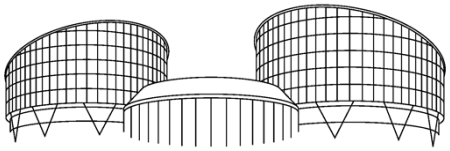

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF NECHAY v. UKRAINE

(Application no. 15360/10)

JUDGMENT

Art 5 § 3 ● Length of pre-trial detention ● No sufficient and relevant grounds for detention lasting almost five years and four months Art 6 § 1 (criminal) ● Reasonable time ● Excessive length of proceedings lasting twelve and a half years Art 13 ● No effective remedy in respect of length of criminal proceedings

STRASBOURG

1 July 2021

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 Nechay v. Ukraine,

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

Síofra O'Leary, *President,*
Mārtiņš Mits,
Ganna Yudkivska,
Stéphanie Mourou-Vikström,
Jovan Ilievski,
Lado Chanturia,
Ivana Jelić, *judges,*
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 15360/10) 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 Oleksiy Oleksandrovych Nechay ("the applicant"), on 1 March 2010;

the decision to give notice to the Ukrainian Government ("the Government") of the complaints about the length of the applicant's pre-trial detention and the length of the criminal proceedings against him, and the lack of effective domestic remedies for the latter complaint, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 8 June 2021,

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

INTRODUCTION

1. The applicant complained under Article 5 § 3 about the length of his pre-trial detention, and under Article 6 § 1 and Article 13 of the Convention of the excessive duration of the criminal proceedings against him and the lack of effective remedies for that complaint.

THE FACTS

2. The applicant was born in 1978 and lives in Kyiv. The applicant, who had been granted legal aid, was represented by Mr T. Matkivskyy, a lawyer practising in Kyiv.

3. The Government were represented by their Agent, Mr I. Lishchyna, of the Ministry of Justice.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. On 26 February 2004 the applicant's father was found dead in the applicant's apartment. He had multiple injuries.

6. On 27 February 2004 the applicant was arrested on suspicion of having caused the death of his father and on the next day criminal proceedings against him were initiated.

7. On 3 March 2004 the Dniprovskyy District Court of Kyiv ("the District Court") ordered the applicant's pre-trial detention on the grounds that he was suspected of having committed a serious crime and could continue his criminal activities, evade investigation and trial, and hinder the determination of the truth.

8. On 21 April 2004 the District Court extended the applicant's detention until 29 May 2004, on the same grounds as those stated in its order of 3 March 2004.

9. On 26 May 2004 the Kyiv Dniprovskyy district prosecutor's office ("the district prosecutor's office") referred the applicant's case to the District Court so that it could decide on compulsory psychiatric treatment for the applicant.

10. The District Court ordered a psychiatric expert examination of the applicant, which established that he had been aware of his actions at the time his father had been killed and had been able to control them, but at the time of the examination he had been suffering from a temporary mental disorder requiring compulsory psychiatric treatment.

11. On 21 June 2004 the District Court ordered that the applicant should have compulsory treatment in a high-security psychiatric hospital until he had recovered, and noted that after his recovery the applicant could be subject to criminal liability. The decision of the court contained no indication that the criminal proceedings against the applicant had been suspended or terminated, but referred to the relevant legal provision (see paragraph 35 below).

12. On 19 July 2004 the applicant was placed in Dnipropetrovsk Psychiatric Hospital no. 72.

13. On 20 January 2005 a commission of medical experts gave an opinion indicating that the applicant no longer required compulsory psychiatric treatment.

14. On 9 February 2005 the psychiatrist who had treated the applicant sent a request to the District Court, asking for revocation of the order for the applicant's compulsory psychiatric treatment. The request was received by the District Court on 14 February 2005.

15. On 4 April 2005 the District Court examined the submitted request and revoked its order of 21 June 2004. The operative part of that decision contained no formal indication that the criminal proceedings against the applicant would be resumed or reopened, but referred to the relevant legal provision (see paragraph 35 below). By the same decision, the District Court remitted the case to the district prosecutor's office for further investigation, and confirmed its previous preventive measure (see paragraph 8 above) in respect of the applicant's detention on remand.

16. On 16 May 2005 the district prosecutor's office received the criminal case against the applicant which had been remitted for further investigation.

17. On 16 June 2005 the applicant was transferred from the hospital to the Kyiv pre-trial detention centre (SIZO).

18. On 14 July 2005 the Kyiv City Court of Appeal ("the Court of Appeal") extended the period of the applicant's detention to six months, having indicated that there were no grounds to change the preventive measure in respect of him.

19. On 26 December 2006 the District Court found the applicant guilty of murder and sentenced him to eight years' imprisonment.

20. On 14 February 2008 the Court of Appeal quashed the judgment of the first-instance court and remitted the case to the prosecution authorities for additional investigation. The applicant's detention was extended without any grounds being indicated.

21. On 13 May 2008 the Court of Appeal extended the period of the applicant's detention to nine months, having indicated that there were no grounds to change the preventive measure in respect of him.

22. On 23 September 2008 the District Court rejected an application for release lodged by the applicant, on the grounds that the application was premature because the court had not yet studied all the case material in order to decide on the applicant's guilt or innocence.

23. On 15 June 2009 the District Court found the applicant guilty of grievous bodily harm causing death and sentenced him to seven and a half years' imprisonment.

24. On 26 October 2009 the Court of Appeal quashed the judgment of the District Court and remitted the case to the prosecution authorities for additional investigation. The applicant's detention was extended without any reasons being given.

25. On 1 April 2010 the District Court rejected another application for release lodged by the applicant. Without going into detail, the court noted that it had taken into account the severity of the crime of which the applicant was accused and "a reference from his place of residence", in addition to his personality, age, state of health, profession and place of residence.

26. On 1 August 2011 the District Court rejected another application for release lodged by the applicant, giving the same reasons as those stated in the ruling of 1 April 2010.

27. On 5 September 2011 the District Court decided to release the applicant on the ground that he had been sentenced to seven and a half years of imprisonment and there was no grounds to believe that he could be sentenced to more, and that period had expired. The court decided to replace the applicant's detention with another preventive measure, that is an obligation not to abscond.

28. On 2 November 2011 the District Court found the applicant guilty of grievous bodily harm causing death and sentenced him to seven and a half years' imprisonment. The court took into account the period of time which the applicant had spent in detention – from 27 February 2004 until 5 September 2011 – and thus concluded that he had already served his sentence.

29. On 12 March 2012 the Court of Appeal upheld the judgment of the first-instance court.

30. On 1 November 2012 the Higher Specialised Court for Civil and Criminal Matters ("the Higher Specialised Court") quashed the decision of the Court of Appeal and remitted the case to that court for a fresh examination.

31. On 17 June 2013 the Court of Appeal examined the applicant's case and upheld the judgment of the District Court of 2 November 2011.

32. On 25 March 2014 the Higher Specialised Court quashed the decision of the Court of Appeal and once again remitted the case to that court for a fresh examination.

33. On 19 July 2016 the Court of Appeal quashed the judgment of the first-instance court of 2 November 2011 and closed the criminal proceedings against the applicant for want of proof of his involvement in the crime.

34. On 14 June 2017 the Higher Specialised Court rejected an appeal on points of law lodged by the prosecutor and upheld the decision of the Court of Appeal of 19 July 2016.

RELEVANT LEGAL FRAMEWORK

I. THE 1961 CODE OF CRIMINAL PROCEDURE

35. Under the Code of Criminal Procedure ("the CCP") in force at the material time when the applicant was subjected to psychiatric treatment and until 2012, a court which decided that a suspect required compulsory medical treatment had to close the criminal case (Article 421). Once compulsory medical treatment was no longer necessary, the court would revoke its order for such treatment, reopen the criminal case and refer it for investigation or for trial (Article 423). If the person concerned was convicted, his period of stay at the relevant medical institution would be taken into account in the term of imprisonment (Article 423).

II. THE 2003 CIVIL CODE

36. Article 1176 of the Civil Code provides for the right to compensation for damage sustained as a result of unlawful decisions, actions or inactivity by bodies of inquiry, pre-trial investigation authorities,

prosecutor's offices and courts. It further provides that the procedure for claiming compensation for damage inflicted by such bodies "shall be established by law".

III. THE COMPENSATION ACT

37. The relevant provisions of the Act of 1 December 1994 on the Procedure for Compensation for Damage caused to Citizens by the Unlawful Acts of Bodies of Inquiry, Pre-trial Investigation Authorities, Prosecutor's Offices and Courts ("the Compensation Act") can be found in the judgment in *Taran v. Ukraine* (no. 31898/06, §§ 42 and 43, 17 October 2013).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

38. The applicant complained that his pre-trial detention had been unreasonably long, in violation of Article 5 § 3 of the Convention, which provides as follows, in so far as relevant:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

39. The Government contended that the applicant's complaints were inadmissible for non-exhaustion of domestic remedies. They argued that on 19 July 2016 the criminal proceedings against him had been terminated on the grounds that he had been exonerated, thus he had been entitled to lodge a civil claim for damages under Article 1176 of the Civil Code or the Compensation Act.

40. The applicant disagreed. He considered that the remedies suggested by the Government had been ineffective in his circumstances, and noted that the Government had not provided any examples of domestic case-law to prove the contrary.

41. The Court notes that the scope of its review of the applicant's compliance with the rule on exhaustion of domestic remedies is limited by the Government's objections (see *Yordanov v. Bulgaria*, no. 56856/00, § 76, 10 August 2006, with further references).

42. In the present case, the Government did not contend that the applicant had not exhausted remedies which might have been available to him before he had lodged his application with the Court on 1 March 2010.

However, they contended that later, once the proceedings at national level had ended, the applicant could have lodged a civil claim for damages. In that regard, the Court reiterates that the question of whether domestic remedies have been exhausted is normally determined by reference to the date when the application was lodged with the Court (see *Baumann v. France*, no. 33592/96, § 47, ECHR 2001 V (extracts)). The rule is subject to exceptions which may be justified by compelling reasons deriving from the specific circumstances and the context in which a remedy becomes available to an applicant, such as the context of new remedies in length-of-proceedings cases (see, for example, *Brusco v. Italy*, (dec.), no. 69789/01, ECHR 2001-IX; *Nogolica v. Croatia* (dec.), no. 77784/01, ECHR 2002 VIII; and *Charzyński v. Poland* (dec.), no. 15212/03, § 35, ECHR 2005 V). In the present case, the Court finds no compelling reasons justifying such an exception. The Court therefore dismisses the Government's objection.

43. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Period to be taken into consideration

44. The applicant considered that the whole period of his detention should be taken into account for the purpose of an assessment under Article 5 § 3 of the Convention. He pointed out that the District Court, having convicted him on 2 November 2011, had taken into account the whole period of his seven and a half years' detention, including the period of his compulsory medical treatment, as provided for by Article 423 of the CCP (see paragraph 35 above).

45. The Government did not submit observations on the merits of this complaint.

46. The applicable general principles are set out in *Buzadji v. the Republic of Moldova* ([GC], no. 23755/07, §§ 84-91 and 102, 5 July 2016).

47. The Court reiterates that Article 5 § 3 applies solely in the situation provided for in Article 5 § 1 (c), with which it forms a whole. It ceases to apply on the day when a charge is determined, even if only by a court of first instance, as from that day on a person is detained "after conviction by a competent court" within the meaning of Article 5 § 1 (a) (see, among many other authorities, *Labita v. Italy* [GC], no. 26772/95, §§ 145 and 147, ECHR 2000-IV). In the present case, the applicant was arrested on 27 February 2004 and released on 5 September 2011, thus he spent seven years, six months and nine days in detention. During this period, after being convicted by the District Court, he was detained between

26 December 2006 and 14 February 2008 (see paragraphs 19 and **Error! Reference source not found.** above), and between 15 June and 26 October 2009 (see paragraphs 23 and 24 above); those periods fall under Article 5 § 1 (a) of the Convention and should not be taken into consideration for the purpose of Article 5 § 3 of the Convention.

48. As to the period when the applicant received compulsory medical treatment for his mental condition between 21 June 2004 and 4 April 2005 in accordance with the order of the District Court, the Court considers that it is not necessary to decide on whether Article 5 § 1 (c) of the Convention is applicable to the period in question, for the following reasons.

49. Although the applicant was placed in the psychiatric hospital in the context of the criminal proceedings against him, it is clear that on 21 June 2004 and at least until 4 April 2005, when it was decided that psychiatric treatment was no longer necessary (see paragraphs 11 and 16 above), that measure of restraint was imposed on him as a result of his mental condition, thus during that period his detention fell under the exception provided for by Article 5 § 1 (e) of the Convention concerning detention by court order of a person of unsound mind (see and compare *Raudevs v. Latvia*, no. 24086/03, §§ 69-70, 17 December 2013).

50. Accordingly, the period to be taken into consideration, after deducting the periods covered by Article 5 § 1 (a) and (e) of the Convention (see paragraphs 47 and 49 above), lasted almost five years and four months.

2. Reasonableness of the duration of the pre-trial detention

51. The applicant considered that the duration of his pre-trial detention had been excessively long.

52. The Government submitted no observations on the merits under this head.

53. The Court observes that the seriousness of the charges against the applicant and the risk of his absconding or interfering with the investigation were mentioned in the initial orders for his detention (see paragraphs 7 and 8 above). On subsequent occasions the courts either extended the applicant's detention without giving any reasoning or noted that there were no grounds to change the preventive measure (see paragraphs 16, 18, **Error! Reference source not found.**, 21 and 24 above). The District Court's rulings on the applicant's applications for release contained no specific reasoning that would satisfy the requirements of Article 5 § 3 either (see paragraphs 22, 25 and 26 above). The Court notes that the decisions on the applicant's detention did not suggest that the courts had made an appropriate assessment of the facts relevant to the question of whether such a preventive measure was necessary in the circumstances applicable at the various stages of the proceedings. Moreover, with the passage of time, the applicant's continued detention required further justification, but the courts did not provide any further reasoning. Furthermore, the domestic authorities

did not consider any other preventive measures as an alternative to detention (see *Osypenko v. Ukraine*, no. 4634/04, §§ 77 and 79, 9 November 2010) prior to the applicant's release on 5 September 2011.

54. The Court has often found a violation of Article 5 § 3 of the Convention in cases against Ukraine on the basis that even in respect of lengthy periods of detention, the domestic courts have referred to the same set of grounds (if any) throughout the period of an applicant's detention (see, for example, *Kharchenko*, cited above, §§ 80-81 and 99, and *Ignatov v. Ukraine*, no. 40583/15, §§ 41-42, 15 December 2016).

55. Having regard to the above, the Court considers that by failing to address specific facts or consider other measures as an alternative to pre-trial detention for a long time, and by relying essentially and routinely on the seriousness of the charges, the authorities extended the applicant's detention pending trial on grounds that cannot be regarded as "sufficient" and "relevant" to justify its duration.

56. There has accordingly been a violation of Article 5 § 3 of the Convention.

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

57. The applicant complained that the proceedings against him had lasted more than ten years. He referred to Article 6 § 1 of the Convention, the relevant part of which reads as follows:

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

A. Admissibility

58. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Periods to be taken into consideration

59. The applicant maintained that Article 6 was applicable in the present case and had applied from the moment when he had been arrested, 27 February 2004, until the time when the Higher Specialised Court had rendered the final decision in the case on 14 June 2017 (upholding the decision of the Court of Appeal of 19 July 2016), thus throughout the proceedings. He noted that the period of his compulsory treatment should not be excluded from the total duration of the proceedings, and referred to

Article 423 of the CCP (see paragraph 35 above) and the fact that when convicting him in 2011, the District Court had taken the disputed period into account in concluding that he had already served his sentence (see paragraph 28 above).

60. The Government alleged that the criminal proceedings against the applicant had started on 28 February 2004 (when the criminal case had been instituted) and ended on 19 July 2016 (when the Court of Appeal had quashed the judgment of the District Court and discontinued the criminal proceedings against the applicant).

61. The Government further contended that the period between 21 June 2004 (when the District Court had imposed the compulsory treatment requirement on the applicant) and 16 May 2005 (when the district prosecutor's office had received the criminal case after the District Court had revoked its order on the applicant's compulsory treatment) should not be included in the assessment of the reasonableness of the length of the proceedings against the applicant. They noted that during this period the criminal proceedings against the applicant had been temporarily suspended until he had recovered, and no procedural or investigative actions could be conducted during this time. Moreover, the duration of the applicant's treatment in the hospital had not depended on the actions of the judicial or investigating authorities. According to the Government, Article 423 of the CCP should be understood as meaning that a decision on an accused's compulsory treatment suspended the investigation in a case until after the accused had recovered, and after his recovery the relevant court would revoke its order on compulsory treatment and resume the proceedings.

62. The Court reiterates that a person arrested on suspicion of having committed a criminal offence can be regarded as being "charged with a criminal offence" and claim the protection of Article 6 of the Convention (see *Simeonovi v. Bulgaria* [GC], no. 21980/04, § 111, 12 May 2017). Therefore, it considers that the proceedings against the applicant started on 27 February 2004 when he was arrested.

63. The proceedings ended on 14 June 2017 when the Higher Specialised Court upheld the decision of the Court of Appeal of 19 July 2016 as a part of the ordinary criminal proceedings and that decision became final (see *Yaikov v. Russia*, no. 39317/05, § 72, 18 June 2015).

64. The Court is now called upon to decide whether the period of the applicant's compulsory treatment should be excluded from the overall duration of the proceedings in the instant case. It must be observed that the applicant's compulsory treatment was ordered under the CCP and in the framework of the criminal proceedings against him, and it was also indicated that the domestic authorities intended to continue with the applicant's criminal prosecution once he had recovered (see paragraph 11 above). Nevertheless, it is the well-established case-law of this Court that proceedings relating to the detention of a person of unsound mind do not

involve the "determination of a criminal charge" (see *Aerts v. Belgium*, 30 July 1998, § 59, *Reports of Judgments and Decisions* 1998-V). According to the Government, no procedural or investigative actions could be conducted during the period in question, and the proceedings were suspended. As regards the latter point, the Court observes that the domestic law provided for the suspension of proceedings in the event of a suspect or an accused being referred to a medical institution for compulsory treatment, and for the resumption of the proceedings once the decision on such treatment had been revoked (see paragraph 35 above). In the instant case, however, the District Court, in its decisions of 21 June 2004 and 4 April 2005 related to the applicant's compulsory treatment, only referred to the relevant provisions of the CCP, but did not pronounce on either the suspension or the resumption of the proceedings in the applicant's criminal case. Such shortcomings, however regrettable, cannot by themselves bring the period between 21 June 2004 and 4 April 2005 under the criminal limb of Article 6. Therefore, the Court considers that the above-mentioned period should be excluded from the total duration of the proceedings.

65. As to the Government's contention that the period between 4 April 2005 and 16 May 2005 (see paragraphs 15 and 16 above) should also be excluded from the total duration of the disputed criminal proceedings as no procedural actions were taken during this period either, the Court notes that by its decision of 4 April 2005 the District Court decided to refer the applicant's criminal case to the investigating authorities for further investigation. According to the Government's own contentions, the resumption of the case was linked to the revocation of the order for the applicant's compulsory treatment (see paragraph 61 above). The Court considers that it is the date when the proceedings resumed that should be taken into account, and the period when the case was transferred from the court to the prosecutor cannot be excluded. Such transfers between investigators and courts happen regularly within criminal proceedings, and although it is true that normally investigative actions are not taken during such periods, those periods cannot be excluded from the total duration of the proceedings, as such transfers are an integral part of criminal proceedings and their duration is totally under the control and responsibility of the relevant law-enforcement and judicial authorities in any event. Thus, the Court rejects the Government's argument and concludes that the period between 4 April 2005 and 16 May 2005 should be included in the total length of the criminal proceedings against the applicant.

66. The Court considers that the criminal proceedings against the applicant started on 27 February 2004 and ended on 14 June 2017; they therefore lasted twelve and a half years over three levels of jurisdiction, after the exclusion of the period between 21 June 2004 and 4 April 2005.

2. Length of the proceedings against the applicant

67. The applicant maintained that the lengthy criminal proceedings had been caused by ineffective investigations and long periods of inactivity on the part of the domestic authorities. In addition, the criminal case had been remitted to the prosecutor's office for additional investigation on several occasions.

68. The Government maintained that the length of the proceedings in the applicant's case had been reasonable, in view of the complexity of the case and the conduct of the participants in the proceedings.

69. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999‑II, and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000‑VII; *Merit v. Ukraine*, (no. 66561/01, 30 March 2004).

70. In the instant case, the proceedings were not particularly complex as they concerned one episode of crime and one suspect – the applicant. Furthermore, for the significant period of time during those proceedings the applicant was deprived of his liberty, which required the authorities to act with a particular diligence. This, however, was not the case. From the facts it appears that it took the investigating authorities one and a half month to resume the investigation after the District Court revoked its order about the applicant's compulsory treatment in a psychiatric hospital and one more month to return the applicant from the hospital (see paragraphs 15 to 17 above). Other delays in the proceedings were caused by the case being remitted to the prosecution authorities for additional investigation on three occasions and remitted for retrial on two occasions.

71. Having regard to its case-law on the subject, the Court considers that in the instant case, the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

72. It follows that there has been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

73. Lastly, the applicant complained that he had had no effective remedies allowing him to accelerate the proceedings against him. He referred to Article 13 of the Convention in this regard, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

74. The Government submitted that this complaint was manifestly ill-founded.

75. The applicant disagreed.

76. The Court notes that this complaint is linked to the complaint under Article 6 § 1 concerning the length of the proceedings which was examined above. It finds no reason to declare it inadmissible. The Court must therefore declare it admissible.

77. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). The Court further refers to its finding in the *Merit* case about the lack of an effective and accessible remedy under domestic law for complaints in respect of the length of criminal proceedings (see *Merit*, cited above, §§ 78-79).

78. The Court does not find any reasons to depart from this case-law in the present case.

79. There has therefore been a violation of Article 13 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. 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

81. The applicant claimed 3,000,000 euros (EUR) in respect of pecuniary damage and EUR 4,000,000 in respect of non-pecuniary damage.

82. The Government contested the above claims as exorbitant and unsubstantiated.

83. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

84. The Court, ruling on an equitable basis, awards the applicant EUR 5,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

85. The applicant also claimed EUR 1,500 for the costs and expenses incurred before the Court. He submitted documents in support of his claim.

The Government considered that the applicant had provided the relevant evidence to substantiate the amount claimed.

86. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, and the fact that the applicant had been granted legal aid, the Court rejects the claim for costs and expenses.

C. Default interest

87. 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 5 § 3 of the Convention;

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

4. *Holds* that there has been a violation of Article 13 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 5,500 (five thousand five hundred 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 1 July 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Victor Soloveytchik
Registrar

Síofra O'Leary
President