



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF MIRONENKO AND MARTENKO v. UKRAINE

(Application no. 4785/02)

JUDGMENT

STRASBOURG

10 December 2009

FINAL

10/03/2010

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 Mironenko and Martenko v. Ukraine,

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

Peer Lorenzen, *President*,

Renate Jaeger,

Karel Jungwiert,

Rait Maruste,

Isabelle Berro-Lefèvre,

Zdravka Kalaydjieva, *judges*,

Mykhaylo Buromenskiy, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 17 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 4785/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Ukrainian nationals, Mr Vladimir Anatolyevich Mironenko and Mr Nikolay Alekseyevich Martenko (“the applicants”), on 14 December 2000.

2. The applicants were represented by Mr V.G. Zvolinskyy, a lawyer practising in Kyiv. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev, from the Ministry of Justice.

3. The applicants alleged, in particular, unlawfulness of their arrest and detention and unfairness of the criminal proceedings against them, including lack of impartiality on the part of the trial court.

4. On 9 July 2007 the President of the Fifth Section 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 applicants were born in 1957 and 1971 respectively. They live in Kyiv.

1. Criminal proceedings against the applicants

6. On 18 February 2000, formal charges were brought against the applicants and two co-suspects, Mr T. and Mr K., in connection with the kidnapping of a child earlier that month. Although the child's parents had received ransom demands, the perpetrators had released the child without a ransom having been paid to them.

7. On 21 February 2000, the second applicant and, on 22 February 2000, the first applicant were arrested on suspicion of involvement in the kidnapping.

8. On 7 June 2000, while the case was still at the pre-trial stage, the investigator decided to discontinue the criminal proceedings against the applicants under the Amnesty Act of 11 May 2000 and ordered their release. Two other suspects, Mr T. and Mr K., were committed for trial in July 2000.

9. On 17 August 2000 the Darnitsky District Court of Kyiv (hereafter "the Darnitsky Court"), composed of a single judge, Mr B., allowed a motion by the victims' representatives for a further investigation to be carried out. The Darnitsky Court held that the abduction of the child was exacerbated by extortion, a more serious criminal offence, which was not covered by the amnesty. The investigating authorities had failed to establish who exactly called the child's parents and demanded a ransom. In that respect it noted that the first applicant had stated that he did not know who had done that. The Darnitsky Court suggested that the authorities should verify the truthfulness of this statement by means of voice identification. The court further stated:

"The indicated insufficiency and incorrectness of the pre-trial investigation cannot be remedied in the trial proceedings; moreover, the case-file contains grounds for laying charges of the more serious offence of extortion against the defendants and [the applicants]...

The Kyiv Prosecutor shall decide on the lawfulness of the decisions ... of 7 June 2000 to terminate the criminal proceedings against [the applicants] ... since their actions suggest that they were involved in committing the more serious offence of extortion. Their actions, in the court's opinion, should be qualified by a cumulation of the crimes ...

Depending on the outcome [of the additional investigations] [the authorities] should resolve the question of the legal qualification of the acts committed by each accomplice to the offence. If the decision to discontinue the criminal proceedings against [the applicants] is revoked, [the authorities] should charge them anew and choose in accordance with law a preventive measure corresponding to the gravity of the offence."

10. On 22 October 2000 the investigator rearrested the applicants.

11. On 24 October 2000 the Deputy Kyiv City Prosecutor ordered their detention.

12. On 8 November 2000 the applicants filed an appeal against the prosecutor's detention order with the Moskovsky District Court of Kyiv ("the Moskovsky Court").

13. On 10 and 13 November 2000 and 4 January 2001 the Moskovsky Court unsuccessfully requested the Kyiv City Prosecutor's Office to provide it with the case file, which was the ground for the decision to arrest the applicants.

14. On 16 November 2000, in the presence of an investigator, the child's father recognised the recorded voice of the first applicant as the voice of the person who had called to demand a ransom.

15. On 20 November 2000 the pre-trial investigation was completed and the applicants were given access to the case file.

16. On 10 January 2001 the Moskovsky Court referred the letter to the General Prosecutor's Office of Ukraine, requesting it to take measures in respect of the failure of the Kyiv City Prosecutor's Office to dispatch necessary case file.

17. On 15 January 2001 the Moskovsky Court was informed that the pre-trial investigation in the applicants' case had been completed on 20 November 2000.

18. On 17 January 2001 the Moskovsky Court, in the absence of the applicants and their lawyer, discontinued the proceedings on the applicants' appeal against the prosecutor's detention order on the ground that, according to Resolution no. 10 of the Plenary Supreme Court of 30 September 1994 (see paragraph 34 below), the pre-trial investigation in the case had been completed.

19. On 13 February 2001 the prosecutor sent the applicants' case file together with the bill of indictment to the Darnitsky Court, which, later still, held a preparatory hearing, at which it found that the case was ready for trial and ordered the applicants' detention pending the proceedings.

20. The trial was held before Judge B., sitting as a single judge at the Darnitsky Court. On 20 March and 16 July 2001 the applicants challenged Judge B. before the President of the Darnitsky Court, arguing that on account of his previous involvement in the proceedings he had already formed a preconceived opinion on their guilt of extortion. On 20 March and 23 July 2001 the President of the Darnitsky Court refused the applicants' requests, noting that their reasoning as to the alleged bias of Judge B. could not serve a ground for his replacement.

21. During the hearings the court granted several requests by the applicants for additional witnesses to be heard and certain investigative actions to be conducted. At the same time, the court dismissed the applicants' requests for it to hear the owner of the flat the child had been held in before his release, to establish the identity of an unknown individual who had allegedly forced the first applicant to commit the abduction and to examine the tapes of the telephone conversations made by the Security

Service in the course of the search for the child. The court found that the proposed evidence was irrelevant to the case, holding, in particular, that the recording of conversations on the child's parents' telephone line had been commenced after the call with ransom demands had been made, and thus the tapes at issue had no evidential value.

22. On 3 January 2002, the Darnitsky Court, composed of Judge B., found the applicants guilty of extortion and unlawful deprivation of liberty. The Darnitsky Court relied, *inter alia*, on the applicants' and their co-defendants' partial confessions (they acknowledged having abducted the child, but denied having demanded a ransom, that is, committing extortion), the statements of the child and his father and the results of the voice identification. The first applicant was sentenced to ten and the second applicant to nine years' imprisonment.

23. The applicants filed appeals against this judgment. They maintained, *inter alia*, that the manner in which the voice identification had been carried out was unlawful and challenged the impartiality of Judge B.

24. By decision of 21 June 2002 the Kyiv City Court of Appeal (hereafter "the Court of Appeal") upheld the judgment of 3 January 2002, finding, *inter alia*, that the voice identification had been carried out in accordance with the relevant procedural legislation.

25. The applicants appealed in cassation, repeating their arguments made before the Court of Appeal. Neither the applicants nor their lawyer filed a request under Article 391 of the Code of Criminal Procedure (see paragraph 38 below) to attend the cassation hearing.

26. On 10 April 2003 the Supreme Court, in absence of the applicants and their lawyer, but in presence of the prosecutor, rejected the applicants' appeal in cassation and upheld the decisions of the lower courts.

27. Neither the Court of Appeal nor the Supreme Court addressed in their decisions the issue of the impartiality of Judge B.

2. Alleged ill-treatment of the second applicant

28. On 17 February 2000 the second applicant was arrested by the police for swearing in public. Immediately after the arrest he was allegedly questioned about his involvement in the above-mentioned kidnapping. According to him, from 17 to 25 February 2000 he was continuously subjected to ill-treatment by the police officers.

29. On 18 February 2000 the Darnitsky Court sentenced the second applicant to ten days' administrative arrest for petty hooliganism.

30. On the same day the second applicant was seen by his wife and a Mr Sh. in the police station.

31. On 10 September 2002 the Darnitsky District Prosecutor's Office received a complaint by the second applicant alleging ill-treatment by the police on 18 to 25 February 2000.

32. On 21 September 2002 the Darnitsky District Prosecutor's Office decided not to institute criminal proceedings into the second applicant's allegations of ill-treatment. This decision was based on the statements of the three police officers concerned, who denied ill-treating the applicant, and the evidence of Mr Sh., who said that when he had seen him on 18 February 2000 the second applicant's fingers were swollen, but there were no other injuries. The second applicant appealed.

33. On 23 March 2004 the Darnitsky Court found that the preliminary inquiry had been adequate and sufficient and that no further investigations were required. On 26 May 2004 and 31 May 2005 respectively the Court of Appeal and the Supreme Court upheld this decision.

II. RELEVANT DOMESTIC LAW

1. Appeal against the prosecutor's detention order and requests for review of lawfulness of pre-trial detention

34. The relevant domestic law and practice is summarised in the judgments *Nevmerzhitsky v. Ukraine* (no. 54825/00, §§ 53-54, ECHR 2005-II (extracts)) and *Yeloyev v. Ukraine* (no. 17283/02, § 35, 6 November 2008).

35. According to Resolution no. 10 of the Plenary Supreme Court of 30 September 1994 “on certain issues arising from application by the courts of legislation providing for an appeal against a prosecutor's detention order” detained persons were entitled to appeal against a prosecutor's detention order at any moment during the pre-trial investigation. If, at the time of the examination of the appeal, the court established that the pre-trial investigations had been completed, the proceedings concerning the appeal had to be discontinued.

2. Challenging of the judge

36. Article 54 of the Code of Criminal Procedure provides, *inter alia*, that a judge is precluded from participation in a trial if he or she – at the pre-trial stage of the proceedings – ordered searches; ordered, changed or discontinued preventive measures or extended time-limits for detention on remand; examined appeals against arrest warrants or examined appeals against the discontinuation of criminal proceedings. This Article also refers to “other circumstances, which give rise to doubts about the impartiality of the judge”.

37. According to Article 55 of the Code, a judge who participated in the criminal proceedings before the first-instance court and whose judgment has been quashed on appeal cannot take part in a new examination of this case by the first-instance court.

38. Article 57 of the Code provides that when the case is heard by a single judge, the parties' motions for his or her replacement are determined by the President of the relevant court.

3. Attendance of hearings in the cassation court

39. Article 391 of the Code of Criminal Procedure provides the following:

“A hearing before the court of cassation instance, which is being held in the presence of the prosecutor, may be attended by [the convicted or acquitted persons, their representatives, civil parties and their representatives]. If need be, the court can invite these persons to attend the hearing to give statements. A request by a convicted person who is being held in detention to be brought to the cassation hearing must be granted by the court of cassation instance.

The parties to the proceedings who appeared before the court are allowed to make submissions.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

40. The applicants contended that after their arrest they were not brought promptly before a judge. The applicants further complained that the Moskovsky District Court did not examine their request for release for several months and that the decision of that court to discontinue the review proceedings concerning their request was not based on law but on the Resolution of the Plenary Supreme Court (see paragraphs 18 and 34 above). The applicants referred to Articles 6 § 1 and 5 § 4 of the Convention. Relying on Article 5 § 5 they also complained that they had no enforceable right to compensation in respect of the alleged breaches of Article 5. The relevant provisions of Article 5 of the Convention read as follows:

“3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

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

A. Admissibility

41. The Government maintained that the applicants made no complaints under Article 5 § 3 of the Convention and accordingly did not claim to be victims of a violation of the above provision. Consequently, their complaint under Article 5 § 5 of the Convention was equally inadmissible.

42. The applicants maintained that from the very first communication with the Court they had complained about the failure of the domestic authorities to arrange for judicial review of the lawfulness of their arrest ordered by the prosecutor, but they had referred erroneously to Article 6 § 1 of the Convention.

43. The Court reiterates that Article 34 requires that individual applicants should claim to be a victim “of a violation of the rights set forth in the Convention”; it requires them to raise the substance of the complaint but it does not oblige them to specify which Article, paragraph or subparagraph, or even which right, they are praying in aid. Any greater strictness would lead to unjust consequences; for the vast majority of “individual” petitions are received from laymen applying to the Court without the assistance of a lawyer (see, *mutatis mutandis*, *Guzzardi v. Italy*, 6 November 1980, § 61, Series A no. 39).

44. The Court is satisfied that the applicants did complain about lack of proper judicial review of lawfulness of their detention ordered by the prosecutor and their erroneous reference to Article 6 does not preclude the Court, which is master of the characterisation to be given in law to the facts of the case, to examine the problem raised by the applicants under Article 5 § 3 of the Convention, which is the relevant provision. For the same reason their complaint under Article 5 § 5 must be declared admissible.

45. The Court therefore dismisses this objection of the Government. It further notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Article 5 § 3

46. The Government referred to their objection on admissibility and made no further observations on the merits.

47. The applicants made no further submissions.

48. The Court reiterates that Article 5 § 3 of the Convention provides persons arrested or detained on suspicion of having committed a criminal offence with a guarantee against any arbitrary or unjustified deprivation of liberty. Article 5 § 3 is aimed at ensuring prompt and automatic judicial

control of police or administrative detention ordered in accordance with the provisions of Article 5 § 1 (c) (see *Harkmann v. Estonia*, no. 2192/03, § 36, 11 July 2006, with further references).

49. The Court further observes that under Ukrainian legislation, a prosecutor cannot be regarded as an officer exercising “judicial power” within the meaning of Article 5 § 3 of the Convention (see *Nevmerzhitsky v. Ukraine*, no. 54825/00, § 125, ECHR 2005-II (extracts)).

50. The Court notes that the applicants, having been rearrested on 22 October 2000, were not brought before a judge while the investigation was pending, that was, at least until mid-February 2001, when the criminal case against the applicants was referred to the court and the preparatory hearing was held (see paragraph 19 above). The Court is of the opinion that the applicants' detention for several months without any judicial control fell outside the strict constraints of time laid down by Article 5 § 3 of the Convention (see *Brogan and Others v. the United Kingdom*, 29 November 1988, Series A no. 145-B, pp. 30-35, §§ 55-62).

51. In the light of the above, the Court concludes that there has been a violation of Article 5 § 3 of the Convention.

2. Article 5 § 4

52. The Government maintained, without any further elaboration, that there was no violation of Article 5 § 4.

53. The applicants made no further submissions.

54. The Court reiterates that Article 5 § 4 of the Convention entitles arrested or detained persons to a review bearing upon the procedural and substantive conditions which are essential for the “lawfulness”, in Convention terms, of their deprivation of liberty. This means that the competent court has to examine not only compliance with the procedural requirements of domestic law but also the reasonableness of the suspicion underpinning the arrest, and the legitimacy of the purpose pursued by the arrest and the ensuing detention (see *Butkevičius v. Lithuania*, no. 48297/99, § 43, ECHR 2002-II).

55. The Court notes that in the circumstances of the present case the review of the lawfulness of the detention, initiated by the applicants, lasted for more than two months and did not lead to any decision on the merits (see paragraph 18 above). Furthermore, as mentioned by the applicants, the decision of the domestic court to discontinue the review proceedings was based on a resolution of the Plenary Supreme Court and, as the Court previously found, the resolutions of the Plenary Supreme Court do not have the force of law and are not legally binding on the courts and the law-enforcement bodies (see, *mutatis mutandis*, *Soldatenko v. Ukraine*, no. 2440/07, § 113, 23 October 2008).

56. The foregoing considerations are sufficient to enable the Court to conclude that the applicants had not benefited from a judicial review of the lawfulness of their detention as required by Article 5 § 4 of the Convention.

There has accordingly been a violation of this provision too.

3. Article 5 § 5

57. The applicants complained that they could not claim compensation for their unlawful detention before the domestic courts.

58. The Government referred to their preliminary objection and made no further observations on the merits.

59. The Court reiterates that Article 5 § 5 of the Convention 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 (see *Wassink v. the Netherlands*, 27 September 1990, Series A no. 185-A, p. 14, § 38, and *Vachev v. Bulgaria*, no. 42987/98, § 79, ECHR 2004-... (extracts)). 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.

60. In so far as the Court has found that there have been violations of Article 5 §§ 3 and 4 of the Convention, Article 5 § 5 of the Convention is also applicable (see *Steel and Others v. the United Kingdom*, 23 September 1998, *Reports of Judgments and Decisions* 1998-VII, p. 2740, § 81). The Court must therefore establish whether or not Ukrainian law afforded the applicants an enforceable right to compensation for the breaches of Article 5 of the Convention.

61. The Court notes that the Government did not refer to any remedy in the Ukrainian legislation at the material time that would provide for compensation for the breaches found in the present case. The Court is not aware of such remedies either. Furthermore, it appears that the domestic courts failed to examine the issue of the lawfulness of the applicants' deprivation of liberty, therefore the applicants do not appear to have had even a theoretical opportunity to claim compensation in the domestic proceedings (see, *mutatis mutandis*, *Svetlorusov v. Ukraine*, no. 2929/05, § 69, 12 March 2009). The Court thus concludes that there has been a violation of Article 5 § 5 of the Convention.

II. COMPLAINT ABOUT THE LACK OF IMPARTIALITY UNDER ARTICLE 6 § 1 OF THE CONVENTION

62. The applicants complained under Article 6 § 1 of the Convention that the trial court which convicted them was not impartial as it consisted of Judge B., who at the earlier stages of the proceedings had expressed the

opinion that they were guilty of extortion. Article 6 § 1 of the Convention reads:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

A. Admissibility

63. The Court notes that this 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

64. The Government considered that there were no grounds to question the impartiality of the domestic courts in the present case. They contended that Judge B., who considered the case in a single-judge formation in the first-instance court, had not demonstrated any bias towards the applicants. He had allowed their various procedural motions either in full or in part. As to the court's ruling of 17 August 2000 the Government considered that Judge B. simply gave a legal assessment to the existing facts and ordered an additional investigation to be conducted precisely because the investigation had failed to look into the matter and to find who had been responsible for extortion. They finally contended that the President of the Darnitsky Court and courts of higher instances had examined the matter and found no bias on the part of Judge B.

65. The applicants disagreed.

66. According to the Court's constant case-law, the existence of impartiality for the purposes of Article 6 § 1 must be determined according to a subjective test where regard must be had to the personal conviction and behaviour of a particular judge, that is, whether the judge held any personal prejudice or bias in a given case; and also according to an objective test, that is to say by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality (see, *inter alia*, *Fey v. Austria*, 24 February 1993, Series A no. 255, p. 12, §§ 27, 28 and 30; *Wettstein v. Switzerland*, no. 33958/96, § 42, ECHR 2000-XII). It must be decided in each individual case whether the relationship in question is of such a nature and degree as to indicate a lack of impartiality on the part of the tribunal (see *Pullar v. the United Kingdom*, 10 June 1996, Reports 1996-III, p. 794, § 38).

67. As to the subjective test, the personal impartiality of a judge must be presumed until there is proof to the contrary (*Wettstein*, cited above, § 43).

68. In the instant case, the Court is not convinced that there are sufficient elements to establish that any personal bias was shown by Judge B. who sat in the applicants' case. In any event, the Court does not consider it necessary to rule on that question since it has arrived at the conclusion, for the reasons set out below, that there was a lack of objective impartiality.

69. As to the objective test, it must be determined whether, quite apart from the conduct of Judge B., there are ascertainable facts which may raise doubts as to his impartiality. This implies that, in deciding whether in a given case there is a legitimate reason to fear that a particular judge lacks impartiality, the standpoint of the person concerned is important but not decisive. What is decisive is whether this fear can be held to be objectively justified (see *Wettstein*, cited above, § 44; and *Ferrantelli and Santangelo v. Italy*, 7 August 1996, *Reports* 1996-III, pp. 951-952, § 58).

70. In this respect even appearances may be of a certain importance or, in other words, "justice must not only be done, it must also be seen to be done" (see *De Cubber v. Belgium*, 26 October 1984, Series A no. 86, p. 14, § 26). What is at stake is the confidence which the courts in a democratic society must inspire in the public (see *Wettstein v. Switzerland*, loc. cit.; and *Castillo Algar v. Spain*, 28 October 1998, *Reports* 1998-VIII, p. 3116, § 45).

71. The Court notes that in its ruling of 17 August 2000, Judge B. remitted the criminal case against Mr T. and Mr K. for further investigation and expressed the opinion that the above defendants and the applicants had committed extortion, which the law-enforcement bodies had failed to investigate. His ruling was couched in terms such as "their actions suggest that they were involved in committing the more serious offence of extortion" (see paragraph 9 above), that could inspire a grounded fear that Judge B. had already formed an opinion about the applicants' guilt and that it could influence his impartiality when the case file was resent to him for trial. Therefore, in the Court's view, the applicants' fears that Judge B. lacked impartiality can be held to be objectively justified. Moreover, the higher courts, in dealing with the applicants' appeals, disregarded their submissions to this effect.

72. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. OTHER COMPLAINTS

73. The applicants further complained under Article 6 of the Convention that the voice identification was ordered and carried out in breach of the relevant procedural rules. They also complained that the trial court refused to hear a further witness and to examine further material evidence. The applicants maintained that the proceedings before the Supreme Court to examine their appeals in cassation against their convictions had not respected the principle of equality of arms. The second applicant

complained under Article 3 of the Convention that he had been subjected to ill-treatment in police custody.

74. The Court has examined these complaints of the applicants as submitted by them. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

75. 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

76. The first applicant claimed 335,000 euros (EUR) in respect of non-pecuniary damage. The second applicant claimed 485,000 EUR in respect of non-pecuniary damage.

77. The Government considered these claims excessive and unsubstantiated. They maintained that there was no causal link between the alleged violations and the damage claimed.

78. The Court takes the view that the applicants have suffered non-pecuniary damage as a result of the violations found. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards each of the applicants EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

79. The applicants made no claims under this head. The Court therefore makes no award.

C. Default interest

80. 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 complaint under Articles 5 § 3, 5 § 4, 5 § 5 and 6 § 1 (lack of impartiality) admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
4. *Holds* that there has been a violation of Article 5 § 5 of the Convention;
5. *Holds* that there has been a violation of Article 6 § 1 of the Convention concerning lack of impartiality;
6. *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 amounts plus any tax that may be chargeable on those amounts:
 - (i) to Mr Mironenko, EUR 5,000 (five thousand euros) for non-pecuniary damage, to be converted into Ukrainian hryvnias at the rate applicable at the date of settlement;
 - (ii) to Mr Martenko, EUR 5,000 (five thousand euros) for non-pecuniary damage, to be converted into Ukrainian hryvnias 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 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* unanimously the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 10 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President