CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF ZLÍNSAT, SPOL. S R.O. v. BULGARIA

(Application no. 57785/00)

JUDGMENT
(just satisfaction)

STRASBOURG

10 January 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 Zlínsat, spol. s r.o. v. Bulgaria,

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

Peer Lorenzen, *President*,
Snejana Botoucharova,
Karel Jungwiert,
Volodymyr H. Butkevych,
Margarita Tsatsa-Nikolovska,
Rait Maruste,
Renate Jaeger, *judges*,
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 4 December 2007,

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

PROCEDURE

1. The case originated in an application (no. 57785/00) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Zlínsat, spol. s r.o., a limited liability company incorporated under Czech law whose registered office is in Fryšták, Dolní Ves, the Czech Republic ("the applicant company"), on 14 December 1999.

2. In a judgment delivered on 15 June 2006 ("the principal judgment"), the Court held that there had been violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention. More specifically, the Court found that the impossibility for the applicant company to challenge before a court prosecutors' decisions ordering the suspension of the performance of a privatisation contract to which it was party and its eviction from a hotel which it had bought was in breach of Article 6 § 1 of the Convention. The Court also found that the interference with the company's possessions had not been lawful, as it had not been surrounded by the minimum degree of legal protection to which individuals and legal entities were entitled under the rule of law in a democratic society, in breach of Article 1 of Protocol No. 1 (*Zlínsat, spol. s r.o. v. Bulgaria*, no. 57785/00, 15 June 2006).

3. Under Article 41 of the Convention the applicant company sought various sums in just satisfaction.

4. Since the question of the application of Article 41 of the Convention was not ready for decision as regards pecuniary damage and certain costs and expenses, the Court reserved it and invited the respondent Government and the applicant company to submit, within six months, their written observations on that issue and, in particular, to notify the Court of any

agreement they might reach (ibid., §§ 106 and 110, and point 6 of the operative provisions).

5. On 12 March 2007 the respondent Government filed comments on the applicant company's claims for just satisfaction made before the delivery of the principal judgment. On 20 March and 9 June 2007 the applicant company filed its updated claims for just satisfaction. The respondent Government did not file a reply.

THE LAW

6. 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

1. The new developments

7. Early in 2001, following unsuccessful negotiations with the applicant company, the Sofia Municipality brought a civil action against it, seeking payment of damages, plus interest, for the company's alleged failure to discharge its obligations under the privatisation contract (see paragraph 7 of the principal judgment). The Municipality alleged that the company had failed to make repairs and improvements to the privatised hotel's building, to create forty-five jobs there, to preserve the hotel's activity until 10 May 2000, and not to suspend its operations for more than one month.

8. In a judgment of 8 February 2002 the Sofia City Court dismissed the action. It found that, following the applicant company's eviction from the hotel by a decision of the prosecution authorities, the hotel had suffered damage which had precluded its normal use. This was evident from Bulgarkontrola AD's report (see paragraph 13 below). The court went on to hold that the applicant company's non-performance was due to *force majeure* – its eviction from the hotel by the decision of the prosecution authorities. The company had been objectively unable to discharge its contractual obligations during the period when it had been so evicted: 6 October 1997 to 13 October 1999. The three-year time-limit for discharging its obligations was therefore penalised by an identical amount of time. The company's failure to complete the repairs and start operating the hotel shortly after it had regained possession did not amount to a breach of contract either, because under clause 17(1) of the contract, such a failure

was excusable if due to "extraordinary difficulties". The damage suffered by the hotel during the two years when the applicant company had been removed from it amounted to exactly such "extraordinary difficulties". What mattered what was not so much the monetary value of this damage, but its nature and magnitude. These made it impossible to operate the hotel without carrying out very extensive repairs, which required a lot of money and time and were still continuing at the time of the court's judgment.

9. On an appeal by the Sofia Municipality, in a judgment of 2 August 2002 the Sofia Court of Appeal upheld the Sofia City Court's judgment, with almost identical reasoning.

10. An ensuing appeal by the Sofia Municipality on points of law was dismissed by the Supreme Court of Cassation in a final judgment of 21 November 2003. The court fully endorsed the lower courts' reasoning.

11. In 2005 the Sofia Municipality brought a new action against the applicant company, again alleging a breach of the privatisation contract. At the time of the latest information from the parties on this point (March 2007), the proceedings were still pending before the first-instance court.

2. The expert reports

(a) The reports presented by the applicant company

12. The applicant company presented two expert reports.

13. The first, prepared by Bulgarkontrola AD, a company specialising in, among others, damage assessment, is a certificate of inspection describing the extent of the damage to the privatised hotel at the time when the applicant company regained possession on 13 October 1999. It shows that on that date the representatives of Bulgarkontrola AD surveyed the premises, taking a number of photographs, and found that they were in a decrepit state: most of the furniture, fixtures and installations were damaged or missing, and the hotel was almost completely unfit for use. The certificate describes in minute detail all missing or damaged items and values them. According to the experts' estimate, the hotel had lost 66,634.30 Bulgarian levs (BGN) in damaged or missing fixtures, BGN 55,760 in damaged or missing electric equipment, BGN 44,280 in damaged or missing water-supply and sewage equipment, and BGN 41,000 in damaged or missing heating and ventilation equipment. To this the experts added BGN 51,426.50 in missing and damaged furniture and devices, BGN 8,742.90 in missing warehoused items, and BGN 3,549.30 in missing restaurant equipment. The sum total of the losses was thus, in the experts' view, BGN 271,393.

14. The second report was drawn up by Recont EOOD, an accounting firm. It seeks to establish the amount of profit lost by the applicant company as a result of its inability to run the hotel between 1 October 1997 and 31 August 2000. According to this report, this amount was BGN 4,994,508.

15. To arrive at this figure, the experts estimated the lost profit for 1997 (from 1 October), 1998, 1999 and 2000 (up to 31 August). Their estimate for each of those periods was based on the difference between income and expenditure.

16. The receipts were the sum of the proceeds from hotel rooms and the rent for the restaurant, the bar and the shop located on the hotel premises. The expenditures were the sums due for electricity, water supply, heating fuel, wages, social security payments, advertising and miscellaneous items.

17. The sum of the proceeds from hotel rooms was arrived at by assuming constant prices for each category of rooms (single, double, triple and suites) for the entire period in question (1 October 1997 to 31 August 2000), and assuming a 60% occupancy rate, again for the entire period in question. The prices assumed by the experts (BGN 36 for single rooms, BGN 40 and BGN 60 for double rooms, BGN 80 and BGN 90 for triple rooms, and BGN 100 and BGN 120 for suites) were on average higher than those estimated by the respondent Government's expert (see paragraph 25 below). The resulting amounts were BGN 221,904 for 1997, BGN 1,798,866 for 1998, BGN 1,798,866 for 1999, and BGN 1,202,530 for 2000.

18. The rent for the restaurant, estimated at BGN 5,000 per month, would produce income amounting to BGN 15,000 for 1997, BGN 60,000 for 1998, BGN 60,000 for 1999 and BGN 40,000 for 2000. The rent for the bar and the shop was estimated to be slightly over BGN 200, producing an income of BGN 611 for 1997, BGN 2,453 for 1998, BGN 2,548 for 1999 and BGN 1,875 for 2000.

19. The expenditure was based on certain assumptions for utilities costs (electricity, water supply, heating fuel etc.), and wages and social security payments. The latter were based on the following staff levels: one manager (pay four times the minimum wage), one assistant-manager (pay three times the minimum wage), one senior administrator (pay two and a half times the minimum wage), three administrators (pay twice the minimum wage), six housekeeping staff for 1997 and nine for the subsequent years (pay one and a half times the minimum wage), one laundry worker (pay one and a half times the minimum wage), and one heating and electricity technician (pay twice the minimum wage). The resulting figures were BGN 18,645 for 1997, BGN 65,514 for 1998, BGN 72,665 for 1999 and BGN 53,321 for 2000.

20. On this basis, the experts estimated that the hotel would produce profits amounting to BGN 218,870 for 1997, BGN 1,1795,805 for 1998, BGN 1,788,749 for 1999 and BGN 1,191,084 for 2000, a total of BGN 4,994,508.

21. In addition, the experts estimated that equipment costing BGN 2,343.44 had vanished from the hotel during the period when the applicant company was evicted from it.

(b) The report presented by the respondent Government

22. The respondent Government presented a report drawn up by Amrita OOD, a consulting firm. The report sought to establish the amount of profit which the applicant company had lost by reason of its inability to operate the hotel between 6 October 1997 and 13 October 1999. According to the report, this amount was BGN 1,296,000.

23. To arrive at this figure, the experts endeavoured to calculate the profit which the applicant company would have derived for four years after its eviction from the hotel (BGN 2,313,713) and subtracting from it the profit for the first two years (BGN 1,018,024), when, in the experts' opinion, the company would have made repairs to the hotel, as required under the privatisation contract and as needed on account of the hotel's bad state at the time of its privatisation. The profit for the four years and for the first two years was calculated as the sum total of the monthly income of the hotel for the months during which it would have had such income (in calculating the sum total, the experts discounted the months during which the earnings would, in their view, have been negative).

24. The monthly income was the difference between the receipts and the expenditure for the month in issue. The receipts were the sum of the proceeds from hotel rooms, plus the rent of the restaurant, the bar and the shop which were located on the hotel's premises, plus two per cent of this amount from "other" sources. The monthly expenditure was the fixed and variable costs of running the hotel.

25. The proceeds from hotel rooms were arrived at by assuming certain prices for the rooms (BGN 35 for single rooms, BGN 49 and BGN 52 for double rooms, BGN 80 for triple rooms, and BGN 82 and BGN 96 for suites – said to be based on the prices in similar hotels during the relevant period; however, these prices are apparently the same as the present-day prices of the rooms, inclusive of value-added tax, as appearing on the hotel's website on 4 December 2007), assuming 40% occupancy during the first year, 50% during the second year, 55% during the third year, and 65% during the fourth year, and assuming that during the first six months of the first year and during the first six months of the fourth year the hotel would have undergone repairs which would have reduced its occupancy rate by a further 60%. These estimates were based on the occupancy rates of similar hotels in Sofia.

26. The rent for the restaurant, the bar and the shop located on the hotel's premises was assumed to be equivalent to that before its privatisation in 1997 (BGN 5,000 for the restaurant and BGN 200 for the bar and the shop).

27. The fixed costs (building maintenance, construction and waste-disposal tax, wages and social security payments, electricity, heating, telephone, lifts and computer maintenance) were calculated as a percentage of the gross receipts and were assessed at BGN 33,012 for each month. The

variable costs fluctuated, with a minimum of BGN 8,708 for month 4 and a maximum of BGN 13,257 for months 26, 27, 29, 31, 33 and 34.

28. On this basis, the experts estimated that the applicant company would have had earnings in months 7-39 and 41-48, and no earnings in months 1-6 and 40.

3. The applicant company's claims

29. The applicant company sought BGN 271,393 in compensation for losses (*damnum emergens*) it had sustained. It arrived at that result by adding up the value of the damaged equipment and fixtures in the hotel, as set out in the report prepared by Bulgarkontrola AD.

30. The applicant company submitted that Bulgarkontrola AD was a certified goods control and damage assessment organisation. It was widely renowned for its independent inspections and its conclusions had evidential value. The fact that the report prepared by it did not discuss the state of the hotel on 12 August 1997, the date on which it had first been delivered to the applicant company, was of no consequence, as the record drawn up on that date had made no mention of any damage to the building. That meant that the hotel had been given to the company in a good and functional state. The fact that in August 1997 the hotel had been functioning was also apparent from the terms of the privatisation contract, which obliged the company not to suspend the hotel's operations, save in the case of repairs, but even then for not more than one month. The company had been unable to make such repairs, as it had been removed from the hotel on 6 October 1997. On the other hand, it was apparent from the pictures taken by Bulgarkontrola AD when the applicant company had retaken possession of the hotel on 13 October 1999 that at that time it had been in a very bad state, with looted and spoiled equipment, destroyed facilities and damaged structure. All these elements had been taken into account by Bulgarcontrola AD, but not by Amrita OOD. Amrita OOD's findings were also questionable because, unlike Bulgarcontrola AD, it had not considered a number of documents held by the applicant company.

31. The applicant company made reference to the findings of the courts in the action brought against it by the Sofia Municipality and averred that this was additional proof of the existence and the extent of the damage to the hotel. It also said that Bulgarcontrola AD's report had been admitted in evidence and examined by all levels of court in these proceedings. In its view, this meant that the conclusions of this report were accurate.

32. The applicant company further claimed BGN 4,994,508 in loss of profit (*lucrum cessans*) resulting from its inability to operate the privatised hotel during the period 1 October 1997 to 31 August 2000, which the expert it had instructed – Recont EOOD – had assessed at that amount. It said that its failure to discharge its obligations under the privatisation contract in a timely fashion was due to its eviction from the hotel; this had been

established by the domestic courts examining the action for breach of contract against it. The fact that it had bought the hotel at a low price was completely irrelevant for the assessment of the amount of profit which it could have derived from it. An award exceeding the purchase price of the hotel could therefore not lead to unjust enrichment.

4. The respondent Government's comments

33. The respondent Government submitted that the applicant company's claims were unproven and ill-founded. The company's financial standing had not worsened after its purchase of the hotel, as it had not invested any money in it. There were moreover indications that even after regaining possession of the hotel the company had not abided by its obligations under the privatisation contract.

34. The report prepared by Amrita OOD showed that the state of the hotel at the time of its privatisation was very bad. That was also evident from the valuation drawn up during the privatisation procedure. This fact had however not been signalled in the documents drawn up when the hotel had been initially delivered to the applicant company, nor noted at the time of its eviction from it, nor taken into account by the applicant company's experts, Bulgarcontrola. For this reason, Bulgarcontrola AD's assessment could not be deemed objective.

35. Concerning the claim for lost profits, the Government argued that the applicant company had not shouldered the burden of proving that it had indeed sustained such losses. The analysis by Recont EOOD was not objective and should not be taken into account. In order to substantiate that it had indeed lost profit, the company had to show not only what the situation would have been had the originating event not occurred, but also that it had already taken steps to realise these profits. By failing to produce an objective assessment in this respect, the applicant company had in fact not established a causal link between the breaches of the Convention and the loss of profits. Moreover, the fact that the hotel had not functioned for a long time after the cessation of the breach made it highly doubtful whether the company had indeed sustained loss of earnings. It had not been established that it would have discharged its obligations under the privatisation contract in good faith and would actually have made a profit.

36. Finally, the Government laid great stress on the facts that the applicant company had purchased the hotel for 425,000 United States dollars (USD) and that its obligation under the privatisation contract to invest USD 1,500,000 was the subject of litigation pending in the domestic courts. They argued that in these circumstances it would be absurd for the State to be held liable to pay almost USD 3,000,000 – an amount many times higher than the purchase price of the hotel – for a two-year eviction from it.

5. The Court's assessment

(a) Preliminary observation

37. The Court observes at the outset that its task in the present proceedings consists solely of assessing the amount of damage suffered by the applicant company on account of the breaches of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 found in the principal judgment. The Court does not therefore have to express an opinion on whether the applicant company has discharged its obligations under the privatisation contract under which it bought the hotel; indeed, this is the subject of a dispute pending in the Bulgarian courts (see paragraph 11 above).

(b) The existence of damage and its constituent elements

38. The Court notes that the violation of Article 6 § 1 found in the instant case consisted in the impossibility for the applicant company to have access to a court (see paragraphs 73-85 of the principal judgment). This violation does not justify any award of compensation, as there is no causal link between it and any of the alleged pecuniary damage: the Court cannot speculate as to what result the company would have achieved had it been able to bring its case before a court (see, among many other authorities, *Tre Traktörer AB v. Sweden*, judgment of 7 July 1989, Series A no. 159, p. 25, § 66; and *Fredin v. Sweden (no. 1)*, judgment of 18 February 1991, Series A no. 192, p. 20, § 65). By contrast, the breach of Article 1 of Protocol No. 1 does call for an award in respect of pecuniary damage, as it consisted of an unlawful, within the meaning of that provision, interference with the applicant company's possessions (see paragraph 99 of the principal judgment, and also, *mutatis mutandis*, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 35, ECHR 2000-XI).

39. The Court considers that in the circumstances of the present case the reparation should aim at putting the applicant company in the position in which it would have been had the violation not occurred (see, *mutatis mutandis*, *Prodan v. Moldova*, no. 49806/99, § 70 *in fine*, ECHR 2004-III (extracts); *Popov v. Moldova* (no. 1) (just satisfaction), no. 74153/01, § 9 *in fine*, 17 January 2006; and *Kirilova and Others v. Bulgaria* (just satisfaction), nos. 42908/98, 44038/98, 44816/98 and 7319/02, § 23 *in fine*, 14 June 2007). As the company did regain possession of its hotel in October 1999, it should be compensated for the damage suffered on account of the two-year period in which it was denied access to it (see, *mutatis mutandis*, *Doğan and Others v. Turkey* (just satisfaction), nos. 8803-8811/02, 8813/02 and 8815-8819/02, § 48, 13 July 2006).

40. This damage comprises, firstly, the deterioration in and loss of the hotel's property, which was the result of its not being able to take care of the hotel during that time. The damage secondly comprises the loss of profit

because of the company's inability to use the hotel (see, *mutatis mutandis*, *Doğan and Others*, cited above, §§ 52 and 54).

(c) Assessment of the quantum of damage

(i) The deterioration of the applicant company's property

41. The Court notes that the respondent Government did not challenge the accuracy of the estimates produced by the applicant company's experts (BGN 271,393 in damaged property and BGN 2,343.44 in vanished equipment – see paragraphs 13 and 21 above). The Court, for its part, sees no reason to doubt their accuracy. On the other hand, the Court, bearing in mind that when buying the hotel the applicant company assumed the obligation to make repairs to it (see paragraph 7 of the principal judgment and paragraphs 7 and 8 above), finds force in the Government's argument that the state of the hotel at the time of its privatisation had been far from perfect, with the result that the ensuing spoliation during the period 1997-99 did not impact on the company's property as heavily as it would, had the state of the property been impeccable. The Court therefore considers that this assumption should weigh in its assessment of the extent of the damage to the company's property. Given the lack of information in the file on the state of the hotel in 1997, this assessment inevitably involves a certain amount of conjecture and must be based on principles of equity. Therefore, the Court, ruling in equity and converting the applicant company's claim into euros, awards under this head EUR 60,000, plus any tax that may be chargeable.

(ii) The loss of profit by the applicant company

42. The principal point of contention in this part of the case was the exact quantum of profits lost by the applicant company. According to the expert report presented by it, they amounted to BGN 4,994,508, whereas the expert report produced by the respondent Government put them at BGN 1,296,000.

43. Faced with a difference of this magnitude, the Court has sought to extract from the material before it elements which may inform its assessment. Nevertheless, given the divergent pieces of evidence and the lack of more reliable data, such as the income statements of the hotel for subsequent years and income statements of comparable properties for the period in issue, this assessment will inevitably involve a degree of speculation (see *Doğan and Others*, cited above, § 51, quoting *Akdivar and Others v. Turkey* (Article 50), judgment of 1 April 1998, *Reports of Judgments and Decisions* 1998-II, p. 718, § 19; and *Selçuk and Asker v. Turkey*, judgment of 24 April 1998, *Reports* 1998-II, p. 915, § 106; see also *Menteş and Others v. Turkey* (Article 50), judgment of 24 July 1998, *Reports* 1998-IV, p. 1693, § 12 *in fine*).

44. The Court notes the following.

(a) It agrees with the parties that the assessment of the quantum of lost profits should be based on the hotel's earnings, defined as the overall difference between its receipts and expenditures during the "period of damage". It notes in this connection that the method used by the respondent Government's experts – calculating the total sum only on the basis of the months in which the hotel would have, in their view, broken even –, seems incomplete. Account should also be taken of the months in which the hotel would have produced net losses.

(b) The "period of damage" started on 6 October 1997, when the company was evicted from the hotel (see paragraph 16 of the principal judgment), and ended on 13 October 1999, when the company regained possession. The ensuing period of time spent by the company in repairing the hotel should not be taken into account, or should be taken into account only in part. This is because the company would have had to make similar (albeit, arguably, less extensive – see paragraph 8 above) repairs anyway. Indeed, as already noted, it seems that the state of the hotel at the time of its privatisation in 1997 was far from perfect. It was apparently for this reason that one of the company's obligations under the privatisation contract was to make considerable investments in the hotel (see paragraphs 7 and 20 of the principal judgment).

(c) The proceeds from the hotel rooms must be based on the actual prices which the applicant company would have been able to charge its clients during the "period of damage". The Court considers that, in view of the economic realities in the country, it is unrealistic to assume that these prices would have been equal to the current prices charged by the hotel, as suggested by the respondent Government's experts, or even higher, as suggested by the applicant company's experts (see paragraphs 17 and 25 above). The Court accordingly cannot accept these figures as an accurate basis for calculating the income to be derived from the hotel rooms (see, *mutatis mutandis*, *Loizidou v. Turkey* (Article 50), judgment of 29 July 1998, *Reports* 1998-IV, p. 1817, §§ 32 and 33 *in fine*).

(d) The parties' estimates of the income to be derived from the restaurant, bar and shop located on the hotel premises largely coincided (see paragraphs 18 and 26 above). The Court, for its part, sees no reason to doubt that they were correct.

(e) The applicant company's experts said that the hotel's assumed occupancy rate for the period in question was 60%. However, they did not explain the basis for this estimate. The respondent Government's experts said that the occupancy rate would have been 40% during the first year and 50% during the second year. Their estimate was based on the occupancy rates of similar hotels in Sofia during that period. The Court therefore finds it more credible. However, it is unable to follow the respondent Government's expert's suggestion that the hotel's occupancy rate would

have been reduced by a further 60% during the first six months of the first year due to repairs. Were the Court to accept that suggestion, this would entail according the "repairs" factor a double weight, since the applicant company actually carried out repairs after retaking possession of the hotel in October 1999. The period of these repairs, during which the hotel was apparently completely closed and hence producing no earnings, was not fully taken into account for the purposes of compensation (see (b) above).

(f) The parties diverged greatly in their assessments of the expenditures for running the hotel. Without expressing a definite view on the specific amounts put forward by each of them, the Court observes that the applicant company's estimate, which posits merely fourteen to seventeen total staff (including six to nine housekeeping staff and three administrators, for a hotel having one hundred and forty-eight rooms), appears unrealistic, especially considering that in the privatisation contract the company had undertaken to create forty-five jobs.

(g) Any profit made by the applicant company would have been subject to taxation (see, *mutatis mutandis*, *Prodan*, cited above, § 74; *Popov* (No. 1), cited above, § 13; *Radanović v. Croatia*, no. 9056/02, § 65, 21 December 2006; and *Kirilova and Others*, cited above, § 31). Neither the applicant company's, nor the respondent Government's experts factored this in their estimates.

(h) The profits which the applicant company would have derived would have accrued in 1997-99. That means that they have to be updated to take account of inflation (see, *mutatis mutandis*, *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal* (just satisfaction), nos. 29813/96 and 30229/96, §§ 22 and 23, 10 April 2001).

45. Having noted the relevant factors and the various deficiencies in the methods of calculation advanced by the parties, the Court comes to the view that, in the circumstances of the case, it has to make an overall assessment of these factors (see, *mutatis mutandis*, *Sporrong and Lönnroth v. Sweden* (Article 50), judgment of 18 December 1984, Series A no. 88, p. 14, § 31). Therefore, ruling in equity, as required by Article 41 of the Convention, the Court considers that the applicant company should be afforded satisfaction for loss of profit assessed at EUR 300,000, plus any tax that may be chargeable.

B. Costs and expenses

46. The Court notes that in the principal judgment it reserved the question of the application of Article 41 of the Convention in so far as the costs incurred for the expert reports and their translations were concerned (see paragraph 110 of the principal judgment).

47. The applicant company reiterated its claim in respect of the expenses made for the preparation and translation of the expert reports which it had

presented in the proceedings leading up to the principal judgment, namely USD 2,000 for the expert reports and USD 180 and BGN 240 for their translation into English (see paragraph 107 (ii) and (iii) of the principal judgment). It did not make further claims in respect of the proceedings under Article 41.

48. The respondent Government made no comments on this point.

49. According to the Court's established case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred and were reasonable as to quantum (see, among many other authorities, *Iatridis*, cited above, § 54). In the present case, regard being had to the information in its possession and the above criteria, the Court awards the applicant company EUR 1,500, plus any tax that may be chargeable.

C. Default interest

50. 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. *Holds*

(a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 60,000 (sixty thousand euros) in respect of the deterioration of the applicant company's property;

(ii) EUR 300,000 (three hundred thousand euros) in respect of loss of profits;

(iii) EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses;

(iv) any tax that may be chargeable on the above amounts;

(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;

2. *Dismisses* the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 10 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek Registrar	Peer Lorenzen President