



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

THIRD SECTION

CASE OF KLEYN v. RUSSIA

(Application no. 44925/06)

JUDGMENT

STRASBOURG

5 January 2016

FINAL

06/06/2016

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

In the case of Kleyn v. Russia,

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

Luis López Guerra, *President*,

Helena Jäderblom,

George Nicolaou,

Helen Keller,

Dmitry Dedov,

Branko Lubarda,

Pere Pastor Vilanova, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 8 December 2015,

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

PROCEDURE

1. The case originated in an application (no. 44925/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Aleksandr Robertovich Kleyn (“the applicant”), on 9 November 2005.

2. The applicant, who had been granted legal aid, was represented by Ms O.V. Preobrazhenskaya, a lawyer practising in Moscow, Russia. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that certain periods of his detention had been unlawful and that he had not had an enforceable right to compensation in that respect.

4. On 28 November 2013 the applicant’s complaints concerning the alleged unlawfulness of his post-conviction and ensuing pre-trial detention and the right to compensation in this regard were communicated to the Government and the remainder of the application was declared inadmissible.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969 and lived, prior to his conviction, in Chelyabinsk.

6. On 29 December 2000 the applicant was arrested on suspicion of double murder. He remained in custody pending the investigation and trial.

7. On 13 September 2001 the Chelyabinsk Regional Court found the applicant guilty of murder, accessory to murder and attempted fraud, and sentenced him to twenty-three years' imprisonment. The court comprised one professional judge and two lay judges.

8. On 12 April 2002 the Supreme Court of the Russian Federation upheld the applicant's conviction on appeal.

9. On 23 July 2004 the applicant lodged a supervisory-review complaint challenging the lawfulness of his conviction. He alleged, *inter alia*, that the trial court had not been a tribunal established by law, given that the lay judges who considered his case had been appointed to the tribunal in contravention of the applicable legislation.

10. On 22 December 2004 the Kopeysk Town Court of the Chelyabinsk Region reduced the applicant's sentence by seven months, in compliance with the latest amendments to the Russian Criminal Code.

11. On 29 April 2005 the Presidium of the Supreme Court of the Russian Federation received the case file for supervisory review.

12. On 15 June 2005 the Presidium quashed the judgments of 13 September 2001 and 12 April 2002 and remitted the matter to the Chelyabinsk Regional Court for fresh consideration. Referring to the case of *Posokhov v. Russia* (no. 63486/00, § 41, ECHR 2003-IV), the Presidium noted that the lay judges had not been authorised to consider the applicant's case, which had affected the lawfulness and well-foundedness of the applicant's conviction. Lastly, the Presidium ordered that the applicant be detained pending a new trial.

13. On 22 July 2005 the Regional Court fixed the preliminary hearing for 1 August 2005 noting that the measure of preventive detention previously imposed on the applicant "should remain unchanged". The parties did not inform the Court of the outcome of the hearing of 1 August 2005. It appears that it was re-scheduled.

14. On 5 August 2005 the Regional Court held a preliminary hearing of the case. The applicant and his lawyer attended the hearing and made submissions to the court. The applicant asked the court to release him on an undertaking not to leave his place of residence. He noted that he had already served over four years of the earlier imposed prison sentence which rendered the further extension of his pre-trial detention unnecessary. The prosecutor discerned no change in the applicant's situation that would be in

favour of the applicant's release and asked the court to extend the applicant's detention pending trial. The court fixed the new trial for 18 August 2005 noting that the measure of preventive detention previously imposed on the applicant "should remain unchanged". In particular, the court noted as follows:

"Deciding on the preventive measure and having heard the parties to the proceedings, the court considers that the remand of the [defendants] in custody during preliminary investigation as a restrictive measure has been lawful and justified. There are no grounds to replace it with a more lenient measure ... in view of the gravity of the charges and the defendants' character."

15. On 18 August 2005 the Regional Court opened the trial and on 19 September 2005 it found the applicant guilty as charged and sentenced him to twenty-two years and three months' imprisonment. The time already served by the applicant was set off against the newly imposed sentence. The court found that the applicant and Sh. had killed V. and Sk. in an attempt to fraudulently obtain the proceeds from the sale of a flat owned by V. The court comprised a single judge. The applicant was represented by a lawyer.

16. On 23 June 2006 the Supreme Court upheld the conviction on appeal. The applicant and his lawyer were present at the hearing and made submissions to the court.

On 13 October 2005 the Supreme Court upheld the decision of 5 August 2005 on appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. Pursuant to the Code of the Criminal Procedure of the Russian Federation, the term of the defendant's detention "during judicial proceedings" is calculated from the date the court receives the file up to the date on which the judgment is given. The period of detention "during judicial proceedings" may not normally exceed six months, but if the case concerns serious or particularly serious criminal offences, the trial court may approve one or more extensions of no longer than three months each (Article 255 §§ 2 and 3).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 (a) OF THE CONVENTION

18. The applicant complained that his detention from 13 September 2001, when he was convicted for the first time, to 15 June 2005, when the

judgment was quashed, had been in contravention of Article 5 § 1 of the Convention, which, in so far as relevant, reads 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:

(a) the lawful detention of a person after conviction by a competent court [.]”

19. The Government conceded that the applicant had been tried and convicted by a tribunal “not established by law”. Nevertheless, in their opinion, this fact alone was insufficient to raise an issue under Article 5 of the Convention. The quashing of the applicant’s conviction by way of supervisory review had been of a temporary nature. Subsequently, the applicant had again been tried by a tribunal “established by law”, found guilty and sentenced to imprisonment. Even though the lawfulness of the applicant’s initial conviction had not been confirmed by the supervisory review court, it had been replaced by a new conviction. All the negative consequences, if any, resulting from the initial conviction had been removed, given that the term of imprisonment already served by the applicant had been set off against the new sentence. Accordingly, the applicant could no longer claim to be a victim of the alleged violation. The Government also pointed out that the applicant had not challenged before the supervisory review court the lawfulness of his detention from 13 September 2001 to 15 June 2005. In his complaint of 23 July 2004 he had alleged only that his conviction had been delivered by a tribunal not established by law. It was not until his application to the Court of 9 November 2005 that he raised that challenge for the first time. In the Government’s opinion, the applicant had thus failed to comply with the six-month rule.

20. The applicant maintained his complaint, which he considered admissible. Once he had learnt that the composition of the trial court had not been lawful, he had immediately lodged a complaint with the Supreme Court challenging the lawfulness of his conviction and sentencing. The Supreme Court had considered his complaint on 15 June 2005. By lodging his complaint with the Court on 9 November 2005, the applicant had complied with the six-month rule. He further submitted that he could still claim to be a victim of the violation alleged. In his view, the authorities had not expressly acknowledged that his detention from 13 September 2001 to 15 June 2005 had been unlawful.

A. Admissibility

1. Whether the applicant can still claim to be a victim

21. In so far as the Government argue that the applicant can no longer claim to be a victim as regards the alleged unlawfulness of his detention

from 13 September 2001 to 15 June 2005, the Court reiterates that an applicant is deprived of his or her victim status if the national authorities have acknowledged the violation of the applicant's rights either expressly or in substance and then afforded appropriate and sufficient redress for it (see, for example, *Scordino v. Italy* (no. 1) [GC], no. 36813/97, §§ 178-93, ECHR 2006-V).

22. As regards the first condition, the Court notes that on 15 September 2005 the Supreme Court of the Russian Federation found, by way of supervisory review proceedings, that the court which had examined the applicant's criminal case had not been "a tribunal established by law", which had affected the lawfulness and well-foundedness of the conviction. In this respect the Supreme Court relied on the case of *Posokhov v. Russia* (cited above, § 41). In such circumstances, the Court is prepared to accept that the above findings of the Supreme Court contained an acknowledgment of a violation of the applicant's right under Article 5 of the Convention.

23. As to the second condition, the Court takes into account the Government's argument that, following the quashing of the applicant's initial conviction by the supervisory review court, the applicant was granted a new trial by the appropriate court, which found him guilty and sentenced him to imprisonment. The time already served by the applicant was set off against the newly imposed sentence. In this respect the Court notes that in the earlier case of *Yefimenko* (*Yefimenko v. Russia*, no. 152/04, §§ 92-100, 12 February 2013), it found that the reopening of the case and the retrial could not be considered to constitute appropriate and sufficient redress, given that the applicant had spent a significant period serving a prison sentence imposed by "a tribunal not established by law". Nor could the automatic deduction of the time already served from the newly imposed sentence be regarded as constituting such redress. Having examined the Government's arguments, the Court finds no reason to depart from that conclusion in the present case. Accordingly, the Court rejects the Government's argument that the applicant can no longer claim to be a victim of the violation alleged.

2. Whether the applicant has exhausted effective domestic remedies

24. In so far as the Government may be understood to suggest that the applicant has not exhausted effective domestic remedies in respect of his complaint challenging the lawfulness of his post-conviction detention imposed by "a tribunal not established by law", the Court reiterates that the word "conviction", for the purposes of Article 5 § 1 (a), has to be understood as signifying both a finding of guilt after it has been established in accordance with the law that there has been an offence and the imposition of a penalty or other measure involving deprivation of liberty (see *Del Río Prada v. Spain* [GC], no. 42750/09, § 123, ECHR 2013). It is satisfied, accordingly, that by challenging the lawfulness of his conviction

before the supervisory review court, the applicant did bring his grievances to the attention of a competent domestic authority. The Court further notes that the supervisory review court considered the applicant's complaint on the merits. The court recognised that the applicant's conviction had been rendered by "a tribunal not established by law", quashed it and remitted the case to the lower court for fresh examination. Accordingly, the Court accepts that the judgment of the Supreme Court of 15 June 2005 constitutes the final decision concerning the lawfulness of the applicant's conviction in the first set of criminal proceedings against him. The Government's objection is therefore dismissed.

3. Whether the applicant has complied with the six-month rule

25. As regards the Government's argument that the applicant did not comply with the six-month time-limit for lodging the complaint, as set out in Article 35 § 1 of the Convention, the Court reiterates that the six-month period starts running from the date of the final decision in the process of the exhaustion of domestic remedies. As established above (see paragraph 24 above), the final decision in respect of the applicant's complaint about the unlawfulness of his post-conviction detention from 13 September 2001 to 15 June 2005 was delivered by the Supreme Court on 15 June 2005. By lodging the complaint with the Court on 9 November 2005, the applicant complied with the six-month rule.

4. Conclusion

26. The Court notes that the applicant's complaint under Article 5 § 1 (a) of the Convention is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. General principles

27. The general principles concerning the lawfulness of a person's detention are well established in the Court's case-law and have been summarised as follows (see *Mooren v. Germany* [GC], no. 11364/03, 9 July 2009):

"72. Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see, *inter alia*, *Erkalo v. the Netherlands*, 2 September 1998, § 52, *Reports of Judgments and Decisions* 1998-VI; *Steel and Others v. the United Kingdom*, 23 September 1998, § 54,

Reports 1998-VII; and *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, ECHR 2008-...). The Court must further ascertain in this connection whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein, notably the principle of legal certainty (compare *Baranowski v. Poland*, no. 28358/95, §§ 51-52, ECHR 2000-III; *Ječius v. Lithuania*, no. 34578/97, § 56, ECHR 2000-IX; and *Nasrulloev v. Russia*, no. 656/06, § 71, 11 October 2007).

...

73. Although it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention and the Court can and should therefore review whether this law has been complied with (see, *inter alia*, *Benham v. the United Kingdom*, 10 June 1996, § 41, *Reports* 1996-III; *Baranowski*, cited above, § 50; *Ječius*, cited above, § 68; and *Ladent v. Poland*, no. 11036/03, § 47, ECHR 2008-... (extracts)).

74. However, the Court has clarified, particularly in its more recent case-law, that not every fault discovered in a detention order renders the underlying detention as such unlawful for the purposes of Article 5 § 1. A period of detention is, in principle, “lawful” if it is based on a court order. A subsequent finding of a superior domestic court that a lower court erred under domestic law in making the order will not necessarily retrospectively affect the validity of the intervening period of detention (see, *inter alia*, *Benham*, cited above, § 42; *Douiyeb v. the Netherlands* [GC], no. 31464/96, § 45, 4 August 1999; *Minjat v. Switzerland*, no. 38223/97, § 41, 28 October 2003; and *Khudoyorov v. Russia*, no. 6847/02, § 128, ECHR 2005-X (extracts)).

75. In its more recent case-law, the Court, referring to a comparable distinction made under English law (compare *Benham*, cited above, §§ 43-46; and *Lloyd and Others v. the United Kingdom*, nos. 29798/96 and others, §§ 102, 105 et seq., 1 March 2005), further specified the circumstances under which the detention remained lawful in the said underlying period for the purposes of Article 5 § 1: For the assessment of compliance with Article 5 § 1 of the Convention a basic distinction has to be made between *ex facie* invalid detention orders – for example, given by a court in excess of jurisdiction (see *Marturana v. Italy*, no. 63154/00, § 78, 4 March 2008) or where the interested party did not have proper notice of the hearing (see *Khudoyorov*, cited above, § 129; and *Liu v. Russia*, no. 42086/05, § 79, 6 December 2007) – and detention orders which are *prima facie* valid and effective unless and until they have been overturned by a higher court (*ibid.*). A detention order must be considered as *ex facie* invalid if the flaw in the order amounted to a “gross and obvious irregularity” in the exceptional sense indicated by the Court’s case-law (compare *Liu*, cited above, § 81; *Garabayev v. Russia*, no. 38411/02, § 89, 7 June 2007, ECHR 2007-... (extracts); and *Marturana*, cited above, § 79). Accordingly, unless they constitute a gross and obvious irregularity, defects in a detention order may be remedied by the domestic appeal courts in the course of judicial review proceedings.”

2. Application of the general principles in the present case

28. Turning to the circumstances of the present case, the Court observes that the complaint concerns the twenty-three years’ term of imprisonment the applicant was required to serve pursuant to the judgment delivered in his

case by the Regional Court on 13 September 2001. As acknowledged by the Supreme Court in the supervisory review proceedings, years after the said judgment was delivered and the applicant started serving a lengthy prison sentence, the lay judges had not been authorised to consider the applicant's case. The fact that the applicant's conviction was pronounced by the "tribunal not established by law" had affected the lawfulness and the well-foundedness of the applicant's conviction.

29. The Court notes the Government's argument that there were no negative consequences for the applicant in the present case given that the term of imprisonment already served had been set off against the new sentence. Nevertheless, the Court considers that the imposition of a lengthy prison sentence by the court which was not "competent", within the meaning of Article 5 § 1 (a) of the Convention, to carry out such sentencing constitutes a gross and obvious irregularity. With this in mind, the Court concludes that the applicant's detention on the basis of the trial court's judgment was in breach of Article 5 § 1 (a) of the Convention. It follows that there has been a violation of this provision (compare *Yefimenko*, cited above, §§ 101-11).

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 (c) OF THE CONVENTION

30. The applicant complained that his detention from 15 June to 19 September 2005 had been in contravention of Article 5 § 1 of the Convention, which, in so far as relevant, reads 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[.]"

31. The Government acknowledged that the applicant's pre-trial detention from 15 June to 5 August 2005 had not been compatible with the requirements set forth in Article 5 § 1 (c) of the Convention. As regards the applicant's pre-trial detention from 5 August to 19 September 2005, the Government submitted that it had been lawful. The applicant and his lawyer had attended the detention hearing. The court had examined the parties' arguments and discerned relevant and sufficient reasons to keep the applicant in custody pending trial.

32. The applicant maintained his complaint.

A. Admissibility

33. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The applicant's detention from 15 June to 5 August 2005

34. Regard being had to the general principles concerning the lawfulness of a person's detention (see paragraph 27 above), the Court notes that on 15 June 2005 the Supreme Court of the Russian Federation quashed the applicant's conviction and remitted the matter to the trial court for fresh consideration. On the same day the Supreme Court also ruled that the applicant should be detained pending a new trial.

35. In this connection, the Court accepts that on 15 June 2005 the Supreme Court acted within its powers. However, the Court cannot but note that the Supreme Court failed to indicate a time-limit for the applicant's detention or the reasons underlying it. Similarly, the Regional Court, on 22 July 2005, merely submitted that the applicant's preventive detention "should remain unchanged". The Court also takes into account the Government's acknowledgement that the applicant's detention during the period indicated was not in compliance with the requirements set out in Article 5 § 1 (c) of the Convention.

36. Having regard to its established case-law on the issue and the circumstances of the present case, the Court does not see any reason to hold otherwise. There has accordingly been a violation of Article 5 § 1 (c) of the Convention as regards the applicant's pre-trial detention from 15 June to 5 August 2005.

2. The applicant's detention from 5 August to 19 September 2005

37. The Court observes that the applicant's detention from 5 August to 19 September 2005 was based on the detention order issued by the Regional Court on 5 August 2005. The Regional Court provided certain grounds for its decision when fixing the date of the new trial for 18 August 2005. While noting a certain ambiguity in the wording used by the Regional Court as regards the time-limit of the applicant's detention, the Court is satisfied that it was obvious to the applicant and his lawyers that the authorised period of detention could not exceed six months (see paragraph 17 above). It can therefore accept that the District Court implicitly set the time-limit for the applicant's detention. Furthermore, it has never been alleged by the applicant that the District Court acted in excess of its jurisdiction, or that

there were any other flaws in the relevant detention (compare *Zuyev v. Russia*, no. 16262/05, § 74, 19 February 2013, and *Khudoyorov v. Russia*, no. 6847/02, § 135 *in fine*, ECHR 2005-X (extracts)).

38. The Court is therefore satisfied that the period of the applicant's detention from 5 August to 19 September 2005, when he was convicted by the trial court, was lawful within the meaning of Article 5 § 1 of the Convention. There has been accordingly no violation of Article 5 § 1 (c) on account of the applicant's detention from 5 August to 19 September 2005.

III. ALLEGED VIOLATION OF ARTICLE 5 § 5 OF THE CONVENTION

39. The applicant complained under Article 5 § 5 of the Convention that he had been unable to receive compensation for his unlawful detention from 13 September 2001 to 15 June 2005. Article 5 § 5, in so far as relevant, reads as follows:

“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. The parties' submissions

1. *The Government*

40. According to the Government, the applicant was not eligible to claim compensation in respect of his post-conviction detention from 13 September 2001 to 15 June 2005, as a matter of law. In any event, at no time had he applied for compensation at the domestic level.

2. *The applicant*

41. The applicant maintained his complaint. He submitted that it had not been possible for him to seek appropriate redress, in respect of his unlawful post-conviction detention, at the national level.

B. The Court's assessment

1. *Admissibility*

42. As regards the applicant's complaint that he did not have an enforceable right to compensation in respect of his post-conviction detention, which was effected in breach of Article 5 of the Convention, the Court takes into account the Government's argument that, as a matter of law, the applicant was not eligible for such compensation. Following the Government's logic, the Court considers that it was not incumbent on the applicant to apply to the domestic authorities for compensation. The Court

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

2. Merits

43. The Court reiterates that Article 5 § 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4. The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the preceding paragraphs of Article 5 has been established, either by a domestic authority or by the Court (see *N.C. v. Italy* [GC], no. 24952/94, § 49, ECHR 2002-X).

44. In the present case the Court has found a violation of Article 5 § 1 (a) of the Convention in respect of the applicant's detention from 13 September 2001 to 15 June 2005. It must therefore establish whether or not the applicant had an enforceable right to compensation for the breach of Article 5.

45. The Court notes that, according to the Government, despite the fact that the supervisory review court found the applicant's conviction unlawful, the applicant had not been entitled to compensation. Accordingly, the Court finds that the applicant did not have an enforceable right to compensation for the deprivation of his liberty between 13 September 2001 and 15 June 2005, which has been found to be in violation of Article 5 § 1 (a) of the Convention.

46. There has therefore been a violation of Article 5 § 5 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicant claimed 140,800 euros (EUR) in respect of non-pecuniary damage.

49. The Government considered the applicant's claims excessive. They further submitted that finding a violation would constitute adequate just satisfaction in the applicants' case.

50. In the present case the Court has found a violation of Article 5 §§ 1 (a), (c) and 5 of the Convention. The Court considers that the applicant has suffered non-pecuniary damage, for which he cannot be compensated solely by the finding of a violation. It therefore awards the applicant EUR 26,000 in respect of non-pecuniary damage, plus any tax that may be chargeable

B. Costs and expenses

51. The applicant also claimed EUR 2,700 for the costs and expenses incurred before the Court. In particular, his representative had spent four hours studying the case file, one hour corresponding with the applicant, and thirteen hours preparing the observations following the communication of the application.

52. The Government argued that the amount claimed was excessive. In their opinion, the case was relatively simple, the materials were not numerous and the applicant's representative could not have needed that amount of time, given her knowledge and expertise. They considered that the legal aid awarded would constitute adequate compensation in respect of the applicant's costs and expenses.

53. 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 (see, for instance, *Belziuk v. Poland*, 25 March 1998, § 49, Reports 1998-II). In the present case, regard being had to the documents in its possession, to the above criteria and to the fact that legal aid has been granted to the applicant, the Court considers it reasonable to award the sum of EUR 1,500 in respect of the proceedings before it, in addition to the sum paid by way of legal aid.

C. Default interest

54. 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 application admissible;

2. *Holds* that there has been a violation of Article 5 § 1 (a) of the Convention on account of the unlawfulness of the applicant's detention from 13 September 2001 to 15 June 2005;
3. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention on account of the unlawfulness of the applicant's detention from 15 June to 5 August 2005;
4. *Holds* that there has been no violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention from 5 August to 19 September 2005;
5. *Holds* that there has been a violation of Article 5 § 5 of the Convention on account of the lack of an enforceable right to compensation in respect of the detention from 13 September 2001 to 15 June 2005;
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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 26,000 (twenty-six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,500 (one thousand five 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;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 January 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Luis López Guerra
President