



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

FOURTH SECTION

CASE OF POPA v. MOLDOVA

(Application no. 29772/05)

JUDGMENT

STRASBOURG

21 September 2010

FINAL

21/12/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Popa v. Moldova,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Ján Šikuta,

Mihai Poalelungi,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 31 August 2010,

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

PROCEDURE

1. The case originated in an application (no. 29772/05) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Moldovan national, Ms Tatiana Popa (“the applicant”), on 23 July 2005.

2. The applicant was represented before the Court by the late Mr V. Dubrovski, a lawyer practising in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. On 25 April 2007 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1976 and lives in Chişinău. The facts of the case are disputed by the parties. Their respective accounts may be summarised as follows.

5. The applicant submitted that at 9 p.m. on 27 July 2004 she and her sister were stopped on the street by a police officer (“AC”) who ordered them to accompany him to a District Police Station. When they refused to

comply with AC's request, he forcibly took them to the police station and, according to the applicant, at one point he pushed her while she was on a flight of stairs at the police station. The applicant submitted that while she was at the police station she was beaten severely by three drunk men in plain clothes. In particular, she claimed that the three men pushed her from her chair, hit her head against a steam radiator, tried to strangle her and punched and kicked her in the head and body. She claimed that all these acts took place in the presence of police officers. The applicant and her sister were later driven to the Rîșcani Police Station and held in custody until she was brought before a judge the following morning. During this period she was not examined by a doctor.

6. The Government contested the applicant's account of the events surrounding her arrest on 27 July 2004. In doing so they relied on statements provided by AC, the applicant's brother-in-law, another police officer ("R"), and a civilian who was present at the police station when the applicant arrived. The Government submitted that on the evening of 27 July 2004 the applicant had been celebrating her birthday at her sister's home. She got into a physical fight with her sister's husband. It is not clear from the statements whether the applicant's brother-in-law went to the police station to report the applicant's behaviour or whether AC was walking past the applicant's sister's home when he noticed the fighting. Nevertheless, the statements of AC and the applicant's brother-in-law both indicated that when AC arrived at the scene, the applicant was assaulting her brother-in-law and would not calm down. In particular, the applicant's brother-in-law told the prosecutor that the applicant had pushed him to the ground and was hitting him with her fists.

7. AC confirmed in his statement to the prosecutor that when he arrived at the scene the applicant insulted him and her brother-in-law. After he cautioned her, she began to hit and kick her brother-in-law. The applicant's brother-in-law also stated that:

"Tanea [the applicant] picked a fight with AC and was pulling his epaulettes with a view to tearing them off, called him "a rotten cop", told him that she was living with a former prisoner and that he would eliminate him."

8. AC therefore asked the applicant, her sister and her brother-in-law to accompany him to the station. In his statement to the prosecutor he conceded that he had to use some force to bring the applicant there. In his evidence given to the District Court he stated that he grabbed the applicant by the hand but did not use any other form of physical force. At the police station the applicant continued to be aggressive towards AC. The applicant's brother-in-law stated that:

"At the police station, Chilat Angela and the sister in law Tatiana were continuing to make noise, calling the policemen "rotten cops" and other explicit words."

9. A civilian who happened to be at the police station when the applicant, her sister and her sister's husband arrived, stated that:

“The people [the police officer] brought with him were inebriated, were shouting, insulting the policeman, pulling him by his clothes and threatening him with being fired from the police.”

10. None of the witnesses indicate that the applicant had any visible injuries when she arrived at the police station.

11. The Government stated that after the police officer had drawn up a report documenting the applicant's misdemeanour, she was transported to a public drugs clinic so that her blood alcohol level could be tested. The Government submitted a report from the clinic which confirmed that the applicant was intoxicated.

12. On 28 July 2004 the Rîșcani District Court found that the applicant had been drunk and disorderly and was guilty of the administrative offences of insulting a police officer and disobeying the lawful orders of a police officer. The court fined her 18 Moldovan lei (MDL) (1.24 euros (EUR) at the time).

13. On 28 July 2004 the applicant was examined by a forensic doctor. She told the doctor that she had been beaten by three unknown men. On 2 August 2004 she was examined by a neurologist. The final medical report of 28 July 2004, as amended on 2 August 2004, stated, *inter alia*, that:

“[The applicant's] head concussion, multiple contusions of the soft tissues of the head, multiple bruises of 1x1 cm up to 7x5 cm on her arms, legs, right hemiabdomen, a scratch of 2x1 cm on her back, have been inflicted by blows with a blunt object, possibly at the indicated time and lead to a short-term health disorder /over 6, but not more than 21 days/ and are qualified as light bodily injuries.”

14. On 5 August 2004 the applicant appealed against the judgment of 28 July 2004. She pleaded her innocence and denied that she had been drunk. The applicant described the circumstances of her ill-treatment and attached a copy of the medical report of 28 July 2004.

15. On 11 August 2004 the Chișinău Court of Appeal upheld her appeal, quashed the judgment of the Rîșcani District Court on the ground of procedural mistakes and ordered a re-trial by the first-instance court.

16. On 8 December 2004 the Rîșcani District Court found the applicant guilty of insulting a police officer and fined her MDL 18. She appealed.

17. By a final judgment of 29 December 2004 the Chișinău Court of Appeal dismissed her appeal.

18. In the meantime, on 3 August 2004 the applicant had lodged a complaint with the Prosecutor's Office. In the complaint she stated that on 27 July 2004 she had been beaten by three unknown men in the presence of police officers. She attached the medical report of 28 July 2004 and described in detail the circumstances of her case, providing the names of the two police officers who had been present during her ill-treatment.

19. Following the applicant's complaint, the prosecutor of the Rîșcani Prosecutor's Office interviewed her brother-in-law, AC, R and the civilian who had been present at the police station when the applicant arrived. On 30 September 2004 the prosecutor informed the applicant that AC had acted in accordance with the law and that her complaint had been dismissed on 28 September 2004 on the ground that there was a lack of "constitutive elements" of an offence.

20. On 7 October 2004 the applicant appealed to the Rîșcani District Court against the decision of the Prosecutor's Office of 28 September 2004. She stated, *inter alia*, that the prosecutor had omitted to examine the witnesses' statements which had been enclosed with the case file and the medical report of 28 July 2004. The applicant also submitted that she had been beaten by AC, R and another police officer ("C") and that her ill-treatment had been witnessed by her nephew ("N") and two other women ("OC" and "RC").

21. The Rîșcani District Court considered the applicant's submissions at an oral hearing. In the course of the hearing the applicant, her sister, and AC gave oral evidence. In her evidence to the court, the applicant's sister stated that both she and the applicant had been beaten by three unknown men in plain clothes and that the events had been witnessed by police officers and by her son, N. In a final judgment of 14 February 2005 the Rîșcani District Court dismissed the applicant's appeal. It found that the decision of 28 September 2004 had been lawful and that there were no legal grounds for its annulment.

II. RELEVANT DOMESTIC LAW

22. The relevant provisions of the Criminal Code read as follows:

Section 328

"An abuse of power, committed by an official, which exceeds the rights and duties provided by law and causes considerable damage to the rights of physical persons ... accompanied by acts of violence or by acts of torture and humiliation of the victim shall be punishable by imprisonment of three to ten years and by a prohibition on carrying out certain activities for a period of up to five years."

23. The relevant provisions of the Code of Criminal Procedure read as follows:

Section 313

"(1) If a party does not agree with the result of the examination of his or her complaint by the prosecutor, he or she shall complain to the investigation judge

(2) The parties have the right to lodge an appeal with the investigation judge ... against a refusal to institute criminal proceedings

(3) The complaint shall be addressed to the investigation judge ... within ten days.

(4) The complaint shall be examined within ten days

(5) Provided that the complaint is substantiated, the investigation judge shall issue a decision ordering the prosecutor to remedy the violations of human rights and freedoms and, if appropriate, shall annul the [prosecutor's decision].

(6) The decision of the investigation judge is irrevocable.”

24. The relevant provisions of the Civil Code read as follows:

Section 1398

“Anyone who acts illegally and culpably in respect of another person, shall repair the pecuniary and ... the non-pecuniary damage caused by his or her actions or omissions....”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

25. The applicant complained that her ill-treatment by police officers and the authorities' subsequent failure to conduct an effective investigation violated her rights under Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

26. The Government contested that argument.

A. Admissibility

27. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The Government

28. The Government submitted that the applicant's injuries could all be explained by her aggressive behaviour on the evening in question. The Government argued that the bruises and abrasions identified by the forensic doctor who examined the applicant on 28 July 2004 were not consistent, in location or severity, with the applicant's claim that her assailants tried to strangle her and hit her head against a steam radiator. Rather, these bruises and abrasions were all sustained by the applicant during her fight with her brother-in-law. With regard to the neurologist's report, the Government submitted that the applicant could have sustained concussion when she fell during the fight with her brother-in-law or when she fell from her chair or fell down the stairs in the police station. Two police inspectors, the applicant's brother-in-law and one other witness testified that the applicant was drunk on the evening in question and that she was behaving aggressively. The Government have submitted copies of these witnesses' statements to the Court.

29. The Government also contended that the prosecutor conducted an effective investigation into the applicant's allegations of ill-treatment. Under Article 153 of the Penal Code he analysed all of the existing evidence and material, while at the same time gathering new evidence by interviewing police collaborators and witnesses.

(b) The applicant

30. The applicant did not respond to the Government's submissions other than to state her claim for just satisfaction.

2. The Court's assessment

(a) General principles

31. As the Court has stated on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95,

ECHR 1999-V, and *Assenov and Others v. Bulgaria*, 28 October 1998, § 93, Reports of Judgments and Decisions 1998-VIII).

32. The Court recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see *Tekin v. Turkey*, 9 June 1998, §§ 52 and 53, Reports 1998-IV, and *Assenov and Others* cited above, § 94).

33. Treatment has been held by the Court to be “inhuman” because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering, and also “degrading” because it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them. In order for a punishment or treatment associated with it to be “inhuman” or “degrading”, the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. The question whether the purpose of the treatment was to humiliate or debase the victim is a further factor to be taken into account (see, for instance, *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX, and *Raninen v. Finland*, 16 December 1997, § 55, Reports 1997-VIII), but the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3.

34. Allegations of ill-treatment must be supported by appropriate evidence (see, *mutatis mutandis*, *Klaas v. Germany*, 22 September 1993, § 30, Series A no. 269). To assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt”. However, where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. In such cases the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII). In the absence of such explanation the Court can draw inferences which may be unfavourable for the respondent Government (see *Orhan v. Turkey*, no. 25656/94, § 274, 18 June 2002).

35. In the context of detainees, the Court has emphasised that persons in custody are in a vulnerable position and that the authorities are under a duty to protect their physical well-being (see *Tarariyeva v. Russia*, no. 4353/03, § 73, ECHR 2006-XV (extracts); *Sarban v. Moldova*, no. 3456/05, § 77,

4 October 2005; and *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX).

36. Moreover, where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible. Thus, the investigation of serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see, among many authorities, *Mikheyev v. Russia*, no. 77617/01, § 107 *et seq.*, 26 January 2006, and *Assenov and Others v. Bulgaria*, cited above, § 102 *et seq.*).

(b) Application of the general principles in the present case

i. Ill-treatment in police custody

37. In the present case there are considerable discrepancies in the facts presented by the parties. There are also discrepancies in the applicant's own account, most notably concerning her claims as to who was responsible for her injuries. In her original complaint lodged with the Prosecutor's Office, she stated that she was beaten by three unknown men in plain clothes. In her appeal, she claimed that she was beaten by police officers, including AC and R. Finally, in her application to this Court she once again stated that she was beaten by three drunk men in plain clothes.

38. In spite of the discrepancy in the applicant's accounts there is no doubt that she suffered injuries on the night in question. Indeed, the medical report describes concussion, multiple contusions of the soft tissues of the head, multiple bruises of 1x1 cm up to 7x5 cm on her arms, legs, right hemiabdomen, and a scratch of 2x1 cm on her back. Although the Government have submitted that the applicant sustained these injuries at least in part during a fight with her brother-in-law, none of the statements

submitted to either the prosecutor or the District Court indicate that the applicant had any visible injuries when she arrived at the police station. However, the Court observes that any injuries may have been concealed by the applicant's clothing.

39. The Court for its part finds it impossible to establish on the basis of the evidence before it whether or not the applicant's injuries were sustained in the manner alleged. The evidence relied on by the parties supports both the applicant's and the Government's case. However, it observes that the difficulty in determining whether there was a plausible explanation for the applicant's injuries or whether there was any substance to her allegations of ill-treatment rests with the authorities' failure to investigate her complaints effectively (see *Veznedaroğlu v. Turkey*, no. 32357/96, § 31, 11 April 2000, and *Petru Roşca v. Moldova*, no. 2638/05, § 42, 6 October 2009). The Court will now examine that matter in greater depth.

ii. Investigation of the alleged ill-treatment

40. The Court observes that the applicant raised a credible claim with the domestic authorities that she had been ill-treated in police custody in violation of Article 3 of the Convention. In particular, she claimed that she had been punched and kicked in the head and in the body and that her head was struck against a steam radiator. Medical evidence confirmed that she had suffered concussion, multiple contusions of the soft tissues of the head, multiple bruises on her arms, legs, right hemiabdomen, and a scratch on her back which had been inflicted by blows with a blunt object, possibly at the indicated time. Consequently, the State was under an obligation to carry out an effective official investigation into the allegations of ill-treatment.

41. As regards the steps taken by the State, the Court notes that following the applicant's complaint of ill-treatment, statements were taken from the applicant's brother-in-law, from the policeman who arrested the applicant and from a policeman and a civilian who were present at the police station when the applicant arrived. Moreover, following her arrest and detention she was seen by three doctors. On 28 July 2004, the night of her arrest, the applicant was sent to a public drugs clinic so that her blood alcohol level could be tested. The following day her injuries were examined by a forensic doctor and she was further examined by a neurologist on 2 August 2004.

42. Nevertheless, while the authorities could not be said to have remained passive following the applicant's complaints, the Court notes that there were some unexplained omissions. First, the Court observes that the prosecutor only obtained witness statements from witnesses favourable to the police. In particular, it notes that no statement was taken from the applicant's sister. Some of these deficiencies were corrected on appeal. However, although the applicant's sister was called to give evidence at the appeal hearing, no attempt appears to have been made to interview the

applicant's nephew, N, who was identified as a witness by both the applicant and her sister, or OC and RC, the two female witnesses whom the applicant referred to in her appeal to the District Court. Furthermore, no attempt was made to examine the accuracy of the recollection of the applicant and her sister that the applicant had been assaulted by three unidentified men in plain clothes.

43. Moreover, the Court observes that had the authorities examined the applicant for injuries on her arrival at the police station and recorded any visible injuries, it may well have been possible to ascertain whether her injuries were sustained before her arrival at the police station or while she was in police custody. In the absence of such evidence, it is impossible for the Government to substantiate their claim that the applicant sustained her injuries as a result of a fall or in the course of a fight. The Court therefore finds that it is not open to the authorities to rely on the fact that the applicant was "drunk and aggressive" without conducting further investigations.

44. In light of the above-mentioned deficiencies, the Court considers that the domestic authorities did not make a serious attempt to investigate the applicant's complaints of ill-treatment.

45. Having regard to the above considerations the Court finds that there has been a breach of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

46. The applicant complains that she did not have an effective remedy before a national authority in respect of the breaches of Article 3 of the Convention and alleges a violation of Article 13, which provides as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

47. The Government submitted that the applicant's complaints under Article 13 of the Convention were manifestly ill-founded and therefore inadmissible. In particular, the Government submitted that the applicant was able to lodge a complaint with the prosecutor and appeal against the prosecutor's decision to the District Court.

48. The Court does not consider this complaint to be manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

49. The applicant complained that pursuant to Article 1398 of the Civil Code, she could not bring a civil action for damages against the police officers unless they were guilty of “illegal acts”. As the District Court had rejected the applicant’s complaints of ill-treatment in police custody, she was precluded from bringing a civil claim for compensation.

50. The Government submitted that the applicant’s right to an effective remedy at domestic level was respected and guaranteed in full under Moldovan law. The applicant was able to complain about the alleged ill-treatment to the prosecutor. After the prosecutor refused to institute criminal proceedings, the applicant complained to a Municipal Prosecutor and had a right of appeal against his decision. She exercised this right but her appeal was dismissed on 14 February 2005. The Government argued that these remedies were effective because both new and existing evidence was considered during the hearing and witnesses and police officers were permitted to give evidence.

51. The Government further submitted that pursuant to Article 14 of the Civil Code, if the elements of the offence had been made out the applicant could have sought pecuniary and non-pecuniary damages.

2. *The Court's assessment*

52. As found above, the applicant’s right to benefit from an effective investigation of her complaints of ill-treatment was breached by the State. The applicant’s complaints in this regard were therefore “arguable” for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131).

53. According to the Moldovan Civil Code in force at the material time, the applicant could only have claimed compensation for pecuniary and non-pecuniary damage if the damage was caused by illegal acts. Since the criminal investigation, conducted by the domestic authorities concluded that the actions of police officers were lawful, any civil action against them would have been ineffective (*Corsacov v. Moldova*, no. 18944/02, § 81, 4 April 2006).

54. The Court therefore concludes that, in the circumstances of her case, the applicant did not have an effective remedy under domestic law to claim compensation for her ill-treatment. Accordingly there has been a violation of Article 13 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

55. The applicant alleged that the facts of the case also gave rise to a violation of Article 5 § 1 of the Convention.

56. The applicant did not challenge her detention before the domestic courts. Consequently, the Court finds that she failed to exhaust domestic remedies. In any case, as her complaints were only lodged with the Court on 23 July 2005, insofar as those complaints related to her detention, the Court observes that they were submitted outside the six month time limit.

57. This part of the application is therefore inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

58. Lastly, the applicant complained of a violation of Article 10 of the Convention.

59. The Court has examined this complaint but finds, in the light of all the material in its possession and in so far as the matters complained of are within its competence, that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

60. The complaint is manifestly ill-founded and therefore inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

V. 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 claimed EUR 5,000 in respect of non-pecuniary damage. She claimed a further EUR 90 in respect of pecuniary loss, which represented the cost of medical treatment for her injuries.

63. The Government submitted that the applicant had not suffered any pecuniary damage and her claims for non-pecuniary damage were excessive. In respect of the pecuniary loss, the Government submitted that the applicant had failed to produce any evidence of these expenses and she had failed to state how the sum was calculated. In any case, the applicant's

injuries were caused by the altercation with her brother-in-law and, as such, they could not be attributed to the State.

64. The Government further submitted that the applicant's claim in respect of non-pecuniary damage was exaggerated. She had not submitted evidence to substantiate her claim for damages and, in view of the damage that she was proved to have suffered, it would suffice for the Court to find a violation.

65. The Court makes no award in respect of pecuniary damage as the applicant has failed to substantiate her claim, either by submitting receipts or by explaining how these expenses were incurred.

66. The Court considers that the applicant must have been caused a certain amount of stress and frustration as a result of the failure to properly investigate her allegations of ill-treatment. However, the amount claimed is excessive. Ruling on an equitable basis, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

67. The applicant did not submit a claim for costs and expenses.

C. Default interest

68. 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. *Declares* the complaints concerning Articles 3 and 13 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds* that there has been a violation of Article 13 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), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(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;

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

Done in English, and notified in writing on 21 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President