



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

FIFTH SECTION

CASE OF KVASHKO v. UKRAINE

(Application no. 40939/05)

JUDGMENT

STRASBOURG

26 September 2013

FINAL

26/12/2013

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

In the case of Kvashko v. Ukraine,

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

Mark Villiger, *President*,

Angelika Nußberger,

Boštjan M. Zupančič,

Ganna Yudkivska,

André Potocki,

Paul Lemmens,

Aleš Pejchal, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 3 September 2013,

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

PROCEDURE

1. The case originated in an application (no. 40939/05) 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 Vyacheslav Gennadiyevich Kvashko (“the applicant”), on 31 October 2005.

2. The applicant was represented by Mr G.V. Tokarev, a lawyer practising in the city of Kharkiv, Ukraine, and by Ms A.V. Kvashko, the applicant’s mother. The Ukrainian Government (“the Government”) were represented by their Agent, most recently, Mr N. Kulchytsky, of the Ministry of Justice of Ukraine.

3. On 1 June 2010 the application was declared partly inadmissible and the complaint under Article 3 of the Convention concerning the alleged lack of timely medical assistance for the applicant in detention, and the complaints under Article 5 §§ 1, 3 and 5 of the Convention concerning the alleged unlawfulness of the applicant’s administrative detention between 1 and 4 May 2005 and of his arrest on 4 May 2005, a lack of prompt judicial review and the availability of compensation were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1973 and lives in Kharkiv.

A. The applicant's arrest and detention

5. In the evening of 1 May 2005 following a family quarrel the applicant's wife apparently called the police. At 5 p.m. the applicant was taken to the Ordzhonikidzevsky District Police Department (*Орджонікідзевський районний відділ Харківського міського управління Міністерства внутрішніх справ України в Харківській області*). After having searched the applicant, the police officers found some brown grass (according to different documents its amount varied from 2 to 7 grams) which the applicant said was tobacco in his pocket. The applicant was detained under Article 263 of the Code of Administrative Offences, which permits detention for up to three days in order for a seized substance to be examined.

6. On 3 May 2005 the investigating officer questioned the applicant about a robbery which had taken place in the middle of April 2005, and the applicant allegedly confessed to committing it.

7. On 4 May 2005 an expert concluded that the brown grass found on the applicant was not a narcotic and it was decided not to institute criminal proceedings in that connection. According to the Government, the applicant was released. The decision of 1 May 2005 to detain the applicant bears a note that the applicant was released on 4 May 2005 at 8:00 p.m.

8. On the same date criminal proceedings for robbery were instituted against the applicant and a number of other individuals. The applicant was arrested by an investigator on suspicion of committing robbery. The time of the applicant's arrest was noted as 8:00 p.m.

9. At 6 p.m. on 6 May 2005 the applicant was brought before a court, which authorised his pre-trial detention. No copy of this decision was submitted by the parties. On the same date the applicant was charged with robbery.

10. Following a complaint by the applicant's lawyer, on 13 May 2005 the court found that the applicant's arrest on 4 May 2005 had been unlawful. During the court hearing a prosecutor submitted that on 4 May 2005 the applicant had been released at around 8 p.m. and immediately arrested again on suspicion of having committed a crime. An investigation officer testified that at around 8:10 p.m. on 4 May 2005 the applicant had had his rights explained to him, including his right to have a lawyer, and he had later been questioned as a suspect. The court established that the applicant had not been released on 4 May 2005 and that his arrest on that date had been unlawful, as there had been no indication that the applicant had wanted to escape.

11. On 12 July 2005 the criminal case was sent to the court for consideration on the merits.

12. On 2 August 2005 the Kharkiv Regional Court of Appeal quashed the decision of 13 May 2005. It found that the decisions of 6 and

13 May 2005 had been taken by the same judge but had contained contradictory findings. It noted that by the decision of 6 May 2005 the court had ordered the applicant's pre-trial detention because "it appeared from the criminal case file materials that if at large the applicant could hinder the investigation, attempt to influence the victim, commit other crimes and escape". However, in the decision of 13 May 2005 the same judge had referred to the absence of such evidence. The court found such an approach to be flawed. It further held that the applicant should have appealed against the decision of 6 May 2005 and that the lawfulness of the applicant's continued detention would be examined by the court that was considering the case on the merits.

B. Medical assistance in detention

13. The applicant stated that during his detention between 1 and 3 May 2005 he had been subjected to psychological pressure and physical ill-treatment. In particular, he alleged that the police officers had put a plastic bag on his head and had beaten him. On one occasion he had been kicked in the left eye. He claimed that because of a previous head injury sustained at the age of 15 and the police beatings, his eyesight worsened.

14. On 6 May 2005 the applicant was examined by an ophthalmologist from Kharkiv City Clinic no. 18, who established that the applicant was suffering from a cataract and acute glaucoma of the left eye. He needed follow-up treatment and surgery for his cataract. It was not noted that the surgery was urgent.

15. The Government submitted that on 6 May 2005 the applicant had been examined by a panel of doctors from Kharkiv City Ophthalmology Clinic no. 14. The applicant had been diagnosed with post-traumatic secondary glaucoma, a cataract of the left eye and other conditions. He had been advised to take eye drops to lower his intraocular pressure. Surgery had not been recommended, as the applicant had lost the sight in his left eye and there was no prospect of it being restored through surgery.

16. By letter of 17 May 2005 the Kharkiv City Clinic no. 18 informed the applicant's lawyer that the applicant had been examined there on 6 May 2005. He needed follow-up treatment and surgery.

17. On 27 May 2005 the applicant was again examined by an ophthalmologist. He was diagnosed with retinal detachment of the left eye and elective surgery was recommended.

18. On 14 June 2005 the applicant's mother made an inquiry to the head of Kharkiv Temporary Detention Centre no. 27 ("the SIZO"), where the applicant was detained, about the state of the applicant's health. On 29 June 2005 she received a reply informing her that the applicant had been examined by an ophthalmologist on 27 May 2005 and diagnosed with retinal detachment of the left eye, but that the medical service of the SIZO

did not have an ophthalmologist or sufficient funds to arrange for treatment. Therefore, the applicant's mother was advised to arrange for him to undergo surgery in a specialised ophthalmological clinic.

19. On 4 July 2005 the applicant was examined by a panel of doctors from Kharkiv City Ophthalmology Clinic no. 14. It was concluded that there was no need for surgery on his left eye, since the sight in this eye had been completely lost.

20. By letter of 20 July 2005 the applicant's mother was informed by the SIZO about the examination of 4 July 2005.

21. By letter of 11 August 2005 the SIZO informed the applicant's lawyer that on 4 July 2005 the applicant had been examined by a panel of doctors from Kharkiv City Ophthalmology Clinic no. 14. He had been diagnosed with a traumatic cataract of the left eye and other conditions affecting his eyes. There was no need for surgery on his left eye. Eye drops had been prescribed.

22. By letter of 12 August 2005 Kharkiv City Ophthalmology Clinic no. 14 submitted similar information about the applicant's examination on 4 July 2005 to his lawyer.

23. Between 4 and 18 October 2005 the applicant was admitted to a prison hospital. He was recognised as category 3 disabled (the least severe category). He was again examined by an ophthalmologist on 25 November 2005.

24. By letter of November 2005 the Ordzhonikidzevskyy District Court asked the Head of the SIZO to provide the applicant with specialised treatment, as there was a risk of him losing his eyesight.

25. Between 3 and 5 April 2006 the applicant was admitted to hospital. He underwent surgery on his left eye.

26. Between 14 and 19 June 2006 the applicant was again hospitalised and underwent another operation. His left eye was removed to avoid inflammation of the right eye.

27. Following a request of 4 August 2010, on the same date the Head of Kharkiv City Ophthalmology Clinic no. 14 confirmed to the Kharkiv Regional Police Department (*Головне управління Міністерства внутрішніх справ України в Харківській області*) that the applicant had been examined on 6 May 2005. No surgery had been recommended. He had been admitted to the Clinic between 3 and 5 April 2006 and between 14 and 19 June 2006.

28. Following a request by the applicant's lawyer, on 26 November 2010 the Head of Kharkiv City Ophthalmology Clinic no. 14 replied that the applicant had been examined by Clinic doctors on 4 July 2005. It was impossible to submit information about other examinations of the applicant because the relevant medical documents "had been destroyed after [the] three-year storage time-limit" had been reached.

29. In the applicant's medical file, a hard-to-read copy of which was submitted by the Government, there are two entries on unidentifiable dates in May 2005 stating that the applicant was examined by an ophthalmologist on two occasions. Another entry dated 4 July 2005 mentions that the applicant had been transferred to Clinic no. 14 for examination.

C. Criminal proceedings against the applicant

30. On 13 April 2007 the Ordzhonikidzevskyy District Court convicted the applicant of burglary and theft of personal documents and sentenced him to seven years' imprisonment and confiscation of half of his property. The term of the applicant's imprisonment was calculated starting on 1 May 2005.

31. On 12 February 2009 the Kharkiv Regional Court of Appeal upheld that judgment. There is no evidence that this decision was appealed against in cassation.

II. RELEVANT DOMESTIC LAW

A. Code of Administrative Offences, 7 December 1984

32. Under Article 263 of the Code, anyone who violates the regulations governing the distribution of drugs can be detained for three hours to draw up a report of an administrative offence. If necessary, such as in the event that a medical examination or examination of drugs is required, or in order to allow for questioning about the circumstances of a drug purchase, the detention can be extended up to three days.

B. The Law of Ukraine "On the Procedure for the Compensation of Damage caused to Citizens by the Unlawful Actions of Bodies in charge of Operational Enquiries, Pre-trial Investigation Authorities, Prosecutors or Courts" ("the Compensation Act")

33. The text of the Act (as worded before the amendments of 1 December 2005) can be found in the following judgments: *Kobtsev v. Ukraine*, no. 7324/02, § 35, 4 April 2006 (section 1 of the Act), and *Afanasyev v. Ukraine*, no. 38722/02, § 52, 5 April 2005 (section 2 of the Act).

34. Following the amendments to the Compensation Act, the range of cases where the right to compensation can arise was expanded to include those in the following category:

“(1-1) where ... unlawfulness of remand in custody ... has been established upon conviction or by another judgment of a court (save for rulings on the remittal of cases for additional investigation)”.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

35. The applicant complained that he had not been provided with timely medical assistance in detention. In this respect he cited Article 3 of the Convention, which reads as follows:

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

36. The Government stated that the applicant had failed to exhaust available effective remedies in respect of his complaint of a lack of adequate medical assistance. He could have asked a prosecutor to institute criminal proceedings for failure to provide him with timely and adequate medical assistance or complained to the courts (under the Civil Procedure Code before 1 September 2005 and under the Administrative Procedure Code after 13 September 2005) that as a result of inactivity on the part of State officials his rights had been breached. The applicant also could have claimed damages. In support of this statement, the Government submitted a copy of a court decision of 4 February 2009 in the case of K. and B. against Temporary Detention Centre no. 13. The claimants’ daughter and mother had died in the above Centre because of a lack of medical assistance. The court awarded the plaintiffs 25,000 Ukrainian hryvnias (UAH) each in compensation for non-pecuniary damage.

37. The applicant submitted that he and his sister had complained to the national authorities about his “ill-treatment”. As for the court decision submitted by the Government, the applicant noted that such a decision was a very rare exception to the national courts’ standard practice. Therefore, the applicant submitted that there had been no effective remedies at the domestic level in respect of his complaints.

38. The Court notes that it has already found that problems arising from the conditions of detention and a lack of proper medical treatment in Ukrainian detention centres are of a structural nature (*Koval v. Ukraine*, no. 65550/01, § 96, 19 October 2006) and no effective remedy is available in this respect (*Melnik v. Ukraine*, no. 72286/01, §§ 113-116, 28 March 2006). The Court sees no reason to depart from those findings in the present case. Moreover, the court decision produced by the Government in support of their statement about the effectiveness of a civil claim for damages caused

by a lack of adequate medical assistance in detention was adopted by the national court after this Court had examined the case and had found a violation of Article 2 of the Convention in respect of the authorities' failure to protect the claimants' daughter's and mother's right to life (*Kats and Others v. Ukraine*, no. 29971/04, 18 December 2008). An identical objection made by the Government has previously been rejected by the Court (*Petukhov v. Ukraine*, no. 43374/02, §§ 76-78, 21 October 2010). The Court therefore considers that the present complaint cannot be rejected for failure to exhaust domestic remedies.

39. The Court further notes that, according to the applicant, he sustained an eye injury after having been kicked in the left eye by a police officer. He needed medical treatment which was not provided to him and this failure led to the loss of the sight in his left eye.

40. It should be noted at the outset that the applicant's complaint of ill-treatment by the police was rejected as unsubstantiated by the decision of the Court given on 1 June 2010 (*Kvashko v. Ukraine* (dec.), no. 40939/05).

41. The Court further notes that on 6 May 2005, five days after the applicant's arrest, the applicant was diagnosed with a cataract and acute glaucoma of the left eye, and it was noted that he needed treatment, including surgery.

42. The parties submitted no information on the applicant's state of health before his arrest. In 1988 the applicant sustained a serious head injury (see paragraph 14 above). However, there is no information on the state of the applicant's eyesight before the events in question.

43. According to the information submitted by the Government, on 6 May 2005 the applicant was examined by a panel of doctors from Kharkiv City Ophthalmology Clinic no. 14, who concluded that the applicant had been suffering from post-traumatic secondary glaucoma, a cataract of the left eye and other conditions. No surgery on the applicant's left eye was needed because he had already lost the sight in that eye. The applicant contested this information.

44. The Court notes that the letter of 4 August 2010 submitted by the Government and sent by Kharkiv City Ophthalmology Clinic no. 14 to the Kharkiv Regional Police Department (on request of the latter authority) is the only document available in support of the Government's statement that the examination of 6 May 2005 by a panel of doctors indeed took place.

45. On the contrary, all the available evidence points to the fact that on 6 May 2005 the applicant was examined by an ophthalmologist from Kharkiv City Clinic no. 18 and that the examination by a panel of doctors only took place on 4 July 2005 (see paragraphs 14, 16, 19-22 and 28 above).

46. In the report of the examination of 6 May 2005 the ophthalmologist from Kharkiv City Clinic no. 18 noted that the applicant was suffering from acute glaucoma of the left eye, which it was thought might require immediate treatment. However, it was noted that the applicant only needed

follow-up treatment and surgery in respect of his cataract. It was not noted that immediate surgery was necessary.

47. In addition, on 27 May 2005 elective surgery and not urgent surgery was recommended by an ophthalmologist. The applicant subsequently underwent two operations in 2006, despite the findings of 4 July 2005 that the sight in his left eye had already been lost. It is therefore possible that those operations were aimed at results other than the restoration of the applicant's eyesight and were not urgent.

48. The Court also notes that while in detention the applicant was examined on numerous occasions by doctors, including specialists from outside medical facilities. There is also no evidence that the follow-up treatment prescribed by doctors was not administered to the applicant.

49. In the absence of a specialist finding that the applicant needed urgent treatment of his health problems while in detention or that the loss of the applicant's eyesight was caused by the absence of appropriate medical treatment – whether urgent or ordinary – the Court cannot conclude that the applicant was not provided with adequate medical assistance in detention which caused him suffering in breach of Article 3 of the Convention.

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

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

51. The applicant complained under Article 5 § 1 of the Convention that his administrative detention between 1 and 4 May 2005 and his arrest on 4 May 2005 had been unlawful. The applicant further complained under Article 5 § 3 of the Convention that he had not been brought promptly before a judge. The applicant also cited Article 5 § 5 of the Convention in this connection.

52. The relevant parts of Article 5 read as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within

a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

...

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

A. Admissibility

53. The Government submitted that the applicant had failed to challenge his administrative detention between 1 and 4 May 2005 under Article 267 of the Code of Administrative Offences (relying upon *Nikolay Kucherenko v. Ukraine*, no. 16447/04, § 27, 19 February 2009).

54. The applicant submitted in reply that his administrative detention had involved the issue of whether he would be subject to criminal prosecution, and therefore should have been considered as detention related to committing a criminal offence. Moreover, he had not been released on 4 May 2005.

55. The Court notes that although the formal basis for the applicant’s detention between 1 and 4 May 2005 was the need to determine whether on 1 May 2005 he had had any narcotic substances on him, for an unknown reason during this detention the applicant was questioned by an investigation officer about whether he had committed a robbery. One day later criminal proceedings were instituted against the applicant for committing the robbery. After having convicted the applicant, the national court decided that his term of imprisonment was to be calculated starting from 1 May 2005. Moreover, there is no evidence that the applicant was in fact released on 4 May 2005 before being arrested under the Criminal Procedure Code. Therefore, the Court cannot agree that between 1 and 4 May 2005 the applicant was detained under the Code of Administrative Offences. It appears that this detention was, in reality, the detention of a person suspected of committing a crime.

56. Therefore, the Court does not consider that in such circumstances an appeal to a court challenging the decision to place the applicant in detention under Article 263 of the Code of Administrative Offences was an effective remedy. The Court, therefore, dismisses the Government’s objection.

57. The Court notes that the applicant’s complaints under Article 5 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

(a) The applicant

58. The applicant submitted that his detention between 1 and 4 May 2005 had been contrary to the Constitution of Ukraine, which only permits detention without a court order for up to seventy-two hours in view of the urgent necessity to prevent or stop a crime from being committed, but which does not permit such detention in respect of an administrative offence. Therefore, his detention under Article 263 of the Code of Administrative Offences had been unconstitutional and thus contrary to Article 5 of the Convention. In any event, the purpose of a person's detention under Article 263 of the Code of Administrative Offences is to wait for the results of an examination of the seized substance, which is not among the exceptions to the right to liberty and security listed in Article 5 § 1 of the Convention.

59. The applicant further submitted that he had been brought to the police station after a quarrel with his wife. However, the case materials had not contained a single document related to this incident. He had been never questioned about this quarrel. He further stated that the brown grass seized from him had obviously been crumbs of tobacco. Therefore, the purpose of his arrest and subsequent detention had been different from that which had been claimed officially.

60. On 3 May 2005 he had been questioned about the robbery of 12 April 2005. At that time there had already been enough suspicion of his involvement in this crime to arrest him. However, he had continued to be kept in administrative detention until the next day. In this respect, the applicant referred to the case of *Doronin v. Ukraine* (no. 16505/02, 19 February 2009).

61. The applicant further submitted that his arrest on 4 May 2005 had been unlawful. According to the applicant, this had been confirmed by the findings of the domestic court given on 13 May 2005.

62. He had been arrested on 1 May 2005 but had only been brought before a judge on 6 May 2006. He had not been released on 4 May 2005, as submitted by the Government, as the time of his release and the time of his new arrest had coincided. Thus, he had not been brought promptly before a judge, contrary to Article 5 § 3 of the Convention.

63. The applicant finally submitted that he had not had a right to compensation for these breaches of Article 5 of the Convention under domestic law.

(b) The Government

64. The Government submitted that the applicant's administrative detention between 1 and 4 May 2005 had been in compliance with Article 5 of the Convention. It had been based on a provision of domestic law (Article 263 of the Code of Administrative Offences) and had resulted from the suspicion that the applicant had committed an offence. The applicant had been arrested again on 4 May 2005 under the Criminal Procedure Code to prevent his escape, which arrest had later been upheld by a court on 6 May 2005.

65. The Government noted that the applicant had been released on 4 May 2005. He had been arrested again at 8:00 p.m. on 4 May 2005 and brought before a judge at 6:00 p.m. on 6 May 2005. This period was less than forty-eight hours and thus had not been in breach of Article 5 § 3 of the Convention.

66. Consequently, there had been no violation of Article 5 § 5 of the Convention.

2. The Court's assessment

(a) The applicant's detention between 1 and 4 May 2005

67. The Court reiterates that, in proclaiming the right to liberty, paragraph 1 of Article 5 contemplates the physical liberty of the person, and its aim is to ensure that no one should be deprived of this liberty in an arbitrary fashion (*Creangă v. Romania* [GC], no. 29226/03, § 84, 23 February 2012). The list of exceptions to the right to liberty secured in Article 5 § 1 is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision (*Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, § 96, ECHR 2006-XI, with further references).

68. In the present case it appears that the applicant was placed in administrative detention to ensure his availability for questioning as a criminal suspect (see paragraph 55 above), which has been found on many occasions by the Court to be an arbitrary deprivation of liberty (*Doronin v. Ukraine*, cited above, § 56; *Oleksiy Mykhaylovych Zakharkin v. Ukraine*, no. 1727/04, § 88, 24 June 2010; and *Nechiporuk and Yonkalo v. Ukraine*, no. 42310/04, § 178, 21 April 2011). The Court finds no reasons to depart from these conclusions in the present case. There was, consequently, a violation of Article 5 § 1 of the Convention in respect of the applicant's detention between 1 and 4 May 2005.

(b) The applicant's arrest on 4 May 2005

69. Having regard to the finding relating to the applicant's detention between 1 and 4 May 2005 (see paragraph 68 above), the Court considers

that it is not necessary to examine whether, in this case, there has been a violation of Article 5 § 1 of the Convention in respect of the applicant's arrest on 4 May 2005.

(c) Whether the applicant was brought promptly before a judge

70. The Court reiterates that prompt judicial review is an essential feature of the guarantee embodied in Article 5 § 3, which is intended to minimise the risk of arbitrariness and to secure the rule of law, one of the fundamental principles of a democratic society (*Brogan and Others v. the United Kingdom*, 29 November 1988, § 58, Series A no. 145-B). While promptness has to be assessed in each case according to its specific features (see, among other authorities, *Aquilina v. Malta* [GC], no. 25642/94, § 48, ECHR 1999-III), the strict time constraint imposed by this requirement of Article 5 § 3 leaves little flexibility in interpretation, otherwise there would be a serious weakening of a procedural guarantee to the detriment of the individual and the risk of impairing the very essence of the right protected by this provision (*McKay v. the United Kingdom* [GC], no. 543/03, § 33, ECHR 2006-X).

71. In the present case, the Court considers that the applicant's detention within the meaning of Article 5 § 1 (c) of the Convention commenced on 1 May 2005. Despite the Government's statement that the applicant had been released on 4 May 2005 (see paragraph 65 above), the facts of the case show that after the applicant's release he was immediately arrested again (see paragraph 55 above). He was thus in continuing detention which was not subjected to any judicial scrutiny until 6 May 2005. There is no objective justification for that delay.

72. The Court therefore finds a violation of Article 5 § 3 of the Convention in respect of the applicant's right to "be brought promptly before a judge" (*Nechiporuk and Yonkalo v. Ukraine*, cited above, §§ 215-216).

(d) Right to compensation

73. The Court reiterates that Article 5 § 5 guarantees an enforceable right to compensation to those who have been the victims of arrest or detention in contravention of the other provisions of Article 5 (*Steel and Others v. the United Kingdom*, 23 September 1998, § 81, *Reports* 1998-VII).

74. In the present case the Court has found a violation of Article 5 §§ 1 and 3, in conjunction with which the present complaint is to be examined. It follows that Article 5 § 5 of the Convention is applicable. The Court must therefore establish whether Ukrainian law afforded the applicant an enforceable right to compensation for the breaches of Article 5 § 1 of the Convention in his case.

75. The Court has already addressed this issue in the cases of *Nechiporuk and Yonkalo v. Ukraine* (cited above) and *Klishyn v. Ukraine* (no. 30671/04, 23 February 2012) and found that the applicants' right to compensation in similar circumstances had been breached.

76. The Court notes that the issue of compensation for unlawful detention is regulated in Ukraine by the Compensation Act. Before the amendments to that Act of 1 December 2005, it provided for compensation for unlawful detention only in case of the ultimate acquittal of the detainee or termination of the criminal proceedings against him/her on exonerative grounds. Following the amendments, the right to such compensation also arose where the unlawfulness of the detention had been established by a judicial decision.

77. It has therefore already been established that, as in the present applicant's case, the Compensation Act did not provide for an enforceable right to compensation at the material time. Moreover, it does not appear that such a right was or is secured under any other provision of Ukrainian legislation, given the absence of any procedure envisaged by law for bringing proceedings to seek compensation for a deprivation of liberty found to be in breach of one of the other paragraphs of Article 5 by this Court (*Nechiporuk and Yonkalo v. Ukraine*, cited above, §§ 229-234).

78. The Court concludes that the applicant did not have an enforceable right to compensation for his unlawful detention, as required by Article 5 § 5 of the Convention. There has, therefore, been a violation of that provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. 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

80. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

81. The Government considered that the applicant's claim fell to be rejected, as there had not been a violation of the applicant's rights in the present case.

82. The Court, deciding on an equitable basis, awards the applicant EUR 4,500 in respect of non-pecuniary damage.

B. Costs and expenses

83. The applicant did not claim any costs and expenses. The Court, therefore, makes no award in this respect.

C. Default interest

84. 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 applicant's complaint under Article 3 of the Convention inadmissible and the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the applicant's administrative detention between 1 and 4 May 2005;
3. *Holds* that there is no need to examine the complaint under Article 5 § 1 of the Convention in respect of the applicant's arrest on 4 May 2005;
4. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
5. *Holds* that there has been a violation of Article 5 § 5 of the Convention;
6. *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, EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage, to be converted into the 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.
7. Dismisses the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 September 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President