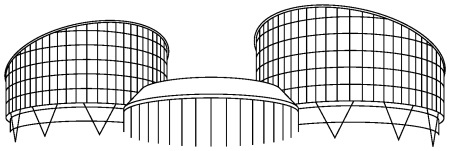

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF OMELCHENKO v. UKRAINE

(Application no. 34592/06)

JUDGMENT

STRASBOURG

17 July 2014

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 Omelchenko 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,
Helena Jäderblom,
Aleš Pejchal, *judges*,
Myroslava Antonovych, ad hoc *judge*,
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 24 June 2014,

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

PROCEDURE

1. The case originated in an application (no. 34592/06) 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 Sergey Vladimirovich Omelchenko ("the applicant"), on 13 July 2006.

2. The applicant, who had been granted legal aid, was represented by Mr A.L. Lesovoy, a lawyer practising in Simferopol. The Ukrainian Government ("the Government") were represented by their Agent, most recently Ms Nataly Sevostianova.

3. The applicant alleged, in particular, that his right to make use of the privilege against self-incrimination and his right to obtain legal assistance in connection with criminal proceedings against him had been breached.

4. On 12 October 2011 the application was communicated to the Government.

5. Mrs G. Yudkivska, the judge elected in respect of Ukraine, was unable to sit in the case (Rule 28 of the Rules of Court). The President of the Chamber decided to appoint Ms M. Antonovych to sit as an ad hoc judge (Rule 29 § 1(b)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant is a Ukrainian national who was born in 1972. He is currently serving a prison sentence in Berdychiv.

7. On 27 October 2004 the body of Ms V. was found on a deserted street in Simferopol. V. had suffered numerous knife wounds.

8. On 28 October 2004 the police obtained an expert opinion that a fingerprint found on the cover of V.'s notebook could possibly belong to the applicant (whose fingerprints were stored in the police database). The police also discovered that some of V.'s belongings, including a mobile telephone and one earring, were missing.

9. On 29 October 2004 several officers from the Simferopol Kyivsky District Police arrived at the applicant's home (some 120 kilometres away from Simferopol), inspected it, seized some of the applicant's clothes and took him to the police station in Simferopol.

10. No formal record of the applicant's arrest was drawn up.

11. On 29 and 30 October 2004 the applicant was questioned as a witness about V.'s murder and the theft of her belongings.

12. On 30 October 2004 he confessed that on 27 October 2004 he had come to Simferopol from his village to enjoy himself and had decided to murder a passer-by in order to steal her belongings. He had stolen V.'s mobile telephone, which he had lost on his way back home, and had killed her with a kitchen knife he had been carrying with him.

13. On 31 October 2004 the applicant was questioned as a suspect. Before the questioning session, the applicant was informed that he was suspected of having committed the murder of V. within the meaning of Article 115 § 1 of the Criminal Code of 2001 and that as a suspect he had right to legal assistance, which he waived in writing.

14. On the same date the applicant underwent a medical expert assessment, according to which he had not sustained any injuries in the period from 29 to 31 October 2004.

15. Again on the same date an undertaking not to abscond was selected as the preventive measure to be used in the applicant's respect.

16. According to the applicant, it was not until 1 November 2004 that he was released from custody under the undertaking not to abscond.

17. During the afternoon of 1 November 2004 the applicant was arrested in Simferopol on charges of breaching the public order (through swearing, spitting and vagrancy) and detained for ten days as an administrative punishment, pursuant to a decision of the Simferopol Zaliznychnyy District Court.

18. On 4, 9 and 10 November 2004 the applicant, held in administrative detention, was further questioned concerning the murder and robbery.

Before each of the questioning sessions the applicant signed waivers of his right to legal representation.

19. On 11 November 2004 the Simferopol Kyivsky District Court remanded the applicant in custody as a preventive measure in connection with the criminal proceedings against him.

20. On 16 November 2004 lawyer E. was admitted to the proceedings to represent the applicant. However, according to the applicant, the lawyer did not visit him until 26 December 2004 and no questioning of the applicant took place in his presence.

21. On 12 January 2005 the charges against the applicant were reclassified in law from those of simple murder within the meaning of Article 115 § 1 of the Criminal Code of 2001 to those of murder for profit (an aggravated form of murder) under Article 115 § 2 of the Code.

22. On 10 February 2005 a new lawyer, R., was admitted to the proceedings to replace lawyer E.

23. On 28 February 2005 the applicant was indicted with having robbed V. and having murdered her for profit within the meaning of Article 115 § 2 of the Criminal Code. On the same date he was questioned for the first time as an accused in the presence of lawyer R. During the questioning session, the applicant retracted his initial confessions and pleaded innocent. He maintained that he had not left his village on the day of V.'s murder and had previously confessed to the murder under pressure from the police, who had detained him unlawfully, threatened and ill-treated him.

24. On the same date the prosecutor's office refused to institute criminal proceedings into the alleged breaches of the applicant's rights, having found that there was no case to answer, and declared the case in respect of V.'s murder and robbery ready for trial.

25. On 5 April 2005 the Court of Appeal of the Autonomous Republic of Crimea (hereafter "the ARC Court"), acting as a first-instance court, convicted the applicant of armed robbery and murder for profit and sentenced him to fifteen years' imprisonment.

26. On an unspecified date the ARC Court also issued a separate ruling noting that there was no record of the applicant's arrest on 29 October 2004.

27. The applicant appealed in cassation against his conviction. He alleged that his confessions given in October and November 2004 should have been excluded from the body of evidence for having been taken in breach of applicable procedural guarantees. In particular, those statements had been taken during the applicant's unlawful detention. He maintained that he had been held at the police station between 29 October and 1 November 2004 without any procedural records having been drawn up. On 1 November 2004 the applicant had been released. However, almost immediately afterwards he had been arrested under the false pretext of breaching the public order and subsequently detained. This tactical move had enabled the police to question him at any time and, in the absence of a

lawyer, apply pressure on him to obtain self-incriminating statements to best suit their purposes.

28. The applicant next stated that the above-mentioned confessions had been obtained in breach of his right to legal representation. In particular, while he had been brought to the police station specifically in connection with the suspicion that he had killed V., initially he had only been questioned as a witness. Furthermore, the applicant had been initially charged with simple murder under Article 115 § 1 of the Criminal Code, a charge which enabled a suspect to waive his right to a lawyer. In the meantime, the scope of the accusation had clearly been pointing to "murder for profit". This charge fell within the ambit of Article 115 § 2 of the Criminal Code, which could result in a life sentence and so entailed mandatory legal representation of a defendant and allowed no waivers of this right. The investigation had purposefully delayed reclassifying the charges in order to exert unlawful pressure and extract confessions from the unrepresented applicant.

29. The applicant also maintained that without his initial confessions the prosecution would have collapsed, as the other evidence had been contradictory and patchy.

30. On 21 July 2005 the Supreme Court of Ukraine quashed the applicant's conviction and remitted the case for additional investigation. It noted, in particular, that the trial court should have verified more carefully whether the applicant's confessional statements had been admissible evidence. In particular, as appeared from the case file, these statements had been obtained during the applicant's detention between 29 October and 10 November 2004. Part of this detention was covered by an administrative detention decision and part was not covered by any records. In these circumstances, the applicant's allegations concerning the ulterior motives in detaining him should have been carefully investigated. The Supreme Court also found that the evidence of the applicant's involvement in the crime had been contradictory and needed to be reassessed, with various discrepancies being reconciled.

31. On 18 November 2005 the ARC Court again found the applicant guilty of armed robbery and murder for profit under Article 115 § 2 of the Criminal Code. It relied on various pieces of physical, forensic, and witness evidence, as well as on the applicant's confessions given at the beginning of the investigation. The court concluded that there were no reasons to exclude these confessions from the body of evidence. In particular, according to the medical evidence, no injuries had been inflicted upon the applicant by the police and there was no other evidence of his ill-treatment. The court further found that on 29 October 2004 the applicant had been taken to the police station in connection with the suspicion that he had committed a crime of violence and had duly been questioned first as a witness and then as a suspect. It also noted that the applicant, informed of his rights as a suspect,

had voluntarily waived his right to legal representation. As at the material time the applicant had been suspected of simple murder, which could not lead to a life sentence, such a waiver had been compatible with applicable law. The ARC Court then sentenced the applicant to fifteen years' imprisonment.

32. On 16 March 2006 the Supreme Court of Ukraine dismissed a further cassation appeal brought by the applicant and upheld the ARC Court's judgment of 18 November 2005.

II. RELEVANT DOMESTIC LAW

A. Constitution of Ukraine of 1996

33. The relevant provisions of the Constitution read as follows:

Article 59

"Everyone has the right to legal assistance. Such assistance is provided free of charge in cases envisaged by law. Everyone is free to choose the defender of his or her rights.

In Ukraine, advocacy acts to ensure the right to mount a defence against an accusation, and to provide legal assistance during the determination of cases by courts and other State bodies."

Article 63

"A person shall not bear responsibility for refusing to testify or to explain anything about himself or herself, members of his or her family or close relatives in the degree determined by law.

A suspect, an accused, or a defendant shall have the right to mount a defence.

A convicted person shall enjoy all human and citizens' rights, except for the restrictions determined by law and established in court judgments."

B. Criminal Code of 2001

34. Under paragraph 1 of Article 115 premeditated murder is punishable by imprisonment for a term of seven to fifteen years. Under paragraph 2 of Article 115, premeditated murder for profit is punishable by imprisonment for a term of ten to fifteen years, or life imprisonment.

C. Code of Criminal Procedure of 1960 (in force at the material time)

35. Article 45 of the Code of Criminal Procedure of 1960 in force at the material time provided that legal representation during an inquiry, pre-trial investigation and trial before a first-instance court was mandatory if, *inter*

alia, the possible penalty was a life sentence. It further specified that in such cases the legal representation should have been provided from the time of arrest or the bringing of charges against the person.

36. Under Article 46, a suspect, accused or defendant could waive his right to legal representation, except where legal representation was mandatory under applicable law.

37. According to paragraph 1 of Article 370, substantial violations of the requirements of criminal procedural legislation were considered to be those which had impeded or could have impeded the court in the complete and thorough examination of a case and in issuing a lawful, reasoned and just verdict. Paragraph 2 of this Article listed a violation of the right of an accused to mount a defence as being among the substantial violations of the requirements of criminal procedural legislation which warranted the quashing of a verdict.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (C) OF THE CONVENTION

38. The applicant complained that he had been hindered in the effective exercise of his right to mount a defence in the criminal proceedings against him, as he had no access to a lawyer at the beginning of the investigation and that the incriminating evidence obtained from him in breach of his right to legal assistance was used as a basis for his conviction.

39. This complaint falls to be examined under Article 6 §§ 1 and 3 (c), which reads as follows in the relevant part:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require."

A. Admissibility

40. The Court notes that the above complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

41. The applicant submitted that the police had forced him to renounce his right to legal assistance and to give false self-incriminating statements by detaining him off the record between 29 October and 1 November 2004 and subsequently placing him under administrative arrest from 1 until 10 November 2004. This arrest, which had been effected under the false pretext that the applicant had breached the public order, had in fact been necessary to ensure his availability for questioning as a criminal suspect in the absence of procedural guarantees. As a result, the applicant, detained and precluded from consulting a lawyer or obtaining outside support, had been very vulnerable and afraid for his life. He had therefore signed all the documents put before him by the police, including the false confessional statements, which had been fabricated by the authorities.

42. In addition, the applicant averred that at the material time he had not been fully aware of the possible consequences of renouncing his right to a lawyer. The charges pressed against him at the material time had concerned simple murder, punishable by a fixed term of imprisonment. They had been reclassified as murder for profit (potentially entailing a life sentence) only at a later stage of the investigation. The milder initial classification of the offence had been artificial, as the authorities, who had been well aware from the very beginning that V. had been stripped of her belongings, had wanted to dispense with the mandatory legal representation requirement and exert pressure on the applicant in order to obtain self-incriminating statements.

43. Once the applicant had finally had a meeting with lawyer R., he had retracted his false confessions. Nevertheless, these confessions had not only influenced the course of the investigation, but had also been unfairly used by the domestic courts to convict him. The courts had taken these statements at face value, notwithstanding that they had contained details irreconcilable with objective evidence. In addition, they had failed to investigate the applicant's allegations concerning police pressure and a breach of his right to mount a defence in the beginning of the investigation. The applicant's rights under Article 6 §§ 1 and 3 (c) of the Convention had consequently been breached.

44. The Government disagreed. They pointed out that at the initial stage of the investigation the applicant had deliberately renounced his right to be legally represented and, being fully informed, had signed waivers to this effect on 31 October, 4, 9 and 10 November 2004. Once the applicant had expressed his wish to be legally represented, a lawyer had been admitted to the proceedings without delay. The charge against the applicant had been reclassified from simple to aggravated murder only after the applicant's lawyer had been admitted to the proceedings. Thus the applicant's right to mandatory legal representation guaranteed by domestic law to defendants in

aggravated murder proceedings had been observed. Only in his cassation appeals had the applicant started complaining of having been coerced to waive his right to legal representation. The judicial authorities had duly examined and dismissed this allegation as unsubstantiated. Likewise, the domestic authorities had duly rejected the applicant's allegation that he had been coerced to give self-incriminating statements. Absent any evidence of coercion, the use of the applicant's early confessions in his conviction had not been incompatible with the fair trial guarantees. An array of other sources of evidence, including the fingerprints on the victim's notebook likely belonging to the applicant, had corroborated the finding of the applicant's guilt.

2. The Court's assessment

45. The Court reiterates that the requirements of paragraph 3 of Article 6 of the Convention are to be seen as particular aspects of the right to a fair trial guaranteed by paragraph 1 of that Article and are thus to be examined together (see *Van Geyseghem v. Belgium* [GC], no. 26103/95, § 27, ECHR 1999-I). On the whole, the Court is called upon to examine whether the proceedings in their entirety were fair (see *Balliu v. Albania*, no. 74727/01, § 25, 16 June 2005).

46. The Court next notes that, although not absolute, the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of the notion of a fair trial (see *Krombach v. France*, no. 29731/96, § 89, ECHR 2001-II). As a rule, access to a lawyer should be provided from the first time a suspect is questioned by the police, unless it can be demonstrated in the light of the particular circumstances of each case that there were compelling reasons to restrict this right (see *Salduz v. Turkey* [GC], no. 36391/02, § 55, 27 November 2008). The right to mount a defence will in principle be irretrievably prejudiced when incriminating statements made during police questioning without access to a lawyer are used for a conviction (ibid.). While a defendant in criminal proceedings may, under various circumstances, waive his right to legal representation, such a waiver may not run counter to any important public interest, must be established in an unequivocal manner, and must be attended by minimum safeguards commensurate to the waiver's importance (see e.g. *Sejdovic v. Italy* [GC], no. 56581/00, § 86, ECHR 2006-II).

47. Turning to the facts of the present case, the Court observes that as is clear from the available materials, on 28 October 2004 while investigating the murder of V. and the theft of her belongings, the police obtained an expert opinion that a fingerprint found on the cover of her notebook could have belonged to the applicant. Based on this information, on 29 October 2004 the police officers inspected the applicant's home, seized his clothes, and brought him to the police station, where he was questioned

and confessed to the murder on the following day (30 October 2004). It is apparent from these police actions that they already suspected the applicant of having been involved in V.'s murder on 28 October 2004. In its judgment of 18 November 2005 the ARC Court likewise noted that on 29 October 2004 the applicant had been brought to the police in connection with the suspicion that he had murdered V. In the meantime, as can be seen from the case file, on 30 October 2004 the applicant was questioned not as a suspect, but as a witness and was not provided with the option of appointing a lawyer to assist him during questioning. It also appears that at the material time the applicant remained in police custody without a record of that custody having been drawn up (see paragraphs 26 and 30 above). It follows that the applicant's confessional statement of 30 October 2004 was obtained in a setting where he was deprived of basic procedural guarantees of the fundamental rights not to incriminate himself and to obtain legal assistance. The guarantees of Article 6 §§ 1 and 3 (c) of the Convention were therefore not observed in respect of the applicant's questioning on 30 October 2004 and the taking of his confessional statement.

48. As regards the subsequent questioning sessions on 31 October, 4, 9 and 10 November 2004, it is notable that they took place after the applicant had been notified of his status as a suspect and had signed waivers of his right to legal assistance. However, in assessing whether these waivers were genuine and unequivocal, the Court notes that the applicant signed them while remaining in police custody. The first waiver of 31 October 2004 dates to the period, when, according to the applicant, he remained in off-the-record detention. There is nothing in the case file to rebut his submissions in this respect. The fact that the applicant signed this waiver while arbitrarily held in police custody and having no ability to consult a lawyer gives rise to a strong suspicion that it was obtained in defiance of the applicant's will. This waiver cannot therefore be regarded as compliant with the Convention requirements.

49. The regularisation of the applicant's detention from 1 until 10 November 2004 did not, in the Court's view, substantially affect the legitimacy of the waivers signed by him on 4, 9 and 10 November 2004. In particular, at the material time the applicant was held under administrative arrest. The Court takes note of the applicant's allegations that this arrest was effected with an ulterior motive, namely, to ensure his availability for questioning as a criminal suspect and to exert unlawful pressure on him. Similar allegations were examined in a number of other cases against Ukraine, where the Court condemned the practice of placing a person under administrative arrest to ensure his availability for questioning as a criminal suspect (see, for example, *Nechiporuk and Yonkalo v. Ukraine*, no. 42310/04, § 264, 21 April 2011; and *Grigoryev v. Ukraine*, no. 51671/07, § 87, 15 May 2012). In the case of *Balitskiy v. Ukraine* the Court also found that such a practice resulting in questioning the criminal suspects

in defiance of applicable procedural guarantees constituted a structural problem in Ukraine (no. 12793/03, §§ 50-51 and 54, 3 November 2011). Regard being had to the above findings and the fact that the applicant was arrested under the pretext that he had committed an administrative offence almost immediately upon his release from the initial off-the-record custody, as well as his intense questioning as a criminal suspect throughout the period of his administrative detention, the Court finds his allegations credible. It considers that the present case discloses another example of the aforementioned structural problem. It therefore finds that the waivers of the right to legal assistance obtained from the applicant on 4, 9 and 10 November 2005 were signed by him in a state of particular vulnerability and in the absence of proper procedural guarantees. They can therefore not be regarded as compliant with the Convention requirements.

50. The Court notes, in addition, that, as appears from the case file, at the material time the applicant was not fully aware of the potential consequences of renouncing his right to legal assistance. In particular, it was not until later in the proceedings that the investigation advanced a charge of murder for profit, which could entail life imprisonment and so required mandatory legal representation under domestic law.

51. Insofar as the applicant submitted that the investigative authorities had purposefully substituted the charge of murder for profit with that of simple murder in the beginning of the investigation in order to dispense with the mandatory legal representation requirement, the Court observes that from the beginning of the investigation the authorities had information, including the applicant's confessions, indicating that V. had likely been robbed. Nevertheless, the applicant was initially charged with simple murder and only several months later, after most questioning sessions and other investigative activities had been carried out in absence of a lawyer representing the applicant's interests, was the offence reclassified as murder for profit, which required mandatory legal representation under domestic law.

52. The Court notes that in other cases against Ukraine it has already examined and condemned the practice, according to which in the beginning of an investigation the authorities "artificially" classified offences under an article of the Criminal Code which did not require mandatory legal representation of the suspect and subsequently advanced a more severe charge, after having obtained confessional statements from unrepresented suspects (see *Yaremenko v. Ukraine*, no. 32092/02, §§ 87 and 88, 12 June 2008; *Leonid Lazarenko*, cited above, § 54; and *Balitskiy*, cited above, § 40). The Court finds that the circumstances of the present case are strikingly similar to those which gave rise to the above findings.

53. Regard being had to all the above considerations, the Court concludes that confessional statements obtained from the applicant between 30 October and 10 November 2004 were received in breach of basic

guarantees of procedural fairness in criminal proceedings. It also notes that in February 2005, after having obtained an opportunity to consult a lawyer, the applicant retracted his confessions and consistently pleaded innocent throughout the further proceedings. Nevertheless, the domestic courts relied on the applicant's confessions as a basis for his conviction and failed to act upon his complaints of a breach of his right to mount a defence. Although the confessional statements at issue were not the sole basis for the conviction, in the above circumstances, the Court finds this fact of little relevance. Regard being had to the use of these statements in the body of evidence held against the applicant in convicting him and the failure of the domestic courts to take action to condemn the breach of the applicant's defence rights in the beginning of the investigation, the Court considers that this breach was not remedied by the subsequent legal assistance provided to the applicant or by the adversarial nature of the ensuing proceedings (see *Leonid Lazarenko*, cited above, § 57).

54. There was, therefore, a breach of Article 6 §§ 1 and 3 (c) of the Convention on account of the applicant's inability to obtain legal assistance in the beginning of the investigation and the use of his confessional statements as a basis for his conviction.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

55. The applicant also complained that his arrest and detention between 29 October and 10 November 2004 had been unlawful and arbitrary and that the judicial authorities had incorrectly interpreted the evidence in his case, which had led to his conviction in spite of his innocence. The applicant relied upon Article 1, Article 5 §§ 1, 2 and 3 and Article 6 § 3 (a) – (d) of the Convention in making the above complaints.

56. Following communication of the application to the respondent Government, the applicant additionally cited Article 3 of the Convention in connection with the facts of the present case.

57. In the light of all the material before it, 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 provisions relied upon by the applicant.

58. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

61. The Government submitted that the above claim was exorbitant and unsubstantiated.

62. The Court considers that the distress and frustration caused to the applicant cannot be compensated for by the mere finding of a violation of Article 6 §§ 1 and 3 (c) of the Convention. Having regard to the nature of the issues in the present case and making its assessment on an equitable basis, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

63. The applicant did not submit any claims under this head. Consequently, the Court does not make any award.

C. Default interest

64. 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 applicant's complaints that he had been hindered in the effective exercise of his right to mount a defence in the criminal proceedings against him, as he had no access to a lawyer at the beginning of the investigation and that the incriminating evidence obtained from him in breach of his right to legal assistance was used as a basis for his conviction admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention in respect of the above complaints;

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 3,000 (three 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;

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

Done in English, and notified in writing on 17 July 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Mark Villiger
Registrar	President