



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

FIFTH SECTION

CASE OF TROSIN v. UKRAINE

(Application no. 39758/05)

JUDGMENT

STRASBOURG

23 February 2012

FINAL

23/05/2012

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

In the case of Trosin 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 17 January 2012,

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

PROCEDURE

1. The case originated in an application (no. 39758/05) 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 Oleg Anatolyevich Trosin (“the applicant”), on 25 October 2005.

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

3. The applicant alleged, in particular, that restrictions on family visits during his post-conviction detention had been disproportionate and that the prison authorities had monitored his correspondence with the Court.

4. On 16 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 1968 and is currently serving a life sentence in prison.

A. Criminal proceedings against the applicant and related issues

6. On 26 August 2004 the applicant was arrested on suspicion of murder.

7. On 28 August 2004 the Prymorsky District Court of Odessa (“the District Court”) ordered the applicant to be placed in pre-trial detention for two months. The applicant was placed in the Odessa no. 21 Pre-Trial Detention Centre (“the Odessa SIZO”).

8. On 20 October and 17 November 2004 the District Court extended the applicant’s pre-trial detention to three and four months respectively.

9. On 24 December 2004 and 26 January 2005 the Odessa Regional Court of Appeal (“the Court of Appeal”) extended the applicant’s pre-trial detention to five and six months respectively.

10. The applicant was not present at those hearings and he was allegedly not given the investigator’s submissions so that he could prepare his objections.

11. According to the applicant, in the course of investigation he was ill-treated, with the purpose of making him confess to the murder.

12. On 24 February 2005 the case was referred to the Court of Appeal for trial.

13. On 29 April 2005 the Court of Appeal, acting as a court of first instance, found, *inter alia*, that the applicant and two co-defendants had committed murder with particular cruelty and for financial gain. The court sentenced the applicant to life imprisonment. The judgment was based on various pieces of evidence including an acknowledgment of guilt by the applicant and other defendants during the trial.

14. After the hearing the applicant was handcuffed and escorted to the high security wing of the Odessa SIZO.

15. On 4 October 2005 the Supreme Court upheld the judgment of 29 April 2005, following which it was made final. For the period of consideration of the case by the Supreme Court the applicant was detained in Kyiv no. 13 Pre-Trial Detention Centre, where he was allegedly not provided with sufficient facilities, such as a table and chair, to prepare his defence.

B. Post-conviction applications by the applicant

16. Following the Supreme Court’s decision of 4 October 2005 the applicant repeatedly submitted applications to have his case reviewed on grounds of exceptional circumstances. He also asked the authorities to provide him with a lawyer to assist him with the preparation of these applications. All his applications were rejected as unsubstantiated; a lawyer was not provided because the criminal proceedings were already finished.

17. On several occasions the applicant requested copies of certain material from his criminal case file. The requests were granted, but with delays.

18. In 2008 the applicant instituted three separate sets of court proceedings against, respectively, the judge who had presided over his criminal case before the first-instance court, the Supreme Court chamber on criminal cases, and the General Prosecutor, claiming that he had been unfairly convicted and that his applications for review of his case on grounds of exceptional circumstances had been arbitrarily rejected. All these proceedings are pending.

C. Family visits and correspondence during detention

19. According to the applicant, he was not allowed family visits during his pre-trial detention.

20. During his post-conviction detention until 16 February 2010 the applicant was allowed to see his relatives no more than once every six months. Subsequently, he was granted family visits once every three months.

21. The visits lasted no longer than four hours. No more than three adult visitors could be present at once. The applicant maintains relations with his wife, mother, adult brother, and his son born in 1992.

22. In February 2010, upon arrival for the visit, one of his four relatives was not admitted to see the applicant because of the limitation on the maximum number of adults per visit. Since then, one person out of the four has had to be excluded when planning a visit to the applicant.

23. During the meetings the applicant communicated with the visitors via glass partition. The applicant's conversations with the visitors were listened to by a prison officer.

24. On 1 February 2006 the applicant sent a letter to the Court, the first page of which had been stamped by the detention facility.

25. Up to October 2006 the applicant's letters to the Court were accompanied by covering letters from the detention facility briefly stating the nature of the applicant's submissions.

II. RELEVANT DOMESTIC LAW

A. Enforcement of Sentences Code of 11 July 2003 as worded at the relevant time

26. In accordance with Articles 110 and 151 of the Code, short visits from relatives and other persons may last no longer than four hours. Such meetings must be held in the presence of a prison officer. Until the

amendment of 21 January 2010 (which came into effect on 16 February 2010), life prisoners were entitled to short visits from their relatives and other persons once every six months. Since that amendment, life prisoners have been entitled to such visits once every three months.

27. Article 113 of the Code, following amendments made to it on 1 December 2005, stipulated that prisoners' correspondence was to be subject to automatic monitoring by the prison staff except for proposals, applications and complaints addressed to the National Ombudsman, the European Court of Human Rights, other relevant international organisations of which Ukraine is a member or participant, authorised persons of those international organisations, or prosecution authorities.

B. Code of Administrative Justice of 6 July 2005 (in force from 1 September 2005)

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

Article 2. Role of the administrative justice system

“1. The role of the administrative justice system shall be the protection of the rights, freedoms and interests of physical persons, and the rights and interests of legal entities in the field of public-law relations, from violations by public authorities ...

2. Any decisions, actions or inaction on the part of public authorities may be appealed against to administrative courts, except for cases in which the Constitution and laws of Ukraine provide for a different procedure of judicial appeal against such decisions, actions or inactivity ...

3. In cases where the decisions, acts or inactivity of a public authority are being challenged, the courts shall review whether [the impugned decisions and acts] have been adopted or taken:

...

6) reasonably;

...

8) proportionately, in particular, by ensuring a necessary balance between any possible unfavourable outcome for an individual's rights, freedoms and interests and the aims the impugned decision or action seeks to achieve;

...”

Article 8. The rule of law

“1. When considering a case, a court shall be governed by the principle of the rule of law, which provides, in particular, that a human being and his or her rights and

freedoms shall be the highest social value and shall determine the essence and orientation of the activity of the State.

2. A court shall apply the principle of the rule of law by taking into account the case-law of the European Court of Human Rights. ...”

Article 17. Jurisdiction of administrative courts in deciding administrative cases

“1. The jurisdiction of the administrative courts shall cover legal relationships arising in the course of the exercise of public administrative powers by ... public authorities and [legal relationships arising] in the course of the public formation of a ... public authority by way of an election or referendum.

2. The jurisdiction of the administrative courts shall cover public-law disputes, in particular:

1) disputes between physical persons or legal entities and ... public authorities concerning the decisions of the latter (normative legal acts or legal acts of individual effect), or their actions or inactivity; ...”

C. Internal Rules for Establishments Enforcing Sentences approved by the Order of the State Department for the Enforcement of Sentences of 25 December 2003 (“the Prison Rules”)

29. In accordance with paragraph 47 of the above-mentioned rules, prisoners are entitled to visits from no more than three adults at once, who may also be accompanied by the prisoner’s under-age children.

Annex 17 of the Prison Rules provides for two options of equipping a room for short meetings between prisoners and visitors. According to the first option the meeting room is to be equipped with tables along the room separated by free space of 120 centimetres in width. The chairs for visitors are not to exceed ten items; stools for the prisoners are to be fixed to the floor.

According to the second option, a meeting room is to be equipped with booths 80 centimetres in width and 100 centimetres in length. One or two booths are to be of 140 centimetres to accommodate two visitors or visitors with children coming to see the same prisoner. The visitors’ booths and the prisoners’ booths are to be separated by glass partitions. The booths are to be equipped with a loudspeaker and a telephone handset. The table of the supervising officer is to be equipped with a device for listening to the conversations in the booths.

On 31 December 2003 the Ministry of Justice, having reviewed the lawfulness of the Prison Rules, included them in the unified register of normative legal acts.

III. RELEVANT INTERNATIONAL MATERIAL

A. Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, adopted on 11 January 2006

30. The relevant extract from the Recommendation read as follows:

“Part II Conditions of imprisonment

Contact with the outside world

24.1. Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons.

24.2. Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact.

24.3. National law shall specify national and international bodies and officials with whom communication by prisoners shall not be restricted.

24.4. The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible.

24.5. Prison authorities shall assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so. ”

B. 11th General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“the CPT”) of 3 September 2001 [CPT/Inf (2001) 16]

31. The relevant extract from the Report read as follows:

“33. In many European countries the number of life-sentenced and other long-term prisoners is on the increase. During some of its visits, the CPT has found that the situation of such prisoners left much to be desired in terms of material conditions, activities and possibilities for human contact. Further, many such prisoners were subject to special restrictions likely to exacerbate the deleterious effects inherent in long-term imprisonment; examples of such restrictions are permanent separation from the rest of the prison population, handcuffing whenever the prisoner is taken out of his cell, prohibition of communication with other prisoners, and limited visit entitlements. The CPT can see no justification for indiscriminately applying restrictions to all prisoners subject to a specific type of sentence, without giving due consideration to the individual risk they may (or may not) present.

Long-term imprisonment can have a number of desocialising effects upon inmates. In addition to becoming institutionalised, long-term prisoners may experience a range of psychological problems (including loss of self-esteem and impairment of social skills) and have a tendency to become increasingly detached from society; to which almost all of them will eventually return. In the view of the CPT, the regimes which are offered to prisoners serving long sentences should seek to compensate for these effects in a positive and proactive way.

The prisoners concerned should have access to a wide range of purposeful activities of a varied nature (work, preferably with vocational value; education; sport; recreation/association). Moreover, they should be able to exercise a degree of choice over the manner in which their time is spent, thus fostering a sense of autonomy and personal responsibility. Additional steps should be taken to lend meaning to their period of imprisonment; in particular, the provision of individualised custody plans and appropriate psycho-social support are important elements in assisting such prisoners to come to terms with their period of incarceration and, when the time comes, to prepare for release. Further, the negative effects of institutionalisation upon prisoners serving long sentences will be less pronounced, and they will be better equipped for release, if they are able effectively to maintain contact with the outside world.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

32. The applicant complained that during his post-conviction detention he had been allowed family visits only once every six months lasting a maximum of four hours, with no more than three adult visitors at once. He relied on Article 8 of the Convention which reads as follows:

“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.”

A. Admissibility

33. The Government submitted that the applicant had not exhausted domestic remedies as he had not challenged before the administrative courts the lawfulness of the Prison Rules imposing restrictions on family visits for prisoners.

34. The applicant claimed that this remedy was not effective as it would have taken too much time.

35. The Court notes that the applicant's complaint concerns several types of restriction on his contacts with his family. Inasmuch as the restrictions were imposed by the Enforcement of Sentences Code (frequency and length of the visits), a challenge against the Prison Rules would not address the measures in question. As regards the specific restrictions imposed by the Prison Rules which were not expressly mentioned in the Enforcement of Sentences Code (the number of persons allowed to be present simultaneously during prison visits and the manner of permitted communication), those were further restrictions aimed at organising the family visits from the practical point of view. The Prison Rules were adopted by the State Department for the Enforcement of Sentences, which was acting within its discretionary powers, and their lawfulness was reviewed by the Ministry of Justice (see paragraph 29). Having reviewed the Prison Rules, the Ministry of Justice concluded that the restrictions introduced thereby were not in conflict with any superior provisions of domestic law. It is true that the administrative courts are generally empowered to review the proportionality of an act complained of (Articles 2 and 17 of the Code of Administrative Justice) and they are governed by the principle of the rule of law as interpreted by the Court (Article 8 of the Code of Administrative Justice). Still, these powers have not been sufficiently tested in cases where the administrative courts are expected to assess the proportionality (and not the legality) of a normative act which has been adopted within the discretionary powers of a regulatory body. The Government have not supplied any comparable examples from the domestic jurisprudence suggesting that a prisoner would have any prospect of success in challenging the proportionality of secondary legislation adopted within a regulatory body's discretionary power which did not conflict with any superior law (as earlier established by the Ministry of Justice), and that such a judicial action would offer appropriate individual redress.

36. The Court therefore dismisses the Government's objection as to non-exhaustion of domestic remedies. It notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that the complaint is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

37. The applicant submitted that the restrictions on family visits as to their frequency, length and the number of persons allowed at a time had

been excessive. The amendments of 16 January 2010 to the Enforcement of Sentences Code, changing the frequency of family visits from six months to three months, did not resolve the issue. Moreover, there had been no privacy as the visits had been observed by a prison officer, and communication had been possible only by telephone and through a glass partition.

38. The Government admitted that there had been an interference with the applicant's right to respect for his family life. However, that interference had been lawful and pursued the legitimate aim of ensuring security and safety in prison and preventing crimes. After the amendments of 16 January 2010 to the Enforcement of Sentences Code, the applicant was entitled to one family visit per three months. Given that the applicant had been sentenced to life imprisonment, the restrictions were justified. Moreover, the limited number of persons allowed to visit a detainee at one time had been further justified by the limited capacity of the meeting rooms and booths.

2. The Court's assessment

39. The Court reiterates that detention or any other measure depriving a person of his liberty entails inherent limitations on his private and family life. However, it is an essential part of a detainee's right to respect for family life that the authorities enable him or, if need be, assist him, in maintaining contact with his close family. Such restrictions as limitations imposed on the number of family visits, supervision over those visits and, if so justified by the nature of the offence, subjection of a detainee to a special prison regime or special visit arrangements constitute an interference with his rights under Article 8 but are not, by themselves, in breach of that provision. Nevertheless, any restriction of that kind must be applied "in accordance with the law", must pursue one or more of the legitimate aims listed in paragraph 2 and, in addition, must be justified as being "necessary in a democratic society" (see *Moiseyev v. Russia*, no. 62936/00, § 246, 9 October 2008).

40. In the present case the applicant complained of the following restrictions on family visits as established by domestic law: (a) the frequency and length of the visits; (b) the number of persons allowed to be present at one visit; (c) the manner of conducting the visits. The Court notes that those restrictions constituted an interference with the applicant's right to respect for family life. It further accepts that the interference was lawful as it was based on the relevant provisions of the Enforcement of Sentences Code and the Prison Rules (see paragraphs 26 and 29 above). The interference also pursued "a legitimate aim" within the meaning of paragraph 2 of Article 8 of the Convention, that of preventing disorder or crime. It remains to be determined whether it was "necessary in a democratic society".

41. In this regard the Court notes that until 16 February 2010 the applicant was entitled under the domestic law to one meeting with his

family every six months. After that date he was allowed one visit per three months. The visits could last no longer than four hours.

42. The Court notes that no issue arose under the Convention where a detainee was restricted to not more than two family visits per month by the provisional application of a special regime. However, in that case the domestic authorities and the Court paid regard to particular and specific considerations underpinning such restrictions (see *Messina v. Italy* (no. 2), no. 25498/94, §§ 62-74, ECHR 2000-X). Meanwhile, in the present case the relevant provisions of domestic law introduced automatic restrictions on frequency and length of visits for all life prisoners and did not offer any degree of flexibility for determining whether such severe limitations were appropriate or indeed necessary in each individual case even though they were applied to prisoners sentenced to the highest penalty under the criminal law. The Court considers that regulation of such issues may not amount to inflexible restrictions and the States are expected to develop their proportionality assessment technique enabling the authorities to balance the competing individual and public interests and to take into account peculiarities of each individual case (see, *mutatis mutandis*, *Dickson v. the United Kingdom* [GC], no. 44362/04, §§ 82-85, ECHR 2007-V).

43. Making its own assessment of the individual situation at hand, the Court does not discern any particular and specific circumstances which would point to a necessity to limit the applicant's meetings with his family to once every six months for a period of more than four years. In the context of quantitative assessment, the Court also notes that those rare visits were further limited by their short duration.

44. The Court further notes that the amendment to the legislation of 21 January 2010 (see paragraph 26 above) has improved the situation with the frequency of family visits to life prisoners. However, the new frequency of the family visits is still automatically applied to all life prisoners without involving the assessment of the necessity of such restriction in the light of particular circumstances of each prisoner.

45. Furthermore, under the applicable domestic rules, the applicant could see only three adults per visit, even though he was maintaining contact with four members of the family: his mother, wife, brother and son born in 1992. The restriction meant that after the applicant's son reached the full age (in 2010) one member of the family had to be excluded from the meeting given the maximum number of adult visitors allowed to see the applicant at one time. Justifying this unalterable limitation, the Government made reference to practical issues, such as space in the meeting rooms and booths. This reasoning, however, may suggest that the authorities, relying on the inflexible restrictions, did not wish to make any attempts to resolve the issue of limited space.

46. Lastly, the Court notes that the visits were held in the presence of a prison officer who listened to the conversations. The applicant was

separated from the visitors by a glass partition. Accordingly, the manner of conducting the family visits, which was also rigidly regulated by law without any individualisation procedures, did not allow any privacy and excluded any physical contact between the applicant and his visitors. The manner in which the meetings were held affected different aspects of the applicant's family life in so far as different types of relations between the applicant and each visitor were involved. Moreover, the presence of the prison officer affected the intimacy of the applicant's communication with the family members. The Court does not find any evidence to show that such far-reaching restrictions were necessary in the applicant's case.

47. The Court therefore considers that the State did not take the necessary measures to ensure that the applicant's private interest in meeting with his family was properly balanced against the relevant public interest in restricting prisoners' contact with the outside world. It further holds that the restrictions complained of were not justified as regards the frequency and length of the family visits, the number of persons admitted per visit, and the manner of conducting these visits. For the above reasons there has been a violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

48. The applicant complained that the prison authorities reviewed his letters to the Court and this put him at real risk of being subjected to psychological pressure and ill-treatment by prison staff with the aim of making him retract his application.

49. The Court decided to examine the matter under Article 34 of the Convention, which provides as follows:

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."

50. The Government contended that the applicant's correspondence had not been monitored by the officers of the detention facility. The applicant's submissions had been received from the applicant in closed envelopes and sent on to the Court.

51. The applicant contested the Government's submissions and insisted that his letters to the Court were reviewed by the prison officers.

52. 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, *Reports of Judgments and Decisions* 1998-IV, § 105).

53. 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 v. Ukraine*, no. 32362/02, § 105, 20 May 2010).

54. 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 the 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).

55. In the present case the parties disagreed as to whether the prison officers reviewed the applicant’s letters addressed to the Court. In this regard the Court notes that the first page of one of the applicant’s letters to the Court had been stamped by the detention facility. Moreover, up to October 2006 the applicant’s submissions to the Court were accompanied by covering letters from the detention facility briefly summarising the nature of the correspondence dispatched. These facts suggest that at least part of the applicant’s communication with the Court was subject to monitoring by the officers of the detention facility. Given that in his letters to the Court the applicant raised issues concerning his ongoing imprisonment in that facility, his fears as to possible negative repercussions on account of the application to the Court do not appear to be devoid of any foundation. In sum, the circumstances of the case do not suggest that the applicant’s right to free and confidential communication with the Court was ensured by the authorities.

56. For these reasons the Court concludes that Ukraine has failed to comply with its obligations under Article 34 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

57. The applicant further complained of other violations, referring to Articles 3, 5, 6, 7, 8, 10, 13, 14, 17 and 34 of the Convention.

58. The Court has examined those complaints and considers that, in the light of all the material in its possession and 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 or its Protocols. Accordingly, the Court rejects them as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The applicant claimed 10,000 euros (EUR) in respect of pecuniary damage. He also claimed compensation for non-pecuniary damage, leaving the matter of the exact amount to the discretion of the Court.

61. The Government submitted that the claims were unsubstantiated.

62. The Court notes that the pecuniary damage alleged is unsubstantiated; it therefore rejects this claim. On the other hand, it considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

64. 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* the complaints concerning the restrictions on family visits during the applicant's post-conviction detention and the monitoring of the applicant's letters to the Court by the authorities admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 8 of the Convention as regards the restrictions on family visits during the applicant's post-conviction detention;
3. *Holds* that Ukraine has failed to comply with its obligations under Article 34 of the Convention as regards the monitoring of the applicant's correspondence with the Court by the domestic authorities;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five 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.
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 February 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President