



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

FIFTH SECTION

CASE OF LUTSENKO v. UKRAINE

(Application no. 30663/04)

JUDGMENT

STRASBOURG

18 December 2008

FINAL

18/03/2009

This judgment may be subject to editorial revision.

In the case of Lutsenko v. Ukraine,

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

Rait Maruste, *President*,
Volodymyr Butkevych,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 25 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 30663/04) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Stanislav Nikolayevich Lutsenko (“the applicant”), on 5 August 2004.

2. The applicant, who had been granted legal aid, was represented by Mr A.P. Bushchenko, a lawyer practising in Kharkiv. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev.

3. The applicant alleged, in particular, that he had been convicted in violation of Article 6 § 1 of the Convention, on the basis of statements given by his absentee co-accused during the pre-trial investigation, then retracted as having been made under duress.

4. On 6 July 2007 the Court decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1977 and lives in Makiyivka.

6. At about 6.30 a.m. on 13 November 1995 Mr O.M. was found in a cultivated forest near a railway station, with four gunshot wounds, from which he died the same day in a hospital some two hours later.

7. On 17 November 1995 the applicant was arrested on suspicion of having murdered Mr O.M. In the course of a subsequent search of the applicant's house 1,500 dollars (USD) were seized.

8. Between 17 November 1995 and 13 December 1996 the applicant was held in custody in the Donetsk Investigative Isolation Unit (SIZO). According to the applicant, the conditions in which he was held were inhuman and degrading. Furthermore, the police allegedly tortured him to obtain a confession.

9. The applicant consistently denied any involvement in the murder. He acknowledged that on 12 November 1995 his classmate Mr A.F. had driven him to the site of the incident, as he had wanted to see the place, where he had planned a business meeting for 13 November 1995 with a certain Andrey, whose other details he did not know. The following day Mr A.F. again accompanied the applicant to the same place along with his father in their car and waited for him nearby. The applicant met Andrey on the railroad bridge as agreed. Andrey took the applicant's jacket. When the applicant saw two men fire at a passer-by, he became scared and ran through the forest to Mr A.F.'s car and they drove away. During the trip, the applicant threw away his boots and his gloves, as he had realised that other passers-by could have seen him and implicated him in the incident.

10. On 18 November 1995 Mr N.L., the applicant's acquaintance, who was a shareholder and a driver in a company managed by Mrs O.M., the victim's widow, was questioned by the police concerning the murder. As he was questioned as a witness, Mr N.L. was warned of his obligation to provide all the information known to him on pain of criminal sanctions and was not offered the option to consult with a lawyer. He confessed to having hired the applicant to kill Mr O.M. and to having paid him USD 2,000 in advance and USD 10,000 *post factum*. He also testified that on the eve of the murder the applicant had shown him the gun he had acquired to kill Mr O.M. Soon afterwards Mr N.L. was indicted for incitement to murder. Following his indictment and purportedly a consultation with a lawyer, he retracted his confession and subsequently consistently denied his or the applicant's involvement in the events throughout the course of the proceedings.

11. On 21 November 1995 Mr N.L. complained to the prosecutor's office that the police officers who had questioned him had put him under severe psychological pressure, including threats to accuse him of a capital offence, to have him beaten and raped and to harm his wife and daughter unless he identified the applicant as the killer of Mr O.M. On an unspecified date Mr N.L. also complained that two unknown individuals had attacked him on the porch of his house and told him to confess to his involvement in

the murder if he wanted to spare his family serious trouble. The parties did not provide any information concerning the authorities' reaction to these complaints.

12. On an unspecified date the case against the applicant and Mr N.L. was referred for trial to the Donetsk Regional Court. According to the prosecution, the applicant was guilty of murder for profit, unlawful possession of firearms and unlawful transactions in foreign currency. According to the prosecution's version of events, Mrs O.M., grossly upset about her husband's inappropriate behaviour towards her, had requested Mr N.L. to find somebody to talk to him, threaten and, if necessary, beat him. She allowed him to take some money from 1.5 billion karbovantsi¹ which she had earlier given him for safekeeping, to hire a suitable person. Mr N.L., who was on bad personal terms with Mr O.M. and was afraid to lose his job in his wife's company, decided to use the money to have Mr O.M. killed. On an unknown date Mr N.L. gave the applicant USD 2,000 for preparation of the murder, including the purchase of a gun, and informed him of the usual time and route by which Mr O.M. walked to work. On an unknown date the applicant acquired from an unknown source a 7.65-calibre foreign gun of an unknown make, and on 13 November 1995 he fired several shots into the victim. On 15 November 1995 Mr N.L. gave the applicant another USD 10,000 in payment for the murder.

13. On 29 May 1996 the Donetsk Regional Court referred the case for additional investigation, having found that the facts of the case were insufficiently established and the evidence of the defendants' involvement in the incriminated offences was insufficient. On an unspecified date the case was referred back to the court for trial.

14. On 13 December 1996 the Donetsk Regional Court acquitted the defendants, having found, in particular, that the prosecution had failed to account for inconsistencies between the available sources of evidence and to secure sufficient proof of the defendants' guilt. In particular, a number of facts, such as Mr N.L.'s alleged involvement in the crimes and the sums purportedly received by the applicant to commit the murder were lacking in any evidentiary basis save for Mr N.L.'s initial confessions, which he had subsequently retracted as given under duress. Accordingly, the court found the evidence unreliable and, as no other evidence was available, interpreted all the doubts in favour of the defence.

15. The applicant was released from custody on the day of his acquittal and soon afterwards left the country and settled in Uzbekistan, allegedly fearing reprisals on the part of the police. On an unspecified date Mr N.L. disappeared.

16. On 9 June 1997 the Donetsk Regional Court placed the applicant and Mr N.L. on the wanted list. According to the applicant, he was unaware of

¹ Approximately USD 10,000 in transitional currency of Ukraine at the material time.

this fact and was never in hiding. He settled, worked, married, had a child and obtained a driver's licence in his own name.

17. On 13 December 1997 the Supreme Court allowed the appeal in cassation by the prosecution and remitted the case for fresh consideration to the Donetsk Regional Court.

18. In 2002, when the applicant applied to the Ukrainian authorities to renew his expired passport, he was arrested and detained in Ukraine pending trial.

19. As Mr N.L. was not found, on 9 December 2002 the Donetsk Regional Court of Appeal (the former Donetsk Regional Court) solicited the applicant's opinion about holding a trial in his absence, to which the applicant, represented by a lawyer, agreed. In the course of the trial, the prosecution requested the court to read out depositions by Mr N.L., to which the defence did not object. The court granted the request by the prosecution.

20. On 3 October 2003 the Donetsk Regional Court of Appeal accepted the prosecution's version of events as filed in 1996. It convicted the applicant of murder for profit and unlawful possession of firearms and acquitted him of unlawful transactions in foreign currency, which was by then no longer a criminal offence.

21. The court found that the applicant's guilt of having committed the murder as charged was apparent, in particular, on the strength of the following evidence:

- Mrs O.M.'s testimony that in October 1995 she had requested Mr N.L. to find a person to threaten her husband and had authorised him to pay that person out of 1.5 billion karbovantsi given to him for safekeeping. After her husband had been murdered, Mr N.L. had advised her to be quiet about the matter;

- Mrs A.L.'s (the applicant's mother's) testimony that on 12 November 1995 her son had bought gloves, tennis shoes and a sports bag. On 13 November 1995 her son had told her that he was going to play tennis in the morning, but had subsequently changed his plans and left the town for two days. The 1,500 USD which were seized from the house belonged to the entire family and were long-term savings;

- Mrs V.V.'s and Mrs O.O.'s testimony that on 13 November 1995, at about 6.30 a.m., they had heard several gunshots and then discovered Mr O.M. wounded near the railroad bridge, and that they had not seen any suspicious men around;

- Mr M.F.'s testimony that on 13 November 1995, at about 6.30 a.m., he had heard three gunshots and some 20 seconds later had seen a man running across the bridge. He was unable, however, to provide a description of the man and refused to speculate whether it could have been the applicant;

- Mr A.F.'s testimony that on 12 November 1995 he had driven the applicant to a market in his father's car, where the applicant had bought a bag, a jacket, tennis shoes and gloves. Subsequently they had gone on to the

neighbourhood where the murder would take place the following day, as the applicant had business there. The applicant went into the forest and was absent for some 10 to 12 minutes, after which they returned home and agreed that Mr A.F. would give the applicant a ride the following morning “to meet the boss”. They drove to the place the next day and Mr A.F. and his father waited for the applicant in the car. The applicant returned without his jacket, very agitated, and informed them that he had encountered suspicious individuals. During the trip the applicant threw away his boots and his gloves out of the window. Mr A.F.’s father gave an analogous statement;

- Mrs A.I.’s depositions, given during the pre-trial investigation, that on 13 November 1995 at 6:15 she had seen a man standing on the railroad bridge with a big dark bag near him, his hands in the pockets;

- an expert assessment of the bullets fired at Mr O.M., according to which the bullets could have been shot from a gun of one of some eight foreign models;

- an expert assessment that it was not impossible to fire one of those guns when wearing gloves similar to the ones which the applicant had had on him, as identified by Mr A.F. (his driver);

- two forensic assessments of the circumstances and causes of Mr O.M.’s death, which described his wounds and found that the shots had been fired from various distances;

- the testimony by the applicant’s boss, in charge of a currency exchange business, concerning the applicant’s low income;

- the record of the currency exchange transactions performed by the business in the relevant time, according to which nobody had exchanged any sum higher than USD 500 in a single transaction; and

- the applicant’s psychiatric assessment, according to which he suffered from no disorder and was answerable for his actions.

22. No reference in the text of the judgment was made to the confessional statements by Mr N.L. or to the applicant’s allegations that they had been given under duress.

23. Having recited the aforementioned evidence, the court concluded:

“Having assessed the evidence in the case, the court considers it established that [the applicant].... had committed murder for profit, which is to be qualified under Section 93(a) of the Criminal Code. His intentional actions, manifested in acquisition, carrying and storage of firearm and ammunition without a respective permit, which have been fully confirmed, fall under Section 222 paragraph 1 of the Criminal Code of Ukraine...”

24. The applicant appealed in cassation. He maintained, *inter alia*, that his conviction lacked evidentiary basis and *de facto* relied to a decisive extent on the initial depositions by Mr N.L., given by him in the absence of

a lawyer when interrogated as a witness without privilege against self-incrimination, and which he had subsequently retracted as given under duress. He maintained that without a reference to those depositions all the other evidence was insufficient to establish the facts, in particular concerning the possession of the gun and the payment of money for the murder.

25. The applicant's lawyer lodged a separate cassation appeal in which he supported the applicant's allegations concerning the insufficiency of the inculcating evidence. He noted, in particular, that there was no evidence whatsoever that the applicant had ever had a gun, much less fired it, or that the USD 12,000 allegedly given to the applicant had ever existed, much less been transferred to him as suggested, and submitted that it was not possible to establish exactly where the applicant had been at the time when Mr O.M. had been wounded.

26. On 11 March 2004 the Supreme Court upheld the judgment of 3 October 2003. In the text of its decision it summarised the evidence on which the conviction was based, as well as referring to the confession made by Mr N.L., as follows:

"During the hearing [the trial court] also examined the statement of [Mr N. L.] given during the pre-trial proceedings, in which he confirmed that after having talked with [Mrs O. M.] he informed [the applicant] about that, and the latter said that in order to prepare the murder he needed USD 2,000 and USD 10,000 for its committal. He gave [the applicant] USD 2,000, and the latter showed him a gun he had acquired. After the murder of [Mr O.M.], on 15 November 1995 he paid [the applicant] USD 10,000 and the latter told him that he had disposed of the gun, the jacket, the gloves and the boots.

The arguments of [the applicant] that [Mr N.L.] had falsely accused him and himself under physical pressure by police officers had also been examined and had been found unsubstantiated..."

27. In concluding its reasoning, the Supreme Court stated:

"Therefore, the [trial] court has examined all the circumstances of the case. Having assessed the evidence in its totality, the [trial] court concluded that [the applicant] had committed the premeditated murder for profit of [Mr O.M.] and correctly qualified it as an offence defined in Article 93 (a) of the 1960 Criminal Code."

II. RELEVANT DOMESTIC LAW

1. Criminal Code of 1960 (partly repealed by the new Criminal Code of 2001)

28. Section 93 (Aggravated murder), paragraph (a), defined "murder for profit" as an offence punishable by a term of imprisonment of up to life and by confiscation of property;

29. Section 94 (Murder) defined “murder committed in the absence of the aggravating circumstances listed in Section 93”, as an offence, punishable by a term of imprisonment of up to fifteen years;

30. Section 179 (Refusal of a witness to testify or of an expert or a translator to perform his duties) defined a witness’s refusal to testify as an offence punishable by correctional labour or a fine.

2. The Code of Criminal Procedure

31. According to Sections 43 (An Accused and his Rights) and 43-1 (A Suspect) of the Code, a suspect and an accused have the right to refuse to testify and to consult a lawyer before being questioned for the first time;

32. Sections 70 (Duties of a Witness) and 71 (Liability of a Witness) provide no such guarantees. On 13 June 2000 the Code was supplemented with Section 69-1 (Rights of a witness), which enabled witnesses to refuse to testify against themselves, their family members and close relatives.

THE LAW

I. SCOPE OF THE CASE

33. The Court notes that in August 2007, after the communication of the case to the respondent Government, the applicant additionally complained under Article 3 of the Convention about the conditions of his detention pending trial between 2002 and 2004.

34. In the Court’s view, this new complaint is not an elaboration of the applicant’s original complaints, lodged with the Court three years earlier, on which the parties have commented. The Court considers, therefore, that it is not appropriate now to take this matter up in the present context (see *Skubenko v. Ukraine* (dec.), no. 41152/98, 6 April 2004).

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

35. The applicant complained that he did not have a fair trial; he alleged, in particular, that he was convicted on no evidence except the confessions of Mr N.L., which had been extracted by unlawful pressure. He relied on Article 6 § 1 of the Convention, which reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. Admissibility

36. The Government alleged that the applicant had failed to exhaust all available domestic remedies in respect of his complaint. In particular, in his cassation appeal he had failed to complain about having been unable to cross-examine Mr N.L. before the trial court.

37. The applicant disagreed. He submitted that if he had, as suggested by the Government, complained about the impossibility of questioning Mr N.L., whose whereabouts were by then unknown, he would have insisted in substance on the postponement of the trial for an indefinite period of time. This would have been contrary to his interests, as he would have been left in a state of uncertainty about his fate. Moreover, in this case his detention could have been prolonged. Finally, the passage of time would have rendered it increasingly difficult to examine other sources of evidence. On the other hand, the applicant believed that the impossibility to cross-examine Mr N.L. could have been remedied by other procedural means, such as the exclusion of his initial confessions from the body of evidence. When the applicant found out that these confessions formed the basis of his conviction, he properly raised the matter in his cassation appeal.

38. The Court recalls that the issue in the present case is not the applicant's trial and conviction in the absence of his co-accused, but the alleged unfair use of the co-accused's confessional depositions as the basis for the applicant's conviction. The Court observes that the applicant extensively elaborated on this issue in his cassation appeal. It therefore dismisses the Government's objection.

39. The Court considers that the applicant's complaint 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. The submissions of the parties

40. The applicant submitted that despite the fact that the trial court had not explicitly referred to Mr N.L.'s depositions in its judgment, they were the main source of inculpatory evidence. Not only had these depositions been extensively elaborated upon in the judgment given by the court of cassation but, without them, all the other available evidence in its entirety could not have resulted in the applicant's conviction as formulated. The applicant had found no reason to object to the examination of Mr N.L.'s depositions at his trial because Mr N.L. had retracted his initial confession as soon as he had been relieved of pressure from the police, and had subsequently consistently pleaded – before both the prosecution and the

court – that the applicant and himself were innocent. However, the judicial authorities had seen fit to rely solely on the initial depositions given by Mr N.L. under duress and in the absence of procedural guarantees against self-incrimination, completely disregarding his subsequent pleas of innocence; the applicant's conviction, based on these depositions, was accordingly unfair.

41. The Government objected to this view. They contended that the applicant's conviction was not based to a decisive extent on Mr N.L.'s depositions. The courts disposed of an ample array of sources of evidence, including numerous witnesses and several forensic assessments. However, even assuming that the initial depositions by Mr N.L. had provided a basis, among other sources of evidence, for the applicant's conviction, the use of these depositions was not unfair. In particular, before resorting to the depositions in question as a means of establishing the facts, the authorities had reasonably attempted to locate Mr N.L. and bring him before the court. As these attempts had been unsuccessful, the trial court had first consulted with the parties as to whether it was feasible to start the trial in Mr N.L.'s absence and, subsequently, whether they had any objections to the examination of his earlier statements. The defence had never objected to these proposals. After all, Mr N.L.'s depositions had been read out at a public hearing and the applicant had had every opportunity to challenge them.

2. *The Court's assessment*

42. The Court reiterates that while Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law (see, amongst other authorities, *Schenk v. Switzerland*, 12 July 1988, § 46, Series A no. 140, and *Teixeira de Castro v. Portugal*, 9 June 1998, § 34, Reports 1998-IV). It is therefore not the role of the Court to determine, as a matter of principle, whether particular types of evidence, including statements by an absentee co-accused may be admissible or, indeed, whether the applicant was guilty or not. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair (see, *inter alia*, *Jalloh v. Germany* [GC], no. 54810/00, § 95, ECHR 2006-...).

43. The impossibility of securing the appearance of a witness at the trial, in the autonomous meaning of the term, does not in itself make it necessary to halt the prosecution. In such a situation it is open to the domestic courts, subject to the rights of the defence being respected, to have regard to the statements obtained during pre-trial investigation, in particular if the courts can consider those statements to be corroborated by other evidence before them. An issue may, however, arise if the conviction is based solely or to a decisive extent on those statements (see, amongst other authorities, *Asch v.*

Austria, 26 April 1991, §§ 25, 27, Series A no. 203; *Artner v. Austria*, 28 August 1992, § 21, Series A no. 242-A; *Doorson v. the Netherlands*, 26 March 1996, § 80, *Reports of Judgments and Decisions* 1996-II; and *Luca v. Italy*, no. 33354/96, § 40, ECHR 2001-II).

44. With regard to the circumstances of the present case, the Court notes at the outset that Mr N.L.'s depositions, although read out at trial as part of the case-file, were not explicitly mentioned in the text of the judgment of 3 October 2003. The Court recalls, on the other hand, that the applicant was convicted, in particular, of aggravated murder "for profit" as opposed, for instance, to unqualified murder, governed by a different criminal statute. The trial court deemed it established that the applicant had had a pecuniary motive and noted that he had actually been paid USD 12,000 in two instalments of USD 2,000 and USD 10,000 respectively. In his cassation appeal, the applicant maintained that save for Mr N.L.'s depositions and in the light of other available evidence, the allegation of his pecuniary agreement with Mr N.L., the actual payment and the amounts referred to, remained mere speculation. Likewise, apart from the fact that Mr O.M. was wounded by several shots from a gun of an unknown make, Mr N.L.'s initial depositions were the only source of evidence that the applicant might actually have had a gun on him.

45. Responding to the applicant's arguments, in its judgment of 11 March 2004 the Supreme Court explicitly referred to the contested depositions and noted that there was no reason to consider them inadmissible, as there had never been a conclusive finding that they had been given under duress. The Supreme Court further noted that the trial court had "properly assessed the evidence in its totality", thus referring to the entire body of evidence examined at trial.

46. In light of the above, the Court considers that the confessional depositions by Mr N.L. were important for the purposes of securing the applicant's conviction as it was formulated.

47. The Court must, therefore, examine whether the use of these depositions was consistent with the requirements of fairness laid down in Article 6 § 1 of the Convention.

48. In this regard the Court reiterates that in determining whether the proceedings as a whole were fair, the quality of the evidence must be taken into consideration, including whether the circumstances in which it was obtained cast doubts on its reliability or accuracy.

49. The Court has previously found that where the domestic judicial authorities are confronted by several conflicting versions of truth offered by the same person, their final preference for a statement given to the investigative authorities over one given in an open court does not in itself raise an issue under the Convention where this preference is substantiated and the statement itself was given of the person's own volition (see *Camilleri v. Malta* (dec.), no. 51760/99, 16 March 2000). On the other hand,

the reliability of evidence would be compromised where it was obtained in breach of the right to silence and the privilege against self-incrimination. The right not to incriminate oneself, in particular, presupposes that the prosecution in a criminal case seek to prove their case against the accused without recourse to evidence obtained through methods of coercion or oppression in defiance of the will of the accused (see, *inter alia*, *Saunders v. the United Kingdom*, 17 December 1996, § 68, Reports 1996-VI, and *Jalloh*, cited above, § 100). Where doubts arise as to reliability of a certain source of evidence, the need to corroborate it by evidence from other sources is correspondingly greater (see *mutatis mutandis Jalloh*, cited above, § 96).

50. As regards the facts of the present case, the Court recalls that Mr N.L. gave his confessional depositions when questioned as a witness. In the absence of any conclusive evidence concerning his ill-treatment, the Court cannot establish beyond a reasonable doubt that he gave his testimony under duress. On the other hand, the Court notes that, unlike a suspect or an accused, who enjoyed a right to remain silent according to the applicable law, a witness was under obligation to reveal all information known to him on pain of criminal punishment. Moreover, unlike a suspect or an accused, a witness had no statutory right to consult a lawyer before the first interrogation.

51. Although the issue in the present case is not the conviction of the author of the confessions, but that of his co-accused, the Court finds that the underlying principles are broadly similar, and these statements, obtained in the absence of procedural guarantees, should have been treated with extreme caution, regard being had, in particular, to the fact that Mr N.L. had promptly retracted them, complaining before the competent authorities that he had given them under duress. Further, Mr N.L. had consistently denied his initial confessions not only during his first trial in open court, but yet at the stage of the pre-trial investigation.

52. Regard being had to the fact that, as noted above, the confessional depositions of Mr N.L., whom the applicant was unable to confront in an open court, given by him in the absence of procedural guarantees against self-incrimination, were used to a decisive degree for establishing the facts material for the qualification of the applicant's actions, the Court finds that the rights of the defence were restricted to an extent which compromised the fairness of the proceedings as a whole.

53. There was, therefore, a breach of Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

54. The applicant further complained under Article 3 of the Convention that he had been subjected to ill-treatment in police custody in 1995 and that, during his detention in the Donetsk SIZO from November 1995 to

December 1996 he had suffered from gravely inadequate conditions of detention. Lastly, the applicant alleged that his second trial after his acquittal in 1996 had been contrary to his rights under Article 4 of Protocol No. 7.

55. Having considered the applicant's submissions in the light of all the material in its possession, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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

58. The applicant requested a retrial and claimed 100,000 euros (EUR) in respect of non-pecuniary damage suffered on account of his purportedly unfair conviction.

59. The Government contested this claim.

60. The Court notes that in the present case it has found a violation of Article 6 § 1 of the Convention. Inasmuch as the applicant's claim relates to the finding of that violation, the Court reiterates that when an applicant has been convicted despite a potential infringement of his rights as guaranteed by Article 6 of the Convention, he should, as far as possible, be put in the position in which he would have been had the requirements of that provision not been disregarded, and that the most appropriate form of redress would, in principle, be trial *de novo*, if requested (see *Öcalan v. Turkey* [GC], no. 46221/99, § 210 *in fine*, ECHR 2005-IV and *Popov v. Russia*, no. 26853/04, § 263, 13 July 2006). The Court notes, in this connection, that Article 10 of Ukraine's "Law on Enforcement of Judgments and Application of the Jurisprudence of the European Court of Human Rights" provides that court proceedings may be reopened if the Court finds a violation of the Convention.

61. As regards the applicant's claim for a monetary award in respect of non-pecuniary damage, the Court finds that the applicant has suffered some non-pecuniary damage on account of the lengthy criminal proceedings against him in violation of Article 6 § 1 of the Convention. The Court finds that, in the particular circumstances of the case, it is feasible to award the applicant EUR 2,000 in this respect plus any tax that may be chargeable.

B. Costs and expenses

62. The applicant, who had also been granted legal aid, claimed EUR 2,500 in legal fees for his representation before the Court.

63. The Government noted that the applicant had not provided any documents in support of his claim.

64. 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 were reasonable as to quantum. In the present case, regard being had to the fact that the applicant had been granted legal aid and to the fact that he did not provide any evidence in support of his claim, the Court gives no award.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 6 § 1 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*
 - (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 2,000 (two thousand euros) in respect of non-pecuniary damage plus any tax that may be chargeable, to be converted into the national 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Rait Maruste
President