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

FIRST SECTION

CASE OF RUSU v. AUSTRIA

(Application no. 34082/02)

JUDGMENT

STRASBOURG

2 October 2008

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 Rusu v. Austria,

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens, *judges,*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 11 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 34082/02) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mrs Cornelia Rusu ("the applicant"), on 12 August 2002.

2. The applicant, who had been granted legal aid, was represented by Mrs C. Vasii-Kolla, a lawyer practising in Timisoara. The Austrian Government ("the Government") were represented by their Agent, Ambassador F. Trauttmansdorff, Head of the International Law Department at the Federal Ministry of European and International Affairs. The Romanian Government did not make use of their right to intervene under Article 36 § 1 of the Convention.

3. The applicant alleged, in particular, that her detention pending her expulsion had been unlawful and that she had not been informed promptly of the reasons for her detention.

4. By a decision of 29 June 2006 the Court declared the application partly admissible.

5. Neither party filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1967 and lives in Timisoara, Romania.

7. On 24 February 2002 the applicant's passport and luggage were stolen in Nice when she was on her way back to Romania from a journey in Spain. After the French police had provided her with a document certifying that she had declared the theft, she continued her trip via Italy and Austria.

8. On 25 February 2002 the Hungarian border police refused the applicant leave to enter Hungary and sent her back to the Austrian border police; on the same day, the Neusiedl/See District Administrative Authority (*Bezirkshauptmannschaft*) ordered her detention with a view to her expulsion pursuant to section 61(1) of the Aliens Act 1997 (*Fremdengesetz 1997*). The reasoning read as follows:

> "You entered Austrian territory, coming from Italy, at 10.30 a.m. on 25 February 2002 at 2425 Nickelsdorf (marker stone A29-30), circumventing border controls and without being in possession of a valid travel document and stamp. On 25 February 2002 at 10.30 a.m. you were apprehended by border control officials.
>
> Your entry into and stay in Austria are therefore illegal. You do not have any fixed accommodation in Austria, nor do you have sufficient funds to finance your stay.
>
> The Neusiedl/See District Administrative Authority has instituted proceedings for your deportation with a view to your expulsion from the country.
>
> In view of the foregoing there is reason to fear that, if released, you would abscond and seek to evade the proceedings."

9. The order for the applicant's detention with a view to her expulsion (*Schubhaftbescheid*), issued in German and consisting of two pages, included instructions as to available remedies (*Rechtsmittelbelehrung*), referring in particular to a complaint to the Independent Administrative Panel (*Unabhängiger Verwaltungssenat*) against the lawfulness of the order, arrest or detention. It was handed to the applicant at around 6 p.m. together with two information sheets in Romanian.

10. Information sheet I read as follows:

> "Section A
>
> You are hereby informed that you have been arrested by law-enforcement officers (federal police/customs officers/Austrian federal army) in accordance with section 43(1)(2) of the Aliens Act because you entered Austria without reporting to the Border Control Office and were apprehended immediately afterwards.
>
> You are entitled to have a relative or other person close to you advised of your arrest, at your request, without unnecessary delay and according to your choice. In addition, the consular representation of your country of nationality will be immediately informed of your detention.
>
> You will be immediately brought before the authority responsible, namely the Neusiedl am See District Administrative Authority, which will issue the subsequent orders.

Section B

I ... (Name) ... (Date of birth)..., would like the following person to be advised of my arrest: ...

Would you like your consular representation in Austria to be informed of your arrest? Yes O No O

By signing, I also confirm receipt of information sheet I.

(Signature)"

11. The applicant filled in the form, asking that Mr L. B. [full name], whose address and telephone number she indicated, be informed of her arrest, and ticked the box indicating that she wished the consular representation to be informed of her arrest. The applicant duly signed the form.

12. Information sheet II read as follows:

"Section A

(1) You are informed that the Neusiedl am See District Administrative Authority/Federal Police Directorate have, in accordance with section 41(1) and (2) of the Aliens Act, ordered your detention pending deportation as being necessary to secure your expulsion or deportation to your country of nationality.

Aliens, that is to say, persons who are not Austrian citizens, may, according to section 35(1)(1) of the Aliens Act, be required to return to a foreign country if they have entered Austria without reporting to the Border Control Office and have been apprehended within 7 days.

According to section 17(2)(6), aliens may, in the interest of public order, be expelled on the basis of an order if they have entered Austria without reporting to the Border Control Office and have been apprehended within 1 month.

In your case, you were arrested by law-enforcement officers on 25 February 2002 at 10.30 a.m. after entering federal territory in the ... local administrative area on 25 February 2002 at ... o'clock without reporting to the Border Control Office, and therefore illegally.

(2) You are entitled to appeal to the Independent Administrative Panel ('*UVS*' – *Unabhängiger Verwaltungssenat*) of the Province of Burgenland, alleging the unlawfulness of the order for your detention pending deportation, your arrest or your detention. This appeal can be addressed to the Independent Administrative Panel Burgenland, Neusiedlerstraße, 7000 Eisenstadt or to the Bezirkshauptmannschaft Neusiedl/See, Eisenstädterstr. 1a, 7100 Neusiedl am See (designation and address of the District Administrative Authority).

Please mark the envelope '*UVS-Beschwerde*' ('UVS Appeal').

(3) If you have not taken part in the determination of your identity and nationality to the required extent or if the approval necessary for entry has not been given by

another country, detention pending deportation can last for six months if earlier deportation is not possible for these reasons.

Therefore it is above all in your interest to declare any identity papers which may have been handed over to other persons or hidden or thrown away in Austria, in particular travel documents, or to have them sent by your relatives from your country of nationality. Your participation in the determination of your identity by your representation office can also considerably shorten your detention pending deportation.

(4) If you have further questions you can also address them in writing to Bezirkshauptmannschaft Neusiedl/See, Eisenstädterstr. 1a, 7100 Neusiedl am See (designation and address of the District Administrative Authority).

Section B

(1) Can you contribute to the determination of your identity? Yes O No O

(2) Furthermore, I confirm by this signature the receipt of information sheet II dated ...

(Signature)"

13. The applicant ticked the box stating that she could contribute to the determination of her identity, and signed the information sheet confirming that she had received it on 25 February 2002.

14. That evening she was transferred to the Graz police detention centre, where she was issued with a leaflet in Romanian informing her of her rights as a detainee (*Informationsblatt für Festgenommene*), including the maximum length of police detention, the right to consult a lawyer, the right to inform a person close to her and the consulate, the right to obtain medical care, and her rights during questioning. She also received and signed an information sheet concerning assistance for persons in detention pending deportation (*Information über die Schubhaftbetreuung*) in Romanian and ticked the box for requesting such assistance. She also received a short version of the internal prison rules.

15. According to the applicant, she then requested a lawyer and an interpreter in order to be informed of the reasons for her arrest. She alleged that her request had been ignored. In the Government's view these submissions were misleading since the relevant information had been provided to the applicant through information sheets I and II.

16. On 26 February 2002 the Neusiedl/See District Administrative Authority requested the Romanian embassy in Vienna to issue a provisional travel document for the applicant's return and to do so speedily, given the applicant's detention with a view to her expulsion. This letter was dispatched and sent by registered post on 27 February 2002 and arrived at the Romanian embassy on 1 March 2002.

17. Also on 26 February 2002 the applicant called the Romanian embassy in Vienna, which promised to issue her with a provisional travel document by 1 March 2002. This did not happen, even after two more phone calls by her to that effect.

18. On 7 March 2002 the applicant was questioned at the Graz police detention centre in the presence of an interpreter, for the purpose of issuing an expulsion order. The minutes of this interview were prepared in German. According to the minutes the interpreter translated into Romanian the decision of 25 February 2002 ordering the applicant's detention with a view to her expulsion.

19. The applicant submitted that it was only then that she had learnt for the first time that she was going to be expelled from Austria. The Government contested this statement as being incorrect in the light of the above submissions concerning information sheet II, which had been handed to the applicant on 25 February 2002.

20. On 13 March 2002 the Neusiedl/See District Administrative Authority issued a deportation order (*Ausweisungsbescheid*) against the applicant. The order was transmitted by fax to the Graz police detention centre and handed to the applicant on 14 March 2002.

21. On the same day the Romanian embassy in Vienna issued a provisional travel document, valid from 13 March until 13 May 2002, which was received by the Neusiedl/See District Authority on 15 March 2002. This document was transmitted to the Graz Federal Police Directorate on 18 March 2002 and from there immediately to the Graz police detention centre.

22. On 15 March 2002 the Austria-Hungary liaison office (*Kontaktbüro*) examined whether the applicant was prohibited from entering Hungary.

23. On 22 March 2002 she was expelled by train from Austria via Hungary to Romania.

II. RELEVANT DOMESTIC LAW

24. At the material time, the relevant provisions governing the arrest and detention of aliens with a view to their expulsion and remedies against such arrest and detention were contained in the Aliens Act 1997 (*Fremdengesetz 1997*), which entered into force on 1 January 1998.

A. Arrest and detention with a view to expulsion

25. Section 61 governed detention with a view to expulsion. In so far as relevant, it provided:

> "(1) An alien may be arrested and detained (detention with a view to expulsion) where this is necessary in order to secure the conduct of the procedure for issuing an

exclusion order or an expulsion order until it becomes enforceable, or in order to secure his or her expulsion, removal or transit. ...

(2) Detention with a view to expulsion shall be based on an order. ...

...

(4) The decision to detain a person with a view to his or her expulsion shall be amenable to appeal under section 72."

26. Section 63 concerned the arrest of aliens. In so far as relevant, it provided:

"(1) The law-enforcement agencies shall be empowered to arrest an alien:

...

2. who is apprehended within seven days of entering the country, if he or she has entered the country by circumventing the border controls. ..."

27. Section 66 dealt with less intrusive measures:

"(1) The authorities may refrain from detaining a person with a view to his or her expulsion if they have reason to believe that the same purpose can be achieved by means of less stringent measures. ...

(2) Less stringent measures shall take the form in particular of an order to reside in accommodation designated by the authorities. Less stringent measures shall be implemented only if the alien concerned agrees to the collection of personal identification data, ...

(3) Following collection of his or her personal identification data, the alien concerned shall reside in the accommodation designated by the authorities and shall report every other day to a police station designated for the purpose. ..."

28. The provisions referred to in the two information sheets (see paragraphs 10 and 12 above) were the relevant provisions of the Aliens Act 1992, which was in force prior to 31 December 1997. Sections 17(2)(6) and 35(1)(1) governed the right to expel aliens who had entered Austria illegally by circumventing border controls. Section 43(1)(2) concerned the arrest of aliens who had been apprehended within seven days of circumventing border controls, and section 41 concerned detention with a view to expulsion.

B. Complaints to the Independent Administrative Panel

29. Section 72 of the Aliens Act 1997, in so far as relevant, provided:

"(1) Persons arrested under section 63 or who have been or are being detained on the basis of this Federal Law, shall have the right to apply to the Independent Administrative Panel alleging the unlawful nature of the order for their detention with a view to expulsion, or of their arrest or detention."

30. Section 73 of the Act, in so far as relevant, provided:

> "(1) The Independent Administrative Panel within whose judicial district the applicant was arrested shall be competent to deal with the application.
>
> (2) ...
>
> 2. The Independent Administrative Panel shall give a decision on the alien's continuing detention with a view to expulsion within one week, unless the alien's detention ends sooner.
>
> ...
>
> (4) If the alien concerned remains in detention, the Independent Administrative Panel must in any event determine whether at the time of its decision the conditions for his or her continuing detention with a view to expulsion are met. ..."

31. Decisions given by the Independent Administrative Panel may be challenged before the Constitutional Court (*Verfassungsgerichtshof*) and the Administrative Court (*Verwaltungsgerichtshof*).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 2 OF THE CONVENTION

32. The applicant alleged a violation of Article 5 § 2 of the Convention, which provides:

> "Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

33. She maintained that she had not been informed promptly, in a language which she understood, of the reasons for her detention. She had therefore not been in a position to exhaust the available remedies.

34. The Government asserted that on the day of her arrest the applicant had been informed in Romanian of the reasons for her arrest and the institution of expulsion proceedings against her. She had confirmed receipt of that information by signing information sheets I and II. The said information sheets also informed her of the possibility of lodging a complaint with the Independent Administrative Panel concerning the alleged unlawfulness of her detention. As she had not made use of that possibility she had failed to exhaust domestic remedies.

35. The Court observes that in its decision on admissibility it held that the question of exhaustion of domestic remedies was closely linked to the substance of the applicant's complaint under Article 5 § 2 of the Convention, and therefore joined it to the merits.

36. The Court reiterates that paragraph 2 of Article 5 contains the elementary safeguard that any person arrested should know why he is being deprived of his liberty. This provision is an integral part of the scheme of protection afforded by Article 5: by virtue of paragraph 2 any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness in accordance with paragraph 4. Whilst this information must be conveyed "promptly" (in French: '*dans le plus court délai'*), it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features (see *Čonka v. Belgium*, no. 51564/99, § 50, ECHR 2002-I, with further references).

37. In the present case the applicant was arrested on 25 February 2002 at 10.30 a.m. On the same day the Neusiedl/See District Administrative Authority ordered her detention with a view to expulsion. This decision was issued in German and was handed to the applicant on 25 February 2002 at 6 p.m. together with two information sheets in Romanian.

38. Information sheet I stated that she had been arrested because she had entered Austria without reporting to the Border Control Office, but did not mention her specific situation, namely that she had tried to leave Austria and had been arrested after the Hungarian border police had returned her to the Austrian border police because she did not have a valid travel document.

39. Information sheet II stated that "... [the authorities have] ordered your detention pending deportation as being necessary to secure your expulsion or deportation to your country of nationality ...", without indicating any reasons why the applicant's detention was considered necessary in the specific circumstances of the case. Information sheet II mentioned again that she had been arrested because she had entered Austria without reporting to the Border Control Office, but did not give any details. In addition it informed the applicant that she could appeal to the Independent Administrative Panel if she considered her arrest or detention to be unlawful.

40. In sum, the Court notes that the information sheets did not contain any specific factual information concerning the applicant's arrest and detention. Moreover, it observes that the legal provisions mentioned in information sheets I and II were not the provisions of the Aliens Act 1997 on which her arrest and detention were based. In fact the information sheets still referred to the relevant provisions of the Aliens Act 1992 (see paragraph 28 above).

41. The Court reiterates that there is a close link between paragraphs 2 and 4 of Article 5. Anyone entitled to take proceedings to have the lawfulness of his detention speedily decided cannot make effective use of that right unless he or she is promptly and adequately informed of the

reasons relied on to deprive him of his liberty (see *Van der Leer v. the Netherlands*, judgment of 21 February 1990, Series A no. 170-A, p. 13, § 28, and *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 413, ECHR 2005-III).

42. It follows from the above considerations that the information given to the applicant on the day of her arrest, that is, on 25 February 2002, was inexact as to the facts and incorrect as to the legal basis of her arrest and detention, and thus insufficient for the purpose of Article 5 § 2 of the Convention. At that time she was therefore not in a position to lodge a complaint before the Independent Administrative Panel.

43. It was only ten days later, on 7 March 2002, that the applicant was informed of the specific reasons and the correct legal grounds for her detention: on that date she was questioned in the presence of an interpreter for the purpose of issuing an expulsion order. According to the minutes, the interpreter translated into Romanian the decision of 25 February 2002 ordering the applicant's detention. However, given the lapse of ten days, it cannot be said that the applicant was informed "promptly" as required by Article 5 § 2 of the Convention (see, for instance, *Saadi v. the United Kingdom* [GC], no. 13229/03, § 84, ECHR 2008-..., in which a delay of 76 hours was considered to be incompatible with the requirement that the reasons for detention should be given "promptly").

44. Returning to the question of exhaustion of domestic remedies, the Court considers that on 7 March 2002, when the applicant was finally correctly informed of the reasons for her arrest and detention, she could reasonably assume that her expulsion was already imminent. At that time the expulsion order was being prepared and the Romanian embassy had already promised a week earlier to issue her with a provisional travel document.

45. The Court reiterates that the requirement of exhaustion of domestic remedies laid down in Article 35 § 1 of the Convention must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case (see *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1211, § 69). In the specific circumstances of the present case, the Court finds that the applicant was absolved from making use of the available remedy, namely the complaint to the Independent Administrative Panel.

46. In conclusion, the Court dismisses the Government's preliminary objection of non-exhaustion and finds that there has been a violation of Article 5 § 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

47. The applicant complained that her detention with a view to her expulsion had been unlawful. She relied on Article 5 § 1 which, in so far as relevant, reads as follows:

> "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

48. The applicant asserted that her detention had not been necessary and that the Austrian authorities had disregarded her specific situation. She had had no intention of entering Austria illegally, as she had simply not been aware that the document issued by the French police following her declaration of the theft of her passport was insufficient for the purpose of travelling. It had been clear that she had no intention of staying in Austria illegally. In fact she had been stopped by the Hungarian border police when trying to leave Austria. Given these circumstances, it had not been necessary to take her into detention with a view to her expulsion, as less intrusive measures would have sufficed to secure the expulsion procedure. The applicant also complained that the authorities had not acted diligently. In particular, the Romanian embassy had issued the provisional travel document on 13 March 2002, but she had not been expelled until more than a week later, on 22 March 2002.

49. For their part, the Government asserted that the applicant had been arrested on 25 February 2002 under section 63(1)(2) of the Aliens Act 1997 for having entered Austrian territory via Italy without a valid travel document. Her detention with a view to her expulsion had been lawful, as it was based on section 61(1) of the Act and served the purpose of securing her deportation. After the provisional travel document issued by the Romanian consulate had been received by the District Administrative Authority on 15 March 2002, the applicant had been expelled via Hungary to Romania on 22 March 2002. Consequently, the prerequisites for the applicant's detention with a view to her expulsion had existed throughout the entire period of her detention.

50. In the Government's view the Austrian authorities had acted with the required diligence. The District Administrative Authority had requested the Romanian consulate on 26 February 2002 to issue a travel document for the applicant's return as soon as possible on account of her detention. The fact that the document in question had not been issued until 13 March 2002 and had been received by the District Administrative Authority only on 15 March 2002 was not imputable to the Austrian authorities. Finally, the

authorities had not remained inactive during the remaining seven days until 22 March 2002, as they had had to prepare and coordinate the applicant's expulsion with the Hungarian border officials.

51. The Court notes that the Government raised the same preliminary objection of non-exhaustion in respect of Article 5 § 1 as in respect of Article 5 § 2. Having regard to the conclusion set out in paragraph 46 above, it follows that the objection regarding the applicant's complaint under Article 5 § 1 must also be dismissed.

52. The applicant's detention falls to be considered under Article 5 § 1 (f) of the Convention. The Court reiterates that all that is required under this provision is that "action is being taken with a view to deportation". Article 5 § 1 (f) does not demand that the detention of a person against whom action is being taken with a view to deportation be reasonably considered necessary, for example to prevent his committing an offence or fleeing; in this respect Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c) (see *Čonka*, cited above, § 38, and *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports* 1996-V, pp. 1862-63, §§ 112-13).

53. The issue to be determined is whether the applicant's detention was "lawful", including whether it complied with "a procedure prescribed by law". Here the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see *Saadi*, cited above, § 67; *Čonka*, cited above, § 39; and *Chahal*, cited above, p. 1864, § 118).

54. It follows that while the necessity of detention with a view to expulsion is not required by the wording of Article 5 § 1 (f) of the Convention, it may be required under the domestic law to which that provision refers. This is the position under Austrian law. The Court notes that the District Administrative Authority based the decision ordering the applicant's detention on section 61(1) of the Aliens Act 1997. The said provision required the detention to be necessary for the issuing of an expulsion order or for carrying out the deportation of the person concerned.

55. Where the Convention refers directly back to domestic law, as in Article 5, compliance with such law is an integral part of the obligations of the Contracting States and the Court is accordingly competent to satisfy itself of such compliance where relevant (Article 19); the scope of its task in this connection, however, is subject to limits inherent in the logic of the European system of protection, since it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law (see *Lukanov v. Bulgaria*, judgment of 20 March 1997, *Reports* 1997-II, p. 543, § 41, and *Włoch v. Poland*, no. 27785/95, § 110, ECHR 2000-XI). In

essence the Court will limit its examination to whether the interpretation of the legal provisions relied on by the domestic authorities was arbitrary or unreasonable (ibid., § 116).

56. In the present case the District Administrative Authority, in its detention order of 25 February 2002, noted only that the applicant had entered Austria illegally as she had travelled without a valid passport and visa, and that she lacked the necessary means of subsistence for a stay in Austria. Referring to these facts the authority found that there were reasons to believe that the applicant would abscond and evade the proceedings if released.

57. The Court finds it striking that the authority did not pay any attention to the applicant's situation, which was fundamentally different from that of an illegal immigrant or refused asylum seeker. Admittedly, she had entered Austria without a valid travel document, as her passport had been stolen in France. However, she had tried to leave Austria on the same day. It was on that occasion, namely when she tried to cross the border with Hungary, that she was arrested. Hence, in her case, there was no indication that she had any intention of staying illegally in Austria. Nor was there any indication that she would not have cooperated in the proceedings for her expulsion.

58. In the circumstances of the case, the mere fact that the applicant entered Austria illegally does not provide a basis for the conclusion that she would try to evade the proceedings. Neither was the fact of her lack of subsistence a relevant consideration. The Court reiterates that detention of an individual is such a serious measure that – in a context in which the necessity of the detention to achieve the stated aim is required – it will be arbitrary unless it is justified as a last resort where other less severe measures have been considered and found to be insufficient to safeguard the individual or public interest which might require that the person concerned be detained (see, *mutatis mutandis, Saadi,* cited above, § 70, with further references).

59. Having regard to the deficiencies in the District Administrative Authority's reasoning, the Court considers that the applicant's detention contained an element of arbitrariness. It is therefore unnecessary to examine separately whether the authorities acted with the required diligence.

60. In conclusion, the Court finds that there has been a violation of Article 5 § 1 (f) of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

62. The applicant did not make any claim for just satisfaction within the time allowed for that purpose (Rule 60 § 1 of the Rules of Court). In such circumstances, the Court would usually make no award. In the present case, however, the Court has found a violation of the applicant's right to liberty. Having regard to the fundamental importance of that right, the Court finds it appropriate to award the applicant 3,000 euros (EUR) as compensation for non-pecuniary damage (see, *mutatis mutandis*, *Mayzit v. Russia*, no. 63378/00, §§ 87-88, 20 January 2005, and *Igor Ivanov v. Russia*, no. 34000/02, §§ 48-50, 7 June 2007).

B. Default Interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection of non-exhaustion of domestic remedies;

2. *Holds* that there has been a violation of Article 5 § 2 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 1 (f) of the Convention;

4. *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) in respect of non-pecuniary damage;
   (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.

Done in English, and notified in writing on 2 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Christos Rozakis
Registrar	President