

## Just satisfaction claims<sup>1</sup>

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### I. Introduction

1. Awarding of sums of money to applicants by way of just satisfaction is not one of the Court's main duties but is incidental to its task under Article 19 of the Convention of ensuring the observance by States of their obligations under the Convention.

2. The purpose of the Court's award under Article 41 of the Convention in respect of damage is to compensate the applicant for the actual harmful consequences of a violation. No award can therefore be made for damage caused by events or situations that have not been found to constitute a violation of the Convention, or for damage related to complaints declared inadmissible by the Court. It is also not intended to punish the Contracting Party responsible. The Court has therefore considered it inappropriate to accept claims for damages with labels such as "punitive", "aggravated" or "exemplary"; nor does the Court make symbolic awards.

3. Additionally, the wording of Article 41 allows the Court discretion in deciding on the matter of just satisfaction. It makes it clear that the Court shall award just satisfaction only "if the internal law of the High Contracting Party concerned allows only partial reparation to be made", and even then, only "if necessary" (*s'il y a lieu* in the French text). Moreover, the Court shall only award such satisfaction as it considers to be "just" (*équitable* in the French text), namely, as appears to it to be appropriate in the circumstances. Consequently, in examining the matter before deciding what amount to award, if any, regard will be had to the particular features and context of each case, an important role being played by the nature and the effects of the violation(s) found, the Court's own practice in respect of similar cases, as well as different economic situations in the Respondent States.

4. The Court may also decide that there are reasons of equity to award less than the value of the actual damage sustained or the costs and expenses actually incurred; or that for some heads of alleged prejudice the finding of violation constitutes in itself sufficient just satisfaction, without there being any call to afford financial compensation. In this latter respect, it is recalled that under Article 41 the Court remains free to decide that no award should be made, for example, where there is a possibility of reopening of the proceedings or of obtaining other compensation at domestic level; where the violation found was of a minor or of a conditional nature; where general measures would constitute the most appropriate redress; or otherwise, because of the general or specific context of the situation complained of. It should be borne in mind that the public vindication of the wrong suffered by the applicant, in a judgment binding on the Contracting State, is a powerful form of redress in itself.

### II. Claims for just satisfaction: scope

#### A. General principles

5. Just satisfaction is afforded under Article 41 of the Convention so as to compensate the applicant for the actual damage established as being consequent to a violation; in that respect, it may cover pecuniary damage; non-pecuniary damage; and costs and expenses (see below). Depending on the specific circumstances of the case, the Court may consider it appropriate to make an aggregate award for pecuniary and non-pecuniary damage.

6. In setting the amount of an award, the Court will consider the respective positions of the applicant as the party injured by a violation and the Contracting Party as responsible for the public

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1. Practice direction issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 28 March 2007 and amended on 9 June 2022.

interest. In that connection and in so far as the case before it is of a repetitive nature, the Court may base its just satisfaction awards on the reference amount already granted in the corresponding leading or pilot case, while having regard also to the simplified and standardised approach to the processing of such follow-up cases.

7. In accordance with the *ne ultra petita* principle, the Court does not award anything more than what the applicant has actually claimed.

#### **B. Pecuniary damage**

8. The principle with regard to pecuniary damage is that the applicant should be placed, as far as possible, in the position in which he or she would have been had the violation found not taken place, in other words, *restitutio in integrum*. This can involve compensation for both loss actually suffered (*damnum emergens*) and loss, or diminished gain, to be expected in the future (*lucrum cessans*).

9. It is for the applicant to show that pecuniary damage has resulted from the violations alleged. A direct causal link must be established between the damage and the violation found. A merely tenuous or speculative connection is not enough. The applicant should submit relevant evidence to prove, as far as possible, not only the existence but also the amount or value of the damage. Normally, the Court's award will reflect the full calculated amount of the damage, unless it finds reasons in equity to award less (see point 4 above). If the actual damage cannot be precisely calculated, or if there are significant discrepancies between the parties' calculations thereto, the Court will make an as accurate as possible estimate, based on the facts at its disposal.

#### **C. Non-pecuniary damage**

10. The Court's award in respect of non-pecuniary damage serves to give recognition to the fact that non-material harm, such as mental or physical suffering, occurred as a result of a breach of a fundamental human right and reflects in the broadest of terms the severity of the damage. Hence, the causal link between the alleged violation and the moral harm is often reasonable to assume, the applicants being not required to produce any additional evidence of their suffering.

11. It is in the nature of non-pecuniary damage that it does not lend itself to precise calculation. The claim for non-pecuniary damage suffered needs therefore not be quantified or substantiated, the applicant can leave the amount to the Court's discretion.

12. If the Court considers that a monetary award is necessary, it will make an assessment on an equitable basis, which above all involves flexibility and an objective consideration of what is just, fair and reasonable in all the circumstances of the case, including not only the position of the applicant as well as his or her own possible contribution to the situation complained of, but the overall context in which the breach occurred.

13. Exercising the discretion, the Court relies on its own relevant practice in respect of similar violations to establish internal principles as a necessary starting point in fixing an appropriate award in the circumstances of each case. Among factors considered by the Court to determine the value of such awards are the nature and gravity of the violation found, its duration and effects; whether there have been several violations of the protected rights; whether a domestic award has already been made or other measures have been taken by the Respondent State that could be regarded as constituting the most appropriate means of redress; any other context or case-specific circumstances that need to be taken into account.

14. Furthermore, as an aspect of "just satisfaction" the Court takes into account the local economic circumstances in the Respondent States in its calculations. In doing so, it has regard to the publicly available and updated macroeconomic data, such as that published by the International Monetary Fund (IMF). In view of these changing economic circumstances for the countries concerned, the

amounts of awards made to injured parties in similar circumstances could vary in respect of different Respondent States and over a period of time.

#### **D. Costs and expenses**

15. The Court can order the reimbursement to the applicant of costs and expenses which he or she has necessarily, thus unavoidably, incurred – first at the domestic level, and subsequently in the proceedings before the Court itself – in trying to prevent the violation from occurring, or in trying to obtain redress therefor. Such costs and expenses will typically include the cost of legal assistance, court registration and translation fees, postal expenses. They may also include travel and subsistence expenses, in particular if these have been incurred by attendance at a hearing of the Court.

16. Where the applicant is represented by any other person than “an advocate authorised to practise”, the fees may be reimbursed only if that person has previously obtained leave for that representation (Rule 36 §§ 2 and 4 (a) of the Rules of Court).

17. The Court will uphold claims for costs and expenses only in so far as they relate to the violations it has found. It will reject them in so far as they relate to complaints that have not led to the finding of a violation, or to complaints declared inadmissible. This being so, applicants may wish to link separate claim items to particular complaints.

18. Costs and expenses must have been actually incurred. That is, the applicant must have paid them, or be bound to pay them, pursuant to a legal or contractual obligation. Documents showing that the applicant has paid or is under an obligation to pay such fees should be submitted. Consequently, the hours or work carried out by the applicants themselves cannot be considered as costs actually incurred. Any sums paid or payable by domestic authorities or by the Council of Europe by way of legal aid will be deducted.

19. Costs and expenses must be reasonable as to quantum. If the Court finds them to be excessive, it will award a sum which, on its own estimate, is reasonable. Given variations across the countries in the fees charged by lawyers, for the assessment of what is a reasonable award the Court may take into account claims and awards in respect of similar cases against the same country. The Court may also take into account whether the violation found falls into the category of “well-established case-law”.

#### **III. Formal requirements**

20. Time-limits, precision, relevant supporting documents and other formal requirements for submitting claims for just satisfaction are laid down in Rule 60 of the Rules of Court. Claimants are warned that compliance with the formal and substantive requirements deriving from the Convention and the Rules of Court is the essential preliminary condition for the award of just satisfaction.

21. Unless the parties are otherwise informed (in particular in cases raising repetitive issues, see point 23 below), the Court requires first, that clear, comprehensive claims are submitted within the time-limits fixed by the President of the Chamber and indicated to the parties in the communication letter; second, that those claims relating to the material damage and costs and expenses are supported by appropriate documentary evidence (*ie.* expert reports, itemised bills, invoices), wherever that is possible and reasonably available to the parties; and, third, that failing these conditions without an appropriate justification, the Court will normally make no award. The Court is not bound by the applicant’s classification of the claims and may find it more appropriate, for example, to consider certain claims as falling under pecuniary damage rather than under costs and expenses.

22. Subject to its own discretion in some exceptional cases, the Court will normally reject claims set out on the application form but not resubmitted at the appropriate stage of the proceedings, as indicated by the President of the Chamber, as well as claims unjustifiably lodged out of time.

23. In cases raising repetitive issues which are dealt with in a simplified manner in line with the relevant well-established case-law of the Court, the applicants may be exempt from the requirement to submit a separate just satisfaction claim. In such case, the parties would be clearly informed in the communication letter that the just satisfaction award would be based on the appropriate awards in the leading case, on a friendly settlement proposal, or that the Court may decide that the finding of a violation constitutes just satisfaction in itself. It is recalled that the Court's task under Article 19 to "ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto" is not necessarily best achieved by repeating the same findings and making relatively substantial and individualised awards in large series of repetitive cases.

24. Applicants are invited to identify a bank account into which they wish any sums awarded to be paid. If they wish particular amounts, such as the sums awarded in respect of costs and expenses, to be paid separately, for example, directly into the bank account of their representative, they should so specify. Where the application is lodged by several applicants, they should also specify if they ask for the award to be made to them jointly or separately. Normally, the Court would make the award jointly to the members of the same household.

#### **IV. The form of the Court's awards**

25. Just satisfaction can be awarded to the victims of the violations found, including indirect victims. It can be awarded to legal entities. The Court may order that the award be held in trust for the applicants who are for some reason unable to receive it at the relevant time.

26. The Court's awards, if any, will normally be in the form of a sum of money to be paid by the respondent Contracting Party to the victims of the violations found. Any monetary award under Article 41 will normally be in euros (EUR, €) irrespective of the currency in which the applicant expresses his or her claims. If the applicant is to receive payment in a currency other than the euro, the Court will order the sums awarded to be converted into that other currency at the exchange rate applicable on the date of payment. When formulating their claims the applicants should, where appropriate, consider the implications of this policy in the light of the effects of converting sums expressed in a different currency into euros or contrariwise.

27. The Court will of its own motion set a time-limit for any payments that may need to be made, which will normally be three months from the date on which its judgment becomes final and binding. The Court will also order default interest to be paid in the event that that time-limit is exceeded, normally at a simple rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

#### **V. Binding force and execution of judgments**

28. The Court's judgments are essentially declaratory in nature. In general, it is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the individual and general measures to be used to discharge its obligations under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment. In practical terms, this means that only in certain special circumstances the Court has found it useful to indicate to a respondent State the type of measures that might be taken to put an end to the situation which has given rise to the finding of a violation, other than the payment of sums of money by way of just satisfaction under Article 41. Most often, this happens in cases addressing systemic problems, in particular pilot judgments.

29. Any question as to whether or not the respondent Government has complied with its obligations as set out in the final judgment is considered by the Committee of Ministers and if necessary by the Court itself (Article 46 §§ 3–5 of the Convention).