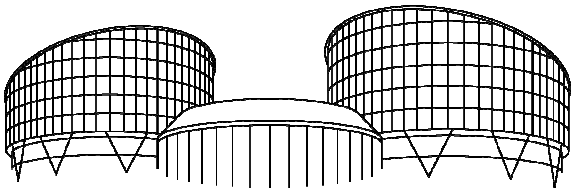

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF BALITSKIY v. UKRAINE

(Application no. 12793/03)

JUDGMENT

STRASBOURG

3 November 2011

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 Balitskiy v. Ukraine,

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

Dean Spielmann, *President,*
Elisabet Fura,
Karel Jungwiert,
Mark Villiger,
Isabelle Berro-Lefèvre,
Ann Power-Forde,
Ganna Yudkivska, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 11 October 2011,

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

PROCEDURE

1. The case originated in an application (no. 12793/03) 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 Andrey Vladimirovich Balitskiy ("the applicant"), on 18 March 2003.

2. The applicant was represented by Mr V.I. Olevsky, succeeded by Mr A.P. Bushchenko, lawyers practising in Kharkiv. The Ukrainian Government ("the Government") were represented by their Agent, Mr Y. Zaytsev, from the Ministry of Justice.

3. The applicant alleged, in particular, that his conviction had been based on self-incriminating statements obtained under duress and in the absence of a lawyer and that the courts had not questioned important witnesses.

4. On 3 September 2009 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1979 and lives in Kharkiv.

6. On 9 May 1998 the Frunzenskiy District Prosecutor's Office instituted criminal proceedings in connection with the murder of Mr T.

7. On the same day the applicant was arrested by the police for hooliganism and taken to the police station. According to the applicant, the police severely beat him in order to force him to confess to the murder of Mr T. who had lived with him in the same apartment block.

8. On 11 May 1998 the applicant was brought before the Frunzenskiy District Court. The court found him guilty of an administrative offence (hooliganism), committed on 9 May 1998 at 1 p.m., and ordered his administrative arrest for fifteen days. The applicant was then returned to the police station, where, according to him, the police ill-treated him again. On the same day he was questioned as a witness in connection with the murder of Mr T.

9. On 12 May 1998 the applicant confessed to the murder and theft. He was questioned from 6.45 p.m. to 8 p.m. on suspicion of the murder of Mr T. At 9 p.m. he was formally arrested as a suspect. The applicant also signed a waiver from a lawyer indicating that he did not need legal representation at that point and would decide on his representation later.

10. On 13 May 1998 the applicant underwent a medical examination. In his opinion of 14 May 1998, the forensic expert noted that the applicant had abrasions on his wrists that could have been caused by handcuffs. He further had three abrasions on his left elbow, one abrasion on the lower part of the abdomen and one abrasion on his leg. According to the expert opinion, the applicant had maintained that the police had not applied force to him and that the abrasion on his abdomen had been caused by falling in his garage two weeks prior to the examination. The expert concluded that the abrasions on the wrists could have been caused by handcuffs one to three days prior to the examination and the other injuries had no relevance to the events indicated in the referral for the medical examination.

11. On 15 May 1998 the applicant was charged with murder. During the questioning he refused the assistance of lawyer T., who had been engaged by his father, and was questioned as an accused without a lawyer.

12. On 1 June 1998 the criminal case against the applicant was transferred to the Kharkiv City Prosecutor's Office for further investigation. Shortly afterwards, the applicant received assistance from lawyer G.

13. On 22 June 1998 the applicant was examined by a forensic expert who established that the applicant had a broken rib, a scar on his head and three scars on his left arm, two scars on his right arm and a broken tooth. On some later date another X-ray examination was carried out which found that the applicant's rib was not broken.

14. On 26 June 1998 the applicant was examined by a dentist who established that the applicant's tooth had split into two as a result of tooth decay.

15. On 27 July 1998 the investigator reclassified the applicant's offence as murder for profit, which was punishable by life imprisonment and required the obligatory legal representation of the applicant.

16. On 10 January 1999 the investigation was completed and the case against the applicant was referred to the Kharkiv Regional Court.

17. On 9 September 1999 the Kharkiv Regional Court referred the case for further investigation. In so deciding, the court noted, in particular, that the applicant's allegations of ill-treatment had not been properly investigated and the time of death of Mr T. mentioned in the medical forensic report did not correspond to the police version of the events. It also noted that, although the official time of the applicant's arrest as a suspect was 9 p.m. on 12 May 1998, the applicant had been arrested on 9 May 1998 by the police officers who were investigating the murder of Mr T. Furthermore, according to the testimony of the witnesses, the arrest had taken place at around 8 a.m., while the police had recorded that the applicant had been arrested for hooliganism at 1 p.m.

18. On 2 November 1999 the Supreme Court upheld the decision of 9 September 1999 with minor amendments.

19. On 8 February 2000 a board of forensic experts conducted an additional forensic examination. The board established that the applicant had minor bodily injuries that might have been caused by handcuffs and a truncheon and it could not be excluded that they might have been inflicted during the period 10 to 13 May 1998. They further noted that following the conflicting findings of the previous X-ray examinations, the latest one had been conducted in the presence of testifying witnesses and the result showed no fractures in the applicant's ribs.

20. Between February 2000 and July 2001 the criminal case against the applicant was referred to the Kharkiv Regional Court several times for examination and remitted by that court for further investigation.

21. On 10 July 2001 the case was referred to the Sumy Regional Court, which assumed jurisdiction over the case.

22. During the examination of the case the court rendered a separate ruling ordering the prosecutor to look into the applicant's allegations of ill-treatment. On 14 December 2001 the Frunzenskiy Prosecutor's Office refused to institute criminal proceedings against the police for lack of proof of a crime. The prosecutor referred to the testimony of the police officers, who had denied any ill-treatment of the applicant. The applicant did not appeal against that decision to the court but raised the issue of ill-treatment in the ensuing criminal proceedings against him.

23. On 20 June 2002 the Sumy Regional Court found the applicant guilty of murder and robbery and sentenced him to fifteen years' imprisonment. The court based its findings on the confessions of the applicant made between 12 and 15 May 1998 and other pieces of evidence, including the testimony of Mr Sh. and Mr To., who had seen the applicant shortly after the murder. The court rejected the applicant's allegations of ill-treatment as unsubstantiated and noted that the applicant had voluntarily

waived his right to legal representation at the initial stage of the proceedings.

24. The applicant and his lawyers appealed. In their appeals they complained, among other things, that the court had based its finding on the applicant's self-incriminatory statements, that the applicant's right to defence had been violated, and that the court had assessed the evidence selectively. They further complained that the court refused to question a number of witnesses who could have proved an alibi for the applicant, or whose testimony needed clarification as to the exact time they had seen the applicant and the victim on the day of murder. In particular number of witnesses saw the victim until 8 p.m. and they had not been questioned by the court or their testimonies had not been included in the criminal case-file. Furthermore, several witnesses saw the applicant near the house or at home for some time between 7 p.m. and 8 p.m. when the applicant was coming and leaving.

25. On 22 October 2002 the Supreme Court upheld the judgment of 20 June 2002. The court rejected the applicant's complaints. It noted that the time the witnesses had last seen the victim alive had been approximate and the murder, according to the applicant's confessions, had happened quickly, in a matter of minutes. In the court's opinion, the fact that the witnesses indicated by the applicant had not been summoned and questioned by the lower court did not require the quashing of the judgment, given that their testimony did not refute that the murder had been committed by the applicant. As to the confessions made by the applicant while under administrative arrest, the court noted that this fact did not render his confessions inadmissible and that not all of them had been made during the administrative arrest. As to unlawfulness of the actions of the police during the applicant's initial arrest, the court noted that it was for the prosecutor to look into the matter.

II. RELEVANT DOMESTIC LAW

26. The relevant domestic law is summarised in the cases of *Yaremenko v. Ukraine* (no. 32092/02, §§ 45-53, 12 June 2008) and *Zhoglo v. Ukraine* (no. 17988/02, § 21, 24 April 2008).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

27. The applicant complained that his conviction had been based on self-incriminating statements obtained under duress and in the absence of a lawyer and that the courts had not questioned important witnesses in his defence. He relied on Article 6 §§ 1 and 3 (c) and (d) of the Convention, which read in so far as relevant as follows:

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

28. As the requirements of Article 6 § 3, as mentioned above, are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1, the Court will examine the complaints under those two provisions taken together (see, among many other authorities, *Van Mechelen and Others v. the Netherlands*, 23 April 1997, § 49, *Reports of Judgments and Decisions* 1997-III).

A. Privilege against self-incrimination and right to defence

1. Admissibility

29. The Government maintained that the applicant's complaints about a violation of his right to defence and his privilege against self-incrimination during the investigative procedures on 12 May 1998 were incompatible *ratione materiae* with the provisions of Article 6 §§ 1 and 3 (c) of the Convention. They considered that the criminal proceedings against the applicant had only begun in the late evening of that day and prior to that he had not been a suspect but a person voluntarily testifying about the circumstances of the crime.

30. The applicant disagreed. He referred to the Court's findings in the case of *Shabelnik v. Ukraine* (no. 16404/03, § 57, 19 February 2009) and submitted that he had been treated as a murder suspect from the moment of his "administrative arrest" on 9 May 1998.

31. The Court notes that a similar contention by the Government was examined and rejected in the case of *Shabelnik* (cited above, § 57), in which the applicant was under the control of the police for other purposes in the capacity of a witness when he confessed to a crime. The Court concluded in that case that in such circumstances Article 6 was applicable from the moment a person confessed to a crime and not from the moment when such person was formally charged with it. The Court sees no reason to reach a different conclusion in the instant case.

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

2. Merits

33. The applicant maintained that his right not to incriminate himself had been violated. He submitted that there were medical documents confirming that he had been ill-treated and forced to confess, but that these allegations had never been properly investigated. He further pointed to the fact that he had been apprehended for alleged hooliganism by the same police officers who had been conducting the investigation into the murder of T.

34. The applicant noted that since 9 May 1998 he had been held incommunicado and had had no practical possibility of arranging for his legal representation without positive steps being taken by the authorities. According to him, neither his waiver of legal assistance signed on 12 May 1998 nor his refusal of a particular lawyer – Mr T. on 15 May 1998 (see paragraphs 9 and 11 above) – could be considered a clear and unequivocal waiver within the meaning of the Court's case-law. Furthermore, his waiver had not been permissible under domestic law, given that he was suspected of a crime for which the maximum penalty was life imprisonment, and, therefore, for which his legal representation was obligatory. He added that the initial classification of the crime as a less serious one had been incorrect given that the murder had been combined with theft and the authorities investigating the case had been aware of that from the beginning.

35. The Government maintained that there was no evidence that the investigator had forced the applicant to confess. They submitted that the applicant had been first questioned as a witness since the investigation had believed that he might know something about the murder. They further noted that once the applicant was questioned as a suspect, that is from

9 p.m. on 12 April 1998, he had been informed of his right not to testify against himself.

36. The Government further noted that the applicant had signed a waiver refusing a lawyer during the questioning of 12 and 15 April 1998. Furthermore, on the latter date the applicant had been represented by a lawyer engaged by his farther and had talked to him before questioning but refused his services during the questioning. They also submitted that the applicant had never requested free legal assistance and that by the time his actions had been reclassified as a crime that required obligatory legal representation of the suspect, the applicant was represented.

37. The Court reiterates that, although not absolute, the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of a fair trial (see *Krombach v. France*, no. 29731/96, § 89, ECHR 2001-II). The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction (see *Salduz v. Turkey* [GC], no. 36391/02, § 55, 27 November 2008).

38. As regards the use or exclusion of evidence obtained in breach of the right to silence and the privilege against self-incrimination, the Court reiterates that these are generally recognised international standards which lie at the heart of the notion of a fair trial under Article 6. Their rationale lies, *inter alia*, in the protection of the accused against improper compulsion by the authorities, thereby contributing to the avoidance of miscarriages of justice and to the fulfilment of the aims of Article 6. The right not to incriminate oneself, in particular, presupposes that the prosecution in a criminal case seek to prove their case against the accused without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused (see *Shabelnik*, cited above, § 55, with further references).

39. The Court notes that the applicant's initial placement under administrative arrest had been conducted in questionable circumstances, as he had been apprehended by the same police officers who were investigating the murder of Mr T. and as he allegedly committed an administrative offence several hours after he had been arrested (see paragraph 17). Following his arrest he was questioned in connection with the above murder and gave self-incriminating statements in the absence of a lawyer and in circumstances that give rise to a suspicion that the applicant gave them in defiance of his will. Furthermore, the waiver whereby the applicant allegedly renounced his right to a lawyer was signed under the same circumstances cannot be considered as clear and unequivocal.

40. The Court also notes the applicant's submissions that the initial classification of the crime as a simple murder rather than a murder for profit had been incorrect and allowed the investigation to avoid the requirement of

his obligatory legal representation. The Court notes that it examined similar allegations in several cases against Ukraine in which the circumstances give rise to strong suspicion as to the existence of an ulterior purpose in the initial classification of the offence and the applicants were effectively denied appropriate legal assistance owing to the way in which the investigator exercised his discretionary power concerning the classification of the investigated crime (see *Yaremenko v. Ukraine,* cited above, §§ 87 and 88; and *Leonid Lazarenko v. Ukraine*, no. 22313/04, § 54, 28 October 2010). Similar to the above mentioned cases, in the present case the authorities had information, including the confession of the applicant (see paragraph 9 above), that the murder of Mr T. had been combined with theft of jewellery and money. Nevertheless, following the above confession of 12 May 1998 the applicant was charged with an ordinary murder and only more than two months later, the investigator reclassified the applicant's offence as murder for profit which required obligatory legal representation. In this connection, the Court expresses, once again, its serious concern with yet another example of this malpractice, according to which, despite the initial arrest in respect of a more serious criminal charge, the investigative authorities, thereafter, "artificially" decrease the severity of the charge in order to classify it under an article of the Criminal Code which would not require them to ensure obligatory legal representation of the suspect.

41. In the view of the above considerations, the Court concludes that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

B. Questioning of witnesses

42. The applicant maintained that the investigation changed the estimated time of murder several times, which required the attendance of witnesses who could testify that they had seen the applicant elsewhere at the relevant time.

43. The Government maintained that the case-file materials held no information that the applicant had requested the attendance of those witnesses. Furthermore, his complaints about the failure to summon the witnesses had been examined by the Supreme Court, which had found that that failure had not been a ground for quashing the judgment given that the testimony of those witnesses had not refuted that the murder had been committed by the applicant. They considered that the applicant had not proved that the testimony of these witnesses was necessary to prove his innocence or to establish the truth in the case.

44. The Court reiterates that all the evidence must normally be produced at a public hearing, in the presence of the accused, with a view to adversarial argument. There are exceptions to this principle, but they must not infringe the rights of the defence. It may prove necessary in certain circumstances to refer to statements made during the investigative stage. If

the defendant has been given an adequate and proper opportunity to challenge such statements, either when made or at a later stage, their admission in evidence will not in itself contravene Article 6 §§ 1 and 3 (d). The corollary of that, however, is that the defendant's conviction should not be based either solely or to a decisive extent on statements which the defence has not been able to challenge (see *Zhoglo*, cited above, §§ 38-40 with further references).

45. The Court notes that in the instant case some witnesses were not examined by the court and the applicant had no opportunity to confront them; however, the Supreme Court concluded in its decision that the testimony of the above-mentioned witnesses had not been decisive for the lower courts' conclusions (see paragraph 25 above). Nor does it appear from the circumstances of the case that the witnesses in question could have created an alibi for the applicant as they all saw him only episodically and always near the crime scene, given that the applicant and the victim lived in the same apartment block (see paragraphs 7 and 24 above). The Court is therefore not persuaded that the failure of the domestic courts to hear the witnesses to whom the applicant referred was significant enough to compromise the outcome of the criminal proceedings. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

46. The applicant further complained under Article 3 of the Convention about ill-treatment by the police and the lack of any investigation into such ill-treatment. Relying on Article 5 § 1 of the Convention, he complained that his pre-trial detention had been unlawful and arbitrary. He further complained under Article 6 §§ 1 and 2 of the Convention that his case had been unlawfully transferred to the Sumy Regional Court, which had no territorial jurisdiction over the case; that the investigation had concealed important pieces of evidence; that the courts had been biased; and that the proceedings had been excessively long.

47. 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, pursuant to Article 35 §§ 1, 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 46 OF THE CONVENTION

48. Before examining the claims for just satisfaction submitted by the applicant under Article 41 of the Convention, and having regard to the

circumstances of the case, the Court considers it necessary to determine what consequences may be drawn from Article 46 of the Convention for the respondent State. Article 46 of the Convention reads as follows:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

49. The Court reiterates that Article 46 of the Convention, as interpreted in the light of Article 1, imposes on the respondent State a legal obligation to implement, under the supervision of the Committee of Ministers, appropriate general and/or individual measures to secure the right of the applicant which the Court has found to have been violated. Such measures must also be taken in respect of other persons in the applicant's position, notably by solving the problems that have led to the Court's findings (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 120, ECHR 2002-VI; *Lukenda v. Slovenia*, no. 23032/02, § 94, ECHR 2005-X; and *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 134, ECHR 2008-...). This obligation has been consistently emphasised by the Committee of Ministers in the supervision of the execution of the Court's judgments (see, for example, ResDH(97)336, IntResDH(99)434, IntResDH(2001)65 and ResDH(2006)1). In theory it is not for the Court to determine what measures of redress may be appropriate for a respondent State to take in accordance with its obligations under Article 46 of the Convention. However, the Court's concern is to facilitate the rapid and effective suppression of a shortcoming found in the national system of protection of human rights (see *Driza v. Albania*, no. 33771/02, § 125, ECHR 2007-XII (extracts)).

50. In the present case the Court found violation under Article 6 §§ 1 and 3 (c) of the Convention concerning the applicant's administrative arrest and initial classification of a crime of which he was suspected. Both issues can be said to be recurrent in the case-law against Ukraine.

51. The practice of placing a person under administrative arrest to ensure his availability for questioning as a criminal suspect had been previously found by this Court to be arbitrary under Article 5 as the authorities failed to ensure the applicant's procedural rights as a criminal suspect (*Doronin v. Ukraine*, no. 16505/02, § 56, 19 February 2009 and *Oleksiy Mykhaylovych Zakharkin v. Ukraine*, no. 1727/04, § 88, 24 June 2010). In the case *Nechiporuk and Yonkalo v. Ukraine* (no. 42310/04, § 264, 21 April 2011) the Court emphasised that by having formally placed the applicant in administrative detention but in fact treating him as a criminal suspect, the police deprived him of access to a lawyer, which would have

been obligatory under the Ukrainian legislation had he been charged with the offence of murder committed by a group of persons and/or for profit, an offence in respect of which he was in fact being questioned.

52. The practice of the initial classification of a crime as a less serious one which did not require obligatory legal representation had also been found to be used in such a manner that applicants were effectively denied appropriate legal assistance owing to the way in which the investigator exercised his discretionary power concerning the classification of the investigated crime (see *Yaremenko v. Ukraine,* cited above, §§ 87 and 88; *Leonid Lazarenko v. Ukraine*, cited above, § 54; and *Bortnik v. Ukraine*, no. 39582/04, § 45, 27 January 2011).

53. The Court is not in a position to advise on specific measures to be taken in this context, but it notes that the above issues should be addressed by the domestic authorities to avoid further repetitive complaints of this type.

54. It has been the Court's practice, when discovering a shortcoming in the national legal system, to identify its source in order to assist the Contracting States in finding an appropriate solution and the Committee of Ministers in supervising the execution of judgments (see, for example, *Maria Violeta Lăzărescu v. Romania*, no. 10636/06, § 27, 23 February 2010; *Driza,* cited above, §§ 122-126; and *Ürper and Others v. Turkey*, nos. 14526/07, 14747/07, 15022/07, 15737/07, 36137/07, 47245/07, 50371/07, 50372/07 and 54637/07, §§ 51 and 52, 20 October 2009). Having regard to the structural nature of the problem disclosed in the present case, the Court stresses that specific reforms in Ukraine's legislation and administrative practice should be urgently implemented in order to bring such legislation and practice into line with the Court's conclusions in the present judgment to ensure their compliance with the requirements of Article 6. The Court leaves it to the State, under the supervision of the Committee of Ministers, to determine what would be the most appropriate way to address the problems.

IV. 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 100,000 euros (EUR) in respect of non-pecuniary damage.

57. The Government considered this claim unsubstantiated and unsupported by any material evidence.

58. Given its findings regarding the unfairness of the domestic proceedings resulting in the applicant's conviction, the Court considers it indispensable for the proper protection of human rights that a retrial (a possibility of which is envisaged in the Ukrainian legislation) be provided forthwith should the first applicant so request. Any such trial must observe, strictly, the substantive and procedural safeguards enshrined in Article 6 of the Convention. Such retrial represents in principle an appropriate way of redressing the violation (see *Nadtochiy v. Ukraine*, no. 7460/03, § 55, 15 May 2008). Therefore, the Court considers that the finding of a violation constitutes in itself sufficient just satisfaction.

B. Costs and expenses

59. The applicant also claimed EUR 4,400 for the costs and expenses incurred before the Court. He submitted a copy of the legal aid contract concluded with Mr Bushchenko on 12 February 2003 and copies of two acceptance certificates: of 20 March 2003 for the total amount of EUR 3,200 and of 27 March 2010 for the total amount of EUR 1,200. Both acceptance certificates refer to the legal aid contract.

60. The Government disagreed, questioning the genuine character of the submitted documents, in which the different amounts had been indicated and the dates of legal services provided did not correspond to other documents concerning the applicant's legal representation.

61. In the light of the materials in its possession and the parties' submissions, the Court considers that the documents submitted by the applicant in support of his claim for costs and expenses are unreliable and, therefore, rejects the applicant's claim under this head.

C. Default interest

62. 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. *Declares* the applicant's complaints under Article 6 §§ 1 and 3 of the Convention that his conviction was based on incriminating evidence obtained in violation of his right to remain silent and the privilege against self-incrimination, and that he was hindered in the effective exercise of his right of defence when questioned during the initial stage of the investigation admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention in respect of the applicant's right to defence and the privilege against self-incrimination;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

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

Done in English, and notified in writing on 3 November 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President