraph 17 above) relied on by the Government, the Court is prepared to accept, notwithstanding whatever doubt there may be as to the efficacy of achieving these aims through a bar on voting, that the restriction on the applicant’s right to vote pursued the aim of encouraging citizen-like conduct, and considers that that aim is not untenable or incompatible *per se* with the right guaranteed under Article 3 of Protocol No. 1 (*Hirst (no. 2)* [GC], cited above, §§ 74-75).

38. In light of the above, and in so far as they are applicable to convicts who do not even serve a prison term, the Court considers that the restrictions placed on convicted prisoners’ voting rights in Turkey are harsher and more far-reaching than those applicable in the United Kingdom, Austria and Italy, which have been the subject matter of examination by the Court in its judgments in the above-mentioned cases of *Hirst (no. 2)* [GC], *Frodl* and *Scoppola (no. 3)* [GC].

39. Furthermore, although the removal of the right to vote without any *ad hoc* judicial decision is not among the essential criteria for determining the proportionality of a disenfranchisement measure (see *Scoppola (no. 3)* [GC], cited above, § 99) and it does not, in itself, give rise to a violation of Article 3 of Protocol No. 1 (*ibid.*, §§ 103-104), the intervention of a judge is in principle likely to guarantee the proportionality of restrictions on prisoners’ voting rights (*ibid.* § 99). In Turkey, disenfranchisement is an automatic consequence derived from the statute, and is therefore not left to the discretion or supervision of the judge.

40. Indeed, according to the Grand Chamber of the Criminal Division of the Court of Cassation which examined section 53 of the Criminal Code in another case (paragraph 19 above), the judgment convicting the person does not have to make a mention of the disenfranchisement for it to be applicable.

41. Moreover, unlike the situation in Italy which was examined by the Grand Chamber in its judgment in the case of *Scoppola (no. 3)*, the measure restricting the right to vote in Turkey is indiscriminate in its application in that it does not take into account the nature or gravity of the offence, the length of the prison sentence – leaving aside the suspended sentences shorter than one year (see paragraph 14 above) – or the individual circumstances of the convicted persons. The Turkish legislation contains no express provisions categorising or specifying any offences for which disenfranchisement is foreseen (see, *a contrario*, *Scoppola (no. 3)* [GC], cited above, § 105).





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42. The Court does not consider that the sole requirement of the element of “intent” in the commission of the offence is sufficient to lead it to conclude that the current legal framework adequately protects the rights in question and does not impair their very essence or deprive them of their effectiveness. To that end, it disagrees with the Government that the legal framework takes into account the nature of the offence (see paragraph 29 above). Beyond submitting that the offences committed intentionally are “stronger”, the Government have not sought to explain how and why excluding all persons convicted of having intentionally committed offences was reconcilable with the underlying purposes of Article 3 of Protocol No. 1 (see *Scoppola (no. 3)* [GC], cited above, § 84).

43. In any event, the Court observes that a similar legal framework, in fact one more favourable to prisoners, has already been examined by the Court in its judgment in the above-mentioned case of *Frodl*. In Austria, only prisoners who have committed with intent one or more criminal offences and been sentenced with final effect to a term of imprisonment of more than one year, forfeit the right to vote.

44. Furthermore, the Court observes that the seriousness of the offences committed by the applicant in the case of *Scoppola (no. 3)* was one of the factors taken into account by the Grand Chamber in reaching its conclusion that the disenfranchisement in the Italian system was not applied automatically or indiscriminately (§ 107). In the present case, the offence committed by the applicant was drawing cheques without having sufficient funds in his account. As such, the Court considers that the applicant’s case illustrates the indiscriminate application of the restriction even to persons convicted of relatively minor offences. The Court observes in this connection that drawing cheques without having sufficient funds in the bank account no longer carries a prison sentence (see paragraph 18 in “Relevant Domestic Law and Practice” above).

45. Furthermore, having regard to the nature of the offence committed by the applicant, the Court is also unable to see any rational connection between the sanction and the conduct and circumstances of the applicant. It reiterates in this connection that the severe measure of disenfranchisement must not be resorted to lightly and that the principle of proportionality requires a discernible and sufficient link between the sanction and the conduct and circumstances of the individual concerned (see *Hirst (no. 2)* [GC], cited above, § 71).

46. In light of the above, the Court cannot conclude that the legislature in Turkey has shown the requisite concern which, according to the Grand Chamber in the above-mentioned case of *Scoppola (no.3)*, should exist in order to adjust the application of the measure to the particular circumstances of each case by taking into account such factors as the gravity of the offence committed and the conduct of the offender (*ibid.* § 106).

47. The Court concludes that the automatic and indiscriminate application of the harsh measure in Turkey on a vitally important Convention right must be seen as falling outside any acceptable margin of appreciation, and that there has been a breach of Article 3 of Protocol No. 1 in the present case.

## II. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL NO. 1 IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

48. The applicant argued that his disenfranchisement as a convicted prisoner was discriminatory.

49. The Court considers that this part of the application may be declared admissible. However, having regard to its conclusion above under Article 3 of Protocol No. 1, it finds that no separate issue arises under Article 14 of the Convention (see *Hirst (no.2)* [GC], cited above, § 87).

## III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

50. Lastly, the applicant complained of a violation of Articles 6 and 13 of the Convention.

51. Having regard to the documents in its possession, the Court finds that this part of the application does not disclose any appearance of a violation of the Convention provisions. It follows that this part of the application is manifestly ill-founded and should be rejected in accordance with Article 35 § 3 (a) and 4 of the Convention.

## IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION



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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 3,000 euros (EUR) in respect of non-pecuniary damage.

54. The Government considered that the finding of a violation would be sufficient to remedy any non-pecuniary damage.

55. Having regard to the circumstances of the case, the Court agrees with the Government and considers that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage sustained by the applicant (see *Hirst (no.2)* [GC], cited above, §§ 93-94).

### B. Costs and expenses

56. The applicant claimed EUR 912.50 for the costs and expenses incurred before the domestic courts and EUR 2,450 for those incurred before the Court. In support of his claim the applicant submitted to the Court a detailed breakdown of the costs incurred by him and his legal representative.

57. The Government thought that the applicant claimed EUR 6,362.50, and considered that sum to be excessive and unsupported by adequate documentation. They also argued that no awards could be made for the applicant's costs and expenses incurred at the national level.

58. 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 response to the Government's argument concerning the costs and expenses relating to the proceedings at the national level, the Court reiterates that, 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 (see *Soci t  Colas Est and Others v. France*, no. 37971/97, § 56, ECHR 2002-III, and the cases cited therein). In the present case the applicant brought the substance of his Convention rights to the attention of the national authorities (see paragraph 7 above). In the light of the foregoing, the Court considers that the applicant has a valid claim in respect of part of the costs and expenses incurred at the national level.

59. Regard being had to the documentation in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,000 covering costs under all heads. From this sum should be deducted the EUR 850 granted to the applicant by way of legal aid under the Council of Europe's legal aid scheme (see paragraph 2 above).

### C. Default interest

60. 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 complaints under Article 14 of the Convention and Article 3 of Protocol No. 1 to the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of Protocol No. 1 to the Convention;



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3. *Holds* that there is no need to examine the complaint under Article 14 of the Convention;
4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;
5. *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 3,000 (three thousand euros), less the EUR 850 (eight hundred and fifty euros) granted by way of legal aid, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicant, in respect of his costs and expenses;
  - (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;
6. *Dismisses* the remainder of the applicant’s claim for just satisfaction.

Done in English, and notified in writing on 17 September 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith  
Registrar

Guido Raimondi  
President