



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

FIFTH SECTION

CASE OF BELYAEV AND DIGTYAR v. UKRAINE

(Applications nos. 16984/04 and 9947/05)

JUDGMENT

STRASBOURG

16 February 2012

FINAL

16/05/2012

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

In the case of Belyaev and Digtyar v. Ukraine,

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

Dean Spielmann, *President*,

Elisabet Fura,

Karel Jungwiert,

Mark Villiger,

Ann Power-Forde,

Ganna Yudkivska,

André Potocki, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 24 January 2012,

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

PROCEDURE

1. The case originated in two applications (nos. 16984/04 and 9947/05) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Ukrainian nationals, Mr Mikhail Igorevich Belyaev (“the first applicant”) and Mr Aleksandr Vladimirovich Digtyar (“the second applicant”), on 20 April 2004 and 20 August 2004 respectively.

2. The applicants, who had been granted legal aid, were represented by Ms R. Ovchynnykova, a lawyer practising in Konotop. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev, succeeded by Ms V. Lutkovska.

3. The applicants alleged, in particular, that the conditions of their pre-trial detention had been incompatible with Article 3 of the Convention, their right to correspondence had not been respected, as required by Article 8 of the Convention, and that they had been hindered from freely communicating with the Court, contrary to Article 34 of the Convention.

4. On 12 January 2010 the Court declared the applications partly inadmissible and decided to communicate the above complaints to the Government. It also decided to rule on the admissibility and merits of the remaining parts of the applications at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1981 and 1979 respectively and are currently serving life sentences in prison.

A. Pre-trial detention of the applicants

6. The second applicant was held in Sumy no. 25 Pre-Trial Detention Centre (“the Sumy SIZO”) from 6 February 2001 to 28 August 2004, except for the period between 24 July 2002 and 12 August 2002 when he was moved to another detention facility.

7. The first applicant was held in the Sumy SIZO from 4 April 2002 to 28 August 2004 except for the period between 30 August 2003 and 17 September 2003 when he was moved to another detention facility.

8. On 28 August 2004 both applicants were moved to Romny no. 56 Prison (“Romny Prison”) to serve their life sentences.

1. The applicants’ correspondence during their pre-trial detention

9. On 29 January and 1 July 2003 and 27 January 2004 the second applicant attempted to send letters to the Court via the postal service of the Sumy SIZO.

10. On 26 November 2003 and 2 and 9 February 2004 the first applicant attempted to send letters to the Court via the postal service of the Sumy SIZO.

11. According to the applicants, these letters were read by the officials of the Sumy SIZO and not sent to the Court.

12. In the same way, the applicants tried to send letters to other international institutions, such as the Council of Europe Commissioner for Human Rights, the Office of the High Commissioner for Human Rights, the UN Human Rights Committee, the UN Commission on Human Rights, and the UN Committee Against Torture.

13. These letters were also allegedly screened by the officials of the Sumy SIZO and not sent to the addressees.

2. Conditions of the applicants’ pre-trial detention

14. According to the applicants, the conditions of their detention in the Sumy SIZO were unsatisfactory. The applicants were held together in various cells, each of them measuring 4.5 sq. m with the sanitary unit covering 1.2 sq. m of that space. The cells thus allowed only 3.3 sq. m of

living space for both applicants, which amounted to 1.65 sq. m per applicant.

15. The cells were dark, dirty, and cold in winter and hot in summer, which gave rise to various illnesses. For at least two years there was no hot water supply. No winter footwear was supplied, while the inmates were prohibited from wearing their own footwear. As a result, in winter the applicants could not benefit from their entitlement to daily open air physical exercise. Their bed linen consisted only of a sheet. The applicants were not provided with any medical assistance in respect of their heart conditions, while keeping and administering any medicine in the cell was forbidden.

16. The applicants complained to the domestic authorities on account of the physical conditions of their detention in the Sumy SIZO. In particular, on 16 January, 14 June and 25 July 2004 the relevant complaints were handed to the staff of the Sumy SIZO for onward dispatch to the domestic authorities.

17. According to the Government, the cells in which the applicants were detained measured 5 sq. m and were equipped with the requisite furniture. There was a window and a sanitary unit and washstand in each cell. The temperature was at least 18 degrees Celsius during winter. The water supply, lighting system and sanitation were appropriate. The showers were made available once per week. Detainees' clothes and bed linen were regularly changed. In support of their account of the facts, the Government submitted reports prepared in 2010 by the officials responsible for the maintenance of the facility.

18. As regards medical assistance, the Government submitted that during their detention in the Sumy SIZO, the first applicant was medically examined thirty-one times and the second applicant was examined forty-six times. The applicants were x-rayed regularly to identify any signs of lung diseases and provided with appropriate treatment. They were also assessed by psychiatrists. During his detention in the Sumy SIZO the second applicant was diagnosed with and treated for gastritis. The applicants made no complaints as to their health or the insufficiency of the medical assistance offered by the medical unit of the facility. In support of their statements the Government submitted copies of the applicants' medical records and a report of the governor of the Sumy SIZO concerning the regime of medical assistance provided to the detainees of that facility.

B. The second applicant's correspondence during his detention in Romny Prison

19. In the course of his detention in Romny Prison, the second applicant attempted to send a number of letters, addressed to, among others, the following addressees:

- (i) the national ombudsman (dated 20 December 2004 and 5 January and 14 February 2005);
- (ii) the Office of the General Prosecutor of Ukraine (dated 25 October 2004 and 14 February and 14 July 2005);
- (iii) the Coordination Committee of the President of Ukraine on Fighting Corruption and Organised Crime (dated 25 October 2004 and 4 January 2005);
- (iv) the European Court of Human Rights (dated 26 July 2005); and
- (v) the Council of Europe Commissioner for Human Rights (dated 26 July 2005).

According to the second applicant, these letters were read by officials of Romny Prison and returned to him.

C. Attempt to retract the application by the first applicant

20. By letter of 12 August 2009 the applicant informed the Court that he wished to terminate the consideration of his application, claiming that his debts owed to the victims of the crimes he had committed had been covered by the State.

21. By letter of 14 September 2009 the applicant informed the Court that the issue of his debts to the victims of the crimes had not been resolved by the State and he had been misled by the authorities when asking the Court to terminate the consideration of his application. He therefore asked the Court to disregard the letter of 12 August 2009 and insisted on the continuation of the proceedings.

II. RELEVANT DOMESTIC LAW

A. The Pre-Trial Detention Act of 30 June 1993 (as worded at the material time)

22. Section 13 of the Act provided, *inter alia*, for persons detained in custody to be able to correspond with relatives, other persons and legal entities upon the written consent of the authority in charge of the criminal case against the detainee concerned.

The officials of the detention centre were required to monitor all detainees' letters, except those addressed to the national ombudsman or a prosecutor.

If a letter was related to the criminal case against the detainee concerned, it had to be handed over within three days for consideration by the authority in charge of the detainee's criminal case. Letters containing information which might interfere with the administration of justice were not to be dispatched to the addressee but were to be handed over to the authority in

charge of the detainee's criminal case. The detainee and the prosecutor had to be informed of the interception made.

If a letter was not related to the detainee's criminal case, it had to be answered by the officials at the detention centre or sent on to the addressee.

B. Code on the Enforcement of Sentences of 11 July 2003 (as worded at the material time)

23. Article 113 of the Code provided, *inter alia*, that letters sent and received by prisoners would be monitored by prison officials. Letters addressed to the national ombudsman or a prosecutor would not be monitored.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

24. The applicants complained of the physical conditions of their detention and of a lack of appropriate medical assistance in the Sumy SIZO. They referred to 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

25. The Government submitted that the applicants had not exhausted domestic remedies in respect of their complaints under Article 3 of the Convention. In particular, they should have complained to a prosecutor and the courts on that account.

26. As to the alleged lack of medical assistance, the Government stated that the applicants had never complained of the inadequacy of their medical treatment to the medical staff of the facility. Moreover, the case file suggested that they had been regularly and appropriately examined by the medical staff and had been provided with any further medical assistance when necessary. They therefore considered that this aspect of the applicants' complaints was manifestly ill-founded.

27. The applicants claimed that they had sufficiently raised the matter before the authorities and that their complaints were well-founded.

2. *The Court's assessment*

28. With respect to the alleged lack of medical assistance, the Court notes that it does not appear that the applicants ever complained to the medical staff of the detention facility, asking for medical assistance. The applicants' assertion that their medical care was inappropriate is not supported by any factual information. At the same time, the materials submitted by the Government suggest that the applicants were medically examined on a regular basis and there is no indication of any failing on the part of the facility's medical unit which would give rise to an issue under Article 3 of the Convention (see also *Vergelskyy v. Ukraine*, no. 19312/06, §§ 89-91, 12 March 2009, and *Znaykin v. Ukraine*, no. 37538/05, § 41, 7 October 2010). The Court therefore rejects this aspect of the case as manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

29. The Court further notes that the applicants' complaints concerning the physical conditions of their detention in the Sumy SIZO refer to periods of their detention which were interrupted by their removal to another detention facility. The Court therefore considers that the period of the first applicant's detention prior to 17 September 2003 and the period of the second applicant's detention prior to 12 August 2002 fall outside the six-month time-limit within which an applicant is required to lodge a complaint (see, for example, *Malenko v. Ukraine*, no. 18660/03, § 40, 19 February 2009).

30. As to the Government's plea of non-exhaustion in respect of the physical conditions of the applicant's 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 v. Ukraine*, no. 72286/01, §§ 69-71, 28 March 2006; *Koktysh v. Ukraine*, no. 43707/07, § 86, 10 December 2009; and *Znaykin*, cited above, § 43).

31. In the present case, the Court considers that the matters raised by the applicants under this head are also of a structural nature. It observes that the authorities must have been sufficiently aware of the applicants' situation – especially given the fact that they raised those issues before them (see paragraph 16). Accordingly, the Court cannot reproach the applicants for having failed to use the domestic remedies suggested by the Government and dismisses their objection to this effect.

32. The Court further notes that the complaints concerning inappropriate physical conditions of detention are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It also notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

33. The applicants asserted that the physical conditions of their detention in the Sumy SIZO had been inadequate. They questioned the reports adduced by the Government to refute their allegations, pointing out that they had been prepared by the officials responsible for the maintenance of that facility.

34. The Government submitted that the physical conditions of the applicants' detention in that facility had been adequate. They relied on their account of the facts.

35. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. 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 *Visloguzov v. Ukraine*, no. 32362/02, §§ 56 and 57, 20 May 2010, with further references).

36. Where the respondent Government alone have access to information capable of firmly corroborating or refuting allegations under Article 3 of the Convention, a failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-founded nature of the applicant's allegations (see *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004). In such cases the Court focuses its analysis on the facts presented to it which the respondent Government have either admitted or failed to refute, without establishing the veracity of each and every allegation.

37. In the present case, the applicants claimed that they were held in cells measuring 4.5 sq. m where the sanitary unit covered 1.2 sq. m. There had therefore been only 3.3 sq. m of general living space or 1.65 sq. m of living space per applicant. The Government submitted that the applicants had been held in cells measuring 5 sq. m, without specifying whether the applicants had been held in those cells individually or together. In the absence of more precise submissions from the Government, the Court is inclined to give weight to the applicants' explanations of this matter and concludes that, even assuming that the cells measured 5 sq. m, as contended by the Government, the living space, reduced by a sanitary unit, was too little per applicant to comply with the standards recognised by the Court

(see, for example, *Kalashnikov v. Russia*, no. 47095/99, § 97, ECHR 2002-VI, and *Melnik*, cited above, § 47, 28 March 2006).

38. The Court further notes that the reports outlining the other physical conditions of the applicants' detention adduced by the Government were prepared by the officials responsible for the maintenance of the detention facility in question and thus might not have objectively reflected the actual state of affairs in that facility. Moreover, those reports were prepared in 2010, while the period complained of dates back to 2002 – 2004. The Court therefore cannot exclude that the applicants' contentions as to the inadequacy of lighting, heating and water supply systems, insufficient provisions of clothes and bed linen and inappropriate sanitary conditions were based on the real circumstances of their detention. These submissions are consistent with the similar numerous cases concerning conditions of detention in Ukrainian pre-trial detention facilities (see, for example, *Nevmerzhitsky v. Ukraine*, no. 54825/00, §§ 86-88, ECHR 2005-II (extracts); *Dvoynikh v. Ukraine*, no. 72277/01, §§ 64-69, 12 October 2006; *Yakovenko v. Ukraine*, no. 15825/06, §§ 84-89, 25 October 2007; *Malenko*, cited above, § 52; *Koktysh*, cited above, § 98-100; *Visloguzov*, cited above, §§ 58-61; *Pokhlebin v. Ukraine*, no. 35581/06, §§ 48-52, 20 May 2010; and *Znaykin*, cited above, §§ 49-53).

39. In sum, the Court, having regard to the above considerations and also taking into account its extensive case-law on the matter, finds that the applicants' detention in the Sumy SIZO amounted to degrading treatment in breach of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 8 AND 34 OF THE CONVENTION

40. The applicants complained that the officials of the Sumy SIZO had monitored their letters to various international institutions, including the Court, and had refused to send them on to the addressees. The second applicant also complained that the staff of the Romny Prison had interfered with his right to correspondence in a similar way. The applicants relied on Articles 8, 10, and 34 of the Convention.

41. The Court has decided to examine these issues under Articles 8 and 34 of the Convention, which provide as follows:

Article 8 (right to respect for private and family life)

“1. Everyone has the right to respect for his private and 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.”

Article 34 (individual applications)

“The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

A. Article 8 of the Convention

1. Admissibility

42. The Government claimed that the applicants should have complained to a prosecutor and the courts on account of the alleged violations of their right to correspondence. The Government further argued that the replies received by the applicants suggested that their letters had been duly sent to the addressees.

43. The applicants disagreed and claimed that the remedies referred to by the Government had not been effective.

44. As regards the pre-trial detention, the Court notes that the applicants complained of the monitoring of their correspondence addressed to various international institutions, including the Court. At the relevant time, domestic law did not make any exceptions as regards the monitoring of this type of correspondence (see paragraph 22). Accordingly, the remedies in question would not have given any prospect of success (see, *Sergey Volosyuk v. Ukraine*, no. 1291/03, §§ 75 and 76, 12 March 2009).

45. As regards the post-conviction detention, the monitoring of the second applicant’s letters, except for the letters addressed to a prosecutor or the national ombudsman, was carried out on the basis of the Code on the Enforcement of Sentences (see paragraph 23). Accordingly, in as much as the screening measures were based on the provisions of the Code, there was no prospect of success in using remedies cited by the Government. As to the alleged monitoring of letters addressed to prosecutors or the national ombudsman, these measures were contrary to domestic law. However, at the relevant time (the period between December 2004 and July 2005) the Code of Administrative Justice, providing a *prima facie* effective remedy for such allegations, was not yet applicable (see, by contrast, *Chaykovskiy v. Ukraine*, no. 2295/06, §§ 44-45 and 72-75, 15 October 2009) and it has not been clarified by the Government what kind of court action should have been brought by the second applicant. Moreover, the Government have not adduced any examples of domestic practice suggesting that the remedies

they referred to were not purely theoretical but practical and effective and offered appropriate redress.

46. In view of the above, the Court rejects the Government's objections as to the exhaustion of domestic remedies.

47. It further notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. They are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

(a) The parties' submissions

48. The applicants claimed that the interference with their right to correspondence had not been lawful and justified.

49. The Government submitted that the monitoring of the applicants' letters had been in accordance with the law and had pursued the legitimate aim of preventing escape from and disorder in detention facilities. They further submitted that the interference had been necessary in a democratic society to achieve those aims. They contested the applicants' submissions that some of their letters had not been sent on to the addressees.

(b) The Court's assessment

(i) The applicants' correspondence during the pre-trial detention

50. The Court notes that it has examined a similar complaint of monitoring of correspondence during pre-trial detention and found a violation of Article 8 of the Convention for the reason that domestic law on that matter did not comply with the quality of law standard (see *Sergey Volosyuk*, cited above, §§ 84-86). The Court finds no reason to depart from this jurisprudence. It further notes that the lack of sufficient safeguards in this field might have resulted in arbitrary refusals to send on some of the applicants' letters, as contended by them.

51. The Court therefore finds that there has been a violation of Article 8 of the Convention in respect of the two applicants as regards their right to correspondence during their pre-trial detention.

(ii) The second applicant's correspondence during the post-conviction detention

52. The second applicant also complained of interference with his right to correspondence during his post-conviction detention.

53. In this respect the Court, having regard to its relevant case law (see, for example, *Enea v. Italy* [GC], no. 74912/01, § 143, ECHR 2009 and *Onoufriou v. Cyprus*, no. 24407/04, §§ 109 - 114, 7 January 2010, with further references), notes that under the legislation on post-conviction

detention, as applicable at the relevant time, prison officers monitored all letters sent by prisoners with the exception of letters to the national ombudsman or a prosecutor (see paragraph 23). The legislation did not draw any further distinctions between the different categories of persons with whom detainees could correspond, such as, for example, law-enforcement and other domestic authorities, Convention and other international bodies, relatives, legal counsel, and so on. It did not elaborate on the manner of the exercise of the screening measures. In particular, it did not envisage any participation by or involvement of prisoners at any stage of the monitoring process. Nor did it specify whether the detainee was entitled to be informed of any alterations to the contents of his or her outgoing correspondence. Moreover, the monitoring was automatic, without any time-limits and did not require any reasoned decision giving grounds for the screening measures and/or setting a time frame for it. Lastly, there was no specific remedy enabling the detainee to contest the measure and to obtain adequate redress.

54. The Court therefore concludes that the applicable domestic law did not offer an appropriate degree of protection against arbitrary interference with a prisoner's right to respect for his correspondence. It follows that the interference complained of was not "in accordance with the law".

55. In the absence of the above-mentioned basic safeguards protecting the right to correspondence, the Court would not exclude that the second applicant might have encountered arbitrary refusals by the prison authorities to send on his letters, as contended by him.

56. The foregoing considerations are sufficient for the Court to conclude that there has been a violation of Article 8 of the Convention in respect of the second applicant as regards his right to correspondence during his post-conviction detention.

B. Article 34 of the Convention

57. The applicants also complained that the interference with their rights to correspondence, as discussed above, had also impaired their right of communication with the Court and had been contrary to Article 34 of the Convention.

58. The Government contended that the applicants had not been hindered in their communication with the Court.

59. The Court reiterates that a complaint under Article 34 of the Convention is of a procedural nature and does not give rise to any issue of admissibility under the Convention (see *Cooke v. Austria*, no. 25878/94, § 46, 8 February 2000, and *Ergi v. Turkey*, 28 July 1998, § 105, *Reports of Judgments and Decisions* 1998-IV).

60. The Court further reiterates that it is of the utmost importance for the effective operation of the system of individual petition, guaranteed by Article 34 of the Convention, that applicants or potential applicants should

be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. In this context, “pressure” includes not only direct coercion and flagrant acts of intimidation, but also other improper indirect acts or contacts designed to dissuade or discourage applicants from pursuing a Convention complaint (see *Visloguzov*, cited above, § 105).

61. The Court has paid specific attention to the issue of the effective exercise of the right of application by detainees. It has held that detainees are in a particularly vulnerable position, as they are dependent in their communication with the Court and the rest of the outside world on the prison administration (see, for example, *Cotlet v. Romania*, no. 38565/97, § 71, 3 June 2003). It has emphasised the importance of respecting the confidentiality of the Court’s correspondence with applicants, since it may concern allegations against prison authorities or prison officials. The opening of letters from the Court or addressed to it undoubtedly gives rise to the possibility that they will be read and may conceivably, on occasion, also create the risk of reprisals by prison staff against the prisoner concerned (see *Klyakhin v. Russia*, no. 46082/99, § 118, 30 November 2004; *Mechenkov v. Russia*, no. 35421/05, § 123, 7 February 2008; and *Ponushkov v. Russia*, no. 30209/04, § 80, 6 November 2008).

62. Turning to the present case, the Court notes that under the legislation in force at the relevant time the applicants’ correspondence with the Court was subject to monitoring by the officials of the Sumy SIZO and Romny Prison. The Court considers that the routine monitoring of all of a prisoner’s correspondence with the Court is in itself incompatible with the principles enshrined in Article 34 of the Convention, as it implies the absence of any confidentiality of such communication and the risk of various forms of direct or indirect influence on the prisoner impairing his opportunities to communicate with the Court.

63. In these circumstances, the Court concludes that Ukraine has failed to comply with its obligations under Article 34 of the Convention as regards the monitoring of the applicants’ correspondence with the Court by the authorities.

III. INSTIGATION BY THE AUTHORITIES OF THE RETRACTION OF THE APPLICATION BY THE FIRST APPLICANT

64. The first applicant further complained under Article 34 of the Convention that his attempt on 12 August 2009 to retract his application from the Court had been instigated by the domestic authorities.

65. The Government contended that the first applicant’s statement of 12 August 2009 of his wish to terminate the proceedings and his subsequent letter of 14 September 2009 asking the Court to ignore that statement had rather been the result of a misunderstanding by the applicant of relevant

domestic and international procedures, for which the applicant had himself been responsible. There was no evidence which could suggest that the authorities had instigated the withdrawal of the application by the first applicant.

66. The Court notes that within a short period of time the first applicant sought the termination of the proceedings before the Court and thereafter insisted on the continuation of the proceedings, asking the Court to disregard his previous letter. The first applicant gave little detail when explaining the first and second actions and did not elaborate on this matter in his further submissions. Nor did he pursue this issue when it was specifically addressed by the Court in the course of communication of the case to the parties. The Court, for its part, does not find any evidence of pressure whatsoever which might have been possibly exerted on the first applicant, contrary to Article 34 of the Convention, when he wrote the letter of 12 August 2009.

67. Accordingly, the Court holds that the State authorities have not failed to comply with their obligations under Article 34 of the Convention with respect to this complaint.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. 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

69. Each applicant claimed 7,000 euros (EUR) in respect of non-pecuniary damage.

70. The Government considered those claims unsubstantiated and excessive.

71. The Court considers that the applicants 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 grants the applicants' claims in full and awards EUR 7,000 each applicant.

B. Costs and expenses

72. The applicants did not submit any claims under this head. The Court therefore makes no award.

C. Default interest

73. The Court considers it appropriate that the default interest rate 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* admissible the following complaints:
 - (a) the complaint of the first applicant under Article 3 of the Convention concerning the physical conditions of his detention in the period between 17 September 2003 and 28 August 2004;
 - (b) the complaint of the second applicant under Article 3 of the Convention concerning the physical conditions of his detention in the period between 12 August 2002 and 28 August 2004; and
 - (c) the complaints of both applicants under Article 8 of the Convention;
2. *Declares* the remainder of the applications inadmissible;
3. *Holds* that there has been a violation of Article 3 of the Convention in respect of both applicants;
4. *Holds* that there has been a violation of Article 8 of the Convention in respect of both applicants as regards their right to correspondence during their pre-trial detention;
5. *Holds* that there has been a violation of Article 8 of the Convention in respect of the second applicant as regards his right to correspondence during his post-conviction detention;
6. *Holds* that Ukraine has failed to comply with its obligations under Article 34 of the Convention as regards the monitoring of the applicants' correspondence with the Court by the domestic authorities;
7. *Holds* that Ukraine has not failed to comply with its obligations under Article 34 of the Convention as regards the alleged instigation by the authorities of the retraction of the first applicant's application;
8. *Holds*
 - (a) that the respondent State is to pay each applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,000 (seven 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 at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 16 February 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President