



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

FIFTH SECTION

CASE OF YEROKHINA v. UKRAINE

(Application no. 12167/04)

JUDGMENT

STRASBOURG

15 November 2012

FINAL

15/02/2013

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

In the case of Yerokhina v. Ukraine,

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

Dean Spielmann, *President*,

Mark Villiger,

Karel Jungwiert,

Boštjan M. Zupančič,

Angelika Nußberger,

Paul Lemmens, *judges*,

Stanislav Shevchuk, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 16 October 2012,

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

PROCEDURE

1. The case originated in an application (no. 12167/04) 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, Mrs Elena Vyacheslavovna Yerokhina (“the applicant”), on 10 March 2004.

2. The applicant was represented by Mr G.M. Avramenko, a lawyer practising in Chernihiv. The Ukrainian Government (“the Government”) were represented by their Agent, Mr N. Kulchytskyy.

3. The applicant alleged, in particular, that she had been subjected to psychological ill-treatment and that there had been no effective investigation in that respect. The applicant further complained of violations of the right to have a lawyer and of the right to a fair trial.

4. On 12 January 2010 the application was communicated to the Government. Mrs G. Yudkivska, the judge elected in respect of Ukraine, was unable to sit in the case (Rule 28 of the Rules of Court). The President of the Chamber decided to appoint Mr Stanislav Shevchuk to sit as an *ad hoc judge* (Rule 29 § 1(b)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background to the case

5. The applicant was born in 1963 and lives in Chernihiv. The applicant is a single woman and for many years she maintained friendly relationships with Z. and her parents.

6. In 1999 the flat where Z. and her parents lived was robbed and Z.'s mother was killed. After it had been found that the crime had been committed by certain male perpetrators, the investigation was stayed as the culprits could not be identified.

B. Murder of Z. and ensuing criminal proceedings

7. On 10 August 2001 Z. was found dead in the flat with several knife wounds.

8. On 11 August 2001 the Chernihiv Prosecutor's Office ("the prosecutor's office") instituted criminal proceedings concerning Z.'s murder.

9. On 17 August 2001 the applicant was questioned as a witness in respect of the murder. The applicant noted that she had been friend with Z. and stated that she did not know who might have killed her.

10. On 3 November 2001 the applicant was arrested on suspicion of the murder of Z. She was questioned by the investigator of the prosecutor's office between 11.10 a.m. and 3.15 p.m., following which a written record of the interview was prepared, which was two pages long. According to the record, the applicant's right to remain silent under Article 63 of the Constitution had been explained to her, following which she denied any involvement in the crime.

11. At 3.30 p.m. an arrest report was prepared. At the same time the investigator explained to the applicant her rights to a lawyer and to remain silent. The applicant signed the record and wrote as follows: "at the present moment I refuse the services of defence counsel". The investigator accepted this waiver by issuing a separate ruling.

12. After the questioning session, the applicant was placed in the local temporary detention centre, where she allegedly suffered as a result of a lack of appropriate sanitary and hygienic conditions; the cell was dark, damp and dirty; the water supply was irregular.

13. Between 3 and 5 November 2001, the applicant was regularly visited by the investigator and police officers, who allegedly compelled her to confess to the murder. According to the applicant, they explained to her that if she confessed to the crime and cooperated with the investigation they would arrange her release under an obligation not to abscond, she would not be dismissed from her job, and they would mitigate her responsibility to the extent of getting her released from imprisonment. On the contrary, if she continued claiming innocence, she would in any event be charged with the murder as, in the absence of any alibi, no one would believe her. They would also arrange for her to have the worst cell in the pre-trial detention centre and subsequently in prison. The transportation to the prison would be the most horrible experience.

14. In the course of these discussions, the applicant was allowed to telephone her friend M. The applicant asked M. to find a lawyer. Following the conversation, M., together with P. (the applicant's relative), hired a lawyer for the applicant.

15. On 5 November 2001 the lawyer requested the prosecutor's office to give him access to the applicant. As he could not find the investigator in charge of the applicant's criminal case, he gave the relevant authorisation document to another investigator and asked the latter to pass it on to the investigator dealing with the applicant's case.

16. On 5 November 2001 the applicant, assuming that her friend had not found a lawyer, wrote a confession to the murder of Z. According to the applicant, she plotted the story with the assistance of police officers, after acceding to their demands that she take on the guilt.

17. The same day the confession was included in the record of the interview which was conducted by the prosecutor's office investigator, without a lawyer. Before the interview the applicant had had her rights under Article 63 of the Constitution explained to her.

18. On 6 November 2001 the applicant confirmed her self-incriminating statements during a reconstruction of the crime: this too was conducted without a lawyer.

19. On the same day the court extended the applicant's preliminary detention in the local temporary detention centre to ten days. The applicant was further examined by a forensic medical expert, who did not find any injuries on her body.

20. On 7 November 2001 the applicant was informed that her friend had found a lawyer for her. At the applicant's request, the investigator admitted the lawyer to the case and the lawyer was allowed to see the applicant for the first time.

21. On the same day the applicant retracted her confession and complained to the prosecutor that her self-incriminating statements and waiver of the right to a lawyer had been given as a result of psychological pressure by the police officers and the prosecutor's office. She also claimed

that the investigator had not informed her that M. had found the lawyer for her and that the latter had been trying to see her as from 5 November 2001.

22. On 9 November 2001 the head of the investigation department of the prosecutor's office informed the applicant that her complaint of psychological pressure by the investigator was unsubstantiated; her allegations that pressure had been exerted on her by police officers would be examined in the course of the pre-trial investigation.

23. On the same day the applicant's lawyer complained to the prosecutor that between 5 and 7 November 2001 he had been unlawfully impeded from gaining access to the applicant.

24. On the same day the applicant applied to the investigator for release. She claimed that she had not committed any crime and had given the self-incriminating statements as a result of psychological pressure exercised on her by police officers. The investigator replied that her submissions would be examined in the course of the pre-trial investigation.

25. On 13 November 2001 the Desnyanskyy District Court of Chernihiv ("the District Court") ordered the applicant's pre-trial detention for two months. The applicant was moved to the Chernihiv pre-trial detention centre.

26. On 14 November 2001 the head of the investigation department of the prosecutor's office, in reply to the lawyer's complaint of 9 November 2001, found that there had been no violations in respect of the lawyer's delayed access to the applicant. He noted that on 5 November 2001 the lawyer had handed the authority document to an investigator who was not responsible for the applicant's case, and the latter only managed to find the right investigator on 7 November 2001; on the same date the lawyer was admitted to the case. On 23 November 2001 the lawyer was given the same answer by the Chernihiv prosecutor.

27. On 14 December 2001 the investigator opened criminal proceedings against the applicant for theft of jewellery from Z. He joined both cases against the applicant in one set of proceedings.

28. On 18 December 2001 the applicant changed her lawyer.

29. On 28 December 2001 the investigator of the prosecutor's office issued a decision refusing to open criminal proceedings against the police officers for abuse of powers in connection with the applicant's allegations of psychological ill-treatment and violation of her rights of defence. The investigator found that the applicant's allegations against the police officers had been an attempt to escape criminal responsibility. He further noted that the police officers were assisting the investigator on a lawful basis and the medical evidence available in the file suggested that the applicant had no bodily injuries on the dates concerned.

30. On 31 January 2002 the District Court extended the applicant's pre-trial detention to four months.

31. On 11 February 2002 the prosecutor's office investigator questioned the investigator who had been in charge of the applicant's case in November 2001. At the time of the interview he had been transferred, within the same office, to the position of senior assistant to the prosecutor. The interviewee explained that he had decided to have the applicant arrested on 3 November 2001, as by that time he had collected sufficient information suggesting that she might have committed the crime. During the questioning he exerted no physical or psychological pressure on the applicant, and the self-incriminatory statements were given by the applicant of her own free will.

32. On 13 March 2002 the investigator questioned two police officers, who denied the applicant's allegations that they had psychologically attacked her.

33. On 18 March 2002 the prosecutor's office investigator refused to open criminal proceedings against the former investigator in connection with the applicant's allegations. The decision was based on the statements given by the former investigator and the police officers.

34. In March 2002 the investigation in the applicant's case was completed and the case file was referred to the District Court for trial.

35. On 31 July 2002 the District Court remitted the case for additional investigation after finding that the investigation had not been thorough and that the applicant's allegations about violation of her rights had not been properly examined.

36. On 4 November 2002 the Supreme Court quashed the decision of 31 July 2002 as unsubstantiated, and noted that the procedural issues indicated by the first-instance court could be resolved during the trial. The case was therefore remitted to the first-instance court.

37. During the trial the applicant denied any involvement in the crimes she was charged with. She complained of psychological ill-treatment and violation of her rights of defence at the initial stage of the investigation. The court questioned the police officers and the investigator concerned, who declared that the applicant had confessed to the murder without any pressure from them.

38. On 21 April 2003 the District Court found the applicant guilty of the murder and theft and sentenced her to ten years' imprisonment. The court based its judgment on the self-incriminatory statements given by the applicant without the lawyer on 5 and 6 November 2001. It also referred to some indirect evidence. The court rejected the applicant's allegations of psychological ill-treatment, having regard to the results of enquiries carried out by the prosecutor's office and to the statements given by the police officers and the investigator during the trial. It further found that there had been no breach of the applicant's rights of defence at the initial stage of the proceedings, as the applicant had waived her right to a lawyer at that time.

39. The applicant appealed against the judgement, claiming, *inter alia*, that her self-incriminating statements had been made as a result of psychological pressure and in the absence of a lawyer.

40. On 11 September 2003 the Chernihiv Region Court of Appeal (“the Court of Appeal”) upheld the applicant’s conviction, noting, *inter alia*, that the District Court had legitimately based its judgment on the self-incriminatory statements given by the applicant on 5 and 6 November 2001. The Court of Appeal rejected the applicant’s contentions that there had been psychological ill-treatment, after examining the available material and after questioning the investigator and the police officers again. As to the absence of legal assistance at the time of self-incrimination, the Court of Appeal noted that the applicant had been given access to a lawyer once she had requested it and the authority document had been submitted.

41. A separate opinion given by one of the judges considering the case was annexed to the decision of the Court of Appeal. According to the applicant, her lawyer was not provided with a copy of the separate opinion.

42. On 15 March 2005 the Supreme Court endorsed the judgment of 21 April 2003 as substantiated. The applicant’s contentions that there had been psychological ill-treatment and that her rights of defence had been violated were rejected as unfounded.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of 28 June 1996

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

Article 59

“Everyone has the right to legal assistance. Such assistance is provided free of charge in cases envisaged by law. Everyone is free to choose the defender of his or her rights.

In Ukraine, the advocacy acts to ensure the right to a defence against accusation, and to provide legal assistance in deciding cases in courts and other state bodies.”

Article 63

“A person shall not bear responsibility for refusing to testify or to explain anything about himself or herself, members of his or her family or close relatives in the degree determined by law.

A suspect, an accused, or a defendant shall have the right to a defence.

A convicted person shall enjoy all human and citizen's rights, except for the restrictions as determined by the law and established in the court judgment."

B. Code of Criminal Procedure of 28 December 1960

44. The relevant provisions of the Code can be found in the judgment in the case of *Davydov and Others v. Ukraine* (nos. 17674/02 and 39081/02, § 112, 1 July 2010).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

45. The applicant complained that between 3 and 6 November 2001 she had been psychologically attacked and threatened by the law-enforcement authorities and that there had been no effective investigation in that respect.

46. The applicant did not refer to any Convention provision. The Court decided to examine the complaint under Article 3 of the Convention, which provides as follows:

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

A. The parties' submissions

47. The Government submitted that the applicant's complaints under Article 3 were inadmissible. They maintained that the applicant should have challenged the decisions of 28 December 2001 and 18 March 2002, by which the investigator refused to investigate her allegations of psychological ill-treatment, under Article 236-1 of the Code of Criminal Procedure. They further contended that while the above decisions had been taken in 2001 and 2002 the applicant had applied to the Court in 2004. Accordingly, the complaints had to be dismissed on the grounds of non-exhaustion of domestic remedies or failure to comply with the six-month time-limit.

48. The Government further submitted that the allegations of psychological ill-treatment were manifestly ill-founded and that Article 3 of the Convention was not applicable, given that the alleged ill-treatment had not reached the minimum level of severity required by that Convention provision. In this regard the Government submitted that the applicant had not specified in sufficient detail the manner and extent of the alleged

psychological ill-treatment and its consequences. However, the fact that the law-enforcement officers had explained to her the negative legal consequences of the crime could not be interpreted as treatment prohibited by the Convention. Moreover, no indications of ill-treatment had been found by the domestic authorities, who had carried out a thorough examination of the matter.

49. The applicant disagreed with the Government's objections. She claimed that the remedy indicated by the Government had not been available to her, as copies of the decisions refusing to investigate the allegations of ill-treatment had not been given to her. She further claimed that she had raised the issue of ill-treatment before the courts dealing with her criminal case. She insisted that she had been subjected to treatment prohibited by Article 3 of the Convention. In support of that contention, the applicant referred to procedural shortcomings by the authorities in that period, emphasising that they had failed to provide her with access to a lawyer.

B. The Court's assessment

50. The Court does not need to examine whether the applicant complied with the rule of exhaustion of domestic remedy and the six-month rule as her complaints under Article 3 of the Convention are in any event inadmissible for the reasons set out below.

51. The Court reiterates that Article 3 of the Convention prohibits in absolute terms torture and inhuman or degrading treatment. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Labita v. Italy* [GC], no. 26772/95, §§ 119-20, ECHR 2000-IV).

52. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161). However, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ribitsch v. Austria*, 4 December 1995, Series A no. 336, § 34, and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

53. In the present case the complaint of ill-treatment is limited to the issues of psychological influence allegedly exerted on the applicant by the law-enforcement officers. While under certain circumstances this kind of impact on an individual may amount to ill-treatment, prohibited by the Convention (see *Gäffen v. Germany* [GC], no. 22978/05, §§ 91 and 108, ECHR 2010), the Court has no material at hand to find that the applicant was subjected to any psychological attacks or that she had been seriously

enough affected for the threshold of Article 3 of the Convention to have been reached. The alleged lack of access to a lawyer in that period of time, an issue which the Court shall examine separately under Article 6 of the Convention, cannot conclusively support these allegations. Accordingly, the applicant's complaint of ill-treatment is manifestly ill-founded.

54. The Court further considers that the applicant failed to make an arguable complaint of ill-treatment before the domestic authorities which would trigger the State's procedural obligation under Article 3 of the Convention to carry out an effective investigation of ill-treatment.

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

II. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 and 3 (c) OF THE CONVENTION

56. The applicant complained under Article 6 § 1 of the Convention that she had not been given access to a lawyer at the initial stage of the criminal proceedings against her, and that this affected the fairness and outcome of those proceedings.

57. The Court decided to examine these complaints under Article 6 §§ 1 and 3 (c) of the Convention which provide, in so far as relevant, 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; ...”

A. Admissibility

1. The parties' submissions

58. The Government submitted that the applicant had raised the present complaint before the prosecutor's office, which adopted decisions of 28 December 2001 and 18 March 2002 refusing to open an investigation in connection with those allegations in particular. However, the applicant failed to challenge those decisions under Article 236-1 of the Code of Criminal Procedure and therefore did not exhaust domestic remedies. As an alternative, the Government claimed that the applicant had missed the six-month time-limit, given that the above decisions had been taken in 2001 and 2002, while the applicant applied to the Court in 2004. The Government

further asserted that this complaint was manifestly ill-founded because the applicant had waived her right to legal representation on 3 November 2001 and had not asked for it until 7 November 2001.

59. The applicant maintained that the complaints were admissible.

2. The Court's assessment

60. The Court notes that the applicant raised the present complaint not only before the prosecutor's office, but also before the courts dealing with her criminal case. In particular, she made this complaint before the Court of Appeal and the Supreme Court (see paragraphs 39 and 42 above). There is no reason to consider that the applicant should have also used another remedy suggested by the Government which, moreover, has recently been criticised by the Court in another context (see *Kaverzin v. Ukraine*, no. 23893/03, §§ 93-98, 15 May 2012). Likewise, no issue under the six-month rule arises in the present case. The Court therefore rejects the Government's objections in this respect.

61. The Court further notes that the complaint raises serious issues requiring an examination on the merits. Therefore, contrary to the Government's submissions, the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

62. The Government submitted that there had been no violation of Article 6 §§ 1 and 3 (c) of the Convention maintaining that the complaint about lack of access to a lawyer was inadmissible.

63. The applicant argued that her right of access to a lawyer had not been secured by the investigating authorities. In particular, despite the fact that the prosecutor's office had received the authority document from the applicant's lawyer on 5 November 2001, the applicant's first communication with him was only on 7 November 2001, that is after she had incriminated herself.

2. The Court's assessment

(a) General principles

64. 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).

65. A waiver of a right guaranteed by the Convention – in so far as it is permissible – must not run counter to any important public interest, must be established in an unequivocal manner and must be attended by minimum safeguards commensurate to the waiver's importance (see *Sejdovic v. Italy* [GC], no. 56581/00, § 86, ECHR 2006-II, and *Hermi v. Italy* [GC], no. 18114/02, § 73, ECHR 2006-XII). Moreover, before an accused can be said to have by implication, through his conduct, waived an important right under Article 6, it must be shown that he could reasonably have foreseen what the consequences of his conduct would be (see *Talat Tunç v. Turkey*, no. 32432/96, § 59, 27 March 2007, and *Jones v. the United Kingdom* (dec.), no. 30900/02, 9 September 2003).

(b) Application of those principles to the present case

66. The Court notes that between 11.10 and a.m. and 3.15 p.m. on 3 November 2001 the applicant was questioned as a suspect in a criminal case. Before the questioning it was explained to the applicant that she had the right to remain silent under Article 63 of the Constitution. However, the right to legal representation had not been explained to her and the questioning was carried out in the absence of a lawyer. No waiver of the right to legal representation had been signed by the applicant until 3.30 p.m. on that day.

67. Furthermore, on 5 and 6 November 2001 the investigating authorities obtained self-incriminating statements from the applicant when she was still not represented by defence counsel. In so doing the authorities relied on the fact that at 3.30 p.m. on 3 November 2001 the applicant had waived her right to legal representation and had not requested it thereafter.

(i) Whether the applicant waived her right to a lawyer on 5 and 6 November 2001

68. The Court notes that the applicant's waiver of 3 November 2001 had been limited in time: the applicant noted that she had refused the services of defence counsel "at the present moment". Accordingly, the investigating authorities could not legitimately rely on that waiver during the investigative actions they conducted on 5 and 6 November 2001 and were obliged to ascertain whether the applicant was still refusing legal representation.

69. Nevertheless, the applicant did not have her right to legal representation explained to her on 5 and 6 November 2001, and her alleged refusal from the legal representation on those dates was not documented. Furthermore, the applicant was not informed that her friend had hired a lawyer for her and that the latter had attempted to enter the proceedings from 5 November 2001, which might have changed her position.

70. For these reasons the Court concludes that on 5 and 6 November 2001 there was no waiver of the right to a lawyer.

(ii) Justification for the absence of a lawyer at the relevant time

71. The Court does not discern any compelling reason why the applicant's right of access to a lawyer had to be restricted at the relevant time. It is remarkable that, although the applicant's lawyer appeared before the prosecutor's office on 5 November 2001, notified them of his intention to enter the proceedings and provided them with the authority document, he was not admitted to the proceedings until 7 November 2001.

72. The Court further notes that the self-incriminating statements obtained in the absence of a lawyer had been used by the courts for the applicant's conviction (see paragraphs 38 and 40 above). In these circumstances the applicant's defence rights were prejudiced irretrievably.

73. In the light of the above considerations the Court holds that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention on account of the failure by the authorities to ensure the applicant's right of access to a lawyer during the initial period of the applicant's detention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

74. The applicant complained under Article 6 § 1 of the Convention that she had been convicted on the basis of evidence obtained by the investigating authorities by using ill-treatment.

75. The Government submitted that the complaint was inadmissible in so far as there was no indication of the psychological ill-treatment.

76. The applicant contended that the complaint was admissible.

77. The Court has rejected the applicant's allegations of ill-treatment as inadmissible. Accordingly, no issue under Article 6 of the Convention can arise in connection with her contention that she was convicted on the basis of evidence obtained through ill-treatment. This complaint is therefore manifestly ill-founded and should be dismissed as inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

78. The Court has examined the remainder of the applicant's complaints. It 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.

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

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. 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

81. The applicant claimed 70,000 euros (EUR) in respect of non-pecuniary damage.

82. The Government submitted that this claim was unsubstantiated.

83. The Court considers that the applicant must have suffered distress and anxiety on account of the violation found. Ruling on an equitable basis, as required by Article 41 of the Convention, it awards the applicant EUR 2,400 in respect of non-pecuniary damage.

B. Costs and expenses

84. The applicant also claimed 5,000 Ukrainian hryvnias (UAH, about EUR 495) for costs and expenses.

85. The Government considered this claim unsubstantiated.

86. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 400 to cover costs under this head.

C. Default interest

87. 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 complaint under Article 6 §§ 1 and 3 (c) of the Convention (concerning the absence of legal assistance during the initial period of the applicant's detention) admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 2,400 (two thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 400 (four hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President