



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

THIRD SECTION

**CASE OF KOROSTELEV v. RUSSIA**

*(Application no. 29290/10)*

JUDGMENT

Art 9 • Freedom of religion • Muslim prisoner reprimanded for performing acts of worship at night time in breach of prison schedule • Authorities formalistic approach to prison discipline • Acts of worship not posing any risks to prison order or safety or disturbing prison population • Reprimand having chilling effect on other prisoners • Failure of domestic courts to identify legitimate aim of impugned interference or carry out balancing exercise

STRASBOURG

12 May 2020

**FINAL**

**12/08/2020**

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Korostelev v. Russia,**

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

Paul Lemmens, *President*,

Georgios A. Serghides,

Helen Keller,

Dmitry Dedov,

María Elósegui,

Erik Wennerström,

Lorraine Schembri Orland, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Anton Alekseyevich Korostelev (“the applicant”), on 25 April 2010;

the decision to give notice to the Russian Government (“the Government”) of the complaints concerning the applicant’s reprimands on account of night-time praying and a lack of an effective domestic remedy in that respect and to the decision to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 22 April 2020,

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

## INTRODUCTION

The case concerns the imposition of reprimands on the applicant on account of his misconduct in prison – namely, two acts of worship at night-time, when “sleep without interruption” was prescribed for all detainees – and the alleged lack of effective remedies to complain about the disciplinary sanction.

## THE FACTS

1. The applicant was born in 1987 and is detained in penal colony no. IK-18 in the settlement of Kharp, Yamalo-Nenetskiy Region, Russia (“IK-18”).

2. The applicant, who had been granted legal aid, was represented by Mr A. Laptev, a lawyer practising in Moscow.

3. The Government were represented by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights.

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

## I. THE APPLICANT'S IMPRISONMENT

5. On 17 June 2009 the applicant was convicted and sentenced to life imprisonment in penal colony no. IK-56 in Lozvinskiy settlement, Sverdlovsk Region.

6. In late 2011 he was temporarily transferred to remand prison no. 1 in the town of Syktyvkar, Republic of Komi ("IZ-1") and placed in solitary confinement.

7. Later, on an unspecified date, the applicant was transferred to IK-18.

## II. THE APPLICANT'S RELIGIOUS BELIEF

8. The applicant is a practising Muslim. He believes that it is his religious duty to perform acts of worship ("Salah") at least five times a day at set times, including at night-time. The act of worship must be carried out in a specific pose and on a prayer rug.

9. According to the applicant, it was of a particular importance for him to perform Salah during Ramadan (the ninth month of the Islamic calendar, observed by Muslims as a month of fasting, prayer and reflection).

## III. THE APPLICANT'S REPRIMANDS FOR NIGHT-TIME PRAYERS

10. At 1 a.m. on 30 July 2012 (11<sup>th</sup> day of Ramadan) and at 2.53 a.m. on 30 May 2013, the prison guards, while observing the applicant in his cell in IZ-1 by means of a closed-circuit television camera, noticed he was performing Salah. They immediately ordered him to return to his sleeping place, but the applicant did not follow orders.

11. On the same dates – 30 July 2012 and 30 May 2013 – the prison guards reported those incidents to the governor of IZ-1. They stated that the applicant had not adhered to the prison's daily schedule, which prescribed that a prisoner should sleep at night between 10 p.m. and 6 a.m., and that the applicant had disregarded their subsequent orders. They alleged that his conduct had breached the Federal Law on the Detention of Suspects and Persons Accused of Criminal Offences (no. 103-FZ dated 15 July 1995) (*Федеральный закон от 15 июля 1995 N 103-ФЗ «О содержании под стражей подозреваемых и обвиняемых в совершении преступлений»* – "the Pre-trial Detention Act"), which provided that each prisoner must follow a prison's daily schedule and orders given by prison guards.

12. In reply to the above allegations, the applicant prepared written "explanations" dated 7 August 2012 and 31 May 2013 respectively. He stated that night-time sleep was a right, not a duty. Therefore he could spend the night-time as he wished. He also submitted that night-time worship was an important ritual prescribed by his religious belief. In addition, in the explanations of 7 August 2012 he mentioned that it was particularly

important for him to comply with his religious duty during “the holy month of Ramadan”. In the explanations of 31 May 2013, the applicant underlined that his conduct had not disturbed anyone, because he had been detained in solitary confinement.

13. On 8 August 2012 and 31 May 2013, having examined the above-mentioned submissions by the prison guards and the applicant, the prison governor formally reprimanded the latter for a breach of the Pre-trial Detention Act, specifically for a breach of the prison schedule and for disregarding the prison guards’ orders to return to his sleeping place. The disciplinary punishment was imposed on him in accordance with Section 36 (1) and (2) of the Pre-trial Detention Act, which required all detainees to comply with prison rules and lawful orders of the detention authority (see paragraph 29 below).

#### IV. THE APPLICANT’S APPEAL AGAINST THE REPRIMAND

14. On 15 August 2012 the applicant appealed against the prison governor’s decision of 8 August 2012 to the Syktyvkar Town Court. He relied on his freedom of religion and his right to spend the night-time as he wished.

15. On 7 November 2012 the Syktyvkar Town Court dismissed the applicant’s appeal. It held that prisoners could exercise their rights in so far as this did not run counter to prison regulations. Prisoners could worship or participate in religious ceremonies only if such practice did not breach legislative rules. The court noted that pursuant to the daily prison schedule in IZ-1 (which had been enacted by the prison governor in line with the requirements of domestic law), prisoners had to sleep between 10 p.m. and 6 a.m. without interruption. Accordingly, the applicant’s conduct – his absence from his sleeping place at the time prescribed for the uninterrupted night-time sleep – had been in breach of the daily prison schedule and the legislative rules on prison discipline. In the light of the above, the court concluded that the applicant had been lawfully prosecuted for his misconduct.

16. On 6 December 2012 the applicant challenged the above-mentioned judgment in an appeal to the Supreme Court of the Republic of Komi.

17. On 11 February 2013 the Supreme Court of the Republic of Komi dismissed the applicant’s appeal, endorsing the lower court’s reasoning. It held that the disciplinary sanction had been lawfully imposed on the applicant because the breach of prison discipline had been duly established. The court noted that the applicant had erroneously interpreted domestic law. It was a prisoner’s duty (not a right) to be present at his or her sleeping place at the time prescribed for night-time sleep.

18. According to the Government, the applicant challenged that decision before the Supreme Court of the Republic of Komi, which dismissed the challenge on 29 July 2013.

## V. THE APPLICANT'S REPRIMAND FOR DAY-TIME PRAYERS

19. The applicant submitted that a reprimand had been imposed on him in IK-18 on 5 March 2018 for an act of worship performed during the daytime on 28 February 2018.

## RELEVANT LEGAL FRAMEWORK, PRACTICE AND INTERNATIONAL MATERIAL

### I. CONSTITUTION OF THE RUSSIAN FEDERATION

20. Article 28 of the Constitution of the Russian Federation guarantees freedom of religion, including the right to profess, either alone or in community with others, any religion or to profess no religion at all, to freely choose, have and share religious and other beliefs, and to manifest them in practice.

### II. CODE OF EXECUTION OF CRIMINAL SENTENCES

21. Article 10 § 2 ("Fundamental principles relating to the legal status of convicted persons") of the Code of Execution of Criminal Sentences provides that while serving their sentences, prisoners enjoy all rights and freedoms save for those exceptions listed in domestic legislation, including the criminal law and the law on execution of criminal sentences.

22. In accordance with Article 11 §§ 2 and 3 ("The prisoners' basic duties"), prisoners must abide by the rules and procedures relating to the serving of criminal sentences as set out in the federal legislation and other instruments adopted in conformity with it. Prisoners must also follow lawful orders given by the detention authorities.

23. Under Article 115 § 1 ("Disciplinary measures for detainees"), a prisoner may be subjected to any of the following for a breach of the prison regime: a reprimand, a disciplinary fine, placement in a disciplinary cell, solitary confinement or confinement in a special cell.

24. Article 127 § 4 provides that to be eligible for a transfer from a strict regime of detention, under which all life prisoners are placed on arrival at a special-regime correctional colony, to a more lenient regime of detention, a life prisoner must have no disciplinary record.

25. Pursuant to Article 114 § 4 ("Procedure for granting a reward to a detainee"), the only reward that can be granted to a detainee with a

disciplinary record is the early removal of the relevant record. No other types of reward are applicable to such detainees.

### III. CRIMINAL CODE

26. Article 79 § 5 (“Early release”) of the Criminal Code provides that a life prisoner may be released early if he or she has served at least twenty-five years of his or her sentence and if the court considers that the serving of the entire sentence is not necessary.

27. Article 79 § 4.1 (in force from 16 May 2014) of the Criminal Code provides that when deciding on an application for early release, the court must take into account the prisoner’s conduct and any disciplinary sanctions imposed on him or her in detention.

### IV. PRE-TRIAL DETENTION ACT

28. Section 17 (10) (“The rights of suspects and accused persons”) of the Pre-trial Detention Act provides that detainees are entitled to eight hours of sleep at night-time. The investigating authorities may interfere with that right only in exceptional circumstances, as listed in the Code of Criminal Procedure.

29. Section 36 (1) and (2) (“The basic duties of suspects and accused persons”) provides that detainees must respect the rules set out in the Pre-trial Detention Act and in the internal documents of their detention facilities. The detainees must also follow lawful orders given by the detention authorities.

### V. INTERNAL RULES OF PRE-TRIAL DETENTION FACILITIES, AS APPROVED BY THE MINISTRY OF JUSTICE ON 14 OCTOBER 2005

30. Rule 100 of the Internal Rules of pre-trial detention facilities provides that detainees in remand prisons can carry out their religious practices only inside their cells or in a specially designated space within the perimeter of their detention facility.

31. Rule 101 proscribes religious practices which run counter to the Internal Rules of pre-trial detention facilities or the rights of other detainees.

32. Annex 4 to the Internal Rules of pre-trial detention facilities contains a suggested daily schedule for a remand prison. It provides detainees with time for “sleep without interruption” between 10 p.m. and 6 a.m.

## VI. DAILY SCHEDULE IN IZ-1, AS APPROVED BY THE REMAND PRISON'S GOVERNOR ON 23 MARCH 2011

33. On 23 March 2011 the governor of IZ-1 enacted the remand prison's daily schedule, which reads as follows:

“Early morning reveille – 6 a.m.

Wash and rearranging of bedding – 6 to 6.30 a.m.

Breakfast – 6.30 to 7.30 a.m.

Morning inspection – 8 to 9 a.m.

Time set aside for any investigative actions and court hearings – 9 a.m. to 12.30 p.m.

Outdoor exercise – 9 a.m. to 12.30 p.m.

Lunch break – 12.30 to 2 p.m.

Time set aside for any investigative actions and court hearings – 2 to 6 p.m. (until 5 p.m. on Fridays).

Outdoor exercise – 2 to 5 p.m.

Supper – 6 to 7 p.m.

Evening inspection – 8 to 9 p.m.

Preparing for bed – 9.30 to 10 p.m.

Sleep (without interruption) – 10 p.m. to 6 a.m.”

## VII. EUROPEAN PRISON RULES

34. On 11 January 2006 the Committee of Ministers of the Council of Europe adopted Recommendation Rec(2006)2 to member States on the European Prison Rules, which reads, in so far as relevant, as follows:

“29.1 Prisoners’ freedom of thought, conscience and religion shall be respected.

29.2 The prison regime shall be organised so far as is practicable to allow prisoners to practise their religion and follow their beliefs, to attend services or meetings led by approved representatives of such religion or beliefs, to receive visits in private from such representatives of their religion or beliefs and to have in their possession books or literature relating to their religion or beliefs.”

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

35. The applicant complained that the disciplinary proceedings brought against him for performing acts of worship at night-time and the lack of opportunity for him to comply with his religious duties violated Article 9 of the Convention, which in its relevant part reads as follows:



“1. Everyone has the right to freedom of ... religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion ... shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

### **A. Admissibility**

36. The Government submitted that the applicant's complaint was manifestly ill-founded.

37. The applicant maintained his complaint.

38. The Court notes that neither the Government nor the domestic authorities questioned the applicant's adherence to Islam. The Court has already held that the manifestation of Islam by praying is covered by Article 9 of the Convention (see *Masaev v. Moldova*, no. 6303/05, §§ 19-26, 12 May 2009). Consequently, it considers that the applicant's complaint falls within the scope of Article 9 of the Convention.

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

### **B. Merits**

#### *1. The parties' submissions*

##### **(a) The applicant**

40. The applicant maintained his complaints. He stated that the imposition of a disciplinary punishment on him had been unlawful, that it had not pursued a legitimate aim and had not been proportionate. In particular, according to the applicant, the interpretation of the Pre-trial Detention Act by the domestic courts had been erroneous and unforeseeable. The *de facto* ban on worshipping at night-time posed no risk to public safety, health, morals or the rights of other prisoners. The exercise of his right to religion had not caused any inconvenience to others or imposed any burden on the authorities.

41. The applicant also complained about a recent reprimand imposed on him on 5 March 2018 (see paragraph 19 above).

##### **(b) The Government**

42. The Government claimed that the impugned interference in the applicant's rights – his reprimand – had fully complied with Article 9 of the Convention. In particular, they stated that the prison schedule had been

designed to guarantee prisoners' rights and to protect their health. The latter required prisoners to sleep at night. The rule prescribing night-time sleep was obligatory for each prisoner, including the applicant, who had an opportunity to pray at different times set aside for that purpose by the prison schedule. According to the Government, given the variety of religious beliefs among detainees, it would be highly impractical to draw up tailor-made schedules for individuals or to make special exceptions to the general schedule for each group of believers. The Government also submitted that the prison authority could not tolerate the applicant's conduct. A decision not to institute proceedings against a prisoner for a breach of discipline could result in disobedience among prisoners and lead to an increase in risks to the personal safety of the prisoners and prison staff.

## 2. *The Court's assessment*

### (a) *Scope of the case*

43. The Court observes that after the Government had been given notice of the case, the applicant complained about a new incident of his being disciplined for performing an act of worship (see paragraphs 19 and 41 above).

44. That new complaint does not constitute an elaboration upon the applicant's original complaints, on which the parties have already commented. The circumstances surrounding it were significantly different from those of the first two incidents of which the Government were notified: the most recent incident concerns a different time of worship (daytime, not night-time) and a different detention facility (a penal colony, not a remand prison). Moreover, the factual information submitted by the applicant in respect of the most recent incident is insufficient for the merits of that complaint to be duly examined.

45. The Court considers, therefore, that it is not appropriate now to take up that matter in the case (see *Petukhov v. Ukraine* (no. 2), no. 41216/13, §§ 115-16, 12 March 2019; *Aliyev v. Azerbaijan*, nos. 68762/14 and 71200/14, §§ 96-97, 20 September 2018; and *Sadkov v. Ukraine*, no. 21987/05, §§ 76-77, 6 July 2017).

### (b) *General principles*

46. As enshrined in Article 9 of the Convention, freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. This freedom is, in its religious dimension, one of the most vital elements that makes up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. That freedom entails, *inter alia*, freedom to

hold or not to hold religious beliefs and to practise or not to practise a religion (see, among other authorities, *S.A.S. v. France* [GC], no. 43835/11, § 124, ECHR 2014).

47. Religious freedom is primarily a matter of individual thought and conscience. This aspect of the right set out in the first paragraph of Article 9 of the Convention, namely to hold any religious belief and to change religion or belief, is absolute and unqualified. However, as further set out in Article 9 § 1, freedom of religion also encompasses the freedom to manifest one's belief, alone and in private but also to practise in community with others and in public. The manifestation of religious belief may take the form of worship, teaching, practice and observance. Bearing witness in words and deeds is bound up with the existence of religious convictions (see *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 105, ECHR 2005–XI). Since the manifestation by one person of his or her religious belief may have an impact on others, the drafters of the Convention qualified this aspect of freedom of religion in the manner set out in Article 9 § 2. This second paragraph provides that any limitation placed on a person's freedom to manifest religion or belief must be prescribed by law and necessary in a democratic society in pursuit of one or more of the legitimate aims set out therein (see *Eweida and Others v. the United Kingdom*, nos. 48420/10 and 3 others, § 80, ECHR 2013).

48. In the case of *Jakóbski v. Poland* (no. 18429/06, § 50, 7 December 2010) concerning access of a Buddhist prisoner to a meat-free diet, the Court had stated that if a decision to make special arrangements for one prisoner within the system can have financial implications for the custodial institution and thus indirectly on the quality of treatment of other inmates, a fair balance must be struck between the interests of the institution, other prisoners and the particular interests of the applicant.

**(c) Application of the above principles to the present case**

*(i) Whether there was an interference with the applicant's rights under Article 9*

49. It is undisputed between the parties that the imposition of a disciplinary punishment on the applicant amounted to an interference with his right to freedom of religion.

50. The Court has consistently stated that the imposition of administrative or criminal sanctions for manifestation of religious belief was an interference with the rights guaranteed under Article 9 § 1 of the Convention (see *Nolan and K. v. Russia*, no. 2512/04, § 61, 12 February 2009; *Masaev*, cited above, § 25; and *Kokkinakis v. Greece*, 25 May 1993, § 36, Series A no. 260-A). By the same token, the Court considers that the disciplinary punishment imposed on the applicant, even in such a lenient form as reprimand, amounted to interference with his rights enshrined in Article 9 of the Convention.

51. It remains to be ascertained whether the interference was justified and necessary in a democratic society.

*(ii) Whether the interference was justified*

(α) “In accordance with the law”

52. The Court observes that the applicant was reprimanded for a breach of the prison schedule and for disregarding the prison guards’ orders to return to his sleeping place. The disciplinary punishment was imposed on him in accordance with Section 36 (1) and (2) of the Pre-trial Detention Act, which required all detainees to comply with prison rules and lawful orders of the detention authority (see paragraph 29 above). Accordingly, the Court finds that the disciplinary proceedings brought against the applicant had a legal basis in Russian law.

53. The Court cannot accept the applicant’s argument that the Pre-trial Detention Act did not meet the quality-of-law requirement and was applied in an unforeseeable manner in that the right to sleep was erroneously interpreted as a prisoner’s duty. It notes that the applicant was disciplined not for being awake at night, but for performing an act of worship. Such activity was clearly incompatible with the prison schedule, which unambiguously stated that the time between 10 p.m. and 6 a.m. was to be reserved for uninterrupted sleep. Given the mandatory nature of the prison rules, the applicant could obviously have foreseen the consequences of his actions, as the right to sleep was not of equal value to the right to worship.

54. Consequently, the impugned interference was “in accordance with the law”.

(β) Legitimate aim

55. The Government stated that the disciplinary sanction imposed on the applicant was necessary to ensure order in the remand prison and guarantee the personal safety of the prisoners and prison staff.

56. The Court has certain doubts that the impugned measure pursued the aims relied on by the Government. However, it considers that this question is closely linked to that of whether the impugned measure was “necessary in a democratic society”, and it therefore finds it appropriate to approach the case from that angle (see, *mutatis mutandis*, *Zelikha Magomadova v. Russia*, no. 58724/14, § 97, 8 October 2019).

*(iii) Necessary in a democratic society*

57. The Court reiterates that, during their imprisonment, prisoners continue to enjoy all fundamental rights and freedoms, save for the right to liberty (see *Khoroshenko v. Russia* [GC], no. 41418/04, § 116, ECHR 2015, with further references). Accordingly, on imprisonment a person does not forfeit his or her Convention rights, including the right to freedom of

religion, so that any restriction on that right must be justified in each individual case.

58. From the Government's submission and the findings of the domestic authorities, it appears that the only reason for disciplining the applicant was the formal incompatibility of his actions with the prison schedule and the authorities' attempt to ensure full and unconditional compliance with that schedule by every prisoner.

59. Although the Court recognises the importance of prison discipline, it cannot accept such a formalistic approach, which palpably disregarded the applicant's individual situation and did not take into account the requirement of striking a fair balance between the competing private and public interests.

60. Turning to those competing interests, the Court accepts that it was of particular importance for the applicant to comply with his duty to perform acts of worship at the time prescribed by his religious belief. That duty had to be complied with every day, not least during Ramadan.

61. The Court cannot discern anything to suggest that the applicant's adherence to Salah at night-time posed any risks to prison order or safety. The applicant did not use dangerous objects or seek to engage in collective worship in a large group together with other prisoners (see, by contrast, *X. v. Austria*, no. 1753/63, Commission decision of 15 February 1965 concerning confiscation of prayer beads from a Buddhist prisoner).

62. Moreover, the applicant's worship did not disturb the prison population or the prison guards, because he performed Salah while in solitary confinement and, as far as can be seen from the material before the Court, did not produce any noise or other disturbing factors (see, by contrast, *Kovaļkovs v. Latvia* (dec.), no. 35021/05, §§ 64-66 and 68, 31 January 2012 as far as it concerns confiscation of the incense sticks which created a powerful odour from the imprisoned applicant). There was no interference of the applicant's worship with the prisoners' daytime routine, including assisting with investigative actions or attending court hearings. Lastly, it does not appear that performing Salah left the applicant exhausted or could have undermined his health or his ability to participate in criminal proceedings.

63. Despite the Government's argument that the applicant could worship at times other than those prescribed by the prison schedule, the Court notes that IZ-1's schedule, as provided by the applicant and not contested by the Government, did not explicitly set out "time for worship" or "personal time" which could be used at the discretion of prisoners (see paragraph 33 above). Such practice ran counter to the European Prison Rules' recommendation that "[t]he prison regime shall be organised so far as is practicable to allow prisoners to practise their religion and follow their beliefs ..." (see paragraph 34 above). It was not at all impossible for the prison authority to respect the applicant's wish to observe Salah, taking into

account that in the circumstances of the case no special arrangements on the part of the authorities were required (see *Jakóbski*, cited above, §§ 48-55; see, by contrast, *Kovaļkovs*, cited above, § 67, as far as it concerns the prison authorities' refusal to grant the applicant a separate room where he could read, pray, meditate and read religious material; see also, *mutatis mutandis*, *Eweida*, cited above, §§ 89-95).

64. Lastly, the Court notes that being a form of disciplinary punishment, the reprimand not only decreased the applicant's chances of early release (see paragraph 27 above), mitigation of the prison regime (see paragraph 24 above), or of obtaining a reward (see paragraph 25 above), but also had a chilling effect on other prisoners. The proportionality of that sanction was not assessed by the domestic courts in a meaningful manner. The latter confined their inquiry to whether or not the applicant's conduct had breached the prison schedule. They failed to identify the legitimate aim of the impugned interference in the applicant's freedom of religion, or to carry out a balancing exercise.

65. In the light of the above, the Court concludes that the interference with the applicant's freedom of religion resulting from his disciplinary punishment did not strike a fair balance between the competing interests and was disproportionate to the aims referred to by the Government. It cannot therefore be regarded as having been necessary in a democratic society within the meaning of the second paragraph of Article 9 in the particular circumstances of the case. Accordingly, there has been a violation of Article 9 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

66. The applicant complained that he had not been afforded an effective domestic remedy by which to raise his complaint under Article 9 of the Convention. He relied on Article 13, which provides:

"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."

67. The applicant maintained his complaint.

68. The Government alleged that the complaint is inadmissible.

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

70. Having regard to the findings in paragraphs 64 and 65 above, the Court considers that there is no need to examine separately the merits of the complaint at hand.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. 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**

72. The applicant claimed an amount left at the discretion of the Court, with a minimum of EUR 5,500 in respect of non-pecuniary damage.

73. The Government stated that the applicant’s claim was excessive.

74. The Court awards the applicant EUR 2,600 in respect of non-pecuniary damage, plus any tax that may be chargeable.

#### **B. Costs and expenses**

75. The applicant also claimed EUR 8,500 for the costs and expenses incurred before the Court under the agreement with his representative, Mr A. Laptev. The applicant asked for the award to be paid into a bank account of his representative.

76. The Government contended that the costs and expenses had not been actually incurred by the applicant. They noted that according to the terms of the legal-assistance agreement between the applicant and his representative, the costs were to be paid only if the Court delivered a judgment in the applicant’s case. The Government alleged that such provision could not guarantee the payment.

77. In the present case the Court is not persuaded by the Government’s argument that the legal-assistance agreement with the applicant’s representative could not guarantee the payment in future, because the Government did not provide the Court with any references to domestic law or practice suggesting that such an agreement was not enforceable. Taking into account that, 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 are reasonable as to quantum, and that the applicant has already been granted legal aid, the Court awards him the sum of EUR 2,000 for the proceedings before it, plus any tax that may be chargeable to the applicant. The award is to be paid into the bank account of the applicant’s representative.

**C. Default interest**

78. 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 complaints under Articles 9 and 13 of the Convention admissible;
2. *Hold* that there has been a violation of Article 9 of the Convention;
3. *Holds* that there is no need to examine separately the merits of the complaint under Article 13 of the Convention taken in conjunction with Article 9;
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 2,600 (two thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses to be paid into the bank account of the applicant's representative;
  - (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 12 May 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško  
Registrar

Paul Lemmens  
President