Recht op privacy. Schending van art. 8 EVRM wegens niet verkrijgen status?

EHRM 12-05-2020, ECLI:CE:ECHR:2020:0512JUD004232115 (Sudita Keita/Hongarije)

Instantie
Europees Hof voor de Rechten van de Mens

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Wetingang
Art. 8 EVRM

Essentie

Stateloosheid. Recht op privacy.
Schending van art. 8 EVRM wegens niet verkrijgen status?

Samenvatting

Sudita Keita kwam in 2002 illegaal in Hongarije en is van Nigeriaanse en Somalische afkomst. Na 15 jaar wordt zijn status in Hongarije uiteindelijk gelegaliseerd en wordt hij erkend als een stateloos persoon. Op dat moment verkrijgt hij het recht op gezondheidszorg, arbeid en zijn er geen obstakels meer voor hem om te trouwen. In de periode 2002 tot 2017 (met uitzondering van de periode juli 2006 tot juli 2008) had Sudita Keita deze rechten niet. Sudita Keita stelt dat Hongarije art. 8 EVRM heeft geschonden vanwege het feit dat het 15 jaar duurde voor het verkrijgen van een status en hij in die periode geen toegang had tot bovenvermelde rechten.
EHRM: Het Hof zet uiteen dat op Hongarije als staat de positieve verplichting rust om effectieve en toegankelijke procedures in te richten om belanghebbende met het oog op de verplichtingen van art. 8 EVRM in staat te stellen zijn status vastgesteld te krijgen. Het Hof stelt vast dat vanaf 2006 Sudita Keita stateloos was (op dat moment weigerde de Nigeriaanse overheid hem het burgerschap). Hongarije heeft op dat moment Sudita Keita niet geïnformeerd over het feit dat hij de status kon verkrijgen van stateloos persoon. Het Hof stelt voorts vast dat tot 2015 het feitelijk voor Sudita Keita onmogelijk was om deze status als stateloos persoon te verkrijgen, omdat hij onmogelijk aan de vereisten daarvoor kon voldoen. Een van de vereisten was dat sprake was van 'rechtmatig burgerschap' en daaraan kon Sudita Keita als stateloos persoon niet voldoen. Nadat dit vereiste was geschrapt in februari 2015, duurde het nog tot oktober 2017 voordat Sudita Keita een status verkreeg. Gelet op deze feiten en omstandigheden oordeelt het Hof dat sprake is van een schending van art. 8 EVRM en wijst € 8.000 toe vanwege immateriële schade.

Verwant oordeel

Zie ook:

- EHRM 26 april 2018, 63311/14 (*H./Kroatië*).

Zie anders:

- HR 13 april 2007, ECLI:NL:HR:2007:AZ8751, *RAV* 2007/3, *NJ* 2008/576 (*Iraanse vluchteling*).

Wenk

In deze uitspraak van het EHRM worden de uitgangspunten zoals vastgelegd in de EHRM-zaak *H./Kroatië* toegepast (zie onder 'Zie ook'). In *H./Kroatië* ging het ook om een stateloos persoon, de heer H.. Hij verbleef al veertig jaar in Kroatië. Gedurende die veertig jaar werd het verblijf van H. deels getolereerd en deels gereguleerd door het afgeven van tijdelijke verblijfsvergunningen. Het lukte H. echter niet om zijn verblijf te legaliseren.
Het Hof overwoog in die zaak dat uit het EVRM een recht voortvloeit om het grondgebied van de lidstaten te betreden en daar te verblijven. Ook al kan specifiek uit art. 8 EVRM niet worden afgeleid dat er een recht op een verblijfsvergunning bestaat, hebben de nationale autoriteiten ervoor zorgen dat het betreffende individu zonder obstakels zijn privé- en/of familieleven kan uitoefenen. Dit vloeit volgens het Hof voort uit de positieve verplichting voor de staat om een effectief en een voor het individu toegankelijk beschermingsmechanisme te creëren zodat zijn rechten onder art. 8 EVRM worden gegarandeerd.
Het Hof oordeelde dat de heer H. deze effectieve mogelijkheid (gelet op de verschillende beslissingen en voorwaarden) niet had gehad. Het Hof oordeelde dat art. 8 EVRM was geschonden en dat Kroatië aan H. een bedrag van € 7.500 moest betalen voor geleden immateriële schade.
Ook in de onderhavige uitspraak ontbreekt het Sudita Keita aan de effectieve mogelijkheid om een legale status te krijgen [VM(G1)] en een normaal leven in Hongarije te leiden. Als stateloos persoon was dat laatste voor Sudita Keita dus feitelijk onmogelijk. Daardoor was het voor Sudita Keita niet mogelijk om te trouwen, toegang te krijgen tot de gezondheidszorg en arbeid te verrichten. Het EHRM oordeelt dat sprake is van een schending van art. 8 EVRM.
Het is de vraag hoe deze twee uitspraken van het EHRM zich verhouden tot het (al oudere) arrest van de Hoge Raad uit 2007 van de Iraanse vluchteling (zie onder 'Zie ook'). In dat arrest ging het om een Iraanse vluchteling die na vijf jaar als vluchteling werd toegelaten tot Nederland. Een status waar zij van het begin af aan recht op had. De Hoge Raad oordeelde in dat arrest dat het op zichzelf juist is dat de toelating van een vluchteling tot Nederland de vluchteling in staat stelt hier een nieuw bestaan op te bouwen, maar dat dit niet betekent dat de toelating als vluchteling ertoe strekt hem in staat te stellen inkomsten uit betaalde arbeid te verrichten. Dat recht ontstaat pas nadat de vluchteling in Nederland als vluchteling is toegelaten. De toelating vindt plaats om humanitaire redenen en strekt niet tot bescherming van enig vermogensrechtelijk belang van de vluchteling. De Hoge Raad oordeelde (kort gezegd) dat de relativiteit ex art. 6:163 BW ontbrak.
De vraag is hoe dat oordeel van de Hoge Raad zich verhoudt of nog kan verhouden tot deze jurisprudentie van het EHRM, waarin een schending van art. 8 EVRM mede wordt aangenomen vanwege het feit dat door het niet verkrijgen van een status geen betaalde arbeid kan worden verworven.
R.D. Leen

Partij(en)

Sudita Keita,
v.
Hungary.

Uitspraak

Europees Hof voor de rechten van de mens:

The European Court of Human Rights (Fourth Section), having regard to:
the application against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ('the Convention') by a stateless person, Mr Michael Sudita Keita ('the applicant'), on 25 August 2015;
the decision to give notice to the Hungarian Government ('the Government') of the application;
the parties' observations;
Having deliberated in private on 21 April 2020,
Delivers the following judgment, which was adopted on that date:

Introduction

The application concerns the protracted difficulties the applicant, a stateless person, had in regularising his legal situation in Hungary, with allegedly adverse repercussions on his access to healthcare and employment and his right to getting married.

The facts

1.

The applicant was born in 1985 and lives in Budapest. He was represented by Mr Zs. Dukkon, a lawyer practising in Budapest.

2.

The Government were represented by their Agent, Mr Z. Tallódi, Ministry of Justice.

3.

Péter Paczolay, the judge elected in respect of Hungary, withdrew from sitting in the Chamber (Rule 28 of the Rules of Court). Accordingly, the President of the Section selected Mr Robert Spano, the judge elected in respect of Iceland, as an *ad hoc* judge from the list of three persons designated by the Government of Hungary as eligible to serve as such a judge (Article 26 § 4 of the Convention and Rule 29 § 1 (a) of the Rules).

4.

The facts of the case, as submitted by the parties, may be summarised as follows.

A. The period from the applicant's arrival in hungary until 29 november 2002

5.

In 2002 the applicant, who is of Somali and Nigerian descent, arrived in Hungary, crossing the border illegally without valid travel documents. He submitted a request for recognition as a refugee.

6.

Under sections 16(1)(c) and (d) of Act no. CXXXIX of 1997 on asylum ('the Asylum Act'), during the ensuing proceedings the applicant was entitled to basic healthcare and employment; it does not appear that he was prevented from getting married either.

7.

The Immigration and Citizenship Office ultimately rejected the applicant's request for refugee status. On 29 November 2002 his appeal was dismissed.

B. The period from 29 november 2002 to 19 july 2006

8.

On 16 April 2003 the applicant was issued with an expulsion order. The enforcement of the expulsion order was suspended on 7 September 2004 until the preconditions for the measure were fulfilled. In the same year, the applicant unsuccessfully requested a residence permit.

9.

During this period, the applicant, as a person subject to an expulsion order and having no regular legal status whatsoever in Hungary, had no entitlement to healthcare or employment. Nor could he exercise the right to marry, because he could not produce any of the documents required for marriage under the relevant provisions of Law-Decree no. 13 of 1979 on international private law and Act no. IV of 1952 on family law (which were in force at that time).

C. The period from 19 july 2006 to 19 july 2008

10.

Since the applicant could not be returned to Somalia while the civil war was ongoing, and, moreover, the Nigerian embassy in Budapest had refused in a *note verbale* to recognise him as a citizen sometime in 2006, he was admitted by the Hungarian authorities as an exile (*befogadott*) on an unspecified date in 2006.

11.

It does not appear that the applicant, following the issuance of the *note verbale* by the Nigerian embassy in Budapest, was informed by the domestic authorities about the possibility of applying for stateless status. The applicable provision of Government Decree no. 114/2007 (V.24.) on the implementation of Act no. II of 2007 ('the Government Decree') nevertheless requires the immigration authority to inform the person in question about the procedures involved if there is any

possibility that he or she should be declared stateless.

12.

As a result of this state of affairs, on 19 July 2006 a humanitarian residence permit was issued to the applicant, which was valid until 19 July 2008.

13.

During this two-year period, he was entitled to basic healthcare and employment, in accordance with section 21 of the Asylum Act; again, it does not appear that he was prevented from getting married during this period.

D. The period from 25 september 2008 to 11 october 2017

14.

Subsequently, the Immigration Authority reviewed the applicant's exile status and, on 25 September 2008, it established that he could not be accepted either as a refugee or as a protected person, and that no prohibition on *refoulement* existed regarding Nigeria. The applicant challenged that ruling in court unsuccessfully, despite the fact that Nigeria had already refused to recognise him as a citizen. As a result, he again lost his entitlement to basic healthcare, employment and marriage since he had no recognised status or valid documents.

15.

On 2 November 2009 the deportation of the applicant to Nigeria was ordered. His subsequent appeal was to no avail. However, the deportation order was ultimately not enforced.

16.

On 16 September 2010 the applicant submitted a request for stateless status after being informed by a lawyer about that possibility. The request was refused on 18 November 2010. The applicant challenged this decision in court.

17.

On 2 February 2012 the Budapest High Court granted the applicant stateless status. On appeal, on 17 October 2012, the Budapest Court of Appeal reversed that decision and refused the request; its ruling was upheld by the *Kúria* on 11 December 2013. The principal reason given was that the relevant section 76(1) of Act no. II of 2007 on the admission and right of residence of third-country nationals (‘the RRTN Act’) required ‘lawful stay in the country’ as a precondition for granting stateless status.

18.

Subsequently, on 10 December 2012, the applicant relaunched the procedure for recognition as stateless. After an initial refusal on 5 June 2013, the first-instance court asked the Constitutional Court to declare unconstitutional the requirement of ‘lawful stay’ in the territory of Hungary in connection with the establishment of stateless status.

19.

The Constitutional Court accommodated the court's request and, by a decision of 23 February 2015, removed the ‘lawful stay’ requirement from the RRTN Act with effect from 30 September 2015. It held in particular that the requirement in issue contravened public international law obligations ratified by Hungary, notably the 1954 United Nations Convention relating to the Status of Stateless Persons (see paragraph 23 below).

20.

On 5 October 2015 the Budapest Administrative and Labour Court recognised the applicant as a stateless person. On appeal, on 11 October 2017, that decision was upheld by the Budapest High Court.

21.

Once granted stateless status by virtue of the Budapest High Court's decision of 11 October 2017, the applicant regained the entitlement to basic healthcare and employment (in line with the relevant provision of Act no. II of 2002 on the promulgation of the 1954 UN Convention relating to the Status of Stateless Persons) and there were no longer any obstacles for him to get married.

22.

The applicant submitted, uncontested by the Government, that he had been living together with his Hungarian girlfriend since 2009 and had successfully completed a heavy-machinery operator course in 2010 with a view to being issued with a work permit.

It is not known whether or not he eventually got married.

Relevant legal framework

23.

The relevant provisions of the Convention relating to the Status of Stateless Persons (United Nations, Treaty Series, vol. 360, p. 117), of 26 April 1954, to which Hungary acceded on 21 November 2001, provide as follows (see also *H. v. Croatia*, no. 63311/14, § 65, 26 April 2018):

Article 1 — Definition of the term 'stateless person'

"1. For the purpose of this Convention, the term 'stateless person' means a person who is not considered as a national by any State under the operation of its law."

Article 6 — The term 'in the same circumstances'

"For the purpose of this Convention, the term 'in the same circumstances' implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a stateless person, must be fulfilled by him, with the exception of requirements which by their nature a stateless person is incapable of fulfilling."

Article 12 — Personal status

"1. The personal status of a stateless person shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence."

Article 25 — Administrative assistance

"1. When the exercise of a right by a stateless person would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting State in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities."

Article 32 — Naturalization

"The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings."

The Law

I. Alleged violation of Article 8 of the Convention

24.

Relying on Articles 3, 5, 8, 13 and 14 of the Convention, the applicant alleged that from 2002 to 2017 the Hungarian authorities had refused to regularise his situation satisfactorily, which had gravely prejudiced his human dignity. The Court, being the master of the characterisation to be given in law to the facts of a case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), considers that this complaint falls to be examined under Article 8 of the Convention alone, which, in so far as relevant, reads as follows:

'1. Everyone has the right to respect for his private and family life …

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

A. Admissibility

25.

The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other ground listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

26.

The applicant submitted that the authorities' fifteen-year-long reluctance to recognise him as stateless or otherwise regularise his situation had been unacceptable, discriminatory and irreconcilable with human dignity.

27.

In particular, he argued that, during that period, he had not been able to access healthcare properly, he had been deprived of any means of providing for himself autonomously, and he had not been able to marry his girlfriend. He had been stateless from the outset, yet the Hungarian rules, which were not in compliance with the relevant provisions of international law, had prevented him from regularising his situation for a protracted period of time.

(b) The government

28.

The Government disagreed. They submitted in particular that the applicant's situation had ultimately been resolved by virtue of the Constitutional Court's ruling.

29.

In the Government's view, even up until that moment in time, the difficulties the applicant might have encountered had not been of the kind or of a degree that would represent a disproportionate burden from the perspective of Article 8 of the Convention. That Article could not, at any rate, be interpreted as requiring a Contracting State to grant stateless status to a person.

30.

Furthermore, the Government submitted that the authorities had applied the relevant law correctly at all stages of the various procedures and that the applicant's right to marry had not been hampered by the fact that he had had no legal entitlement to remain in the country.

2. The Court's assessment

(a) General principles

31.

The general principles relevant to the present application have recently been outlined in *H. v. Croatia* (no. 63311/14, §§ 119-123, 26 April 2018) as follows:

‘119. At the outset, the Court reiterates that Article 8 protects, *inter alia*, the right to establish and develop relationships with other human beings and the outside world and can sometimes embrace aspects of an individual's social identity. Thus, the totality of social ties between a migrant and the community in which he or she lives constitutes part of the concept of private life under Article 8 (see, *mutatis mutandis, Maslov v. Austria* [GC], no. 1638/03, § 63, ECHR 2008, and *Abuhmaid* [*v. Ukraine*, no. 31183/13, § 102, 12 January 2017]).

120. Nevertheless, according to the Court's case-law, the Convention does not guarantee the right of an alien to enter or to reside in a particular country and Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see, amongst many other authorities, *Chahal v. the United Kingdom*, 15 November 1996, § 73, *Reports of Judgments and Decisons* 1996-V; *Üner* [*v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-XII]; *Slivenko* [*v. Latvia* [GC], no. 48321/99, § 115, ECHR 2003-X]; *Kurić and Others* [*v. Slovenia* [GC], no. 26828/06, § 355, ECHR 2012 (extracts)], and *Abuhmaid*, cited above, § 101).

121. Moreover, neither Article 8 nor any other provision of the Convention can be construed as guaranteeing, as such, the right to the granting of a particular type of residence permit, provided that a solution offered by the authorities allows the individual concerned to exercise without obstacles his or her right to respect for private and/or family life (see *Aristimuño Mendizabal v. France*, no. 51431/99, § 66, 17 January 2006, and *B.A.C. v. Greece* [no. 11981/15, § 35, 13 October 2016]). In particular, if a residence permit allows the holder to reside within the territory of the host country and to exercise freely there the right to respect for his or her private and family life, the granting of such a permit represents in principle a sufficient measure to meet the requirements of Article 8. In such cases, the Court is not empowered to rule on whether the individual concerned should be granted one particular legal status rather than another, that choice being a matter for the domestic authorities alone (see *Ramadan v. Malta*, no. 76136/12, § 91, ECHR 2016 (extracts), and cases cited therein).

122. Having said that, the Court reiterates that measures restricting the right to reside in a country may, in certain cases, entail a violation of Article 8 of the Convention if they create disproportionate repercussions on the private or family life, or both, of the individuals concerned (see *Maslov*, cited above, § 100, and *Kurić and Others*, cited above, § 355). Moreover, the Court has held that in some cases … Article 8 may involve a positive obligation to ensure an effective enjoyment of the applicant's private and/or family life (see paragraphs 119–120 above). In this connection, it is helpful to reiterate that the boundaries between the State's positive and negative obligations under Article 8 do not lend themselves to precise definition. The applicable principles are nonetheless similar. In

both instances regard must be had to the fair balance which has to be struck between the general interest and the interests of the individual; and in both contexts the State enjoys a certain margin of appreciation (see, amongst many other authorities, *Fernández Martínez v. Spain* [GC], no. 56030/07, § 114, ECHR 2014 (extracts), and *B.A.C. v. Greece*, cited above, § 36).

123. The positive obligation under Article 8 may be read as imposing on States an obligation to provide an effective and accessible means of protecting the right to respect for private and/or family life (see *Roche v. the United Kingdom* [GC], no. 32555/96, § 162, ECHR 2005-X, and *Abuhmaid*, cited above, § 118, with further references; see also *Kurić and Others*, cited above, § 358). Article 8 requires, amongst other things, a domestic remedy allowing the competent national authority to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to such an obligation (see *Abuhmaid*, cited above, § 118)'.

(b) Application of these principles to the present case

32.

In view of the nature of the applicant's complaint and the fact that it is primarily for the domestic authorities to ensure compliance with the relevant Convention obligation, the Court considers that the principal question to be examined in the present case is whether, having regard to the circumstances as a whole, the Hungarian authorities, pursuant to Article 8, provided an effective and accessible procedure or a combination of procedures enabling the applicant to have the issues of his further stay and status in Hungary determined with due regard to his private-life interests (see, *mutatis mutandis, H.*, cited above, § 124, with further references).

33.

In this respect, the Court notes that the applicant has been living in Hungary since 2002 with no recognised status in any other country (see paragraphs 5–22 above). He has been living together with his Hungarian girlfriend since 2009 and has also completed a vocational training course (see paragraph 22 above); therefore, there can be no doubt that he has enjoyed private life in Hungary (see, *mutatis mutandis, H.*, cited above, § 125).

34.

The Court observes that the applicant's legal status in Hungary was uncertain between 2002 and 11 October 2017, that is to say, for about fifteen years. Indeed, the only period when he had a valid, albeit temporary, humanitarian residence permit was between 19 July 2006 and 19 July 2008 (see paragraph 12 above). This state of affairs resulted in long periods when he had no entitlement to healthcare or employment in Hungary (see paragraphs 9 and 14–20 above). It was only on 11 October 2017 that, by virtue of the Budapest High Court's decision, the applicant regained the said entitlement (see paragraph 20 above). In these circumstances, the Court accepts that the uncertainty of the applicant's legal status had adverse repercussions on his private life (see, *mutatis mutandis, H.*, cited above, § 126).

35.

A further important element in the present case is the fact that the applicant is currently stateless (see paragraph 21 above, and *H.*, cited above, § 128).

36.

The Court considers it important to note several aspects of the proceedings related to the applicant's status in Hungary. It cannot subscribe to the Government's arguments revolving around the consideration that Article 8 of the Convention cannot be interpreted as requiring the State to grant stateless status to a person (see paragraph 29 above). The applicant's complaint does not concern the impossibility for him to obtain stateless status as such, but the general impossibility of regularising his status in Hungary for a fifteen-year-long period. The Court is therefore not called upon to examine whether the applicant should have been granted stateless status (which was ultimately granted on 11 October 2017 — see paragraph 20 above), but rather to examine whether he had an effective possibility of regularising his status, allowing him to lead a normal private life in Hungary (see, *mutatis mutandis, H.*, cited above, § 131).

37.

At this juncture, the Court notes that the applicant — following the decision on 29 November 2002 on the refusal of recognition of refugee status (see paragraph 7 above) — effectively lived in Hungary without any legal status while being deprived of basic entitlements to healthcare and employment. As mentioned above, this situation was interrupted only by the two-year period after 19 July 2006, when the applicant was granted a humanitarian residence permit as an exile (see paragraphs 12 and 34 above).

38.

It was uncontested by the Government that the Nigerian embassy in Budapest had refused to recognise the applicant's Nigerian citizenship at some time in 2006 (see paragraph 10 above), rendering the applicant *de facto* stateless from that point in time. The Court observes that the domestic authorities, in disregard of the Government Decree, did not consider taking any relevant measures to inform the applicant about the possibility of applying for stateless status at that time (see paragraph 11 above).

39.

It is also to be emphasised that, up until the decision of the Constitutional Court removing the 'lawful stay' requirement from section 76(1) of the RRTN Act (see paragraph 19 above), it was practically impossible for the applicant to be recognised as stateless as he did not meet that requirement. Thus, in reality, contrary to the principles flowing from the 1954 UN Convention relating to the Status of Stateless Persons (see paragraph 23 above), the applicant, a stateless individual, was required to fulfil requirements which, by virtue of his status, he was unable to fulfil (see *H.*, cited above, § 137).

40.

The Court also observes that, following the decision of the Constitutional Court of 23 February 2015 (see paragraph 19 above), it took the domestic courts until 11 October 2017 (see paragraph 20 above) to reach a final decision in the applicant's case, ultimately granting him stateless status.

41.

Having regard to the combined effect of the above elements, the Court is not persuaded that, in the particular circumstances of the applicant's case, the respondent State complied with its positive obligation to provide an effective and accessible procedure or a combination of procedures enabling the applicant to have the issue of his status in Hungary determined with due regard to his private-life interests under Article 8 of the Convention (see, *mutatis mutandis, H.*, cited above, § 141; compare and contrast *Abuhmaid v. Ukraine*, no. 31183/13 § 126, 12 January 2017).

42.

There has accordingly been a violation of Article 8 of the Convention.

II. Application of Article 41 of the Convention

43.

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

44.

The applicant claimed € 28,000 in respect of pecuniary damage, corresponding to lost employment opportunities, and € 360,000 in respect of non-pecuniary damage.

45.

The Government contested these claims.

46.

On the one hand, the Court considers that the applicant has not demonstrated the existence of a causal link between the violation found and the pecuniary damage alleged and therefore rejects this claim. On the other hand, it awards the applicant € 8,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

47.

The applicant also claimed € 30,000 plus VAT for the costs and expenses incurred before the Court, without further itemisation. He submitted an agreement concluded with his lawyer, according to which this amount would be billable in case of successfully concluding the case.

48.

The Government contested this claim.

49.

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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of € 4,000 covering costs under all heads.

C. Default interest

50.

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

For these reasons, the Court, unanimously,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds*

   (a)

   that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

   (i)

   € 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

   (ii)

   € 4,000 (four thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

   (b)

   that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.