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

SECOND SECTION

CASE OF ANTONENKOV AND OTHERS v. UKRAINE

(Application no. 14183/02)

JUDGMENT

STRASBOURG

22 November 2005

FINAL

22/02/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Antonenkov and Others v. Ukraine,

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

Mr J.-P. COSTA, *President*,
Mr I. CABRAL BARRETO,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 3 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 14183/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Ukrainian nationals, Mr Aleksey Anatolyevich Antonenkov ("A.A.") Aleksey Anatoliyevich Diukin ("A.D.") and Vladimir Petrovich Stolitniy ("V.S.") ("the applicants"), on 6 March 2002.

2. The applicants were represented by Mr A.V. Vladimirov, a lawyer practising in Kyiv. The Ukrainian Government ("the Government") were represented by their Agent, Mrs Valeria Lutkovska.

3. On 13 October 2004 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1967, 1959 and 1970, respectively. All three live in Kyiv.

5. On 26 June 1996 criminal proceedings against the applicants were instituted.

6. On 31 June 1996 A.D. was arrested on suspicion of fraud and theft. On 16 August 1996 V.S. and, on 19 August 1996 A.A., were arrested on

similar charges. The prosecution's case was that the applicants had fraudulently (using false documents) converted and subsequently sold an apartment belonging to Mr K.

7. During the investigation the prosecution authorities obtained several economic expert opinions regarding the suspect transaction.

8. On 3 March 1997 the Kyiv City Prosecutor approved the indictment and referred the case to the Kyiv City Court, requesting it to determine the territorial jurisdiction in the case. On 5 March 1997 the Kyiv City Court (hereafter "City Court") remitted the case to the Shevchenkovsky District Court of Kyiv (hereafter "the District Court"). The applicants stood trial on charges of theft, fraud, and embezzlement of official documents (A.D.), fraud and forgery (V.S.) and fraud and theft (A.A.).

9. On 2 April 1997 the District Court committed the applicants for trial.

10. On 3 April 1997 the District Court released A.A. and V.S. on bail of UAH 3,000 each (approximately USD 1,500 at the material time) and an undertaking not to abscond. On 19 May 1997 A.D. was also released on bail of UAH 4,000 (approximately USD 2,000) and an undertaking not to abscond. On 27 May 1997 the applicants' bail was raised to UAH 17,000 (approximately USD 8,500) each.

11. Between April 1997 and June 1998 the District Court listed 22 hearings (14 between September 1997 and June 1998). Ten hearings were adjourned mainly due to the failure of the victim, witnesses and the applicants' lawyers to appear in court. In the course of the proceedings on 24 October 1997 the court issued a compulsory summons for the witness F.

12. On 22 June 1998 the District Court decided to remit the case for further inquiries on account of the insufficiency of the original investigation. The court stated *inter alia*, that the investigative authorities had failed to establish the whereabouts of one of the key witnesses, F., which made it impossible for the court to summon her to give evidence. The prosecution appealed against this decision. The decision was, apart from one point, quashed by the City Court in its ruling of 6 August 1998 because the flaws in the investigation indicated in this decision could be remedied during the trial. However, the City Court upheld the findings of the District Court that the charges of aggravated embezzlement filed against A.D. needed additional investigation.

13. The trial resumed on 2 November 1998. During the period November 1998 to April 2000 thirty hearings were scheduled, of which seven were held. Fifteen hearings were cancelled due to the victim's failure to appear, five hearings were adjourned on account of the applicants' absence and on two occasions the presiding judge was ill. In particular, the hearing scheduled for 12 May 2000 was adjourned until 17 May 1999 on account of V.S. being on a mission. On 15 March 2000 he lodged with the trial court a successful request for permission to go to the Russian Federation for medical treatment.

14. On 20 April 2000 the District Court remitted the case for further investigation, referring to the similar circumstances in its decision of 22 June 1998. The prosecution's appeal out of time was rejected by the City Court on 28 September 2000. On 18 January 2001 the Kyiv City Prosecutor lodged a supervisory *protest* (an extraordinary appeal) against the decision 20 April 2000. On 29 January 2001 the Presidium of the City Court granted the *protest* and remitted the case to the first instance court for further consideration.

15. The District Court resumed the examination of the case on 4 April 2001. Between April 2001 and July 2002 the court listed 23 hearings of which 13 were adjourned due to the failure of the victim (on 9 occasions), the applicants (on 3 occasions) and the prosecutor (on one occasion) to appear. In the course of the proceedings on 24 April and 21 May 2001 the court ordered the compulsory summons of the victim.

16. On 17 July 2002 the District Court disjoined the proceedings concerning the charges of theft and embezzlement of documents (A.D. and A.A.) and remitted the case in this part for additional investigation.

17. On 19 July 2002 the District Court terminated proceedings concerning the charges of fraud (all three applicants), embezzlement of documents (A.D.) and forgery (V.S.) as time-barred, lifted the bail condition and ordered the return of the bail money.

18. According to both parties' submissions, the criminal proceedings for (presumably) theft against A.D. and A.A. are still pending.

II. RELEVANT DOMESTIC LAW

19. The text of Articles 148, 149 and 150 of the Code of Criminal Procedure of 1960 (general rules on the application of preventive measures) is set out in *Merit v. Ukraine*, no. 66561/01, 30 March 2004 (Relevant domestic law and practice).

20. Article 154-1 of the Code (application of bail) is set out in *Koval v. Ukraine* (no. 65550/01, 10 December 2002).

21. Article 281 (remittal of a case for additional investigation) is set out in the judgment of 6 September 2005 in the case of *Salov v. Ukraine* (see no. 65518/01, § 72).

22. Article 151 of the Code provides that an undertaking not to abscond consists in obtaining from the suspect or the accused an agreement not to leave the place of residence or temporary stay without the permission of an investigator (or a trial judge). In the event of a breach of the written undertaking given by him, a stricter measure of restraint may be applied to the suspect or accused.

THE LAW

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

23. The applicants complained about the excessive length of the criminal proceedings against them. In their letter of 18 May 2004, the applicants further complained that the decision of the Shevchenkovsky District Court of Kyiv of 19 July 2002 was unfair as it left unresolved the issue of their guilt. They referred to Article 6 § 1 of the Convention, which, insofar as relevant, reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

24. The Government contested that argument.

A. Admissibility

1. The fair trial issue

25. In their letter of 18 May 2004, the applicants submitted a complaint about the unfairness of the criminal proceedings against them. They maintained that the decision of the Shevchenkovsky District Court of Kyiv of 19 July 2002 was unfair, within the meaning of Article 6 of the Convention, given that the issue of the applicants' guilt or innocence was left open due to the termination of the criminal proceedings against them.

26. The Court notes that this complaint was submitted more than six months after the impugned decision was delivered. Moreover, the applicants failed to challenge this decision before the Kyiv City Court of Appeal and have therefore not, as required by Article 35 § 1 of the Convention, exhausted the remedies available under Ukrainian law. The Court, therefore, rejects this part of the application, pursuant to Article 35 §§ 1 and 4 of the Convention.

2. The length of the proceedings

a. The alleged non-exhaustion of domestic remedies

27. The Government maintained that the applicants did not exhaust domestic remedies as they failed to challenge the decision of 19 July 2002 before the Kyiv City Court of Appeal.

28. The applicant contested this submission.

29. The Court recalls its case-law to the effect that Ukrainian law as it stood at the material time provided no effective remedies, within the

meaning of its case-law under Article 35 § 1 of the Convention, with regard to complaints relating to the length of the criminal proceedings (see *Merit v. Ukraine*, cited above, §§ 61-67). It finds no reason to depart from this conclusion in the present case. The Court finds therefore that the applicant was absolved from pursuing the remedy invoked by the Government and has complied with the requirements of Article 35 § 1 of the Convention.

b. The alleged failure to comply with the six-month rule

30. The Government stated that the six-month period for submission of the application started to run on 22 June 1998 or 20 April 2000, when the District Court ordered a re-investigation.

31. The applicants alleged that the court acts referred to by the Government were of an interim character, and consequently could not be considered final for the purposes of Articles 6 and 35 § 1 of the Convention. Therefore, according to the applicants, the decisions of 22 June 1998 or 20 April 2000 could not trigger the running of the six-month period.

32. The Court recalls that Article 6 § 1 applies throughout the entirety of proceedings for "the determination of ... any criminal charge" (see *Phillips v. the United Kingdom*, no. 41087/98, § 39, ECHR 2001-VII). It further recalls that, where no domestic remedy is available (see paragraph 29 above), the six-month period runs from the act alleged to constitute a violation of the Convention. However, where it concerns a continuing situation, it runs from the end of the situation concerned (see *Al Akidi v. Bulgaria* (dec.), no. 35825/97, 19 September 2000).

33. The Court notes that in the present case it is not in dispute that the court proceedings under consideration (either before or after the decisions of 22 June 1998 and 20 April 2000) related to the same pool of charges filed against the applicants by the prosecution authorities. It would be artificial to separate these parts of the applicants' criminal trial from the remainder of the criminal proceedings in their entirety. The Court recalls that the remittal of the case for additional investigation marked a procedural step of an interim character which contained no elements of a final judicial decision in a criminal case and did not constitute the final determination of the charges against the applicant (see, *mutatis mutandis*, *Nikitin v. Russia*, no. 50178/99, § 58, ECHR 2004-...).

34. The Court considers, therefore, that with regard to V.S. the six-month period runs from the decision of 19 July 2002, which, in the absence of any appeal, ultimately terminated the criminal proceedings against him. As to A.A. and A.D. the proceedings against them are still pending and thus they give rise to a possible continuous situation of a violation of the "reasonable time" provision of Article 6 § 1 of the Convention. Consequently, the present complaint, having been submitted to the Court on 6 March 2002, falls within the Court's six-month jurisdiction.

c. General conclusion

35. The Court notes that this complaint is not manifestly ill-founded. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The submissions of the parties

36. The Government were of the view that the case was rather complex, which was shown by the fact that there had been three defendants. They mentioned the necessity to examine a number of expert opinions, to question numerous witnesses and to consider over two thousands pages of documentary evidence. The Government stated that the domestic courts had displayed due diligence in the conduct of the proceedings by scheduling hearings at regular intervals. They pointed out that the courts had made efforts to expedite the examination of the case by issuing compulsory summons regarding the witness F. and the victim K.

37. The Government further observed that the applicants had contributed to the prolongation of the proceedings by failing to appear in court on a number of occasions, by supporting the first decision of the trial court to refer the case for further investigation and by not opposing the second decision of this kind. These decisions, in their opinion, once implemented, considerably delayed the examination of the case.

38. The applicants maintained that the proceedings had not been conducted with sufficient diligence. They further pointed out that they were only responsible for a small number of adjournments of the hearings.

2. The Court's assessment

a. Period to be taken into consideration

39. The Court recalls that the period to be taken into consideration in determining the length of criminal proceedings begins with the day on which a person is "charged" within the autonomous and substantive meaning to be given to that term. It ends with the day on which a charge is finally determined or the proceedings are discontinued (see *Rokhlina v. Russia*, no. 54071/00, § 81, 7 April 2005).

40. The period to be taken into consideration in the present case began with the institution of criminal proceedings against the applicants on 26 June 1996 and lasted until 19 July 2002 for V.S. and is still pending with regard to A.D. and A.A. The Court notes that out of the six years and one month (V.S.) and the nine years four months (A.D. and A.A.) of the proceedings, only four years ten months and eight years one month,

respectively, fall within the Court's jurisdiction *ratione temporis*. However, in assessing the reasonableness of the time that elapsed after 11 September 1997, when the Convention came into force in respect of Ukraine, account must also be taken of the state of proceedings at that stage (see, *Foti and Others v. Italy* judgment of 10 December 1982, Series A no. 56, pp. 18-19, § 53).

b. The reasonableness of the length of proceedings

41. The Court recalls that the reasonableness of the length of the proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and the conduct of the competent authorities. On the latter point, what is at stake for the applicant has also to be taken into consideration (see, among many other authorities, *Kalashnikov v. Russia*, no. 47095/99, § 125, ECHR 2002-VI).

42. Turning to the facts of the present case, the Court considers that there is a certain degree of complexity inherent in the economic nature of the charges laid against the applicants (see *Grauslys v. Lithuania*, no. 36743/97, § 61, 10 October 2000). It notes, in particular, that the authorities had to order a number of expert examinations of the circumstances surrounding the impugned transaction. However, the Court notes that the expert opinions in issue were delivered during the pre-trial stage. Moreover, the court did not even question the expert witnesses, limiting its examination to the experts' reports. The Court finds it doubtful that the two-thousand pages case-file could in itself justify the overall length of the trial (see, *mutatis mutandis*, *Ruiz-Mateos v. Spain*, judgment of 23 June 1993, Series A no. 262, p.p. 21 and 23, §§ 40 and 53).

43. The Court notes that the applicants did cause certain delays in the proceedings. In particular, they did not attend several hearings. The duration of these delays cannot be determined precisely, but, in any event, it was less than six months in total.

44. However, the Court finds that many delays in the proceedings are attributable to the conduct of the domestic authorities.

45. It first has regard to the proceedings relating to the trial court's remittals of the case for re-investigation in June 1998 and April 2000. On both occasions the prosecution opposed these decisions and successfully appealed against them to the Kyiv City Court. The Court recalls the Government's submissions in the case of *Salov v. Ukraine* that the proceedings at issue concerned a "dispute between a prosecutor and the court and the applicant had not been a party to it" (see no. 65518/01, § 72, 6 September 2005). In their observations in the present case the Government stated that the applicants "supported" the decision of 22 June 1998 and "did not oppose" that of 20 April 2000. The secondary role of the applicants in these proceedings is further demonstrated by the fact that they, unlike the

prosecution, had no right of appeal against the court's decisions to remit the case for further investigation (see paragraph 20 above). Moreover, on both occasions, once the Kyiv City Court quashed the decisions to reinstitute the investigation in the case, the case-file was remitted to the trial court with considerable delays. The Court, therefore, finds that the State authorities were the masters of the proceedings which caused the unnecessary prolongation of the trial for five months in June-November 1998 and for one year in April 2000 – April 2001.

46. Further delays in the proceedings were due to infrequent trial hearings. Although the applicants were not in custody, the Court finds that the trial court should have fixed a tighter hearing schedule in order to speed up the proceedings (cf. *Čevizović v. Germany*, no. 49746/99, 29 July 2004, §§ 51 and 60). Furthermore, the Court notes that although the most frequent reason for the adjournment of the hearings throughout the trial was the victim's failure to appear. It was not until April-May 2001 that the court ordered his compulsory appearance, and these orders do not seem to have had any effect on his conduct.

47. Having regard to the foregoing, the Court considers that the length of the proceedings did not satisfy the "reasonable time" requirement. Accordingly, there has been a breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL NO. 4 TO THE CONVENTION

48. The applicants complained about the lengthy restriction on their freedom of movement as a result of the undertaking not to abscond. They relied on Article 2 of Protocol No. 4, which, insofar as relevant reads as follows:

> 1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence....
>
> 3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
>
> 4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

49. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

1. The submissions of the parties

50. The Government maintained that the undertaking not to abscond was imposed on the applicants as a part of their bail conditions. The Government stated that this measure could not be regarded as restricting the applicant's freedom of movement unless it was ordered unlawfully or the authorities abused their power to grant or refuse the applicants' requests to temporarily leave the place of permanent residence, which was not the case.

51. The applicants alleged that the undertaking not to abscond was a preventive measure separate from bail. This measure imposed on them an obligation to report to the trial judge each time they wanted to leave their place of residence, thus restricting their liberty of movement. The applicants next alleged that the Code of Criminal Procedure prohibited the application of more than one preventive measure at a time. Therefore, in their view, the measure was unlawful and placed a disproportionate burden on them.

2. The Court's assessment

a. Whether there was interference

52. First, the Court finds it unnecessary to embark on a discussion of whether the undertaking not to abscond was or was not a preventive measure separate from bail. It suffices to note that pending the trial the applicants were subject to an obligation (be it part of the bail conditions or a separate measure) to seek permission from the trial court to leave their places of permanent residence every time they wished to go elsewhere. The Court, therefore, agrees with the applicants that the impugned measure restricted their right to liberty of movement in a manner amounting to an interference, within the meaning of Article 2 of Protocol No. 4 to the Convention (see *Hannak v. Austria*, no. 17208/90, Commission decision of 13 October 1993; *Raimondo v. Italy*, judgment of 22 February 1994, Series A no. 281-A, p. p. 19, § 39).

53. It remains to be determined whether that restriction was "in accordance with the law" and was a "necessary in a democratic society".

b. Lawfulness and purpose of the interference

54. The Court notes that the parties disagreed as to whether the undertaking was in compliance with the Ukrainian Code of Criminal Procedure.

55. For the purposes of its examination of this question, the Court recalls that it is primarily for the national authorities, notably the courts, to resolve problems of the interpretation of domestic legislation (see, among many others, *Miragall Escolano and Others v. Spain*, nos. 38366/97, and following, § 33, ECHR 2000-I). The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the

Convention. This applies, in particular, to the interpretation by courts of rules of a procedural nature (see *Ivanova v. Finland* (dec.), no. 53504/99, 28 May 2002).

56. The Court notes in this connection that, while the applicants alluded briefly to the issue of the simultaneous application of bail and the undertaking not to abscond, their essential standpoint was that they were challenging the implementation of the impugned measure rather than its lawfulness.

57. The Court, therefore, sees no reason to question the domestic court's finding that the application of the undertaking not to abscond in the present case was compatible with domestic procedural law.

58. The Court equally finds that the impugned measure pursed legitimate aims, namely, the "maintenance of *ordre public*" and the "prevention of crime" (see, *mutatis mutandis*, *Labita v. Italy* [GC], no. 26772/95, § 194, ECHR 2000-IV).

c. Proportionality of the interference

59. The Court observes that it ruled on the compatibility with Article 2 of Protocol No. 4 of an obligation not to leave one's place of residence in a series of cases against Italy, including the case of *Luordo* (see *Luordo v. Italy*, no. 32190/96, § 96, ECHR 2003-IX). In *Luordo* the Court found such an obligation, imposed on the applicant for the duration of bankruptcy proceedings, disproportionate because of their length, in that case 14 years and 8 months, even though there had been no indication that the applicant had wished to leave his place of residence or that such permission had ever been refused. This pattern was followed in subsequent cases, where the duration of an obligation not to leave one's place of residence varied from 13 years 6 months (see *Goffi v. Italy*, no. 55984/00, § 20, 24 March 2005) to 24 years 5 months (see *Bassani v. Italy*, no. 47778/99, § 24, 11 December 2003).

60. The Court finds, however, that the circumstances of the present case are sufficiently different to enable it to be distinguished from the applications referred to above, for the following reasons:

61. First, the Court notes that, in the present case, the applicants were the subject of criminal proceedings. The Convention permits States, in certain circumstances, to apply preventive measures restricting the liberty of an accused in order to ensure the efficient conduct of a criminal prosecution, including a deprivation of liberty. In the Court's view, an obligation not to leave an area of residence is a proportionate restriction on an accused's liberty (see, *mutatis mutandis*, *Nagy v. Hungary* (dec.), no. 6437/02, 6 July 2004).

62. Secondly, the preventive measure was not automatically applied for the whole duration of the criminal proceedings against the applicants; for example, there is no information in the Court's possession indicating that

A.D. and A.A., while under criminal investigation, were ever subjected to this measure after July 2002. Accordingly, the obligation not to leave their area of residence was imposed on the applicants for a period of approximately five years three months, out of which four years and ten months fall within the Court's competence *ratione temporis*.

63. Thirdly, as can be seen from the preceding calculation, the length of the impugned restriction was significantly shorter than in the *Luordo* and subsequent cases against Italy.

64. In the light if these considerations, the Court finds that the mere duration of this restriction in the present case is insufficient for the Court to conclude that it was disproportionate. In order to decide whether a fair balance was struck between the general interest in the proper conduct of the criminal proceedings and the applicants' personal interest in enjoying freedom of movement, the Court must also ascertain whether the applicants actually sought to leave the area of their residence and, if so, whether permission to do so was refused.

65. According to the Government's submissions, unchallenged by the applicants, V.S. applied twice to leave Kyiv and was granted permission on both occasions.

66. In view of the above considerations, the Court cannot reach the conclusion that a fair balance between the demands of the general interest and the applicants' rights was not achieved. The Court finds, therefore, that the restriction on the applicants' freedom of movement in the present case was proportionate.

67. Accordingly, there has been no violation of Article 2 of Protocol No. 4 to the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

69. The applicants A.A. and A.D. claimed 80,000 euros (EUR) and V.S. claimed EUR 100,000 in respect of pecuniary damage. As regards non-pecuniary damage, the applicants claimed EUR 130,000 each.

70. The Government maintained that the applicants had not specified the nature of the damage caused to them and had not substantiated the amounts claimed.

71. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects these claims. The Court finds, however, that the applicants may be considered to have suffered some degree of frustration and distress as a result of the violations found in this case. Deciding on an equitable basis, it awards V.S. EUR 2,000 and A.A. and A.D. EUR 3,000 each in respect of non-pecuniary damage.

B. Costs and expenses

72. The applicants also claimed EUR 20,000 each for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

73. The Government pointed out that the applicants had failed to furnish any evidence in support of these claims. However, they left the question of costs and expenses to the Court.

74. According to the Court's case-law, an applicant is entitled to the reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award each applicant the sum of EUR 1,000 to cover the costs under all heads.

C. Default interest

75. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the length of the criminal proceedings against the applicants and the restriction on their liberty of movement admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there has been no violation of Article 2 of Protocol No. 4 to the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention the following sums, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 2,000 (two thousand euros) to Mr Stolitny in respect of non-pecuniary damage;

(ii) EUR 3,000 (three thousand euros) each to Mr Antonenkov and Mr Diukin in respect of non-pecuniary damage;

(iii) EUR 1,000 (one thousand euros) to each of the applicants in respect of costs and expenses;

(iv) plus any tax that may be chargeable on these amounts;

(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;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 22 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President