FIFTH SECTION

CASE OF ICHIN AND OTHERS v. UKRAINE

(Applications nos. 28189/04 and 28192/04)

JUDGMENT

STRASBOURG

21 December 2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ichin and Others v. Ukraine,

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

Peer Lorenzen, *President,*
Karel Jungwiert,
Rait Maruste,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Ganna Yudkivska, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 30 November 2010,

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

PROCEDURE

1. The case originated in two applications (nos. 28189/04 and 28192/04) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Ukrainian nationals, Ms Ichina, Mr Ichin, Ms Dmitriyeva and Mr Dmitriyev ("the applicants"), on 2 July 2004.

2. The applicants were represented by Mr R. Martynovskiy, a lawyer practising in Sevastopol. The

Ukrainian Government ("the Government") were represented by their Agent, Mr Y. Zaytsev, from the Ministry of Justice.

3. The applicants alleged, in particular, that the detention of Mr Ichin and Mr Dmitriyev was unlawful and the proceedings which led to the above detention were unfair.

4. On 1 September 2009 the President of the Fifth Section decided to give notice of the applications to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. Ms Ichina was born in 1960, Mr Ichin was born in 1991, Ms Dmitriyeva was born in 1969 and Mr Dmitriyev was born in 1990. They live in Sevastopol.

6. On 31 December 2003 Mr Ichin, Mr Dmitriyev and another individual Mr K., all of them minors, stole food supplies and kitchen appliances from a school canteen.

7. On 5 January 2004 they were questioned by the police and confessed to the theft. They returned some of the stolen goods.

8. On 7 January 2004 the investigator instituted criminal proceedings into the theft, after having noted that, between 30 December 2003 and 2 January 2003, unknown persons had broken into a school canteen and stolen food supplies and kitchen appliances.

9. On 13 January 2004 the investigator, with the approval of the District Prosecutor, lodged requests with the Sevastopol Nakhimovskiy District Court ("the Nakhimovskiy Court") to place Mr Ichin and Mr Dmitriyev in a juvenile holding facility in accordance with Article 7-3 of the Code of Criminal Procedure. The investigator noted that Mr Ichin and Mr Dmitriyev had committed deliberate actions that could be classified as a crime under part 3 of Article 185 of the Criminal Code, that both of them came from big families with low incomes, had contact with criminals, had poor references from school, had a tendency to take part in illegal activities and could not be influenced by their parents. The investigator noted that, in view of the above considerations, there were sufficient grounds to believe that Mr Ichin and Mr Dmitriyev could commit socially dangerous acts (*суспільно небезпечні діяння*) again.

10. The same day the applicants were summoned by the investigator to appear before the court on 14 January 2004 as witnesses, with their lawful representatives, for having committed socially dangerous acts foreseen by part 3 of Article 185 of the Criminal Code.

11. On 14 January 2004 the Nakhimovskiy Court examined the requests in the presence of the applicants and the prosecutor. By two decisions of the same day, the court ordered Mr Ichin and Mr Dmitriyev to be placed in a juvenile holding facility. The court noted that Mr Ichin and Mr Dmitriyev were accused of socially-dangerous acts and that criminal proceedings had been instigated against them on 7 January 2004. With regard to the reasons given in the investigator's requests (see paragraph 9 above), the court concluded that there were sufficient grounds to believe that Mr Ichin and Mr Dmitriyev could evade the investigation and the course of justice and could continue their criminal activities. The court's decision was final and not subject to appeal.

12. Mr Ichin and Mr Dmitriyev remained in the juvenile holding facility until 13 February 2004.

13. On 3 March 2004 the investigator instituted criminal proceedings against Mr Dmitriyev and Mr Ichin for stealing food supplies and kitchen appliances from the school canteen.

14. On 3 and 4 March 2004 respectively, Mrs Dmitriyeva and Mrs Ichina wrote to the President of the Nakhimovskiy Court complaining of degrading treatment of their sons by the personnel of the juvenile holding facility. In his reply of 15 March 2004 the President of that court informed them that he lacked the power to instigate criminal proceedings against the personnel of the holding facility.

15. According to Mrs Ichina, her complaints to the prosecutor alleging degrading treatment of Mr Ichin in the juvenile holding facility were answered only by a letter from the prosecutor informing her that there were no grounds for a criminal investigation regarding the personnel of the holding facility.

16. According to Mrs Dmitriyeva, her complaints to the prosecutor alleging the degrading treatment of Mr Dmitriyev in the holding facility remained unanswered.

17. On 26 April 2004 the investigator decided that the criminal proceedings against Mr Ichin and Mr Dmitriyev should be terminated as they were under the age of criminal liability and the case should be referred to a court for the application of compulsory educational measures.

18. On 14 May 2004 the Sevastopol Nakhimovskiy District Prosecutor approved the decision of 26 April 2004.

19. On 4 February 2005 the Nakhimovskiy Court examined the materials concerning the application of compulsory educational measures with respect to Mr Ichin and Mr Dmitriyev and decided to limit the punishment to a warning to both of them. There is no evidence that this decision was appealed against.

II. RELEVANT DOMESTIC LAW

A. Code of Criminal Procedure

20. Relevant provisions of the Code as in force at the material time provide as follows:

Article 7-3

Procedure for consideration of cases involving socially dangerous acts committed by persons who have not yet reached the age of criminal responsibility

"Where an investigator establishes in a criminal case that the socially dangerous act in question was committed by a person between the age of eleven and the age of criminal responsibility, he or she shall give a reasoned decision for terminating the case and applying compulsory educational measures to the minor. The case shall then be sent to the prosecutor together with the decision.

...

If it has been established that a person aged between eleven and fourteen who has committed a socially dangerous act resembling an act punishable under the Criminal Code of Ukraine by more than five years' imprisonment requires urgent removal from society, then upon the decision of the investigator or the inquiry body, and with the consent of the prosecutor and by a reasoned decision of the court, he or she may be placed in a juvenile holding facility for a period of up to thirty days. The participation of the defence counsel in such a measure shall be ensured from the time of the placing of the minor in the juvenile holding facility..."

Article 447

Procedure for the application of compulsory educational measures to a minor

"When in the course of the criminal case examination the court finds that the young offender, who had committed a minor offence or an offence of medium severity, can be corrected, it may issue a decision, by resolution of the judge, terminating the case and imposing on the minor one of the compulsory educational measures mentioned in Article 105 § 2 of the Criminal Code of Ukraine.

The judge or the president of the court shall, within ten days, schedule the hearing of the case transferred by the prosecutor under the procedure prescribed by Articles 73 or 9 of this Code if he/she agrees with the decision reached by the prosecutor or investigator. In the event of disagreement, the case shall be returned to the prosecutor with the reasoned decision.

The examination of the case mentioned in paragraph 2 of this Article shall be held in public with the compulsory presence of a prosecutor and a defence counsel. In the course of examination, the minor and his/her defence counsel may argue their case and evidence substantiating or disproving the commitment of the offence by the person concerned is examined also. The court also examines other aspects of the circumstances which are essential for the purpose of making a decision as to the application of the compulsory education measures. Minutes shall be taken during the court hearing. After the court's examination is completed, the prosecutor and then the counsel for the defence may express their opinions.

If there are sufficient grounds to consider that the person, who, by the court's decision, is to be transferred to the special educational support institution, will take part in illegal activity, then as well as with the aim of ensuring the

execution of its decision, the court can, for a temporary period of up to thirty days, place this person in a juvenile holding facility which may transfer him or her afterwards to a special educational support institution."

B. The Law of Ukraine on Juvenile Services and Authorities and on Special Institutions for Minors of 24 January 1995

21. The relevant provisions of the Law provided as follows:

Article 6 Courts

"The courts examine cases:

concerning minors who have committed a crime;

...

concerning detention of minor-offenders in a juvenile holding facility...

Cases referred to in the first part of this article shall be examined by the specifically authorised judges (the panel of judges) with the participation of juvenile services, unless otherwise provided by law."

Article 7 Juvenile holding facility

"...Minors aged between 11 and 18 may be sent to the juvenile holding facilities for up to thirty days where they:

have committed an offence before reaching the age of criminal responsibility for such offence if it is considered necessary to isolate them from society (by a resolution of the body of inquiry and the investigator sanctioned by the prosecutor or by a resolution of the court);

...

are transferred to the special institutions for minors by a decision of the court;

are absent without official leave from the special educational support institution in which they were staying ..."

C. Regulations on the juvenile holding facilities of the bodies of the Interior Approved by the order of the Ministry of Interiors of 13 July 1996, no. 384

22. Relevant provisions of the Regulations read as follows:

"1.1. Juvenile holding facilities (hereinafter JHF) are special institutions of the bodies of the Interior for minors, which are designed for temporary detention of certain categories of minors that need to be isolated.

1.2. Juvenile holding facilities (JHF) are created for temporary detention of minors under the age of 11 to 18 ...

1.3. The main tasks of the holding facilities are:

prevention of the juvenile offenses;

conducting preventive and educational work with them;

identification of the causes and conditions which lead to delinquency among the teenagers;

ensure appropriate conditions of their detention.

...

5. Preventive and education work in the holding facilities:

5.1. Preventive and education work with minors, who are held in the holding facilities, shall be conducted taking into consideration the age, degree of pedagogical neglect, social danger of the previously committed offenses and other circumstances that are important for effective preventive measures of influence.

5.2. In order to prevent juvenile delinquency, identifying and eliminating causes and conditions that contribute to it, the officials of the holding facilities:

5.2.1. Shall identify the living conditions and education of minors in the family, their personal qualities, interests, reasons for absence without leave from the special educational institution, deficiencies in the activity of enterprises, institutions and educational institutions that contributed to the commission of offenses; reasons for committing crimes, persons participating in them, those places on the list of wanted persons, as well as those who are missing; places of selling stolen goods, the cases of involving minors in criminal and other antisocial activities.

5.2.2. Shall immediately notify the local departments of the Interior in the Crimea, Kiev, Kiev Region, Regional Departments and the City Department of Sevastopol and the departments on transport about the identification of

persons who have committed crimes or other circumstances that are important for their successful investigation.

5.2.3. Shall carry out individual educational activities with minors who are held in the holding facilities, focusing on the development of positive predispositions and interests, elimination of behavioural deficiencies, involving them in education and work.

5.2.4. Shall inform the interested government agencies and NGOs on the causes of juvenile offences, make proposals for elimination of such causes and conditions, as well as on improving the organization of education and labour education of minors, who are held in the holding facilities."

THE LAW

I. JOINDER OF THE APPLICATIONS

23. The Court considers that, pursuant to Rule 42 § 1 of the Rules of Court, the applications should be joined, given their common factual and legal background.

II. AS TO *LOCUS STANDI* OF MS ICHINA AND MS DMITRIYEVA

24. The Government maintained that Ms Ichina and Ms Dmitriyeva could not claim to be victims of any rights guaranteed by the Convention in the circumstances of the present case.

25. The applicants claimed that the complaint under Article 8 of the Convention concerned all of them.

26. The Court notes that the applicants made a number of complaints under different provisions of the Convention. The complaint under Article 8 had been originally made in respect of all of them − other complaints, like those under Article 5, had been made only in respect of Mr Ichin and Mr Dmitriyev. The parties did not differ on the last point. The Court considers that the fact that only one of the complaints concerns Ms Ichina and Ms Dmitriyeva does not deprive them of the status of applicants in the present case altogether. Therefore, it dismisses this objection of the Government concerning the victim status of Ms Ichina and Ms Dmitriyeva.

III. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

27. The applicants complained that the detention of Mr Ichin and Mr Dmitriyev was unlawful. They referred to Article 5 § 1 of the Convention, which reads as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or from fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics „drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

A. Admissibility

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

B. Merits

1. Parties' submissions

29. The applicants submitted that the domestic law was not respected and the court decisions on the placing of Mr Ichin and Mr Dmitriyev in the juvenile holding facility had not been justified while the purpose of such detention remained unclear. No investigative actions had been conducted in respect of them while in detention and no charges had been brought against them at that time. Furthermore, they had not formally been considered as suspects at the time when the decision on their detention had been taken.

30. The Government considered that the detention of Mr Ichin and Mr Dmitriyev was in accordance with Article 5 § 1. Such detention had been based on clear and foreseeable provisions of the domestic law, namely Article 7-3 of the Code of Criminal Procedure. They further noted that the decision on detention of Mr Ichin and Mr Dmitriyev had been given by the domestic courts which had the competence to interpret the domestic law and to apply it in the circumstances of the particular case within their discretion. They submitted that the applicants' detention had been effected for the purpose of bringing them before the competent legal authority within the meaning of Article 5 § 1 (c).

2. The Court's assessment

(a) General principles

31. The Court reiterates that Article 5 of the Convention guarantees the fundamental right to liberty and security. That right is of primary importance in a "democratic society" within the meaning of the Convention (see *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 65, Series A no. 12, and *Winterwerp v. the Netherlands*, 24 October 1979, § 37, Series A no. 33).

32. All persons are entitled to the protection of that right, that is to say, not to be deprived, or not to continue to be deprived, of their liberty (see *Weeks v. the United Kingdom*, 2 March 1987, § 40, Series A no. 114), save in accordance with the conditions specified in paragraph 1 of Article 5. The list of exceptions set out in Article 5 § 1 is an exhaustive one (see *Labita v. Italy* [GC], no. 26772/95, § 170, ECHR 2000-IV, and *Quinn v. France*, 22 March 1995, § 42, Series A no. 311) and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his or her liberty (see *Engel and Others v. the Netherlands*, 8 June 1976, § 58, Series A no. 22, and *Amuur v. France*, 25 June 1996, § 42, *Reports* 1996-III).

33. The Court further reiterates that where deprivation of liberty is concerned it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of "lawfulness" set by the Convention −a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Baranowski v. Poland*, no. 28358/95, § 52, ECHR 2000-III).

34. The Court further reiterates that the authorities must also conform to the requirements imposed by domestic law in the proceedings concerning detention (see *Van der Leer v. the Netherlands*, 21 February 1990, §§ 23-24, Series A no. 170-A; *Wassink v. the Netherlands*, 27 September 1990, § 27, Series A no. 185-A; and *Erkalo v. the Netherlands*, 2 September 1998, § 57, 1998-VI).

35. It is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. However, since under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention, it follows that the Court can, and should, exercise a certain power of review of such compliance

(see *Benham v. the United Kingdom*, 10 June 1996, § 41, *Reports* 1996-III).

(b) Application of the general principles to the present case

36. The Court notes that the procedure for placement of a minor in a special holding facility is foreseen by Article 7-3 of the Code of Criminal Procedure. From the wording of the said article, as the Government have argued, it appears that the purpose of such detention may correspond to the one described in subparagraph (c) of paragraph 1 of Article 5, namely "the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so".

37. The circumstances of the present case, however, cast doubts as to whether the scope and manner of application of this procedure is sufficiently well-defined so as to avoid arbitrariness. Mr Ichin and Mr Dmitriyev had committed a theft to which they confessed, a few days later, within the framework of the preliminary inquiry. Following this, the investigators instigated criminal proceedings into the crime of theft committed by unknown persons, although the identity of the offenders and their age had been established by that time. Nevertheless, they were summoned to the court as witnesses and the decision to place them in the juvenile holding facility does not appear to be for any of the purposes listed in subparagraph (c) of paragraph 1 of Article 5. The Government suggested that the applicants' detention had been effected for the purpose of bringing them before the competent legal authority, but it remained without answer which authority had been meant. Furthermore, there were no investigative actions taken in their respect during the detention and the criminal proceedings against them, although the applicants could not be criminally liable (see paragraph 17 above), were nonetheless introduced twenty days after their release from the holding facility. Therefore, the Court considers that the applicants' detention did not fall under the permissible exception of Article 5 § 1 (c).

38. The Court will next examine whether, although not referred to by the Government, Article 5 § 1 (d) may apply to the applicants' detention on the ground that the applicant were minors and their placement in the juvenile holding facility could be conducted under domestic law (see paragraphs 20-22 above) in order to isolate them from society or to be held pending transfer to special education institutions. Furthermore, the regulations governing the juvenile holding facilities appear to provide for educational work to be conducted with the minors concerned. The Court, therefore, shall consider whether the applicants' detention was "for the purpose" of education supervision (see *Bouamar v. Belgium*, 29 February 1988, § 50, Series A no. 129).

39. The Court reiterates that, in the context of the detention of minors, the words "educational supervision" must not be equated rigidly with notions of classroom teaching, it must embrace many aspects of the exercise, by the authority, of parental rights for the benefit and protection of the person concerned (see, *mutatis mutandis*, *D.G. v. Ireland*, no. 39474/98, § 80, ECHR 2002-III). However, the Court does not consider, and indeed, it does not appear to be argued by the Government, that the juvenile holding facility itself constituted "educational supervision". As it transpires from the domestic law, the centre is designed for temporary isolation of different categories of minors, including those who have committed an offence. The regulations on the juvenile holding facilities do not provide with sufficient clarity what educational activities must be organised in the centre and the preventive and educational work envisaged in the regulations includes purely investigative actions of data collection about possible involvement of minors in criminal activities. In the circumstances of the present case, it was not argued by the Government that the placement in the holding facility had been for the purpose of "educational supervision" and it does not appear from the case-file materials that the applicants' detention was anyhow related to any such purpose or that the applicants participated in any educational activities during their stay in the holding facility. Therefore, the Court considers that the applicants' detention did not fall under the permissible exception of Article 5 § 1 (d) either. Nor have any of the other exceptions to Article 5 been shown to apply in the present case.

40. The foregoing considerations are sufficient to enable the Court to conclude that Mr Ichin and Mr Dmitriyev had been detained in an arbitrary manner and there has accordingly been a violation of Article 5 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

41. The applicants also complained that the proceedings concerning the holding of Mr Dmitriyev and Mr Ichin in the juvenile holding facility were unfair, given that the applicants had not been informed in advance about the true reasons for their summons to appear in court and therefore could not prepare their defence and arrange for their legal representation. They invoked Articles 5 § 4, 6 §§ 1 and 3 (c) of the Convention.

42. The Government considered that Article 5 § 4 of the Convention was not applicable in the present case, given that the case concerned issues covered by Article 5 § 3 of the Convention, which was directly connected to the reasons for the applicants' arrest under Article 5 § 1 of the Convention.

43. The Court reiterates its findings above that the applicants' detention did not fall within any of the permissible exceptions to the right to liberty of person listed in Article 5 § 1 of the Convention. Therefore, the Government's contention about the necessity to examine the applicants' complaint under Article 5 § 3 of the Convention must be rejected. Furthermore, the Court, which is master of the characterisation to be given in law to the facts of the case, considers that the relevant provision for the problem raised by the applicants is Article 5 § 4 of the Convention which provides as follows:

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

A. Admissibility

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

B. Merits

45. Mr Ichin and Mr Dmitriyev stated that when the decision regarding their detention had been taken they were not represented by a lawyer and could not prepare their defence. Furthermore, since they were minors, a representative of the Juvenile Service was required to be present during the proceedings.

46. The Government considered that the judicial decisions concerning the placing of Mr Ichin and Mr Dmitriyev in the juvenile holding facility were reasonable and complied with Article 5 § 3 of the Convention.

47. The Court considers that, having concluded that the detention of Mr Ichin and Mr Dmitriyev has not been justified under Article 5 § 1 of the Convention, it is not necessary to consider separately whether the basic requirements of procedural fairness under Article 5 had been met in the judicial proceedings leading to the placing of Mr Ichin and Mr Dmitriyev in the juvenile holding facility.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

48. The applicants complained, under Article 5 § 2, that Mr Ichin and Mr Dmitriyev had not been given reasons for their detention because there was no criminal case against them at that time. With reference to Articles 5 § 4 and 13 of the Convention and Article 2 of Protocol No. 7, the applicants complained that the decision of 14 January 2004 was not subject to appeal. They also considered that the placement of Mr Ichin and Mr Dmitriyev in the juvenile holding facility had unlawfully interfered with their family life within the meaning of Article 8 of the Convention. They complained, finally, under Article 3 of the Convention of the degrading treatment of Mr Ichin and Mr Dmitriyev by the personnel of the juvenile holding facility. In reply to the Government's observations, the applicants raised new complaints under Article 3 of the Convention in respect of Ms Ichina and Ms Dmitriyeva and under Article 6 § 2 of the Convention in respect of Mr Ichin and Mr Dmitriyev.

49. Having carefully examined the applicants' submissions in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose

any appearance of a violation of the rights and freedoms set out in the Convention. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicants claimed the following amounts in respect of non-pecuniary damage:
Ms Ichina – EUR 4,000;
Mr Ichin – EUR 12,000;
Ms Dmitriyeva – EUR 4,000;
Mr Dmitriyev – EUR 9,000.

52. The Government considered that there was no call for any award in the present case.

53. The Court notes that it found no violation in respect of Ms Ichina and Ms Dmitriyeva, it, therefore, rejects their claim. As to Mr Ichin and Mr Dmitriyev, in the light of the violations found, the Court, acting on equitable basis, awards each of them EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

54. The applicants also claimed EUR 1,500 for the costs and expenses incurred before the Court in each of the applications.

55. The Government considered that these claims were not supported by sufficiently detailed documentary evidence.

56. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court awards the claimed amounts to Mr Ichin and Mr Dmitriyev in full.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join the applications;

2. *Dismisses* the Government's objection concerning the victim status of Ms Ichina and Ms Dmitriyeva;

3. *Declares* the complaints of Mr Ichin and Mr Dmitriyev under Article 5 §§ 1 and 4 admissible and the remainder of the applications inadmissible;

4. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of Mr Ichin and Mr Dmitriyev;

5. *Holds* that it is not necessary to consider separately the allegation of procedural unfairness under Article 5 § 4 of the Convention;

6. *Holds*

(a) that the respondent State is to pay Mr Ichin, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros) in respect of non-pecuniary damage and EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant, to be converted into Ukrainian hryvnias at the rate applicable at the date of settlement;

(b) that the respondent State is to pay Mr Dmitriyev, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros) in respect of non-pecuniary damage and EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant, to be converted into Ukrainian hryvnias at the rate applicable at the date of settlement;

(c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 21 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek Peer Lorenzen
Registrar President

ICHIN AND OTHERS v. UKRAINE JUDGMENT