dirittifondamentali.it

La Corte EDU sulle circostanze della detenzione illegale ed illegittima
(CEDU, sez. V, sent. 22 aprile 2021, ric. n. 44704/11)

La decisione resa al caso che qui si segnala origina dal ricorso presentato contro l'Ucraina dal Sig. XXX, il quale ha lamentato la violazione dell'art. 5 par. 1 e 4 CEDU, ritenendo la sua detenzione illegale ed illegittima sotto tre diversi profili. Il primo profilo di doglianza ha riguardato l'assenza di un (nuovo) ordine di detenzione che stabilisse la prosecuzione della custodia cautelare dopo il periodo già scontato; il secondo profilo, la violazione delle norme del codice di procedura penale riguardanti la domanda di rilascio immediato; il terzo profilo, l'assenza di una decisione o di una motivazione da parte dei tribunali nazionali circa il tempo della ulteriore detenzione. Un aggiuntivo motivo di reclamo ha avuto ad oggetto l'asserita impossibilità per il ricorrente di far valere l'illegittimità della sua detenzione e, dunque, un riesame giudiziario durante il periodo ricompreso tra la fine delle indagini e l'udienza di rinvio, denunciando peraltro la presunta, mancata, imparzialità del giudice che si era pronunciato già sulla sua detenzione e senza adeguata motivazione.
Ritenuto ricevibile il ricorso in quanto rispettato il termine di sei mesi previsto per i reclami ex art. 35 par. 1 CEDU, la Corte EDU ha proceduto a scrutinare il merito della questione. In proposito, facendo leva sui suoi numerosi precedenti, essa ha riaffermato che il proseguimento della detenzione del ricorrente dopo il completamento delle indagini e la prassi di trattenere in custodia gli imputati unicamente sulla base della circostanza che l'atto di accusa sia presentato innanzi al tribunale di primo grado risultano incompatibili con il principio di certezza del diritto e di legalità. E ciò rispetto alla decisione del Tribunale distrettuale con la quale si è confermata la misura di custodia cautelare nei confronti del ricorrente. La stessa decisione non è risultata adeguatamente motivata e per ciò stesso in palese violazione dell'art. 5 par. 1 CEDU. Similmente la stessa legittimità della detenzione ai sensi del par. 4 della medesima disposizione convenzionale è apparsa ai giudici di Strasburgo compromessa poiché la *ratio* ad essa sottesa risiede proprio nel garantire al detenuto il diritto al controllo giudiziario della legittimità della misura adottata e, sulla scorta di tale controllo, l'esistenza delle condizioni per una possibile ed eventuale istanza di rilascio. Il rimedio previsto, come ha aggiunto la Corte, deve essere concretamente accessibile ovvero le autorità competenti devono predisporre ogni accortezza affinché possa realisticamente essere utilizzato. Nel caso di specie, il ricorrente non ha avuto la possibilità di esperire un controllo giurisdizionale circa la legittimità della sua detenzione e la decisione (sul negato rilascio) è apparsa priva di adeguata motivazione, poiché le autorità nazionali non hanno fornito spiegazioni né effettuato un esame specifico delle circostanze proprie del caso di specie. Per conseguenza si è ritenuto violato anche il par. 4 dell'art. 5 CEDU e disposto il risarcimento in relazione al danno morale.

***

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

FIFTH SECTION

CASE OF XXX v. UKRAINE
(Application no. 44704/11)

JUDGMENT
STRASBOURG
22 April 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 XXX v. Ukraine,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:
Síofra O'Leary, *President,*
Ganna Yudkivska,
Stéphanie Mourou-Vikström,
Lətif Hüseynov,
Jovan Ilievski,
Arnfinn Bårdsen,
Mattias Guyomar, *judges,*
and Victor Soloveytchik, *Section Registrar,*
Having regard to:
the application 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 Vladyslav Mykolayovych Popovych ("the applicant"), on 16 July 2011;
the decision to give notice to the Ukrainian Government ("the Government") of the application;
the parties' observations;
Having deliberated in private on 23 March 2021,
Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The applicant complained under Article 5 §§ 1 and 4 of the Convention of the unlawfulness of his pre-trial detention and the lack of appropriate review of the lawfulness of his detention.

THE FACTS

2. The applicant was born in XXX and lives in XXX . He was represented by Mr O.V. Zarutskyy, a lawyer practising in Kyiv.
3. The Government were represented by their Agent, most recently Mr I. Lishchyna.
4. The facts of the case, as submitted by the parties, may be summarised as follows.
5. On 13 April 2010 the applicant was arrested by the police on suspicion of extortion.
6. On 16 April 2010 the XXX skyy Local Court ordered the applicant's detention on the grounds that he was suspected of having committed a serious crime, that he might interfere with justice, or that he might abscond and continue his criminal activities.
7. On 9 June 2010 the same court extended the period of the applicant's pre-trial detention to four months.
8. On 11 August 2010 the Chernihiv Regional Court of Appeal extended the period of the applicant's pre-trial detention to six months, until 13 October 2010.
9. On 23 September 2010 the applicant and his lawyer were given the case file for studying.
10. On 29 September 2010 the investigators referred the applicant's case with a bill of indictment to the Desnyanskyy District Court of Chernihiv ("the District Court").
11. On 4 October 2010 the applicant's case was received by the District Court.
12. On 13 October 2010 the detention order of 11 August 2010 expired, but the applicant remained in detention in view of the fact that, following referral of his case to the District Court, he had been regarded as having been placed at the disposal of the latter.
13. On 19 October 2010 the District Court, sitting in a single judge formation composed of Judge S., held a committal hearing and scheduled the case for trial to commence on 4 November 2010. In its decision to commit the applicant to trial, the court noted that there were no grounds for replacing the applicant's detention with a different preventive measure.
14. On 30 May 2011, referring to the expiry of the term of the applicant's pre-trial detention, non-compliance of the applicant's further detention with requirements of paragraph 7 of Article 156 of the Code of Criminal Procedure (see paragraph 19 below) and the trial court's failure to provide reasons for the applicant's continuing detention, the applicant's lawyer requested his immediate release. This request was rejected the same day by Judge S. Without going into further details, the judge noted that there were "no grounds for granting the request [for the applicant's release]".
15. The applicant also requested the Chernihiv Regional Prosecutor's Office (the Prosecutor's Office) to institute criminal proceedings against the investigators for his unlawful detention as he was not released immediately after expiry, on 13 October 2010, of the detention order of 11 August 2010 in accordance with paragraph 7 of Article 156 of the Code of Criminal Procedure. On 30 May 2011 the Prosecutor's Office rejected his request as unsubstantiated, noting that Article 156 concerned the expiry of the maximum permissible period of detention pending investigation, that is 18 months, while the applicant's detention pending investigation had not exceeded 6 months.
16. On 10 August 2011 the applicant's lawyer again requested the District Court to have the applicant released with similar arguments as in his request of 30 May 2011. On 14 September 2011 Judge S. rejected the request of 10 August 2011 for lack of grounds for granting the request.
17. On 1 August 2011 the Novozavodkyy District Court of Chernihiv rejected the applicant's complaint against the decision of the Prosecutor's Office of 30 May 2011 having found that the

Prosecutor's Office had acted in accordance with law. This decision was upheld by the Chernihiv Regional Court of Appeal and the High Court in Criminal and Civil Matters on 19 August 2011 and 9 February 2012 respectively.

18. No information about the outcome of the above-mentioned criminal proceedings against the applicant or about his release or continued detention after 7 August 2012 is available.

RELEVANT DOMESTIC LAW

CODE OF CRIMINAL PROCEDURE (1960)

19. Paragraph 2 of Article 156 of the Code, as worded at the material time, provided that the period of detention at the investigation stage should not exceed 18 months. Paragraph 7 of the same article provided that if the accused or the defence counsel were given the case file for studying less than a month prior to expiry of the maximum period of detention foreseen by paragraph 2 of that article, the accused should be immediately released upon expiry of the said period.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

20. The applicant complained under Article 5 § 1 of the Convention about the alleged unlawfulness of his detention after 13 October 2010, when the last court order on his continued detention had expired. His complaint is threefold. Firstly, he considered that in absence of any new detention order after 13 October 2010 his continued detention had been unlawful. Secondly, he considered that as he had been given the case file for studying on 23 September 2010, that is less than a month before 13 October 2010, which was the date of expiry of his detention pending investigation, he should have been immediately released in accordance with paragraph 7 of Article 156 of the Code of Criminal Procedure on that date. Thirdly, he complained that during the committal hearing of 19 October 2010 no decision on his further detention had been taken, the domestic court simply having noted that there were no grounds for changing or cancelling the preventive measure.

21. The applicant also complained, invoking Article 13 of the Convention, that he had no possibility to raise any complaint about the unlawfulness of his detention during the period between the end of the investigation (29 September 2010) and the beginning of the trial (19 October 2010) and that any complaint about unlawfulness of his detention during the trial, once it started, would have been considered by the same judge who had committed him to trial and had not reacted to the alleged unlawfulness of his detention. Thus, there was no effective remedy for challenging the unlawfulness of his detention after the expiry of the last detention order given at the investigation stage, i.e. after 13 October 2010. The Court, being master of the characterisation to be given in law to the facts of the case and having regard to the substance of the applicant's above complaint, decides to examine it under Article 5 § 4 of the Convention.

22. The relevant parts of Article 5 of the Convention read 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:

...

(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 fleeing after having done so;

...

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

1. Compliance with the six-month time-limit under Article 35 § 1 of the Convention

23. The parties did not submit any observations on the admissibility of the case. Therefore, in the absence of an objection by the respondent Government, the Court is not required to deal with the question whether the applicant has exhausted all domestic remedies as required by Article 35 § 1 of the Convention.

24. In his application form the applicant submitted that he had complied with the six-month rule as the end of the pre-trial detention should be considered to be the date of the sentence in the criminal case against him. He stated that at the time of lodging of his application the proceedings in his case were still pending before the first instance court. In this regard the applicant relied on the judgments of *Nikolay Kucherenko v. Ukraine* (no. 16447/04, § 29, 19 February 2009) and *Gavazhuk v. Ukraine* (no. 17650/02, §§ 54 and 55, 18 February 2010).

25. The Court notes that the six-month rule is a mandatory one and that, consequently, it has jurisdiction to examine compliance with it of its own motion (*Assanidze v. Georgia* [GC], no. 71503/01, § 160, ECHR 2004-II). The Court will examine the application of this rule in the present case.

26. The Court reiterates that the requirements contained in Article 35 § 1 as to the exhaustion of domestic remedies and the six-month period are closely interrelated. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of the knowledge of that act or its effect on or prejudice to the applicant. The Court has further stated that, in general, in continuing situations the six-month period runs from the cessation of the situation complained of (*Svipsta v. Latvia*, no. 66820/01, § 116, ECHR 2006-III (extracts)).

27. Seeing that the applicant introduced his application on 16 July 2011 and that some of the domestic decisions complained of date from more than six months earlier, the question arises about the starting point of the six months in the circumstances of the present case.

(a) Compliance with the six-month period in relation to the complaints under Article 5 § 1

28. The applicant complained that after 13 October 2010 his detention had become unlawful. The mentioned date was the expiry date of the last detention order given by the domestic courts during the investigation stage in the criminal proceedings against the applicant (see paragraph 12 above).

29. The Court notes that even though the applicant complained about the unlawfulness of his detention, only one of his arguments was actually about a violation of the domestic law, namely paragraph 7 of Article 156 of the Code of Criminal Procedure. The substance of his complaints under Article 5 § 1 of the Convention was the lack of a clear legal basis governing certain periods of his pre-trial detention that contravened the requirements of Article 5 of the Convention.

30. Furthermore, the Court has held that for the purpose of Article 5 § 1 of the Convention, if the applicant was arrested and subsequently remained in detention throughout the whole duration of the investigation and trial, which ended with conviction, his or her uninterrupted detention during the specific periods to which he or she referred, as well as during the remaining periods, was of the same legal nature and constituted, for the purposes of the Convention, a continuous situation which ceased to exist on the date of conviction (see, *Nikolay Kucherenko v. Ukraine*, cited above, § 29 and *Gavazhuk v. Ukraine*, cited above, §§ 54 and 55).

31. In the examination of similar Ukrainian cases in the past, the Court would examine separately any period of detention that was not covered by a judicial order, a situation which usually started while the investigating authorities were completing the preparation of the bill of indictment and the case-file was being transmitted to the trial court for examination and ended with the committal hearing by the trial court (see, for an overview of this case-law, *Kharchenko v. Ukraine*, no. 40107/02, § 70, 10 February 2011). The Court dealt separately with complaints regarding the lawfulness of the subsequent pre-trial detention, namely, when a domestic court, committing a person for trial, decided to uphold the pre-trial detention measure in his or her respect without setting a time-limit for continued detention and without giving any reasons for its decision (*ibid.*, §§ 73 and 75).

32. Despite the above distinction, both issues and respective periods were part of one and the same structural problem - lack of sufficient guarantees against arbitrariness of detention at the trial stage. As the Court explained in the above *Kharchenko* judgment (ibid., § 98):

"The Court thus regularly finds violations of Article 5 § 1 (c) of the Convention as to the periods of detention not covered by any court order, namely for the period between the end of the investigation and the beginning of the trial and the court orders made during the trial stage which fix no time-limits for further detention, therefore upholding rather than extending detention, which is not compatible with the requirements of Article 5 (see, among many other authorities, *Yeloyev*, cited above, §§ 49-55). Both issues seem to stem from legislative lacunae."

33. In the light of the above considerations and having regard to the substance of the applicant's complaints, the Court considers that they must be examined as covering an uninterrupted period of his pre-trial detention that can be described as a continuous situation which was still ongoing when he lodged his application before this Court.

34. It follows that the six-month period regarding the applicant's complaints about lack of any judicial order governing his detention between 13 and 19 October 2010 did not start to run on the latter date and that, therefore, being part of his general complaint about the whole period of his pre-trial detention, cannot be rejected as being submitted too late.

(b) Compliance with the six-month period in relation to the complaints under Article 5 § 4

35. The Court observes that the applicant's complaints under Article 5 § 4 of the Convention concern the lack of possibility to initiate a review of lawfulness of his detention between the end of the investigation (29 September 2010) and the committal hearing (19 October 2010) and about the alleged lack of impartiality of the judge who decided on the applicant's detention on 19 October 2010, 30 May and 14 September 2011 and the fact that his decisions of the above dates lacked adequate reasoning.

36. The question arises, therefore, whether the Court is barred from dealing with the period dating before 16 January 2011, i.e. more than six months prior to the introduction of the application.
37. The Court recalls its practice of rejecting as time barred complaints about judicial examinations concerning an applicant's detention, if such complaints were submitted more than six months after the respective examinations took place (see *Hristov v. Bulgaria* (dec.), no. 35436/97, 19 September 2000; *Mello v. Slovakia* (dec.), no. 67030/01, 21 June 2005; *Osypenko v. Ukraine*, no. 4634/04, § 87, 9 November 2010).
38. On the other hand, in the case of *Molodorych v. Ukraine* (no. 2161/02, §§ 104-106, 28 October 2010), the Court made the following findings concerning the substance of complaints under Article 5 § 4 with respect to the same legal framework as in the case at hand:
"104. The Court considers that the issue under Article 5 § 4 of the Convention raised in the present case does not merely concern an incidental failure of the domestic courts to address properly the lawfulness of the applicant's continued detention. It stems from a more general problem of a lack of clear and foreseeable domestic procedure of judicial review of the lawfulness of detention.
105. In particular, whilst the Code of Criminal Procedure requires the courts to give reasons for their decisions authorizing detention during pre-trial investigations and to fix a term of such detention (see paragraph 57 above), it does not provide for a similar requirement as regards the decisions concerning the issue of continued detention after a case is referred to a trial court. The Court further observes that, although Article 237 of the Code of Criminal Procedure provides for an obligation of a judge to examine the question of application of preventive measures during preliminary consideration of a case, such consideration may be completed without participation of the person concerned or his lawyer, given the provisions of Article 240 of the Code (see paragraph 58 above).
106. In this respect, the Court notes that it has found on a number of occasions in other cases against Ukraine which concerned the same legal framework, though in the context of Article 5 § 1 complaints, that Ukrainian detention procedures did not afford applicants adequate protection from arbitrariness (see, for instance, *Yeloyev*, cited above, § 54).
...
108. ... For the reasons stated in paragraphs 105 and 106 above, the Court further finds that on the whole the domestic law does not provide for the procedure of review of the lawfulness of continued detention after the completion of pre-trial investigations satisfying the requirements of Article 5 § 4 of the Convention."
39. Alongside with those findings in the *Molodorych* judgment, seeing that the domestic courts were competent to examine requests for release and nothing prevented them from providing reasons for their decisions, if they chose to do so, the Court considered that complaints under Article 5 § 4 could not be made *in abstracto* and that the applicant had to demonstrate that he had attempted to initiate judicial review of his detention, which could remedy, at least to some extent, the lack of periodic review of the lawfulness of detention at the trial stage. In the case of *Shalimov v. Ukraine* (no. 20808/02, 4 March 2010) the Court rejected the applicant's complaint under Article 5 § 4 on the following ground:
"57. The Court ... notes that according to the relevant domestic law there were remedies that were effective at least in theory as the applicant was entitled to institute such proceedings for review of detention and the courts were competent to order his release by replacing pre-trial detention with

another preventive measure. Given that the applicant had failed to use these remedies, the Court cannot speculate whether or not the applicant's application for release would be considered to be in compliance with the requirements of Article 5 § 4, and accordingly it is not in a position to assess the effectiveness of existing remedies in practice in the circumstances of the present case. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention."

40. Indeed, in cases in which the applicant attempted to seek judicial review of his detention and his request was actually examined, the Court dealt with the question whether the relevant domestic proceedings complied, *in concreto*, with requirements of Article 5 § 4 of the Convention. In cases against Ukraine, the Court found, for instance, excessive delays in the examination of requests for release (see, among other authorities, *Kharchenko*, cited above, § 86), failure to address pertinent arguments of the applicants (see, among other authorities, *Svershov v. Ukraine*, no. 35231/02, § 71, 27 November 2008) and refusals of considering the applicant's further requests for release altogether (see *Yeloyev v. Ukraine*, no. 17283/02, § 65, 6 November 2008).

41. In the light of the above, the Court emphasizes that the alleged violation of Article 5 § 4 of the Convention in the present case is not the result of freestanding and incidental dysfunctions, but rather stems from what appears to be a systemic lack of access to an effective procedure of judicial review (see *Molodorych v. Ukraine*, cited above, § 104). In such situations it would be excessively formalistic to require that the applicant during an uninterrupted period of detention complains separately regarding each concrete consequence of this shortcoming within six months from the relevant occurrence.

42. It follows that, for the purposes of the complaint under Article 5 § 4, the six-month period in the present case did not start running separately with respect to the judicial decisions of 19 October 2010 and those of 30 May and 14 September 2011. As mentioned above, given that all of the above decisions were all taken within the same proceedings, concerned detention of the same legal nature and the applicant's complaints concern general deficiencies of the system of judicial review of detention in Ukraine, the Court considers that, in so far as the complaint concerns the decision of 19 October 2010, it cannot be dismissed as having been lodged out of time.

2. Conclusion on admissibility

43. Having found that the applicant has complied with the six-month time limit, the Court also notes that the complaints under Article 5 §§ 1 and 4 are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. Article 5 § 1

44. The applicant maintained that he had been detained even after the last detention order had expired on 13 October 2010. He also complained that at the committal hearing of 19 October 2010 the trial court had not properly decided on his further detention, which made it unlawful too.

45. The Government submitted that the applicant's pre-trial detention had been in compliance with the domestic legislation in force at the material time. According to the Government, the period of the applicant's pre-trial detention had ended on 4 October 2010, when the bill of indictment had been received by the trial court, and thereafter it had been up to the trial court – the District Court –

to decide on a preventive measure in respect of the applicant. The Government further submitted that on 19 October 2010 the District Court had addressed the issue and found no grounds for changing or lifting the preventive measure in respect of the applicant. It had also examined the applicant's requests for release on 30 May and 14 September 2011 and had dismissed them.

46. The Court has previously found on many occasions that the continued detention of the applicant after the investigation in their criminal cases had been completed was characterised by lack of sufficient legal basis or clear rules governing their situation (see, among other authorities, *Yeloyev v. Ukraine*, cited above, § 50). It has already found a violation of Article 5 § 1 of the Convention in a number of cases concerning the practice of holding defendants in custody solely on the basis of the fact that a bill of indictment has been submitted to the trial court. It has held that such practice is incompatible with the principles of legal certainty and protection from arbitrariness (see *Kharchenko v. Ukraine*, cited above, § 71). Therefore, the period of the applicant's detention between 13 and 19 October 2010 was not in accordance with Article 5 § 1 of the Convention.

47. The Court further observes that although on 19 October 2010 the District Court upheld the pre-trial detention measure in respect of the applicant it neither set a time-limit for his continued detention nor gave any reasons for its decision. This left the applicant in a state of uncertainty as to the grounds for his detention after that date. In this connection the Court reiterates that the absence of any grounds given by the judicial authorities in their decisions authorising detention for a prolonged period of time is incompatible with the principle of protection from arbitrariness enshrined in Article 5 § 1 (ibid., § 75).

48. There has accordingly been a violation of Article 5 § 1 of the Convention in relation to the period following 13 October 2010.

2. Article 5 § 4

49. The applicant complained that he could not make any requests for release prior to the committal hearing and that, thereafter, the trial court had failed to conduct a proper review of the lawfulness of his detention. He also challenged the impartiality of the judge who examined his requests for release.

50. The Government submitted that the domestic legislation in force at the material time had provided the applicant with the opportunity to have the lawfulness of his detention reviewed. The Government pointed out that the applicant's requests for release had been examined and dismissed on 30 May and 14 September 2011.

51. The Court reiterates that the purpose of Article 5 § 4 is to secure to persons who are arrested and detained the right to judicial supervision of the lawfulness of the measure to which they are thereby subjected (see, *mutatis mutandis*, *De Wilde, Ooms and Versyp v. Belgium*, judgment of 18 June 1971, Series A no. 12, § 76). A remedy must be made available during a person's detention to allow that person to obtain speedy judicial review of the lawfulness of the detention, capable of leading, where appropriate, to his or her release. The existence of the remedy required by Article 5 § 4 must be sufficiently certain, not only in theory but also in practice, failing which it will lack the accessibility and effectiveness required for the purposes of that provision (see, *mutatis mutandis*, *Stoichkov v. Bulgaria*, no. 9808/02, § 66 *in fine*, 24 March 2005, and *Vachev v. Bulgaria*, no. 42987/98, § 71, ECHR 2004-VIII (extracts)). The accessibility of a remedy implies, *inter alia*, that the circumstances

voluntarily created by the authorities must be such as to afford applicants a realistic possibility of using the remedy (see, *mutatis mutandis*, *Čonka v. Belgium*, no. 51564/99, §§ 46 and 55, ECHR 2002-I).
52. The Court notes that in the course of the period of time complained of it was not possible for the applicant to obtain judicial review of the lawfulness of his detention from the end of the investigation (29 September 2010) and until the committal hearing of 19 October 2010, as the examination of any such request would await the committal hearing (see *Kharchenko v. Ukraine*, cited above, § 86). Thereafter, the lawfulness of the applicant's detention was examined by the domestic courts on 19 October 2010, when committing him for trial, and on 30 May and 14 September 2011. However, the decisions delivered as a result do not fully satisfy the requirements of Article 5 § 4 of the Convention.
53. The Court notes that in other similar cases previously decided it has been faced with the issue of the domestic courts' failure to provide an adequate response to applicants' arguments as to the necessity of their release (see *Kharchenko*, cited above, § 100). Likewise, in the instant case the domestic courts simply indicated that there were no grounds for the applicant's release, without providing any further explanation and without carrying out any examination of the circumstances of the applicant's particular situation (ibid., § 85). In the light of these findings, the Court does not find it necessary to address the remainder of the applicant's allegations under this head, insofar as they fall to be examined under Article 5 § 4 of the Convention.
54. The Court considers accordingly that there has been a violation of Article 5 § 4 of the Convention.
II. APPLICATION OF ARTICLE 41 OF THE CONVENTION
55. 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
56. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.
57. The Government considered the sum claimed to be excessive.
58. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the applicant EUR 5,900.
B. Costs and expenses
59. In respect of the costs and expenses incurred at the domestic level and before the Court, the applicant claimed EUR 1,000 or any other sum that the Court might find reasonable.
60. The Government submitted that the applicant's claim was unsubstantiated and excessive.
61. 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 are reasonable as to quantum.
62. The Court notes that the applicant submitted a half-page list of legal services provided to him by his representative both domestically and before the Court, but failed to provide any documents proving that he had paid his lawyer for the services rendered or that he was under a legal obligation to do so (see, *mutatis mutandis*, *Pshenichnyy v. Russia*, no. 30422/03, § 38, 14 February 2008). However, it is clear from the case file that the applicant incurred some costs and expenses for his representation (see, *mutatis mutandis*, *Tregubenko v. Ukraine*, no. 61333/00, § 69, 2 November 2004). Regard being had

to the information in its possession and to the above considerations, the Court awards the applicant EUR 250 in respect of costs and expenses.

C. Default interest

63. 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 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
4. *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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 5,900 (five thousand nine hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 250 (two hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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 April 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Síofra O'Leary
President