



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

THIRD SECTION

CASE OF ABOU AMER v. ROMANIA

(Application no. 14521/03)

JUDGMENT

STRASBOURG

24 May 2011

FINAL

24/08/2011

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

In the case of Abou Amer v. Romania,

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

Josep Casadevall, *President*,

Corneliu Bîrsan,

Egbert Myjer,

Ján Šikuta,

Ineta Ziemele,

Nona Tsotsoria,

Kristina Pardalos, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 3 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 14521/03) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Mr Fahed Youssef Abdalla Abou Amer (“the first applicant”), a stateless person of Palestinian origin who was born in Egypt and Mrs Ana-Maria Abou Amer (“the second applicant”) his wife, a Romanian national, on 6 May 2003.

2. The applicants, who had been granted legal aid, were represented by Mr Jan-Åke Höög, a lawyer practising in Motala, Sweden. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu, of the Ministry of Foreign Affairs.

3. On 28 May 2009 the President of the Third Section decided to communicate to the Government the complaints concerning the conditions of the first applicant’s detention pending expulsion, the lawfulness of his detention and the alleged interference with the applicants’ Article 8 rights. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1969 and 1979 respectively and live in Motala, Sweden. At the date of the facts in the present application, they were living in Romania.

5. The first applicant was granted refugee status by the Romanian authorities in 1998, along with his father and brothers. In 2000 he married the second applicant. Their daughter was born in 2001 and acquired Romanian nationality at birth. At the date of the facts, the applicant was legally residing and working in Romania.

6. In March 2003 the applicants and their daughter visited family in Egypt.

7. Meanwhile, on 25 March 2003, at the request of the Romanian Intelligence Service (*Serviciul român de informații*) and in accordance with Government Emergency Ordinance no. 194/2002 on the rules governing aliens in Romania ("Ordinance no. 194"), the prosecutor at the Bucharest Court of Appeal issued an order in which the first applicant was declared an "undesirable person" and banned from Romania for ten years on the ground that there was "sufficient and serious intelligence" that he was "engaged in activities capable of endangering national security".

8. Based on that order, on 28 March 2003 the prosecutor decided to take the applicant into public custody in the Otopeni Centre for the Reception, Selection and Accommodation of Foreigners ("the Otopeni Centre"), until his deportation was possible. The decision was taken for an initial period of thirty days, until 26 April 2003.

9. On 6 April 2003, in the morning, when the applicants and their daughter returned to Romania, the first applicant was served with the order of 25 March 2003 and the decision of 28 March 2003 and prohibited from leaving the airport and entering Romania. He was informed of the reasons for that interdiction and asked to leave the territory immediately.

10. At 1 p.m., after a brief meeting with his wife, the first applicant bought a ticket for Zurich and boarded a flight to that destination. As entry into Switzerland was denied, on 7 April he returned to Romania, where he was kept in the airport's transit zone.

According to the applicant's statements he was placed in the airport's basement, in a room without heating, with only a thin cover to protect him from the cold. There was no bathroom. He had access to a toilet but had to be escorted there. Food was scarce and of poor quality. His wife was not allowed to see him or to send him clothes and food.

11. On 8 April he was visited by a representative of the Romanian Council for Refugees (*Consiliul Român pentru Refugiați*). On that occasion,

he did not complain about his detention. On the same day he was seen by a doctor who reported that he was in good general health.

12. On the same day, through the offices of his lawyers, the applicant challenged the prosecutor's order of 25 March 2003 before the Bucharest Court of Appeal. He argued that he had not done anything that would harm national security and that the order had disrupted his family life.

13. On 8 April at 9.45 a.m. the authorities tried to repatriate the applicant to Egypt, which also refused him access to the territory and returned him to Romania on 9 April.

The authorities kept him in the transit area while they attempted to get him a visa for Egypt.

14. On 11 April 2003 the Bucharest Court of Appeal stayed the execution of the prosecutor's order of 25 March 2003, pending the outcome of the proceedings for its annulment. The decision to take the applicant into public custody remained operative.

15. On 14 April 2003 the applicant was transferred to the Otopeni Centre where he claimed he was held in similar conditions to those in the airport. He stated that he had been allowed contact with his wife, who had brought him food and clothes. Upon transfer he had received an information note in English explaining the reasons he was being taken into public custody in the Centre, namely, that his request for refugee status had been denied, that an order for expulsion had been issued against him and that he had been declared "undesirable" on Romanian territory. He was also informed that the custodial measure would remain in place until travel documents were obtained and the return formalities completed.

16. The applicant contested his taking into public custody before the Bucharest Court of Appeal. He also complained that the conditions in the transit zone were inadequate for a long period of detention. On 21 April 2003 the Bucharest Court of Appeal annulled the decision of 28 March. The Authority for Foreigners (*Autoritatea pentru străini*) appealed. The parties failed to provide any information on the subsequent proceedings.

On 24 April 2003 the Bucharest Court of Appeal extended the applicant's public custody by three months. It noted that the decision of 21 April 2003 was not final and thus could not be taken into account, and considered that the reasons that justified the initial measure still existed. Furthermore, as long as the proceedings against the prosecutor's order were pending the measure was still needed and the applicant could not be removed from the territory. It also dismissed the applicant's arguments based on the infringement of his right to family life, as it considered that taking him into public custody did not breach Article 8 of the Convention.

17. In a decision of 4 June 2003 the Bucharest Court of Appeal upheld the prosecutor's order of 25 March 2003, on the grounds that the measure had been taken in conformity with Ordinance no. 194 and that the applicant had not proved the contrary. It also rejected the applicant's argument based

on the right to family life, as it considered that the fact that he was married did not exonerate him from complying with the law and that the order did not interfere with his family life.

The decision was final.

18. On 3 June 2003 the applicants, who had found out through their own means about the possibility of being granted entry to Sweden, left for Sweden with their daughter, where they currently reside. The first applicant's father and brothers and the second applicant's family are still living in Romania.

II. RELEVANT DOMESTIC LAW

19. Articles 81 to 85 of Ordinance no. 194 describe the procedure for declaring a person "undesirable" and contesting that measure. A detailed description of that procedure is available in *Lupsa v. Romania*, no. 10337/04, ECHR 2006-VII.

20. According to Article 93 of Ordinance no. 194 a magistrate may decide to take an alien into public custody if the person cannot be returned within the time-limit established (24 hours if the individual possesses a valid passport and money under Article 87 § 2). The measure is applied for an initial period of 30 days and a request for extension made by the Aliens Authority will be examined by the court within the territorial jurisdiction of the accommodation centre. The measure can be challenged before the Bucharest Court of Appeal. Such an appeal does not stay the enforcement of the measure.

III. COUNCIL OF EUROPE TEXTS

21. In 1995 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") visited the area of Bucharest airport where persons who were denied access to the country were kept. They found that the conditions of detention were acceptable for short stays, that the room was not overcrowded and was well lit and aired.

In 1995, 1999 and 2002-2003, the CPT visited the Otopeni Centre. In the last visit, they found that the conditions of detention were good, the rooms were spacious, well lit and aired and well equipped. It also found the toilets and common areas acceptable. Visits and telephone calls were allowed and the medical facilities were acceptable. The CPT expressed concern about the complaints they received from some individuals in the centre about the personnel having asked for bribes in exchange for certain privileges. They also considered that the centre should offer a wider range of activities to those lodged there.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

22. The first applicant complained that the conditions in which he had been held in the airport facilities and in the Otopeni Centre contravened the requirements of 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. The parties' submissions

23. The Government pleaded non-exhaustion of domestic remedies, as the first applicant had not lodged a complaint with the domestic authorities about the conditions of his detention.

24. Furthermore, they considered that the contested measures did not affect the applicant's freedom of movement, as he remained free to leave Romania at any point, which in the end he did, for Sweden. Therefore the fact that he had chosen to stay in the airport holding area and the Otopeni Centre was not imputable to the State.

25. The Government contended that the conditions of accommodation were acceptable in both facilities. They submitted that in the airport transit zone the applicant had been held in a 48.27 sq. m room which had four beds and a window, with toilets and shower facilities nearby. On 7 April 2003 he was alone in the room. The airport administration offered him food. As for his stay in Otopeni, the Government submitted that the applicant had been offered bedding and cutlery.

26. No visit requests were made during the applicant's stay in the airport holding area. In the Otopeni Centre he received 25 visits from the second applicant, his lawyer and other individuals.

27. The applicant reiterated that he had been kept in degrading conditions.

B. The Court's assessment

28. The Court reiterates that to fall within the scope of Article 3, ill-treatment must attain a minimum level of severity. 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 (see, for example, *Ciorap v. Moldova*, no. 12066/02, § 63, 19 June 2007). Furthermore, measures depriving a person of his liberty may often involve an inevitable

element of suffering or humiliation. Nevertheless, the suffering and humiliation involved must not go beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (*Orchowski v. Poland*, no. 17885/04, § 120, ECHR 2009-(extracts)).

29. In the case under examination, the parties gave conflicting descriptions of the conditions in the two detention facilities where the applicant was accommodated. Based on the information available to it, the Court must first ascertain whether the conditions attained the threshold for the applicability of Article 3.

30. The applicant's initial submissions to the Court offered *prima facie* evidence of the poor conditions in the two facilities. However, according to the Government the conditions in both the airport facilities and the Otopeni Centre were acceptable by Convention standards. The Court also notes that the Government's position is fully supported by the findings of the CPT (see paragraph 21 above).

The applicant failed to submit any additional evidence to support his statements. Moreover, the only complaint he lodged with the courts concerned the alleged inadequacy of the transit zone for a long period of detention. While this allegation is confirmed by the CPT's findings, his seven-day detention in the transit zone cannot be considered long (see also paragraph 40 below).

31. The Court notes that the applicant did not lodge any specific complaint with the authorities – courts, the airport or Otopeni Centre administration, or the representatives of the Romanian Council for Refugees – about the conditions of his detention. He thus failed to allow the State authorities the opportunity to address the alleged flaws he described in his application to the Court. While leaving open the question whether any of these avenues could have constituted an effective remedy at that time, the Court considers nevertheless that such complaints could have at least provided evidence to support the applicant's claims to the Court.

32. The foregoing considerations are sufficient to enable the Court to conclude that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

33. The first applicant complained that he was held in custody despite his expulsion being clearly impossible and that he had no effective remedy by which to challenge the legality of his detention. He relied on Article 5 of the Convention, which reads as follows in so far as relevant:

“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:

...

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

A. The parties’ positions

34. The Government contested that argument. They considered that a distinction should be made between the time spent by the applicant in the airport transit zone, which, in their view, did not constitute “detention”, as the applicant remained free to leave at any moment, and the time spent in the Otopeni Centre. They further contended that the measures taken by the authorities had been lawful and that the period spent by the applicant in public custody was reasonable according to the Court’s standards.

35. The applicant argued that the shifting of the burden of proof by the domestic courts dealing with the appeal against the prosecutor’s order had been incorrect.

He also pointed out that the final domestic decision was that of 4 June 2003, which rendered ineffective all previous court decisions favourable to him.

B. The Court’s assessment

36. The Court notes at the outset that the applicant was taken into public custody pursuant to the prosecutor’s decision of 28 March 2003.

1. Alleged arbitrariness of the measure

37. The Court reiterates that in order to avoid being branded arbitrary, detention under Article 5 § 1(f) must be carried out in good faith; it must be closely connected to the ground of detention relied on by the Government; the place and conditions of detention should be appropriate; and the length of the detention should not exceed that reasonably required for the purpose pursued (see *Saadi v. the United Kingdom* [GC], no. 13229/03, §§ 72 and 74, ECHR 2008-...; and *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 164, 19 February 2009).

38. The Court notes that it is not disputed that the first applicant was held in the airport facilities and in the Otopeni Centre “to prevent him entering into the country unauthorised” and “with a view to his deportation”. It reiterates that detention under Article 5 § 1 (f) does not have

to be reasonably considered necessary; all that is required to justify detention under this provision is that “action is being taken with a view to deportation”. It is therefore immaterial, for the purposes of Article 5 § 1 (f), whether the underlying decision to expel can be justified under national or Convention law (*Chahal v. the United Kingdom*, 15 November 1996, § 112, *Reports of Judgments and Decisions* 1996-V and *Kaya v. Romania*, no. 33970/05, § 17, 12 October 2006).

39. The Court considers that the measure of taking the applicant into public custody affected him *de facto* from the moment when he arrived at the airport, on 6 April 2003, and was refused entry to Romania. It therefore cannot agree with the Government that the time spent in the airport transit zone was not “detention”. The applicant did not choose to stay in the transit zone. He was banned from entering Romania and the two other States to which he travelled (Switzerland and Egypt) refused him entry. His situation differs therefore from that of the applicants in *Mogoş v. Romania* ((dec.), no. 20420/02, 6 May 2004) who refused to enter Romania although there was no obstacle to their entry. He is rather in a comparable situation to that of the applicants in *Shamsa v. Poland* (nos. 45355/99 and 45357/99, §§ 16 and 47, 27 November 2003) who were not allowed by the authorities to enter Poland from the transit zone.

40. The measure in the present case was taken by a decision of the prosecutor for an initial period of 30 days and subsequently extended by the court in an adversarial procedure. The Court is satisfied that the domestic law has been respected in the case and that the measure was taken with the sole aim of facilitating the applicant’s removal from the territory (see, *a contrario*, *Shamsa*, cited above, §§ 53-60). The facts of the case indicate that during the custody period, the authorities were making active efforts to have the applicant removed from the country.

Moreover, the length of the measure did not exceed that reasonably required for the purpose pursued. The applicant was detained for about two months and chose to leave for Sweden. The Court has already found that a three-month detention in similar conditions did not raise an issue under Article 5 § 1 (f) of the Convention (see *A. and Others*, cited above, § 168).

41. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. Right to an effective remedy

42. The Court notes that Article 5 § 4 guarantees a right to “everyone who is deprived of his liberty by arrest or detention” to bring proceedings to test the legality of the detention and to obtain release if the detention is found to be unlawful (see *A and Others*, cited above, § 200). In cases of detention with a view to deportation Article 5 § 4 does not require that the domestic courts have the power to review whether the underlying decision

to expel is justified under national or Convention law (see *Chahal*, cited above, § 128).

43. In the case at hand, the Court notes that the applicant did have the opportunity to challenge the custodial measure and participated in the proceedings for the extension of the measure (see paragraph 16 above). It considers that, despite the applicant being dissatisfied with their outcome, those appeals proved to be “effective” under the Court’s established case-law (see, *mutatis mutandis*, *Čonka v. Belgium*, no. 51564/99, § 75, ECHR 2002-I).

44. It follows that this complaint is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

45. The applicants complained, under Article 8 of the Convention, that their family life had been compromised by the prosecutor’s order to deport the first applicant and to ban him from Romania for ten years; they had been forced to leave Romania in order to be able to continue a family life and had had to leave their respective families behind. The relevant parts of Article 8 of the Convention read as follows:

“1. Everyone has the right to respect for his ... family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

46. 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’ arguments*

47. The Government considered that the measures taken against the first applicant did not interfere with the applicants’ family life. They contended that there was no right guaranteed by the Convention for the applicants to establish their residence in Romania.

The applicants were free to leave Romania at any time, and have established their home in Sweden where they are currently living a normal family life with their child.

48. Even assuming that the measures constituted an interference with the applicants' right to respect for their family life, the interference met the criteria set forth in the second paragraph of Article 8. It was provided by Articles 83 and 93 of Ordinance no. 194, which describe with precision the behaviour expected from foreigners, as well as the consequences of not respecting those requirements.

The Government put forward that the measures were aimed at protecting national security and were proportionate to that aim.

49. The applicants argued that they had been forced to leave Romania as a result of the measure taken against the first applicant, that being their only choice for re-establishing their family life. They further argued that the prosecutor could not justify the issuing of the order of 25 March 2003 and that the first applicant had not been engaged in any activities that would pose a threat to national security.

2. *The Court's assessment*

a) **Whether there was an interference**

50. The Court reaffirms at the outset that a State is entitled, as a matter of international law and subject to its treaty obligations, to control the entry of aliens into its territory and their residence there (see, among many other authorities, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, judgment of 28 May 1985, Series A no. 94, p. 34, § 67, *Boujlifa v. France*, judgment of 21 October 1997, *Reports of Judgments and Decisions* 1997-VI, p. 2264, § 42). The Convention does not guarantee the right of an alien to enter or to reside in a particular country and, in pursuance of their task of maintaining public order, Contracting States have the power to expel an alien under certain circumstances. However, their decisions in this field must, in so far as they may interfere with a right protected under paragraph 1 of Article 8, be in accordance with the law and necessary in a democratic society, that is to say justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued (see *Dalia v. France*, judgment of 19 February 1998, *Reports* 1998-I, p. 91, § 52; *Mehemi v. France*, judgment of 26 September 1997, *Reports* 1997-VI, p. 1971, § 34; *Boultif v. Switzerland*, no. 54273/00, §§ 39 and 46, ECHR 2001-IX; *Slivenko v. Latvia* [GC], no. 48321/99, ECHR 2003-X, § 113; *Üner v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-XII; *Al-Nashif v. Bulgaria*, no. 50963/99, § 114, 20 June 2002; and *Lupsa*, cited above, § 25).

51. In the case at hand, it is not disputed that the applicants had a family life in Romania at the time of the events. The first applicant was granted a refugee status and was working in Romania, in 2000 had married the second

applicant, a Romanian national, and in 2001 a child, who acquired Romanian nationality at birth, had been born to them. Both the first applicant's and the second applicant's families lived at that time and, according to the available data, continue to live, in Romania.

52. The Court notes that on 25 March 2003 the prosecutor issued an order in which the first applicant was declared an "undesirable person" and banned from Romania for ten years.

53. The Court also takes note of the fact that the applicants left Romania and restarted their family life in Sweden only two months after the interruption caused by the measure of declaring the first applicant an "undesirable person" and banning him from the territory. However, it considers that during that time, the first applicant could neither enter Romania nor leave for another country, as the States he attempted to travel to denied him entry. Moreover, it notes that the applicants' decision to leave Romania was not taken freely, as Sweden appeared to be the only state where they could resume their family life expediently.

From this point of view, the case differs from *Sadet v. Romania* ((dec.), no. 36416/02, 20 September 2007) where the applicants chose to leave Romania before the expulsion order was even enforced, although they were admitted in the interest of family reunification, and did not consider returning to Romania.

54. The Court reiterates that even if Article 8 of the Convention does not contain an absolute right for any category of alien not to be expelled, its case-law amply demonstrates that there are circumstances where the expulsion of an alien will give rise to a violation of that provision (see *Üner*, cited above, § 57). Taking that case-law into account, as well as the applicants' particular situation in the present case, the Court will consider that the forced departure from Romania as a result of the first applicant being declared an "undesirable person" and being banned from Romania by the prosecutor's order of 25 March 2003 constituted an interference with the applicants' family life (see also, *mutatis mutandis*, *Slivenko v. Latvia* [GC], no. 48321/99, § 97, ECHR 2003-X).

b) Whether the interference was justified

55. The Court refers to the principles established in its case-law regarding interference with a person's Article 8 rights for reasons of national security (see, in particular, the above-cited judgments *Al-Nashif*, § 119; *Lupsa*, §§ 32-38; *Kaya*, §§ 38-39; and *C.G. and Others v. Bulgaria*, no. 1365/07, §§ 39-40, 24 April 2008).

56. In the case of *Lupsa*, the Court has already examined the lawfulness of a similar interference and concluded that the possibility to appeal against the prosecutor's order, under Ordinance no. 194, did not offer the necessary guarantees against arbitrariness (see *Lupsa*, cited above, §§ 41-42).

57. As in *Lupsa*, in the present case the prosecutor did not present to the first applicant or to the Court of Appeal the concrete reasons that founded the taking of the measure. No criminal charges were brought against the first applicant for any crimes, let alone for deeds that might constitute a threat to national security.

58. The Court of Appeal confined itself to a purely formal examination of the prosecutor's order. Not only did it fail to seek the prosecutor's reasons for declaring the applicant an "undesirable person", but it went further and placed on the first applicant the burden of proving that he had not been involved in any activities threatening national security. Such proof seems impossible to produce, notably when the first applicant was not informed of the concrete suspicions against him.

59. The Court sees no reason in the present case to reach a different conclusion than the one in *Lupsa*. It follows that the applicants did not enjoy the minimum degree of protection against arbitrariness on the part of the authorities, and that the interference with their family life was not in accordance with "a law" satisfying the requirements of the Convention.

60. Having regard to that finding, the Court deems it unnecessary to continue the examination of the applicants' complaint to determine whether the interference pursued a "legitimate aim" and was "necessary in a democratic society" (see *Lupsa*, § 43; and *Kaya*, § 44, judgments cited above).

61. Accordingly, the Court considers that in the present case there has been a violation of Article 8 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

62. The applicants raised several other complaints, under Articles 6 § 1 and 13 of the Convention and Article 3 of Protocol No. 4 to the Convention.

However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicants claimed 50,000 euros (EUR) each in respect of non-pecuniary damage.

65. The Government argued that the applicants failed to prove the existence of a causal link between the violations alleged and their claims for non-pecuniary damage.

They also considered that the amount claimed was exaggerated and that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage alleged.

66. The Court considers that the applicants suffered distress as a result of the unlawful interference with their right to respect for their family life. It therefore awards them jointly EUR 8,000 in respect of non-pecuniary damage.

B. Costs and expenses

67. The applicants also claimed EUR 1,960 for the costs and expenses incurred before the Court, representing the difference between the legal fees for their lawyer and the money received in legal aid from the Council of Europe.

68. The Government argued that the applicants had failed to justify their claims.

69. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the above criteria and to the fact that the applicants have received EUR 850 in legal aid, and given the absence of any additional evidence, the Court rejects the claim for costs and expenses.

C. Default interest

70. 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 complaint concerning Article 8 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay jointly to the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (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;
4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 24 May 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President