

## PRACTICE DIRECTION<sup>1</sup>

### JUST SATISFACTION CLAIMS

#### I. Introduction

1. The award of just satisfaction is not an automatic consequence of a finding by the European Court of Human Rights that there has been a violation of a right guaranteed by the European Convention on Human Rights or its Protocols. The wording of Article 41, which provides that the Court shall award just satisfaction only if domestic law does not allow complete reparation to be made, and even then only “if necessary” (*s’il y a lieu* in the French text), makes this clear.

2. Furthermore, the Court will only award such satisfaction as is considered to be “just” (*équitable* in the French text) in the circumstances. Consequently, regard will be had to the particular features of each case. The Court may decide that for some heads of alleged prejudice the finding of violation in itself constitutes adequate just satisfaction, without there being any call to afford financial compensation. It may also find reasons of equity to award less than the value of the actual damage sustained or the costs and expenses actually incurred, or even not to make any award at all. This may be the case, for example, if the situation complained of, the amount of damage or the level of the costs is due to the applicant’s own fault. In setting the amount of an award, the Court may also consider the respective positions of the applicant as the party injured by a violation and the Contracting State as responsible for the public interest. Finally, the Court will normally take into account the local economic circumstances.

3. When it makes an award under Article 41, the Court may decide to take guidance from domestic standards. It is, however, never bound by them.

4. Claimants are warned that compliance with the formal and substantive requirements deriving from the Convention and the Rules of Court is a condition for the award of just satisfaction.

#### II. Submitting claims for just satisfaction: formal requirements

5. Time-limits and other formal requirements for submitting claims for just satisfaction are laid down in Rule 60 of the Rules of Court, which, in relevant part, provides as follows:

1. An applicant who wishes to obtain an award of just satisfaction under Article 41 of the Convention in the event of the Court finding a violation of his or her Convention rights must make a specific claim to that effect.
2. The applicant must submit itemised particulars of all claims, together with any relevant supporting documents, within the time-limit fixed for the submission of the applicant’s observations on the merits unless the President of the Chamber directs otherwise.

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<sup>1</sup> Issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 28 March 2007.

3. If the applicant fails to comply with the requirements set out in the preceding paragraphs the Chamber may reject the claims in whole or in part.

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Thus, the Court requires specific claims supported by appropriate documentary evidence, failing which it may make no award. The Court will also reject claims set out on the application form but not resubmitted at the appropriate stage of the proceedings and claims lodged out of time.

### **III. Submitting claims for just satisfaction: substantive requirements**

6. Just satisfaction may be afforded under Article 41 of the Convention in respect of:
- a) pecuniary damage;
  - b) non-pecuniary damage; and
  - c) costs and expenses.

#### **1. Damage in general**

7. A clear causal link must be established between the damage claimed and the violation alleged. The Court will not be satisfied by a merely tenuous connection between the alleged violation and the damage, nor by mere speculation as to what might have been.

8. Compensation for damage can be awarded in so far as the damage is the result of a violation found. No award can 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 at an earlier stage of the proceedings.

9. The purpose of the Court's award in respect of damage is to compensate the applicant for the actual harmful consequences of a violation. It is not intended to punish the Contracting State responsible. The Court has therefore, until now, considered it inappropriate to accept claims for damages with labels such as "punitive", "aggravated" or "exemplary".

#### **2. Pecuniary damage**

10. 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*).

11. It is for the applicant to show that pecuniary damage has resulted from the violation or violations alleged. The applicant should submit relevant documents to prove, as far as possible, not only the existence but also the amount or value of the damage.

12. Normally, the Court's award will reflect the full calculated amount of the damage. However, if the actual damage cannot be precisely calculated, the Court will make an estimate based on the facts at its disposal. As pointed out in § 2 above, it is also possible that the Court may find reasons in equity to award less than the full amount of the loss.

### **3. Non-pecuniary damage**

13. The Court's award in respect of non-pecuniary damage is intended to provide financial compensation for non-material harm, for example mental or physical suffering.

14. It is in the nature of non-pecuniary damage that it does not lend itself to precise calculation. If the existence of such damage is established, and if the Court considers that an award in money is necessary, it will make an assessment on an equitable basis, having regard to the standards which emerge from its case-law.

15. Applicants who wish to be compensated for non-pecuniary damage are invited to specify a sum which in their view would be equitable. Applicants who consider themselves victims of more than one violation may claim either a single lump sum covering all alleged violations or a separate sum in respect of each alleged violation.

### **4. Costs and expenses**

16. The Court can order the reimbursement to the applicant of costs and expenses which he or she has 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 fees and suchlike. They may also include travel and subsistence expenses, in particular if these have been incurred by attendance at a hearing of the Court.

17. The Court will uphold claims for costs and expenses only in so far as they are referable 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. 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 have been necessarily incurred. That is, they must have become unavoidable in order to prevent the violation or obtain redress therefor.

20. They 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.

21. The Court requires evidence, such as itemised bills and invoices. These must be sufficiently detailed to enable the Court to determine to what extent the above requirements have been met.

### **5. Payment information**

22. Applicants are invited to identify a bank account into which they wish any sums awarded to be paid. If they wish particular amounts, for example 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.

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

23. The Court's awards, if any, will normally be in the form of a sum of money to be paid by the respondent Government to the victim or victims of the violations found. Only in extremely rare cases can the Court consider a consequential order aimed at putting an end or remedying the violation in question. The Court may, however, decide at its discretion to offer guidance for the execution of its judgment (Article 46 of the Convention).

24. 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 applicants should, where appropriate, consider the implications of this policy in light of the effects of converting sums expressed in a different currency into euros or contrariwise.

25. 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.