

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

FIFTH SECTION

CASE OF VOLOSHYN v. UKRAINE

(Application no. 15853/08)

JUDGMENT

STRASBOURG

10 October 2013

FINAL

10/01/2014

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Voloshyn v. Ukraine,

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

Mark Villiger, President,
Angelika Nußberger,
Boštjan M. Zupančič,
Ann Power-Forde,
Ganna Yudkivska,
Helena Jäderblom,
Aleš Pejchal, judges,

and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 17 September 2013,

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

PROCEDURE

1. The case originated in an application (no. 15853/08) 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 Valentyn Oleksiyovych Voloshyn ("the applicant"), on 10 March 2008.

2. The Ukrainian Government ("the Government") were represented by their Agent, Mr N. Kulchytskyy.

3. The applicant alleged that the conditions of his detention in the temporary detention centre of the Poltava Region Police Department ("the ITT") were incompatible with Article 3 of the Convention. He also complained, under Article 6 of the Convention, that the courts had failed to collect evidence relating to his civil claim and had not given sufficient reasons for their findings.

4. On 2 January 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1952 and lives in Poltava.

6. On 9 June 2004 the applicant was arrested in connection with criminal proceedings against him and two women, D. and O. In October 2004 the applicant was released under written obligation not to abscond. The criminal

proceedings were discontinued in 2008 for lack of *corpus delicti* in the actions of the applicant and the other accused persons.

7. As established by the domestic courts, between 10 and 18 June 2004 the applicant was held in the ITT. In the morning of 11 June 2004 the applicant was escorted to the local court for a hearing concerning the preliminary measure to be applied in his respect. He returned to the ITT in the afternoon on the same day.

8. In January 2007 the applicant lodged a civil claim with the Oktyabrskyy District Court of Poltava ("the District Court") against the ITT and other authorities seeking compensation for non-pecuniary damage sustained owing to the inappropriate conditions of his detention in the ITT.

9. The applicant claimed that throughout the period of his detention in different cells of the ITT the conditions of his detention had been contrary to domestic legislation and Article 3 of the Convention. He stated that: he had not been given a chance to wash himself or clean his teeth as he had not been provided with hygiene products; he had had to sleep on wooden or metal bunks without a mattress or bed linen; every night he had been bitten by insects, putting him at risk of being infected with HIV or other illnesses from the other inmates; instead of a spoon he had been given a small utensil which had made it impossible to eat; he had never been allowed outside exercise and had had no access to fresh air; the toilets in the cells had offered no privacy as they were not properly partitioned; and every morning and evening he and the other detainees had been strip-searched in each other's presence. In particular, the applicant and the other detainees were ordered to undress, go out of the cell to the corridor and enter a metal cage. During the body search the applicant was pushed with a truncheon and required to face a wall and spread his buttocks.

10. Further to the applicant's requests, the District Court questioned the two women, D. and O., who had been held in the ITT during the same period. Owing to the rotation of the detainees, D. was held in the same cells (nos. 3 and 5) as the applicant but on different days.

11. When questioned in the court, D. submitted that she and other detainees had not been provided with bed linen; the cells had been infested with biting insects, making it impossible to sleep; she had been regularly strip-searched (apart from the applicant); she had not been provided with hygiene products; she had had no outdoor exercise; the utensil for eating had been too small, with the result that the persons using it could not avoid touching the food with their fingers; and the toilets were not properly partitioned.

12. When questioned in court, O. explained that she had not been provided with bed linen, an appropriate utensil for eating or hygiene products; she had had no outdoor exercise; she had been bitten by insects; and no disinfection measures had been carried out.

13. Further to the applicant's requests, the District Court also questioned the applicant's wife and other persons who saw him and talked with him during the impugned period of his detention or afterwards. All the witnesses were examined in the presence of the applicant.

14. The applicant also submitted that his allegations could be corroborated by the detainees who had been held in the same cells simultaneously with him. He asked the court to have the ITT submit relevant detention records in order to identify his cellmates and summon them as witnesses. The District Court requested the records from the ITT. The ITT submitted the records concerning the detainees in the cells but those records did not specify the personal information necessary to identify and summon the cellmates. The applicant further demanded that the court inspect the cells in which he had been held in order to verify the facts in dispute. That request was refused and the District Court examined photographs of the ITT provided by the defendants.

15. During the hearings the defendants submitted that the applicant's contentions had been unsubstantiated. They argued, in particular, that the strip-searches had been carried out in accordance with domestic regulations, the applicant had had opportunities to receive the necessary products from his relatives, disinfection measures had been carried out twice a month as confirmed by the relevant records, and the physical conditions had been appropriate, as confirmed by the photographs taken on the premises of the ITT.

16. On 7 June 2007 the District Court dismissed the claim as unsubstantiated. It noted that there was no evidence to suggest that the applicant had sustained any non-pecuniary damage, that there had been any unlawful actions or inactivity on the part of the defendants or that they were guilty of any civil wrongdoing. It pointed out that the applicant's allegations were supported by statements of witnesses who had no direct experience of the applicant's personal situation in the ITT. On the other hand, it noted that the record of the disinfection measures carried out in the ITT disproved the applicant's allegations concerning inappropriate sanitary conditions. It also had regard to the domestic regulations concerning body searches of individuals held in temporary detention centres.

17. The applicant appealed, claiming that the District Court had failed to take the necessary measures to identify and question his cellmates; it had groundlessly disregarded the statements of D. and O., who had been detained in the ITT during the same period, whose direct experience was relevant to the facts of the case. In particular, witness D. was held in the same cells, though on different days during the period under examination, and her submissions concerning the physical conditions of detention were identical to those of the applicant. The court had not inspected the premises of the ITT. The applicant further emphasised that the practice of strip-searches was contrary to Article 3 of the Convention. He referred to the

Court's judgments in the cases of *Iwańczuk v. Poland*, (no. 25196/94, 15 November 2001) and *Van der Ven v. the Netherlands* (no. 50901/99, ECHR 2003-II). He insisted that there had been no reason for strip searches to be carried out twice a day, yet the District Court had considered that practice justified. The applicant argued that by ignoring the Convention requirements on that matter the District Court had failed to respect the Constitution, according to which the Convention was a part of the domestic law.

18. On 31 July 2007 the Poltava Regional Court of Appeal upheld the judgment of the District Court in the presence of the applicant. It noted that, according to the official records submitted by the defendants, during the period at issue the cells in the ITT had been disinfected twice a month; the applicant had been visited by his lawyer; on 13 and 15 June 2004 his wife had given him parcels containing toilet paper, toothpaste, toothbrush and soap. The strip-searches had been carried out in accordance with the internal regulations adopted by the Ministry of Internal Affairs. The photos submitted by the defendants showed that the toilets in the cells had been properly partitioned, and the exercise yard and the ventilation system had been available. On the other hand, the applicant had not submitted any evidence to substantiate his claim that he had sustained non-pecuniary damage, that the defendants had engaged in unlawful actions or inactivity or that they were guilty of any civil wrongdoing. The applicant's allegations were contradictory and could not be supported by the statements of the witnesses, as they had no direct experience of the conditions of the applicant's detention.

19. The applicant appealed on points of law, repeating the arguments he had raised before the court of appeal. In particular, he insisted that the courts had failed to take measures to identify and question his cellmates. They had not given valid reasons for disregarding the statements of D. and O., who had been detained in the ITT during the same period. The practice of strip searches contradicted Article 3 of the Convention as interpreted in the Court's case law and the courts had failed to examine the case from that standpoint.

20. On 28 January 2008 the Supreme Court rejected the applicant's appeal on point of law noting that the decisions of the lower courts were lawful and substantiated.

II. RELEVANT DOMESTIC LAW

A. Constitution of 28 June 1996

21. Article 9 of the Constitution provides that international treaties that are in force, agreed to as binding by the Parliament of Ukraine, constitute part of the national legislation of Ukraine.

B. Code of Civil Procedure of 18 March 2004

22. Article 137 of the Code provides that if a party to proceedings experiences difficulties in collecting evidence, the court must obtain such evidence at the request of that party.

23. Article 140 of the Code provides that material and written evidence which cannot be delivered to the court must be inspected at its location.

THE LAW

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

24. The applicant complained that his right to a fair hearing had not been ensured by the court. In particular, the courts had failed to give sufficient reasons for their findings and had not taken the requisite steps to procure and assess the evidence which was relevant to his civil claim. He relied on Article 6 of the Convention, which reads, in so far as relevant, as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

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

B. Merits

1. Submissions by the parties

26. The applicant maintained his complaint.

27. Relying on the Court's case-law, the Government insisted that it was for the national courts to interpret and apply the respective provisions of procedural and substantive law, as well as to assess the evidence before them. They further noted that the applicant's case had been considered by the courts of three levels of jurisdiction and that all the relevant arguments advanced by the parties had been properly addressed.

28. The Government next submitted that the applicant had been given ample opportunities to present his case, which had been considered in his presence, and that his requests to examine witnesses and other evidence had been given due consideration.

2. The Court's assessment

29. The Court reiterates that Article 6 § 1 obliges the courts to give reasons for their judgments, but cannot be understood as requiring a detailed answer to every argument. The extent to which this duty to give reasons applies may vary according to the nature of the decision. It is moreover necessary to take into account, *inter alia*, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinions and the presentation and drafting of judgments. That is why the question whether a court has failed to fulfil the obligation to state reasons, deriving from Article 6 of the Convention, can only be determined in the light of the circumstances of the case (see *Ruiz Torija v. Spain*, judgment of 9 December 1994, Series A no. 303-A, § 29).

30. It is not the Court's function to deal with errors of fact or law allegedly committed by a national court, unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). The admissibility of evidence is primarily a matter for regulation by national law and, as a general rule, it is for the national courts to assess the evidence before them. The Court's task under the Convention is rather to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (see *Elsholz v. Germany* [GC], no. 25735/94, § 66, ECHR 2000-VIII).

31. It is central to the concept of a fair trial, in civil as in criminal proceedings, that a litigant is not denied the opportunity to present his or her case effectively before the court and that he or she is able to enjoy equality of arms with the opposing side (see *Steel and Morris v. the United*

Kingdom, no. 68416/01, § 59, ECHR 2005-II). The principle of equality of arms requires "a fair balance between the parties", and each party must be given a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent (see *Batsanina v. Russia*, no. 3932/02, § 22, 26 May 2009).

32. Turning to the present case, the Court notes that the applicant claimed compensation for inappropriate conditions of detention, making a number of specific allegations in that regard. The courts rejected the claim after finding that the applicant had failed to prove that he had sustained any non-pecuniary damage, that there had been any unlawful actions or inactivity on the part of the defendants or that they had been guilty of any civil wrongdoing.

33. However, even if the domestic courts dismissed the applicant's claim essentially for lack of proof, they nevertheless acknowledged the difficulties which the applicant had experienced in assembling the evidence relevant for the case. Namely, further to the applicant's request, the District Court ordered the ITT to provide the records concerning the applicant's cellmates. Admittedly, those persons could have confirmed or disproved the applicant's allegations concerning his personal situation in a particular cell at the relevant time and testify concerning the circumstances of body searches. However, having received the incomplete information, the District Court did not take further steps to identify those persons and question them. Despite the fact that the applicant specifically contended before the higher courts that the District Court had failed to take measures to procure the evidence, there is nothing to suggest that the higher courts addressed that issue and properly assessed whether the applicant had been in a position to present his case effectively.

34. The Court further notes that in determining the applicant's claims as to the inadequate conditions of detention, the domestic courts did not take into account the witnesses statements for the reasons that those witnesses had no direct experience of the circumstances that had to be established. Yet the courts gave no specific assessment of the applicant's contention that O. and D. had been detained in the ITT during the same period, and D. had been held in the same cells as the applicant, albeit on different days within the impugned period.

35. In the Court's opinion, the domestic courts, by ignoring the above-mentioned points, even though they were pertinent for the proper consideration of the case, fell short of their obligations under Article 6 § 1 of the Convention to ensure the equality of arms and provide appropriate reasoning for their decisions. Therefore there has been a breach of that provision of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 3 AND 8 OF THE CONVENTION

36. The applicant complained that the conditions of his detention in the ITT had been inappropriate.

37. The Court considers that the issues raised by the applicant in the present complaint fall under Articles 3 and 8 of the Convention, which provide as follows:

Article 3

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

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Article 3 of the Convention

1. Admissibility

38. The parties did not comment on the admissibility of the present complaint. The Court finds it appropriate to examine whether the complaint is compatible with the six-month rule provided for in Article 35 § 1 of the Convention, since even in the absence of the relevant objection from the Government, it is not open to the Court to set aside the application of that rule (see *Miroshnik v. Ukraine*, no. 75804/01, § 55, 27 November 2008).

39. According to the Court's settled case-law, where no domestic remedy is available 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 that situation (see, for example, *Kucheruk v. Ukraine*, no. 2570/04, § 171, 6 September 2007).

40. In a number of cases against Ukraine concerning complaints of inappropriate conditions of detention, the Court has rejected the Government's arguments that the applicants had to exhaust domestic remedies by applying to the prosecutor or the courts seeking protection of their rights. Dismissing the Government's objections, the Court considered

that there had been no grounds for assuming that the use of those remedies could effectively address the applicants' issues (see, for example, *Melnik v. Ukraine*, no. 72286/01, §§ 69-71, 28 March 2006; *Znaykin v. Ukraine*, no. 37538/05, §§ 42-44, 7 October 2010; and *Belyaev and Digtyar v. Ukraine,* nos. 16984/04 and 9947/05, §§ 30 and 31, 16 February 2012). Accordingly, where the applicants failed to introduce the complaints within the six-month period after the continued situation ceased to exist, the Court rejected such complaints under the six-month rule (see *Khayrov v. Ukraine,* no. 19157/06, § 64, 15 November 2012, with further references).

41. At the same time, the Court has jurisdiction to assess in every case in the light of the particular facts whether any given remedy appears to offer the possibility of effective and sufficient redress within the meaning of the generally recognised rules of international law concerning the exhaustion of domestic remedies (see *Denisov v. Russia* (dec.), no. 33408/03, 6 May 2004). Thus, without prejudice to its findings in earlier similar cases, the Court will examine whether, in the particular circumstances of the present case, an action for damages could have been regarded as an effective remedy for the purpose of Article 35 § 1 of the Convention (see *Artyomov v. Russia*, no. 14146/02, § 110, 27 May 2010) or whether the use of that remedy would have interrupted the running of the six-month time-limit (see, *mutatis mutandis*, *Kaverzin v. Ukraine,* no. 23893/03, § 99, 15 May 2012).

42. The Court notes that the applicant's complaint concerned a relatively short period of detention (between 10 and 18 June 2004) and a retrospective civil remedy offering a pecuniary award might be appropriate to deal with the issues raised by the applicant in his civil claim after his release. Moreover, the applicant's civil action touched upon a number of issues which might not have decisively resulted from the structural problems existing in the domestic penitentiary system but could have stemmed from the alleged specific misbehaviour, shortcoming or omission on the part of the respondent parties. The civil courts took cognisance of the applicant's claim and after examination on the merits dismissed it as unsubstantiated. The Court therefore considers that in the circumstances of the present case, the applicant's attempt to settle the issue by way of a compensatory civil remedy cannot be placed against him. Given that the applicant applied to the Court within six months after the completion of the civil proceedings, his complaint cannot be rejected as having been submitted too late.

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

2. Merits

(a) Submissions by the parties

44. The applicant maintained his complaint.

45. The Government argued that the period of the applicant's detention in the ITT had been short and, given that he had failed to elaborate on the negative physical or psychological consequences of that detention, there had been no grounds to conclude that he had been subjected to treatment prohibited by Article 3 of the Convention.

46. They submitted the ITT records concerning disinfection measures and argued that such measures were taken twice a month. This in their opinion disproved the applicant's allegation that he had suffered from multiple insect bites. Moreover, according to the medical records provided by the ITT, the applicant's cellmates were not HIV infected. As to the hygiene conditions, the applicant received the necessary hygiene products from his wife. The Government maintained that the ITT had provided appropriate eating utensils. The toilets in the cells were partitioned, the ventilation system and the sleeping places had been in good condition, and the outdoor exercise yard had been available. In support of their conclusions the Government provided photographs of the ITT.

47. As regards the body searches, the Government submitted relevant statements by the ITT officers arguing that in accordance with the internal regulations, body searches were carried out twice a day when the morning and evening shifts of the ITT officers changed. They further noted that the body searches were conducted in the presence of the persons of the same sex. The purpose of the searches was to ensure security, to detect prohibited items, and to disclose any preparations for possible escape or attacks on the ITT staff. During the searches detainees wore their underwear. There was no evidence that the applicant had been forced to remove his underwear or that any physical force had been applied to him; that during the searches he or other detainees had been placed in metal cages, pushed with truncheons, or ordered to stand against the wall and spread their buttocks. The Government concluded that the frequency of the searches and the manner in which they had been conducted complied with the requirements of domestic regulations and did not disclose a violation of the Convention.

(b) The Court's assessment

48. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. In accordance with this provision, the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable

level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Visloguzov v. Ukraine*, no. 32362/02, §§ 56 and 57, 20 May 2010, with further references).

49. Where the respondent Government alone have access to information capable of firmly corroborating or refuting allegations under Article 3 of the Convention, the failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-founded nature of the applicant's allegations. In such cases the Court focuses its analysis on the facts presented to it, which the respondent Government have either admitted or failed to refute, without establishing the veracity of each and every allegation (see *Belyaev and Digtyar v. Ukraine*, cited above, § 36).

50. The Court notes that, as established by the domestic courts, the applicant was held in the ITT from 10 to 18 June 2004. The length of a detention period may be a relevant factor in assessing the gravity of suffering or humiliation caused to a detainee by the inadequate conditions of his detention. However, the relative brevity of such a period alone will not automatically exclude the treatment complained of from the scope of Article 3 if all other elements are sufficient to bring it within the scope of that provision (see *Mkhitaryan v. Armenia*, no. 22390/05, § 55, 2 December 2008).

51. The Court notes that the Government made quite general statements on the matter but did not provide details on the conditions under which the applicant was held. It considers that the Government's submissions do not convincingly disprove the applicant's allegations that he had had no bed linen or mattress, that he had suffered from insects, that he had not been given appropriate utensils for eating, that he had not been allowed outside exercise and had no access to fresh air; or that the toilets in the cells had not been properly partitioned and offered no privacy. In assessing the hygiene conditions of detention, the Court takes note of the fact that the applicant had to receive the toilet paper, toothpaste, toothbrush and soap from his wife. As to the records of the ITT concerning the disinfection measures, it remains unclear whether such measures, if indeed taken, were sufficient to ensure appropriate sanitary conditions.

52. In addition, the Court cannot overlook the statements of two witnesses who had been held in the ITT at the same time. During the hearings before the domestic court those witnesses made a number of statements which were similar to the applicant's as regards the conditions of detention in the ITT. It is true that their statements concerned primarily their own situation in the ITT. However, the Court considers that a substantial part of those statements was also pertinent to the applicant's situation, especially the statements of witness D. who, as a result of the rotation of the

detainees, was held in the same cells but on different days during the period under examination.

53. As regards the body searches, the Court has held that conditions of detention – including the procedure by which prisoners are required to undergo searches – may breach the prohibition of ill-treatment laid down in Article 3 (see *Frérot v. France*, no. 70204/01, § 36, 12 June 2007). Whilst strip-searches may be necessary on occasion to ensure prison security or prevent disorder or crime, they must be conducted in an appropriate manner and must be justified (see *Valašinas v. Lithuania*, no. 44558/98, § 117, ECHR 2001-VIII; *Iwańczuk,* cited above*,* § 59; and *Van der Ven v. the Netherlands,* cited above, §§ 61 and 62). Where the treatment in question does not reach the minimum level of severity prohibited by Article 3, it may nevertheless be in breach of the requirements under Article 8 § 2 of the Convention (see *Wainwright v. the United Kingdom*, no. 12350/04, §§ 43 and 46, 20 September 2006).

54. In the present case the parties did not seem to dispute that the applicant had been subjected to searches twice a day when the morning and evening shifts of the ITT officers changed. The parties disagreed, however, as to the manner in which the searches were carried out. In particular, the Government contended that the applicant had been allowed to keep his underwear on. They maintained that there was no evidence suggesting that the applicant had been ordered to undress completely, that he had been placed in a metal cage, pushed with truncheons, and required to stand against a wall and spread his buttocks. Yet the Court considers that the applicant's allegations lack an evidentiary basis precisely because the domestic authorities failed to take the necessary measures for the proper examination of the matter. The statements of the police officers provided by the Government are manifestly insufficient to disprove those allegations (compare *Iwańczuk v. Poland*, cited above § 57). The Court therefore cannot attach much weight to the Government's argument in this regard. In any event, the Government have not substantiated the necessity to carry out regular strip searches twice a day during the whole period of the applicant's detention in the ITT, including those days when he had not even left the premises and had received no parcels from outside. There is no indication that such routine practice had sufficient justification in the particular case of the applicant.

55. The foregoing considerations are sufficient for the Court to conclude that the applicant's conditions of detention in the ITT amounted to degrading treatment in breach of Article 3 of the Convention.

B. Article 8 of the Convention

56. The Court notes that the complaint under Article 8 is closely linked to the one examined above and must therefore likewise be declared

admissible. However, given the Court's findings under Article 3 of the Convention, the Court considers that no separate issue arises under Article 8 of the Convention. Consequently, the Court holds that it is not necessary to examine the complaint under Article 8 of the Convention separately.

III. 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 claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

59. The Government submitted that the claim was unsubstantiated.

60. The Court considers that the applicant must have suffered distress and anxiety on account of the violations it has found. Ruling on an equitable basis, as required by Article 41 of the Convention, it awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

61. The applicant did not submit any claims under this head. The Court therefore makes no award.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

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

3. *Holds* that there has been a violation of Article 3 of the Convention;

4. *Holds* that there is no need to examine separately the complaint under Article 8 of the Convention;

5. *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) plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 10 October 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President