



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

FIFTH SECTION

CASE OF SMOLIK v. UKRAINE

(Application no. 11778/05)

JUDGMENT

STRASBOURG

19 January 2012

FINAL

19/04/2012

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

In the case of Smolik v. Ukraine,

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

Dean Spielmann, *President*,

Elisabet Fura,

Boštjan M. Zupančič,

Ann Power-Forde,

Ganna Yudkivska,

Angelika Nußberger,

André Potocki, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 13 December 2011,

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

PROCEDURE

1. The case originated in an application (no. 11778/05) 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 Vladimir Valentinovich Smolik (“the applicant”), on 11 March 2005.

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

3. The applicant alleged, in particular, that his initial detention had not been lawful and that his defence rights had been infringed during that time.

4. On 24 November 2009 the President of the Fifth Section decided to give notice of the application to the Government. 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

5. The applicant was born in 1989 and is currently serving a prison sentence.

6. In the afternoon of 12 May 2004 a minor, K., was found dead in his apartment, with several knife wounds. On the same day the local prosecutor’s office instituted criminal proceedings in connection with the murder.

7. The applicant (14 years old at that time) was a school acquaintance of K. Before the incident, K. had invited the applicant to his home on many occasions.

8. At 5 p.m. on the same day the police visited the applicant's home. In the presence of his mother the applicant confessed and the police took him to the police station.

9. The police did not draw up arrest order and the applicant did not have his procedural rights explained to him on that day, as required by Article 106 of the Code of Criminal Procedure. According to the applicant, he was questioned about the incident and subjected to ill-treatment by the police.

10. At 7.50 p.m. on the same day the applicant was examined by a medical expert, who reported abrasions on the applicant's hand, back, waist and shoulder. The expert opined that the injuries were light and had been inflicted between twenty-four hours and six hours before the examination. The applicant remained in police custody.

11. At 9.30 a.m. on 13 May 2004 the applicant was given access to a lawyer he had chosen himself. His procedural rights were explained to him, including the right to remain silent and not to incriminate himself, to be informed of the charges against him, to have a meeting with a lawyer before being questioned, to seek to examine evidence, to seek withdrawal of an investigator, to participate in investigative actions, and to lodge complaints.

12. Between 11.05 a.m. and 3.40 p.m. that day an investigator from the prosecutor's office questioned the applicant in the presence of the lawyer and a teacher. During that questioning the applicant stated that he had entered the victim's apartment, using a key he and a schoolmate had stolen from K. beforehand; the applicant's plan was only to steal money, but when K. arrived unexpectedly and a fight broke out between them he grabbed a knife and stabbed him several times; he then took money and left the apartment.

13. At 5.10 p.m. on 13 May 2004 an investigator from the prosecutor's office drew up an arrest order in respect of the applicant, relying on Articles 106 and 115 of the Code of Criminal Procedure.

14. On 15 May 2004 the applicant was questioned once again. In the presence of the lawyer the applicant confirmed his previous statements.

15. On 16 May 2004 the local court remanded the applicant in custody as a preventive measure and noted, *inter alia*, that the applicant had been arrested as a suspect at 5.10 p.m. on 13 May 2004. At the court hearing the applicant was represented by the lawyer. They both submitted, *inter alia*, that the applicant had acknowledged guilt.

16. On 6 July 2004 the applicant's father requested that criminal proceedings be instituted against the police officers, claiming that after arrest the applicant was subjected to ill-treatment, and that the lawyer was allowed in only the next morning.

17. On 15 July 2004 a forensic medical expert confirmed the conclusions of the medical expert of 12 May 2004.

18. On the same day the applicant was questioned once again in the presence of the lawyer. He was clear that it was K. who had initiated the fight and that all he could remember was when he found himself holding a knife and K. lying on the floor: he was really scared then. He further submitted that after he was arrested police officers had beaten him up, thus making him confess in detail.

19. On 17 July 2004 the investigator of the local prosecutor's office refused to institute criminal proceedings into the alleged ill-treatment for lack of *corpus delicti*.

20. On 18 July 2004 the applicant was further questioned in the presence of the lawyer. The applicant once again stated that he could not remember what happened during the fight with K. until the moment when the latter was lying dead on the floor.

21. Following the completion of the investigation the case was referred to court for the applicant to be tried.

22. On 5 November 2004 the Mykolayiv Region Court of Appeal ("the trial court"), having regard to the applicant's complaints of ill-treatment, ordered additional inquiries in relation to those allegations.

23. On 12 November 2004 the local prosecutor once again refused to institute criminal proceedings into the alleged ill-treatment for lack of *corpus delicti*.

24. When questioned by the trial court, the applicant admitted that he had entered K.'s apartment and stolen the money. He could not explain how the murder was committed, as he could not remember what had happened.

25. On 26 November 2004 the trial court found the applicant guilty of aggravated murder and robbery and sentenced him to fifteen years' imprisonment. The judgment was based on the self-incriminatory statements made by the applicant on 13 May 2004 and later and other documentary, oral and material evidence. In the operative part of the judgment the trial court ordered that the term of imprisonment be counted from 12 May 2004.

26. The applicant and his representative appealed against that judgment, alleging, *inter alia*, that the applicant had committed the murder when mentally disturbed and in a fight with the victim. They further insisted that the applicant's procedural rights had been infringed, as he had been subjected to ill-treatment and his status as an arrested person had not been formalised straight after the arrest.

27. On 24 February 2005 the Supreme Court held a hearing in the case and the applicant submitted that there had been an accomplice, A., in K.'s apartment who had committed the murder. He alleged that he had been afraid to tell the truth earlier because he had been threatened by the accomplice, who was much older than him.

28. The Supreme Court rejected the applicant's submissions, finding that the applicant's guilt had been well established by the evidence in the case file and there had been no indication that the applicant's rights had been violated in the course of the investigation. However, it changed the applicant's sentence for robbery, reclassifying it as theft.

29. On 17 June 2005 the prosecutor's office instituted an investigation of the applicant's allegations concerning involvement of the accomplice A. in the crimes.

30. On 10 February 2006 the investigation was terminated as no evidence of A.'s involvement had been obtained.

II. RELEVANT DOMESTIC LAW

A. Constitution of Ukraine

31. The relevant part of Article 29 of the Constitution reads as follows:

"... In the event of an urgent necessity to prevent or stop a crime, bodies authorised by law may hold a person in custody as a temporary preventive measure, the reasonable grounds for which shall be verified by a court within seventy-two hours. The detained person shall be released immediately if he or she has not been provided, within seventy-two hours of the moment of detention, with a reasoned court decision in respect of the holding in custody. ...

Everyone who has been detained has the right to challenge his or her detention in court at any time. ..."

B. Code of Criminal Procedure of 28 December 1960

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

Article 43-1. The suspect

"A person shall be considered a suspect if:

- 1) he/she has been arrested on suspicion of having committed a crime;
- 2) in his/her respect a preventive measure has been applied until a decision has been made to bring that person to the proceedings as an accused.

A suspect is entitled to know what he/she is suspected of; to give evidence or refuse to give evidence and answer questions; to have defence counsel and a meeting with him before the first questioning; to challenge the lawfulness of his/her arrest before the court ...

It shall be stated in the arrest order or the decision to apply a preventive measure that the suspect has had his or her rights explained."

Article 45. Obligatory participation of defence counsel

“The participation of defence counsel during the inquiry and the preliminary investigation and during consideration of the criminal case in the first-instance court is obligatory:

1) in the cases concerning a person who is suspected of or charged with a crime committed at the age of less than eighteen years, – from the moment when such a person is considered a suspect or when such a person has been charged with the crime; ...”

Article 106. Arrest of a suspect by the body of inquiry

“The body of inquiry shall be entitled to arrest a person suspected of a criminal offence for which a penalty in the form of deprivation of liberty may be imposed only on one of the following grounds:

1. if the person is discovered whilst or immediately after committing an offence;
2. if eyewitnesses, including victims, directly identify this person as the one who committed the offence;
3. if clear traces of the offence are found either on the body of the suspect, or on his clothing, or with him, or in his home.

If there is other information giving ground to suspect a person of a criminal offence, a body of inquiry may arrest such a person if the latter attempted to flee, or does not have a permanent place of residence, or the identity of that person has not been established.

For each case of a suspect’s arrest, the body of inquiry shall be required to draw up an arrest order (*протокол затримання*) outlining the grounds, the motives, the day, time, year and month, the place of arrest, the explanations of the person detained and the time when it was recorded that the suspect had been informed of his right to have a meeting with defence counsel as from the moment of his arrest, in accordance with the procedure provided for in paragraph 2 of Article 21 of the present Code. The arrest order shall be signed by the person who drew it up and by the detainee.

A copy of the arrest order with a list of his rights and obligations shall immediately be handed to the detainee and sent to the prosecutor. At the request of the prosecutor, the material which served as a ground for the arrest shall be sent to him as well. ...

Within seventy-two hours of the arrest, the body of inquiry shall:

- (1) release the detainee if the suspicion that he committed the crime has not been confirmed, if the term of the preliminary detention established by law has expired or if the arrest has been effected in violation of the requirements of paragraphs 1 and 2 of the present Article;
- (2) release the detainee and select a non-custodial preventive measure;

(3) bring the detainee before a judge with a request to impose a custodial preventive measure on him or her.

If the arrest is appealed against to a court, the detainee's complaint shall be immediately sent by the head of the detention facility to the court. The judge shall consider the complaint together with the request by the investigating body for application of the preventive measure. If the complaint is received after the preventive measure was applied, the judge shall examine it within three days of receiving it. If the request has not been received or if the complaint has been received after the term of seventy-two hours of detention, the complaint shall be considered by the judge within five days after receiving it.

The complaint shall be considered in accordance with the requirements of Article 165-2 of this Code. Following its examination, the judge shall give a ruling, either declaring that the arrest is lawful or allowing the complaint and finding the arrest to be unlawful.

The ruling of the judge may be appealed against within seven days from the date of its adoption by the prosecutor, the person concerned, or his or her defence counsel or legal representative. Lodging such an appeal does not suspend the execution of the court's ruling.

Preliminary detention of a suspect shall not last for more than seventy-two hours.

If, within the terms established by law, the ruling of the judge on the application of a custodial preventive measure or on the release of the detainee has not arrived at the pre-trial detention facility, the head of the pre-trial detention facility shall release the person concerned, drawing up the order to that effect, and shall inform the official or body that carried out the arrest accordingly."

Article 115. Arrest of a suspect by an investigator

"An investigator may arrest and question a person suspected of a crime according to procedure envisaged by Articles 106, 106-1, and 107 of the Code.

Article 438. Introducing charges against a minor and questioning him

"... If a minor has not attained the age of sixteen ... a pedagogue ... may be invited ... to be present during the introduction of charges against a minor and his questioning ..."

C. The Act "On procedure for compensation for damage caused to citizens by the unlawful acts of bodies of inquiry, pre-trial investigation authorities, prosecutor's offices and courts" of 1 December 1994 ("the Compensation Act")

33. The relevant provisions of the Compensation Act (as worded at the relevant time) can be found in the judgment of *Afanasyev v. Ukraine* (no. 38722/02, § 52, 5 April 2005).

III. RELEVANT INTERNATIONAL MATERIAL

Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“the CPT”) from 9 to 21 October 2005

34. The relevant extracts from the report read as follows:

“38. It appears from the information gathered during the 2005 visit that the prompt and accurate recording of a person’s detention (i.e. from the moment he/she is obliged to remain with the Internal Affairs staff) remains a considerable area of concern. The delegation’s findings revealed that, in many instances, periods of detention (from several hours up to one day) went unrecorded in the protocols of detention. At the same time, custody registers often contained incorrect data, and on occasion, misleading information. By way of illustration, the register of a district police station indicated that a person was detained there for two hours while it was subsequently established that the person in question was in fact held at the police station concerned for three days. Resolute action is required on the part of the Ukrainian authorities to put an end to this state of affairs.

The CPT recommends that steps be taken immediately to ensure that whenever a person is deprived of liberty by the Militia, for whatever reason, this fact is formally recorded without delay. Further, once a detained person has been placed in a cell, all instances of his/her subsequent removal from the cell should be recorded; that record should state the date and time the detained person is removed from the cell, the location to which he/she is taken and the officers responsible for taking him/her, the purpose for which he/she has been removed from the cell, and the date and time of his/her return.”

THE LAW

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

35. The applicant complained that his initial detention was unlawful, as it had not been conducted with necessary safeguards as to the documentation of the detention and the suspect’s rights.

36. Article 5 § 1 of the Convention provides, in so far 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

37. The Government maintained that in its judgment of 24 November 2004 the trial court had in fact recognised that the applicant’s right to liberty had been violated after stating that the term of imprisonment should be counted from 12 May 2004. Furthermore, given this statement of the trial court, the applicant could have claimed damages for the unlawful detention. He failed however to make use of this remedy. Therefore the Government submitted that the complaint was out of the Court’s competence *ratione personae* and, besides, that it was inadmissible for non-exhaustion of domestic remedies.

38. The applicant contended that the trial court order, that his prison sentence should be calculated as starting from 12 May 2004, had not been an acknowledgement of the alleged violation. Moreover, there had been no prospect of success in seeking damages for the allegedly unlawful detention, as under the domestic legislation then in force the right to claim damages inflicted by a body of inquiry or preliminary investigation arose only in limited cases, namely where the relevant proceedings were terminated on exonerative grounds or ended with acquittal.

39. The Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a “victim” for the purposes of Article 34 of the Convention, unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, a breach of the Convention (see, *inter alia*, *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI, and *Siliadin v. France*, no. 73316/01, § 62, ECHR 2005-VII).

40. It is true that the trial court ordered that the applicant’s prison sentence be calculated as starting from 12 May 2004. However, in doing so it did not make any assessment as to whether the applicant’s initial detention was lawful. In particular, the trial court did not examine whether the applicant’s arrest was documented and whether his procedural rights were ensured to him in due time. These issues constituted the substance of the applicant’s complaint under Article 5 § 1 of the Convention, but were not addressed by the trial court in any way. There has therefore been no acknowledgment of the alleged violation for the purpose of the Convention and the applicant can still claim to be a victim in this respect.

41. As to the alleged non-compliance with the rule of exhaustion of domestic remedies, the applicant’s arrest was carried out in the course of investigation of a criminal case and thus a claim for damages, if submitted,

would fall within the ambit of the Compensation Act. Under that Act, as worded at the relevant time, the applicant could claim compensation provided that the relevant criminal case was terminated on exonerative grounds or resulted in his acquittal. This, however, did not happen in the applicant's case. It follows that his claim for damages would have had no prospect of success.

42. The Court therefore rejects the Government's objections as to the admissibility of the present complaint. It notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

43. The applicant argued that his arrest order had been drawn up belatedly. For the first twenty-four hours his detention had not been documented and his rights had not been explained and provided to him. The overall period of his detention without judicial authorisation in fact exceeded seventy-two hours, which was contrary to domestic legislation.

44. The Government maintained that the applicant's complaint was unsubstantiated, referring essentially to their submissions as to the inadmissibility of the complaint.

45. The Court reiterates that the unacknowledged detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention, and discloses a most grave violation of that provision. Failure to make a record of such matters as the date, time and location of detention, the name of the detainee, the reasons for the detention and the name of the person carrying it out must be seen as incompatible with the requirement of lawfulness and with the very purpose of Article 5 of the Convention (see *Menesheva v. Russia*, no. 59261/00, § 87, ECHR 2006-III with further references).

46. In the present case the Government have not suggested that there were any records of the applicant's detention from the moment of his actual arrest (5 p.m. on 12 May 2004) to the moment when the arrest order was drawn up (5.10 p.m. on 13 May 2004). The fact that the trial court subsequently and implicitly admitted that the applicant was detained on 12 May 2004 is of little relevance. The principal issue of concern is that at the time of the impugned detention there were no appropriate custody records and the applicant's status as a suspect was formalised only the next day, with a twenty-four-hour delay. There is no evidence that until the morning of 13 May 2004 any of the procedural rights he could exercise at the relevant time had been explained to him. In these circumstances the applicant could not make effective use of a variety of procedural safeguards enshrined in the Convention and the domestic legislation. These

shortcomings eventually resulted, *inter alia*, in the applicant being detained without a court order longer than the seventy-two-hour time-limit, contrary to domestic-law requirements.

47. In this regard the Court cannot overlook the CPT's findings, which suggest that there is no established practice of keeping proper records of detentions by Ukrainian police (see paragraph 34). The Court considers that the failure of the police to document the applicant's detention in the present case stems from a lack of sufficient safeguards ensuring that any involuntary retention of a person by the authorities is recorded properly and in sufficient detail, these records are publicly available, the status of the person is formalised straight after he or she has been taken in by the authorities, and all the person's rights are immediately and clearly explained to him or her.

48. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's initial detention had not been lawful in the meaning of Article 5 § 1 (c) of the Convention. There has accordingly been a violation of that provision of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

49. The applicant complained of a violation of his right to a fair trial, claiming that from 12 to 13 May 2004 he was questioned without being explained of and provided with defence rights.

50. The relevant parts of Article 6 provide as follows:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...

"3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; ..."

Admissibility

1. The parties' submissions

51. The Government stated that there were no documents suggesting that the applicant was questioned on 12 May 2004. In their opinion the first questioning was conducted on 13 May 2004. It was carried out in the presence of the lawyer, chosen by the applicant. The Government pointed out that as the applicant was a minor the participation of a lawyer was

obligatory under the domestic law. A teacher was also present during the first questioning, thus providing an additional guarantee of the objectivity of the investigation. Before that questioning the applicant had had his rights explained to him in detail. The Government further submitted that the applicant had subsequently confirmed his initial self-incriminatory statements and his guilt had been well established by the other evidence available in the case file.

52. In reply, the applicant insisted that on 12 May 2004 he had been questioned without a lawyer and his rights of defence had not been explained and provided to him that day.

2. The Court's assessment

(a) As to the first interview

53. The Court reiterates that Article 6 § 1 requires that, as a rule, access to a lawyer should be provided from the first time a suspect is questioned by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right. Even where compelling reasons may exceptionally justify denial of access to a lawyer, such a restriction - whatever its justification - must not unduly prejudice the rights of the accused under Article 6. The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during questioning by police without access to a lawyer are used for a conviction (see *Salduz v. Turkey* [GC], no. 36391/02, § 55, 27 November 2008).

54. In the present case the first time the applicant had any communication with the police in relation to the incident was at his home in the presence of his mother. It appears that the police went to interview the applicant, as they did with others connected with the victim, trying to collect any information that could be useful for the investigation. There are no grounds to hold that when they visited the applicant's home the police had already decided that the applicant was a suspect. At the same time, it appears that the applicant volunteered his confession of his own motion and it was only after his confession that the police must have considered him a suspect. Moreover, the statements made by the applicant during that initial interview were not used by the courts for his conviction and there is no indication that his defence rights were unduly prejudiced on account of that interview in any other way.

55. Accordingly, the fact that the applicant confessed to police immediately at that initial interview does not suggest of itself that the applicant's rights under Article 6 were infringed.

(b) As to the delay in access to a lawyer and explanation of rights

56. The Court further observes that after the interview the applicant was taken as a suspect to the police station, and was provided with a lawyer the next morning. In this regard the Court notes that in the case of *Dayanan v. Turkey* (no. 7377/03, §§ 31-33, ECHR 2009-...) it found that it is problematic to deprive a pre-trial detainee of legal representation, even if during the relevant period he or she does not make any statements that are later used to convict him or her. However, in contrast to *Dayanan* case, there is no evidence that the applicant was questioned during the time at issue, or that any other investigative action had been carried out with his participation. Regard should also be had to the fact that the conclusions in *Dayanan* case were made in view of the legislative restrictions on access to a lawyer at that stage of the proceedings (see also, *mutatis mutandis*, *Hovanesian v. Bulgaria*, no. 31814/03, § 37, 21 December 2010 and *Zdravko Petrov v. Bulgaria*, no. 20024/04, § 47, 23 June 2011). No such legislative restrictions existed in the present case. Furthermore, under Article 45 of the Code of Criminal Procedure the presence of defence counsel for minor suspects was obligatory. Moreover, the case file does not suggest that the delay in the applicant's gaining access to a lawyer of his own choosing was caused by the authorities. To the extent that this delay might have been attributable to the authorities' failure to document the applicant's arrest, this issue has been addressed by the above finding of a violation of Article 5 § 1 (c) of the Convention.

57. It follows, therefore, that the absence of a lawyer until the morning of 13 May 2004 did not affect the applicant's rights under Article 6 of the Convention and the fairness of the proceedings against him.

58. The Court further observes that the applicant's rights were explained to him on the morning of 13 May 2004, before his first questioning as a suspect. However, the issue of delay in explaining his rights to him has been discussed under Article 5 § 1 of the Convention and does not require a separate examination.

© Conclusion

59. It follows that this part of the application is manifestly ill-founded and should be dismissed as inadmissible pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

60. The applicant complained under Article 3 of the Convention that he had been ill-treated by police officers after the arrest and that there had been no effective investigation in that respect. He further complained that the courts convicted him relying on the self-incriminatory statements obtained

from him by the investigating authorities through ill-treatment. Lastly, the applicant complained under Article 6 § 1 of the Convention, Articles 2 and 4 of Protocol No. 7 that the court had misinterpreted the facts and wrongly applied the law in his case.

61. 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.

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

IV. 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 applicant claimed 250,000 euros (EUR) in respect of non-pecuniary damage.

65. The Government considered that claim excessive and unsubstantiated.

66. The Court considers that the applicant must have suffered distress and anxiety on account of the violations found. Ruling on an equitable basis, as required by Article 41 of the Convention, it awards the applicant EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

67. The applicant did not submit any claim under this head. The Court therefore makes no award.

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

1. *Declares* unanimously the complaint under Article 5 § 1 (c) of the Convention admissible;
2. *Declares* by a majority the complaints under Article 6 relating to the lack of access to a lawyer at the initial stage of the proceedings inadmissible;
3. *Declares* unanimously the remainder of the application inadmissible;
4. *Holds* unanimously that there has been a violation of Article 5 § 1 (c) of the Convention;
5. *Holds* unanimously
 - (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 the 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;
6. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President