



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

FIFTH SECTION

CASE OF ZNAYKIN v. UKRAINE

(Application no. 37538/05)

JUDGMENT

STRASBOURG

7 October 2010

FINAL

07/01/2011

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

In the case of Znaykin v. Ukraine,

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

Peer Lorenzen, *President*,

Renate Jaeger,

Karel Jungwiert,

Mark Villiger,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva,

Ganna Yudkivska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 14 September 2010,

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

PROCEDURE

1. The case originated in an application (no. 37538/05) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Grigoriy Znaykin (“the applicant”), on 28 September 2005.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev.

3. The applicant alleged, in particular, that the conditions of his detention had been unsatisfactory and that his detention from 27 June 2005 to the date of his conviction by the first-instance court had been unlawful.

4. On 17 March 2009 the President of the Fifth 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

5. The applicant was born in 1975. Before his imprisonment he had been living in Staryy Krym.

A. Criminal Proceedings against the applicant and related issues

6. On 26 February 2005 the Prosecutor's Office of the Autonomous Republic of Crimea ("the Prosecutor's Office") instituted criminal proceedings into allegations that the applicant, a police officer at the time, had abused his power. The applicant was suspected of having abused his police power which resulted, *inter alia*, in the ill-treatment of suspects he had been working with and unlawful searches of their homes.

7. On 28 February 2005 the applicant was arrested on this account.

8. On 3 March 2005 the applicant was brought before the Tsentralnyy District Court of Simferopol ("the District Court") which decided to extend the applicant's detention until 10 March 2005. The District Court also ordered the Prosecutor's Office to find more information on the applicant's personality, his state of health, his role in the alleged crime, so that it could reach a reasoned decision regarding the applicant's further detention.

9. On 10 March 2005 the District Court extended the applicant's detention for two months, stating that he had been charged with a serious crime and, if at liberty, could impede the investigation. The District Court rejected the applicant's contention that, for health reasons, he could not be detained in custody, noting that the evidence presented in that respect had been unreliable.

10. On 22 March 2005, following an appeal by the applicant, the Court of Appeal of the Autonomous Republic of Crimea ("the Court of Appeal") upheld the decision of 10 March 2005.

11. On 26 April 2005, following a submission by the Prosecutor's Office, the District Court extended the applicant's detention until 28 June 2005, stating that he had been charged with a serious crime and, if at liberty, could impede the investigation.

12. On 17 May 2005, having considered an appeal by the applicant against the decision of 26 April 2005, the Court of Appeal rejected it as unsubstantiated. It stated, however, that, under the applicable rules, the applicant's detention could only be extended to 26 June 2005 and therefore amended the decision of 26 April 2005 accordingly.

13. On 24 June 2005 the Prosecutor's Office referred the case file to the Chairman of the Court of Appeal to determine which trial court would consider the applicant's case.

14. On 4 July 2005 the Chairman of the Court of Appeal referred the case to the Feodosiya Town Court ("the Town Court") for trial.

15. On 10 August 2005 the Town Court committed the applicant for trial. It also upheld the preventive measure applied to the applicant (detention in custody). No time-limit or reasons for the applicant's further detention were offered in that decision.

16. On 4 January 2006, having examined the case, the Town Court found the applicant guilty of abuse of power and sentenced him to five years

and six months' imprisonment. The court also prohibited the applicant from occupying law-enforcement posts for three years and ordered his property to be confiscated. The applicant appealed.

17. On 20 January 2006 the local newspaper "T." published an interview with the Prosecutor of the Autonomous Republic of Crimea, Mr Sh. The interview was entitled "The criminals will be put in prison". In the interview Mr Sh. stated, in particular, the following:

"... The criminal proceedings have been instituted against three police officers of the Kirovskyy Police Department — Mr Znaykin, Mr M., and Mr V. — who, in 2004, unlawfully arrested three citizens, beat them up, and then unlawfully carried out searches of their homes. ..."

18. On 4 February 2006 the governor of the Feodosiya Temporary Detention Centre ("the Feodosiya ITT") allegedly refused the applicant a family visit even though permission had been obtained from the court. According to the applicant, the duration of the other family visits, granted in that detention centre, was shorter than that provided by the domestic law.

19. On 25 May 2006 the Court of Appeal upheld the applicant's conviction, following which the judgment of 4 January 2006 came into effect. The applicant appealed in cassation but did not complain that he had not been provided with sufficient time and facilities to prepare his defence or that his right to presumption of innocence had been impaired.

20. On 29 May 2006 the applicant complained to the General Prosecutor's Office, alleging that his right to presumption of innocence had been breached as a result of the publication of Mr Sh.'s interview by the local newspaper on 20 January 2006.

21. On 24 July 2006 the Prosecutor's Office, to which the complaint had apparently been redirected, replied to the applicant that there had been no violation of presumption of innocence on account of the above-mentioned interview.

22. On 30 November 2006 the Supreme Court rejected the applicant's cassation appeal as unsubstantiated.

B. The conditions of the applicant's detention

23. Between 22 March 2005 and 9 July 2006 the applicant was held in the Simferopol Pre-Trial Detention Centre ("the Simferopol SIZO") and the Feodosiya ITT.

1. The applicant's submissions on the facts

24. The applicant submitted that he had been held with nine or ten other detainees in cell no. 76 at the Simferopol SIZO, which measured 10.8 sq. m. The cell was equipped with nine bunks stacked in three tiers. The toilet was not separated from the living area and provided no privacy. Because the

table in the cell was very small, the detainees had to take it in turns to eat. The applicant had to wash his clothes in the cell, because the laundry service only accepted bed sheets. Daily exercise sessions outside the cell lasted only thirty or forty minutes and were organised in the SIZO's roof-covered yards. Those submissions were confirmed by the signatures of the other nine detainees held with the applicant. Despite the fact that the applicant suffered from hypertension, he was not provided with sufficient medical care.

25. The applicant complained to the officials of the Simferopol SIZO about the conditions of his detention, but to no avail.

26. In the Feodosiya ITT the applicant was held together with another detainee in a cell which measured 4 sq. m, of which the toilet and the washstand occupied 1.5 sq. m; there were no windows, no table and no chairs, and the ventilation was unsatisfactory. Subsequently, the applicant was moved to a cell measuring 4.8 sq. m, which he shared with five or six other detainees. The toilet was not separated from the living area, which therefore denied any privacy. There was no table and no chair. In support of his submissions the applicant provided statements from eight co-detainees.

27. On 8 February 2006 the applicant unsuccessfully complained to the prosecutor supervising detention facilities, alleging that the conditions of his detention in the Feodosiya ITT were unsatisfactory.

2. The Government's submissions on the facts

28. As regards the Simferopol SIZO, the Government submitted that the applicant had been held in cell no. 156, which measured 29.2 sq. m and in which there were between nine and eleven detainees. Subsequently, he had been held in cell no. 76 which measured 12.3 sq. m and in which there were a total of eight detainees.

29. The sanitary units were separated from the other area of the cells; the furniture was appropriate; the laundry operated smoothly; the applicant was offered one-hour periods of daily outdoor exercise. As to the medical care, the applicant was duly inspected upon his arrival at that facility. According to a written statement by the head of the Simferopol SIZO, the applicant made no complaints to the medical staff on account of his health.

30. As to the Feodosiya ITT, the Government submitted that the applicant was held in the following cells:

- cell no. 3, measuring 4.74 sq. m, in which the applicant was held with one detainee;
- cell no. 5, measuring 5.88 sq. m, in which there were a total of four detainees;
- cell no. 2.7 measuring 5.28 sq. m, in which there were between five and eight detainees.

31. Despite the fact that there were no windows in the cells, the lighting and ventilation systems were operating properly. The cells were equipped with furniture.

II. RELEVANT DOMESTIC LAW

A. Constitution of 28 June 1996

32. The relevant provisions of the Constitution read as follows:

Article 29

“Every person has the right to freedom and personal inviolability.

No one shall be arrested or held in custody other than pursuant to a reasoned court decision and only on grounds and in accordance with a procedure established by law. ...”

Article 62

“A person is presumed innocent of committing a crime and shall not be subjected to criminal punishment until his or her guilt is proved through legal procedure and established by a court verdict of guilty. ...”

B. Civil Code of 16 January 2003

33. Article 297 § 3 of the Code provides that a physical person is entitled to lodge a claim with a court seeking protection of his or her dignity and honour.

C. The Pre-Trial Detention Act of 30 June 1993

34. Section 12 of the Act provides, *inter alia*, that the officials of a pre-trial detention facility may allow family visits to a detainee (in principle, once per month for a duration of one to four hours) only upon the written permission of a body of inquiry, an investigator, or a court which is dealing with the case at the relevant time.

35. The other relevant provisions of this Act can be found in the judgment of 12 October 2006 in the case of *Dvoynykh v. Ukraine* (no. 72277/01, §§ 31-37).

D. Code of Criminal Procedure of 28 December 1960

36. The relevant provisions of the Code read as follows:

Article 156: Periods of detention during investigation

“... The period of detention during a pre-trial investigation shall expire on the day the court receives the case file. ...”

Article 241: Terms of committal proceedings

“A committal hearing shall be held within ten days or, in complex cases, thirty days of receipt of the case file by the court.”

III. RELEVANT INTERNATIONAL MATERIAL

37. The relevant international material is summarised in the judgment of *Melnik v. Ukraine* (no. 72286/01, § 47-49, 28 March 2006).

THE LAW**I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION**

38. The applicant complained that the physical conditions of his detention in the Feodosiya ITT and the Simferopol SIZO had been inadequate. In addition, the applicant complained that he had not been offered appropriate medical care when detained in the Simferopol SIZO. He relied on Article 3 of the Convention, which reads as follows:

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

A. Admissibility*1. The parties' submissions*

39. The Government maintained that the applicant had not exhausted domestic remedies in respect of those complaints because he had failed to properly raise those issues before the prosecutor's office and the courts. As to the issue of medical care in the Simferopol SIZO, the Government, referring to the written statement of the head of that facility, contended that

the applicant had not even applied to the medical staff for any assistance. In their view, that complaint was manifestly ill-founded.

40. The applicant disagreed.

2. The Court's assessment

41. As to the applicant's complaint that he had not been provided with appropriate medical care in the Simferopol SIZO, the Court, having examined the material in the case file, notes that it does not appear that the applicant ever complained to the medical staff of that detention facility asking for medical assistance. The applicant's assertion that the medical care was inappropriate is not supported by any factual information. The Court therefore rejects this complaint as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

42. As to the Government's plea of non-exhaustion in respect of the physical conditions of detention, the Court notes that, on a number of occasions, it has rejected similar objections when it has found that such complaints pointed to problems of a structural nature in the domestic prison system (see, for example, *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001, *Melnik*, cited above, §§ 69-71; *Koktysh v. Ukraine*, no. 43707/07, § 86, 10 December 2009).

43. In the present case, the Court considers that the matters raised by the applicant under this head are also of a structural nature. It observes that the authorities must have been sufficiently aware of the applicant's situation especially given the fact that he raised those issues before them (see paragraphs 25 and 27). Accordingly, the Court cannot reproach the applicant for having failed to use the domestic remedies suggested by the Government and dismisses their objection to this effect.

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

B. Merits

45. The applicant, referring to his account of the facts, insisted that the physical conditions of his detention in the Simferopol SIZO and the Feodosiya ITT had been unsatisfactory.

46. The Government maintained that the physical conditions of the applicant's detention in those facilities had been adequate. They relied on their account of the facts.

47. The Court observes that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level of severity 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 (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25). Furthermore, in considering whether treatment is “degrading” within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it has adversely affected his or her personality in a manner incompatible with Article 3. Even the absence of such a purpose cannot conclusively rule out a finding of a violation of this provision (see *Peers v. Greece*, no. 28524/95, §§ 67-68 and 74, ECHR 2001-III, and *Valašinas v. Lithuania*, no. 44558/98, § 101, ECHR 2001-VIII).

48. The Court has consistently stressed that the suffering and 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. Measures depriving a person of his liberty may often involve such an element. In accordance with this provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI).

49. In the present case, the parties submitted various figures as to the personal space available to the applicant when detained in the Simferopol SIZO and the Feodosiya ITT. The figures submitted by the applicant suggest that in the Simferopol SIZO the personal space per detainee ranged from 0.98 sq. m to 1.08 sq. m, and in the Feodosiya ITT it ranged from 0.69 sq. m to 2 sq. m. According to the Government, in the Simferopol SIZO the personal space per detainee ranged from 1.54 sq. m to 3.24 sq. m, and in the Feodosiya ITT it ranged from 0.66 sq. m to 2.37 sq. m.

50. The Court does not need to resolve this disagreement between the parties. Having regard to its established case-law on this issue and the relevant standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (which are quoted, for example, in *Kalashnikov*, cited above, § 97, and *Melnik*, cited above, § 47), the Court considers that in any event the submissions of both parties show that the applicant was held in overcrowded conditions, which in itself discloses a serious issue under Article 3 of the Convention.

51. The Court further notes that, even assuming the applicant was allowed a maximum of one-hour daily outdoor exercises, as contended by the Government, for the rest of the time the applicant was as a rule confined to his cell and was not allowed any other out-of-cell activity. In the Court's

opinion that factor adds to the problem of the insufficient cell space (see *Karalevičius v. Lithuania*, no. 53254/99, § 36, 7 April 2005, and *Khudoyorov v. Russia*, no. 6847/02, § 105, ECHR 2005-... (extracts)).

52. The Court also notes that the Government failed to refute the applicant's assertion that in certain cells the toilets were not separated from the other area in the cell which meant that the applicant had no privacy when using it. Likewise, there is no evidence in support of the Government's assertion that the applicant's cells were equipped with necessary furniture and that the ventilation and lighting systems operated properly. In these circumstances the Court is inclined to give weight to the applicant's submissions on these matters which, moreover, have been confirmed by his inmates (see *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004). The Court further notes that the issues concerning lack of access to daylight and fresh air with respect to the Feodosiya ITT are even more aggravated by the fact that the cells in that facility had no windows, as admitted by the Government.

53. The foregoing considerations are sufficient for the Court to conclude that the physical conditions of the applicant's detention in the Simferopol SIZO and the Feodosiya ITT, which lasted for more than one year, three and a half months, amounted to degrading treatment, in breach of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

54. The applicant complained that his detention from 27 June 2005 to the date of his conviction by the first-instance court had been unlawful. He relied on Article 5 § 1 of the Convention, which reads in as much as relevant as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ...”

A. Admissibility

55. 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

56. The applicant contended that his detention had been authorised by the court order only until 26 June 2005. As from 27 June 2005 and up to his conviction by the Town Court, that is 4 January 2006, there had been no court decision ordering his detention.

57. The Government submitted that in the period between 27 June and 10 August 2005 the applicant had been held in detention for the reason that he had been awaiting his committal to trial. That period of detention was therefore based on the legal procedure provided for by the Code of Criminal Procedure. Between 10 August 2005 and 4 January 2006 the applicant's detention had been based on the court decision of 10 August 2005 by which the Town Court, among other things, upheld the preventive measure in his respect.

2. The Court's assessment

58. The Court reiterates that, in proclaiming the right to liberty, Article 5 § 1 contemplates the physical liberty of the person and its aim is to ensure that no one should be dispossessed of this liberty in an arbitrary fashion. The list of exceptions to the right to liberty secured in Article 5 § 1 is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision (see *Doronin v. Ukraine*, no. 16505/02, § 52, 19 February 2009 with further references).

59. In the present case, the Court notes that, during the period under consideration, the applicant was detained for the purpose of bringing him to criminal liability for the crime with which he had been charged. Accordingly, this period of detention falls under the sub-paragraph (c) of Article 5 § 1 of the Convention.

(a) The applicant's detention between 27 June and 10 August 2005

60. The Court notes that between 27 June and 10 August 2005 the applicant's detention was not covered by any court decision and the applicant's detention was justified merely by the fact that the file was being transferred from the investigator to the court and the applicant had been awaiting his committal for trial. The Court has previously found a violation in similar cases against Ukraine (see *Yeloyev v. Ukraine*, no. 17283/02, §§ 49-51, 6 November 2008; *Doronin*, cited above, § 58; and *Nikolay Kucherenko v. Ukraine*, no. 16447/04, §§ 36-38, 19 February 2009). The Court does not see a reason to depart from its findings in the present case. Accordingly, there has been a violation of Article 5 § 1 as regards the period of the applicant's detention between 27 June and 10 August 2005.

(b) The applicant's detention between 10 August 2005 and 4 January 2006

61. The Court further observes that on 10 August 2005 the Town Court, when committing the applicant for trial, also upheld the preventive measure in his respect (detention in custody). However, it failed to specify the time-limit for applying such a preventive measure. Moreover, it did not even give any reasons for that decision. As submitted by the Government, the applicant's detention had been covered by that court order as from the date of its adoption up to 4 January 2006.

62. The Court has already found a violation of Article 5 § 1 of the Convention in circumstances where Ukrainian courts extended detention for an indefinite period of time and without any particular grounds (see *Yeloyev v. Ukraine*, cited above, §§ 54-55, and *Doronin*, cited above, § 59). The Court does not see a reason to reach a different conclusion in the present case. Accordingly, there has been a violation of Article 5 § 1 of the Convention with respect to the period between 10 August 2005 and 4 January 2006.

III. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

63. The applicant complained that his right to presumption of innocence had been violated by the interview of the Prosecutor of the Autonomous Republic of Crimea which was published in the local press on 20 January 2006. He relied on Article 6 § 2 of the Convention, which reads as follows:

“2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

64. The Government submitted that the applicant had failed to exhaust domestic remedies in so far as he did not raise this issue in the course of the criminal proceedings in his case. Nor did he lodge a civil suit claiming a violation of his honour and dignity by the impugned publication and seeking redress on this account. In the latter regard, the Government referred in particular to Article 297 of the Civil Code and insisted that there had been well-established judicial practice in this field. As examples of practical effectiveness of the civil remedy, the Government referred to the decisions of the domestic courts which had been analysed by this Court in the case of *Vitrenko and other v. Ukraine* (no. 23510/02, decision of 16 December 2008).

65. The Government further maintained that the applicant had failed to substantiate that there had been any detriment to his right to presumption of innocence in the course of the criminal proceedings against him and that therefore the applicant could not be regarded as a victim of the violation claimed.

66. The applicant did not put forward any arguments against the Government's submissions.

67. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law, but not that recourse should be had to remedies which are inadequate or ineffective (see *Akdivar and Others v. Turkey*, no. 21893/93, §§ 65-67, ECHR 1996-IV; and *Aksoy v. Turkey*, no. 21987/93, §§ 51-52, ECHR 1996-VI).

68. In the present case, the Court notes that the applicant was not silent with his complaint at the domestic level. In particular, he complained to the General Prosecutor on account of inappropriate expressions of the inferior prosecutor. However, the Court has held on a number of occasions that a hierarchical complaint does not constitute an effective remedy for the purpose of Article 35 § 1 of the Convention (see *Horvat v. Croatia*, no. 51585/99, § 47, ECHR 2001-VIII, and *Hartman v. Czech Republic*, no. 53341/99, § 66, ECHR 2003-VIII (extracts)). Moreover, in the present case the applicant's complaint was re-addressed to and then considered by the Prosecutor's Office headed by Mr Sh., the prosecutor whose actions the applicant had been challenging. This remedy was therefore deprived of any safeguards for an independent scrutiny. Accordingly, the Court finds that the applicant's recourse to such a remedy could not count for exhaustion purposes.

69. The Court further observes that the applicant did not raise this matter before the domestic courts, either in the course of criminal proceedings or by means of a separate civil action. The applicant failed to substantiate why the recourse to the judicial remedies adduced by the Government would be ineffective in his case. In these circumstances the Court considers that, by failing to bring this complaint to the attention of the domestic courts, the applicant did not comply with the rule of exhausting domestic remedies (see, also, *Koval v. Ukraine* (dec.), no. 65550/01, 10 December 2002, *Nevmerzhitsky v. Ukraine* (dec.), no. 54825/00, 28 January 2003 and, by contrast, *Shagin v. Ukraine*, no. 20437/05, §§ 71-73, 10 December 2009).

70. The Court thus does not find it necessary to deal with the Government's other objections and rejects this complaint in accordance with Article 35 § 1 and 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

71. The applicant complained under Article 5 §§ 1 (c) and 3 of the Convention that in its decisions of 10 March and 26 April 2005 the domestic court had failed to give reasons for his detention, and that the overall period of his detention during the investigation and the judicial proceedings had been excessive. He further complained under Article 6 § 3 (b) of the Convention that, because of the conditions of his detention, he had not had adequate time and facilities to prepare his defence in the criminal proceedings. The applicant also alleged that the proceedings in his criminal case had been unfair, claiming that the domestic courts had misinterpreted the facts and wrongly assessed the evidence. Lastly, he complained that on 4 February 2006 the governor of the Feodosiya ITT had refused him a family visit despite the relevant permission of the court and that the length of some of the family visits had been unlawfully shortened.

72. Having considered the applicant's submissions in the light of all the material in its possession, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

73. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. 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

75. The applicant asked the Court to award fair compensation for the violations found. He did not specify his claim.

76. The Government submitted that the claim had not been quantified and substantiated.

77. The Court has no doubts that the applicant must have suffered anxiety and distress as a result of the violations of the Convention that cannot be compensated for adequately by the Court's findings. Making its assessment on an equitable basis, the Court awards the applicant the sum of 6,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

78. The applicant did not submit any claims for the costs and expenses within the time-limit fixed. Consequently, the Court does not make any award under this head.

C. Default interest

79. 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 under Article 3 of the Convention (physical conditions of the applicant's detention in the Simferopol SIZO and the Feodosiya ITT) and Article 5 § 1 of the Convention (lawfulness of the applicant's detention between 27 June 2005 and 4 January 2006) 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 5 § 1 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into national currency of the respondent State at the rate applicable on 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.

Done in English, and notified in writing on 7 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President