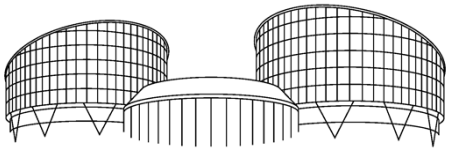

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF BOSYY v. UKRAINE

(Application no. 13124/08)

JUDGMENT

STRASBOURG

22 November 2018

This judgment is final but it may be subject to editorial revision.

In the case of Bosyy v. Ukraine,

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

Síofra O'Leary, *President,*
Lətif Hüseynov,
Lado Chanturia, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 23 October 2018,

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

PROCEDURE

1. The case originated in an application (no. 13124/08) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Vasyl Ivanovych Bosyy ("the applicant"), on 8 February 2008.

2. The applicant, who had been granted legal aid, was represented by Mr E. Markov, a lawyer admitted to practice in Odessa. The Ukrainian Government ("the Government") were represented by their Agent, most recently Mr I. Lishchyna.

3. On 11 January 2011 notice of the application was given to the Government. On 9 October 2013 the Court invited the Government to submit observations on the admissibility and merits of the complaints concerning the conditions of the applicant's detention, alleged ill-treatment by guards in the detention facility, alleged monitoring of his correspondence in prison and alleged hindrance of the exercise of his right of individual application (through failure to provide him with documents for his application to the Court, interference with his communication with the Court and intimidation on account of his application to the Court). The remainder of the application, including the complaints concerning the fairness of criminal proceedings against the applicant, was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. In 2005 to 2006 the applicant was prosecuted for various crimes. He was eventually found guilty of aggravated robbery and sentenced to seven

years' imprisonment, the final decision having been adopted on 19 September 2006.

A. The applicant's detention

1. Pre-trial detention centre

5. From 27 May 2005 to 3 October 2006 the applicant was detained at a pre-trial detention centre (SIZO) in Kropyvnytskyi (then named Kirovograd).

2. First Correctional Colony

6. From 4 October 2006 to 20 March 2008 the applicant was detained at correctional colony no. 6 in Kropyvnytskyi (hereinafter "the first colony").

7. According to the applicant, he was held in a dormitory measuring 6 by 8 sq. m and containing twelve double bunk beds. The Government submitted that the dormitory concerned measured 41.68 sq. m and contained ten single beds. They submitted photographs supposedly corroborating their submissions in that regard.

8. The applicant alleged that electricity in the colony had been regularly switched off. The Government submitted that electricity was supplied round the clock but, to reduce power consumption as part of a nationwide energy-saving strategy, the voltage of the general lighting in the institution had been reduced from 220 to 110 V. The applicant submitted that that meant that, even when the lighting had been on, the cell had been dimly lit and the light insufficient for activities such as reading and sewing.

9. The applicant also alleged that he had not been given the essential items and that he had been "beaten, humiliated, tortured [and] placed in a disciplinary cell". In particular, he alleged that he had been beaten on arrival at the colony on 4 October 2006 and that the guards had tried to place him into a psychiatric clinic in March 2007. The Government denied those allegations.

3. Second Correctional Colony

10. On 23 May 2008 the applicant was transferred to correctional colony no. 78 in the village of Raikivtsi, Khmelnytsk Region (hereinafter "the second colony"), where he stayed until his release on 25 May 2012.

4. Circumstances concerning the period of detention in both colonies

11. The applicant alleged that the food in the correctional colonies had been inadequate and of a poor quality. He alleged that at both correctional colonies the sanitary conditions had been inadequate in that there had been cockroaches and sometimes mice and rats. The Government denied those allegations. They submitted that the food supply had been in accordance

with the relevant regulations and regularly checked. In support of their submissions they submitted a number of logs and reports from the prison authorities showing that portions compliant with the regulations in force had been distributed to the prisoners, and that the sanitary conditions had been checked and found to be appropriate. They also submitted several statements from inmates who alleged that they had served time with the applicant and stated that the conditions of their detention, particularly in terms of the provision of food, clothes and sanitary conditions, had been appropriate.

12. The applicant alleged that he had been repeatedly ill-treated by prison guards, that the prison authorities had intercepted, reviewed, blocked and delayed his correspondence, particularly that with the Court and the Parliamentary Commissioner for Human Rights, and had persecuted and threatened him for having applied to the Court. The Government denied those allegations.

13. It appears from the documents submitted by the parties that the applicant complained many times to various domestic authorities, notably the prosecutor's office, alleging, in general, ill-treatment and persecution by the prison authorities. In May and August 2010 he withdrew two of his complaints, stating that they had been lodged in a state of heightened emotions.

14. Registers of incoming and outgoing mail from the correctional colonies submitted by the Government show that, in the period from 17 June 2008 to 1 December 2011 – the only period of the applicant's detention for which specific information in this regard is available – the applicant sent and received more than sixty letters to and from various public entities, most notably various domestic courts, disciplinary commissions of judges, members of Parliament and the Presidential Administration. Under domestic law (see paragraph 21 below) this correspondence was subject to monitoring by the prison authorities. The prison registers show that the applicant also corresponded extensively with other entities, namely prosecutors, the Parliamentary Commissioner for Human Rights and the Court. This correspondence was, under domestic law, exempted from monitoring.

15. The Government also submitted a number of cover letters prepared by the prison authorities relating to the letters sent out by the applicant. For instance, in a cover letter of November 2011 to the Judges Qualifications Commission of Ukraine the governor of the second colony stated that he was forwarding a letter by the applicant concerning the initiation of criminal proceedings against the judges of the trial court that had convicted him.

B. Events in connection with the applicant's application to the Court

1. Access to the domestic case file

16. The applicant alleged that the domestic authorities had denied him access to his criminal case file, thus preventing him from obtaining copies of documents related to his application to the Court. The Government denied those allegations. They submitted documents from the domestic courts showing that the applicant had examined his criminal case file on 23 December 2001 and 11 January 2012 and that, by a letter of 25 January 2012, the trial court had sent him a number of copies of documents from that file.

2. Revocations of authority of the applicant's lawyer

17. After sending the Court an authority form empowering Mr Markov to represent him, the applicant sent the Court two letters, in April 2014 and April 2015, informing it that he wished to revoke the lawyer's authority. He said that the lawyer, by seeking to derive financial benefit from the case, had demonstrated conduct unworthy of his status.

18. In subsequent correspondence between the Registry, the applicant and the lawyer it transpired that the applicant was apparently upset about the lawyer's inability to help him with matters unrelated to the proceedings before the Court, such as sending him various goods and representation in unrelated domestic judicial and pardon proceedings.

19. When invited to comment on the first revocation, in May 2014 the applicant informed the Court that he wished to cancel that revocation and maintain the lawyer's authority. Following this cancellation of the first revocation and before the second revocation the lawyer submitted observations in reply to those of the Government on behalf of the applicant.

20. After the second revocation, the lawyer's comments questioning the seriousness of the applicant's wish to revoke his authority were forwarded directly to the applicant with an invitation to comment. He did not respond.

II. RELEVANT DOMESTIC LAW

21. Article 113 of the Code on the Enforcement of Sentences (2003) stipulates that prisoners are allowed to correspond with relatives, other persons and organisations. All such correspondence, unless it is specifically exempted, is subject to automatic monitoring and censorship by the prison authorities. Prior to amendments introduced in 1 December 2005 (see below), those exceptions had been limited to correspondence with the Parliamentary Commissioner for Human Rights and prosecutors.

The Law of 1 December 2005 (in force from 21 December 2005) exempted from monitoring all correspondence by prisoners addressed to the Court and other international institutions of which Ukraine was a member.

The Law of 21 January 2010 (in force from 9 February 2010) added the following to the list of exemptions: (i) correspondence addressed to prisoners from previously exempt organisations and (ii) correspondence addressed to and received from prisoners' lawyers.

The Law of 8 April 2014 further added correspondence between prisoners and all courts to the list of exemptions.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

22. The applicant complained of a number of violations of Article 3 of the Convention, which reads as follows:

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

Admissibility

1. Detention in the pre-trial detention centre

23. The applicant complained about the conditions of his detention at the pre-trial detention centre. However, as his detention in that establishment came to an end on 3 October 2006, that complaint was lodged outside of the six-month time-limit and should therefore be rejected as inadmissible pursuant to Article 35 §§ 1 and 4 of the Convention.

24. To the extent the applicant complained of ill-treatment in the pre-trial detention centre, it does not appear from his submissions that any investigations in that regard continued after his transfer from the centre to the first colony which could potentially bring the relevant complaints within the six-month period. Therefore, that part of the application is manifestly ill-founded and should be rejected as inadmissible pursuant to Article35 §§ 3 (a) and 4 of the Convention.

2. Detention in the correctional colonies

(a) Conditions of detention

(i) The parties' submissions

25. The parties' submissions are summarised in paragraphs 7 to 9 and 11 above.

(ii) The Court's assessment

26. The relevant principles of the Court's case-law were recently set out in *Muršić v. Croatia* ([GC], no. 7334/13, § 137-41, 20 October 2016). In particular, when the personal space available to a detainee falls below 3 sq.m of floor surface in multi-occupancy accommodation in prisons, the lack of personal space is considered so severe that a strong presumption of a violation of Article 3 arises (ibid., § 137). In cases where a prison cell – measuring in the range of 3 to 4 sq.m of personal space per inmate – is at issue, the space factor remains a weighty factor in the Court's assessment of the adequacy of conditions of detention. In such instances a violation of Article 3 will be found if the space factor is coupled with other aspects of inappropriate physical conditions of detention (ibid., § 139). Where a detainee had at his or her disposal more than 4 sq.m of personal space in multi-occupancy accommodation in prison and where therefore no issue with regard to the question of personal space arises, other aspects of physical conditions of detention remain relevant for the Court's assessment of adequacy of an applicant's conditions of detention under Article 3 of the Convention (ibid., § 140).

27. Turning to the present case, the Court notes that it is unable to establish, to the required standard of proof, that the applicant had at his disposal less than 4 sq. m of personal space in the first colony (see paragraph 7 above). He made no specific allegation of overcrowding in the second colony. Therefore, no issue of lack of personal space as such arises. As to the other elements of the applicant's allegations, they are not sufficiently developed and lack substantiation.

28. Therefore, 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.

(b) Alleged ill-treatment by prison guards

(i) The parties' submissions

29. The Government denied the applicant's allegation that he had been ill-treated by prison guards. They acknowledged that he had submitted a number of complaints in that regard with the domestic authorities but stated that his complaints had proved unsubstantiated. Moreover, they pointed out that, when the prosecutors had attempted to question him about his allegations of ill-treatment, he had withdrawn them (see paragraph 13 above).

30. The applicant submitted that he had been ill-treated by prison guards. It was up to the domestic authorities to look for proof of ill-treatment, which they had failed to do with any diligence. He added that he had withdrawn his complaints under pressure from the prison authorities.

(ii) The Court's assessment

31. The applicant failed to provide any details or any prima facie evidence to substantiate his complaints (compare *D.G. v. Poland*, no. 45705/07, § 180, 12 February 2013). His allegations are sweeping and unspecific.

32. In particular, there is no evidence of any injuries or even established instances of the use of force against the applicant (contrast, among many other examples, *Diri v. Turkey*, no. 68351/01, § 43, 31 July 2007, and *Dolenec v. Croatia*, no. 25282/06, § 147, 26 November 2009) or prison-wide operations by which he could have been affected (contrast *Karabet and Others v. Ukraine*, nos. 38906/07 and 52025/07, § 263, 17 January 2013). The applicant did not submit that he had had any injuries which he had brought to the authorities' attention, but which had gone undocumented despite his efforts (see, for example, *Sarac v. Turkey* (dec.), no. 35841/97). Nor did he explain why he was not in a position to take such steps (contrast, for example, *Balogh v. Hungary*, no. 47940/99, § 37, 20 July 2004, where the applicant provided detailed reasons for his failure to undergo a medical examination).

33. The applicant's failure to pursue some of his complaints at the domestic level is a further factor to be taken into account in assessing the credibility of his allegations (see, *mutatis mutandis, Danilov v. Ukraine*, no. 2585/06, § 82, 13 March 2014). The Court is prepared, where circumstances so warrant, to entertain the possibility that repudiation of a prisoner's complaint at the domestic level can be motivated by pressure from the prison authorities (see, for example, *Sergey Savenko v. Ukraine*, no. 59731/09, § 29, 24 October 2013). However, the Court observes that the applicant demonstrated the same lack of consistency in the proceedings before the Court in circumstances where there was no indication of any pressure on him (see paragraphs 17 to 20 above). This is a further factor undermining the credibility of his allegations.

34. 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.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

35. The applicant complained that there had been no effective remedy available to him at the domestic level for his complaints under Article 3. He relied on Article 13 of the Convention, which reads:

> "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."

36. The Government contested that argument.

Admissibility

37. The Court, having declared the relevant complaints under Article 3 of the Convention inadmissible, concludes that the applicant has no arguable claim for the purposes of Article 13 of the Convention (see, for example, *Valeriy Fuklev v. Ukraine*, no. 6318/03, § 98, 16 January 2014, and *Orlovskiy v. Ukraine*, no. 12222/09, § 100, 2 April 2015).

38. It follows that the applicant's complaint under Article 13 of the Convention must be rejected as being incompatible *ratione materiae* with the provisions of the Convention, pursuant to Article 35 §§ 3 (a) and 4.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

39. The applicant complained of a violation of his right to respect for his correspondence on account of the prison authorities' monitoring and interception of his correspondence. He relied on Article 8 of the Convention, which reads:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The parties' submissions

40. The applicant submitted that all of his correspondence had been systematically monitored by the prison authorities, as provided for by domestic law.

41. The Government submitted that all of the applicant's correspondence had been duly sent out and delivered to him.

B. The Court's assessment

1. Admissibility

42. The applicant first formulated his complaint concerning interference with his correspondence in his letter of 29 July 2008. Therefore, as far as the applicant's complaint relates to his detention in the pre-trial detention centre (see paragraph 23 above), it is out of time and should be rejected as inadmissible pursuant to Article 35 §§ 1 and 4 of the Convention.

43. As far as the applicant's detention in the correctional colonies is concerned, the case material indicates that the applicant sent and received numerous letters to and from various public entities not exempt from

monitoring of correspondence under domestic law in the period from 17 June 2008 to 1 December 2011, which is the only period of his detention for which specific information in that regard is available (see paragraph 14 above). The same material shows that the applicant also addressed numerous letters to the entities exempt from monitoring, namely the prosecutors, the Parliamentary Commissioner for Human Rights and this Court (see paragraph 21 for the list of the exemptions in force at various times).

44. The Court has already found in *Belyaev and Digtyar v. Ukraine* (nos. 16984/04 and 9947/05, § 53, 16 February 2012) that, under the law in force prior to 21 December 2005, prison officers monitored all letters sent by prisoners with the exception of letters to the Parliamentary Commissioner for Human Rights or prosecutors. The relevant legislation did not draw any further distinctions between the different categories of persons with whom detainees could correspond, such as, for example, law-enforcement and other domestic authorities, Convention and other international bodies, relatives, legal counsel, and so on. It did not elaborate on the manner in which the screening measures would be exercised. In particular, it did not provide for any participation by or involvement of prisoners at any stage of the monitoring process. Nor did it specify whether the detainee was entitled to be informed of any alterations to the contents of his or her outgoing correspondence. Moreover, the monitoring was automatic, without any time-limits and did not require any reasoned decision giving grounds for the screening measures and/or setting a time frame for it. Lastly, there was no specific remedy enabling the detainee to contest the measure and obtain adequate redress. On account of those characteristics of the applicable domestic legal regime the Court concluded that the applicable domestic law had not offered an appropriate degree of protection against arbitrary interference with a prisoner's right to respect for his correspondence and that interference with the applicant's rights under Article 8 on account of that monitoring had not been "in accordance with the law" (ibid., § 54).

45. The Law of 1 December 2005 introduced an amendment to the legal regime found to be defective in *Belyaev and Digtyar* by exempting correspondence addressed to the Court and other international institutions from monitoring. That was the regime which applied to the applicant's correspondence during the bulk of his detention. Further exemptions were added, which became effective on 9 February 2010. Subsequent amendments introduced in 2014 are of no relevance to the case.

46. To the extent that the applicant complained that his correspondence addressed to the Court, the Parliamentary Commissioner for Human Rights and the prosecutors (prior to 9 February 2010) or received from them (from 9 February 2010 onwards) had been monitored in breach of the domestic law prohibiting such monitoring, there is no material before the Court which

would corroborate his allegations. It appears that the applicant did not initiate any proceedings in that regard before the domestic courts, as was his right (see *Chaykovskiy v. Ukraine*, no. 2295/06, §§ 72 and 73, 15 October 2009).

47. The Court finds, therefore, that this part of the application should be rejected as manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

48. However, as far as the applicant complained of the monitoring of his correspondence with various entities not exempt from monitoring under the relevant provisions of the domestic law, that part of the complaint is not manifestly ill-founded. It is not inadmissible on any grounds. It must, therefore, be declared admissible.

2. Merits

49. The Court notes that, although the parties disagreed as to whether some of the applicant's letters had been withheld by the prison authorities, the Government did not specifically contest the applicant's submission that his correspondence with non-exempt entities had been routinely monitored by the prison administration, pursuant to the applicable domestic law (see *Vintman v. Ukraine*, no. 28403/05, § 126, 23 October 2014). Indeed, the prison authorities' cover letter submitted by the Government, which contains a summary of the content of the applicant's letter, illustrates that the authorities did in fact monitor his letters to non-exempt addresses, as provided for by domestic law (see paragraph 15 above and compare *Glinov v. Ukraine*, no. 13693/05, §§ 27, 28 and 55, 19 November 2009, and *Trosin v. Ukraine*, no. 39758/05, § 55, 23 February 2012).

50. That monitoring constituted an interference with the exercise of the applicant's right to respect for his correspondence under Article 8 § 1. Such interference will contravene Article 8 § 1 unless, among other conditions, it is "in accordance with the law" (see *Enea v. Italy* [GC], no. 74912/01, § 140, ECHR 2009).

51. As far as non-exempt addresses were concerned, the Court in *Vintman* (cited above, §§ 129-33), for the same reasons as in *Belyaev and Digtyar*, found the rules governing the monitoring regime, as reformed by the laws of 2005 and 2010, to be defective in the same way as the pre-2005 legislation.

52. As far as correspondence with non-exempt addressees is concerned, the Court sees no reason to reach a different conclusion in the present case.

53. It follows that the interference complained of was not "in accordance with the law". The Court therefore does not consider it necessary in the instant case to ascertain whether the other requirements of paragraph 2 of Article 8 of the Convention were complied with.

54. There has, accordingly, been a violation of Article 8 of the Convention on account of the monitoring of the applicant's correspondence

with various entities which were not exempt from monitoring under domestic law in force at the relevant time.

IV. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

55. The applicant complained that the authorities had not provided him with certain documents he had believed he had needed for his application to the Court, had hindered his communication with the Court and had persecuted him for having applied to the Court. He relied on Article 34 of the Convention, which provides:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

A. The parties' submissions

56. The parties' submissions are summarised in paragraph 16 above.

B. The Court's assessment

57. The Court notes at the outset that it did not ask the applicant for any additional documents (see *Chaykovskiy*, cited above, § 94, and contrast *Naydyon v. Ukraine*, no. 16474/03, §§ 24-26, 14 October 2010).

58. In so far as the applicant complained that he had not been provided with copies of documents from his domestic criminal case file, the Court did not need any additional documents to reach the conclusion that his complaints relating to those proceedings were inadmissible (see paragraph 3 above) as his complaints in that regard had clearly been lodged outside of the six-month period (contrast, for example, *Naydyon*, cited above, §§ 17 and 18). Therefore, any difficulties in obtaining documents from that file, even if they were to be proven, were of no consequence for the applicant's application before the Court (see *Chaykovskiy*, cited above, 95).

59. As far as other documents are concerned, the applicant did not identify clearly which documents he needed. While it appears that the documents concerned his complaints regarding the conditions of his detention, it is not clear to which period his complaints related – to the detention in the pre-trial detention centre or to the detention in the correctional colonies. It also appears that among the documents he believed he needed were his requests for a pardon and documents concerning his relations with an NGO he believed was obliged to help him with legal matters in prison. However, the applicant did not formulate any coherent complaints before the Court in that regard.

60. As far as the applicant alleged that he had been persecuted by the prison authorities on account of his application to the Court, those allegations are unspecific and wholly unsubstantiated (see *Glinov*, cited above, §§ 73 and 74). The Court has already found the applicant's allegations that the authorities interfered with his correspondence with the Court were unsubstantiated (see paragraph 46 above).

61. The Court accordingly concludes that the respondent State has not failed to comply with its obligations under Article 34 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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

63. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

64. The Government maintained that there had been no violation of the applicant's rights in the present case.

65. The Court, ruling on an equitable basis, awards the applicant EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

66. The applicant also claimed EUR 4,600 for the costs and expenses incurred before the Court, to be paid directly into the representative's bank account.

67. The Government maintained that there had been no violation of the applicant's rights in the present case.

68. Regard being had to the documents in its possession and to its case-law, as well as taking into account the legal aid payment the applicant's representative has already received, the Court considers it reasonable to award the sum of EUR 600 for the proceedings before the Court, to be paid directly to the account of the applicant's lawyer.

C. Default interest

69. 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 complaint under Article 8 of the Convention concerning the monitoring of the applicant's correspondence with persons not exempted from monitoring under domestic law admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 8 of the Convention on account of the monitoring of the applicant's correspondence with various entities which were not exempt from monitoring under domestic law in force at the relevant time;

3. *Holds* that the respondent State has not failed to comply with its obligations under Article 34 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months the following amounts:
      (i) EUR 1,000 (one 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;
      (ii) EUR 600 (six hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be transferred directly to the account of the applicant's lawyer, Mr Markov;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 22 November 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Síofra O'Leary
President