



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

FIFTH SECTION

CASE OF WENNER v. GERMANY

(Application no. 62303/13)

JUDGMENT

STRASBOURG

1 September 2016

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 Wenner v. Germany,

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

Ganna Yudkivska, *President*,

Angelika Nußberger,

Khanlar Hajiyeu,

Erik Møse,

André Potocki,

Carlo Ranzoni,

Mārtiņš Mits, *judges*,

and Milan Blaško, *Deputy Section Registrar*,

Having deliberated in private on 5 July 2016,

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

PROCEDURE

1. The case originated in an application (no. 62303/13) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a German national, Mr Wolfgang Adam Wenner (“the applicant”), on 30 September 2013.

2. The applicant, who had been granted legal aid, was represented by Mr F. Haas, a lawyer practising in Starnberg. The German Government (“the Government”) were represented by one of their Agents, Mr H.-J. Behrens, of the Federal Ministry of Justice and Consumer Protection.

3. The applicant alleged that the refusal to grant him drug substitution treatment during his imprisonment, including a refusal to have the necessity of such treatment examined by an external medical expert, had breached Article 3 of the Convention.

4. On 17 June 2014 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1955. At the time of lodging his application, he was detained in Kaisheim Prison. He was released subsequently.

A. The applicant's medical condition and treatment received in detention

6. The applicant has been continuously addicted to heroin since 1973, when he was aged 17. He has also been suffering from hepatitis C since 1975 and has been HIV-positive since 1988. He has been considered 100% disabled and has been receiving an employment disability pension since 2001. He has tried to overcome his addiction to heroin with various types of treatment (including five courses of in-house drug rehabilitation therapy), all of which failed. From 1991 to 2008 the applicant's heroin addiction was treated with medically prescribed and supervised drug substitution therapy. Since 2005, the applicant had reduced the dosage of his drug substitution medication (Polamidon) and consumed heroin in addition to that medication.

7. In 2008 the applicant was arrested on suspicion of drug trafficking and taken in detention on remand in Kaisheim Prison, where his drug substitution treatment was interrupted against his will. On 3 June 2009 the Augsburg Regional Court convicted the applicant of drug trafficking, sentenced him to three years and six months' imprisonment and, having regard to a previous conviction, to another two years and six months' imprisonment. It further ordered the applicant's placement in a drug detoxification facility, to be executed after a period of six months' detention in prison. The applicant was still not provided with substitution treatment for his heroin addiction. On 10 December 2009 he was transferred to a drug rehabilitation centre in Günzburg, Bavaria, where he underwent abstinence-based treatment for his addiction, without additional substitution treatment.

8. On 19 April 2010 the Memmingen Regional Court declared the applicant's detention in the detoxification facility terminated and ordered his retransfer to prison. In a decision dated 25 June 2010 the Munich Court of Appeal dismissed the applicant's appeal. Having regard, in particular, to the views expressed by the applicant's treating doctors, the court considered that it could no longer be expected with sufficient probability that the applicant could be cured from his drug addiction or could be prevented for a considerable time from relapsing into drug abuse. He had secretly consumed methadone at the clinic and lacked motivation to lead a drug-free life.

9. The applicant was transferred back to Kaisheim Prison on 30 April 2010. The prison doctors gave him various painkillers for chronic pain resulting from his polyneuropathy, on a daily basis. During his detention, the pain in his feet, neck and spine became such that, at least during certain periods, he spent most of his time in bed.

10. The applicant was examined by an external doctor for internal medicine, H., on the prison authorities' request in October 2010. H. did not consider any changes in the treatment of the applicant's HIV and hepatitis C

infections necessary. Having regard to the applicant's chronic pain linked to his long-term drug consumption and polyneuropathy, he suggested that the prison medical service reconsider the possibility of drug substitution treatment. He subsequently confirmed that the applicant should be examined by a doctor specialised in drug addiction therapy to that end.

11. The applicant also obtained, on his request, an opinion drawn up by an external doctor specialised in drug addiction treatment (B.) dated 27 July 2011, on the basis of the written findings of doctor H. and the Kaisheim Prison doctor's and authorities' findings and statements, but without having been able to examine the applicant in person. B. considered that from a medical point of view, drug substitution treatment had to be provided to the applicant. He explained that in accordance with the Federal Medical Association's Guidelines for the Substitution Treatment of Opiate Addicts (*Richtlinien der Bundesärztekammer zur Durchführung der substituionsgestützten Behandlung Opiatabhängiger*) of 19 February 2010 (see paragraph 30 below), drug substitution therapy was internationally recognised as being the best possible therapy for long-standing opioid addicts. Detoxification caused the person concerned serious physical strain and extreme mental stress and should only be attempted in cases of a very short opioid dependence. Drug substitution therapy prevented a deterioration of the patient's state of health and a high risk to life, which arose particularly after forced abstinence in detention. It further prevented the spreading of infectious diseases such as HIV and hepatitis C. It had to be clarified whether, in the applicant's case, further treatment for the hepatitis C from which he suffered was necessary.

B. The proceedings at issue

1. The decision of the prison authorities

12. By submissions dated 6 June 2011, which he supplemented subsequently, the applicant made a request to the Kaisheim prison authorities for treatment with Diamorphin, Polamidon or another heroin substitute for his heroin addiction. Alternatively, he requested that the question of whether such substitution treatment was necessary be examined by a drug addiction specialist.

13. The applicant claimed that drug substitution treatment was the only adequate treatment for his medical condition. Under the relevant Guidelines of the Federal Medical Association for the Substitution Treatment of Opiate Addicts, drug substitution treatment, which he had received prior to his detention, was the required standard treatment for his condition and had to be continued during his detention.

14. The applicant claimed that, as confirmed by doctor H., the serious chronic neurological pain from which he was suffering could be

considerably alleviated by drug substitution treatment, as had been the case during his previous substitution treatment. Having been addicted to heroin for almost forty years, he stood hardly any chance of leading a totally drug-free life on release from prison. His rehabilitation could therefore better be furthered by providing him drug substitution treatment. While undergoing such treatment previously, he had been able to lead a relatively normal life and to complete training as a software engineer.

15. Furthermore, referring to doctor B.'s opinion, the applicant claimed that he was in need of Interferon therapy in order to treat his hepatitis C infection. In view of his poor physical and mental health, it was impossible to carry out such treatment without simultaneous drug substitution therapy. Substitution also helped to protect other prisoners from infection when using the same needles as he did for the consumption of drugs and diminished the trafficking and uncontrolled consumption of illegal drugs in prison. He also considered that the prison doctors did not have specialist knowledge in drug addiction treatment and asked to be examined by an external specialist.

16. After the prison authorities' first decision dismissing the applicant's application was quashed by the Augsburg Regional Court on 4 October 2011 for lack of sufficient reasoning, the prison authorities, on 16 January 2012, again dismissed the applicant's request.

17. The prison authorities argued that substitution treatment was neither necessary from a medical point of view nor a suitable measure for the applicant's rehabilitation. With regard to the medical necessity of drug substitution therapy, the prison authorities, relying on prison doctor S.'s statement, considered that drug substitution therapy was not a necessary treatment for the purposes of section 60 of the Bavarian Execution of Sentences Act (see paragraph 27 below). They found that the applicant, who was severely addicted to drugs, had not received drug substitution treatment prior to his current detention in Kaisheim Prison. He had been placed in a drug rehabilitation centre for five months before his transfer to Kaisheim Prison, where he had been treated by medical experts with considerable knowledge of drug addiction treatment. The applicant had neither been given substitution treatment in the clinic, nor had the doctors recommended substitution treatment in prison. After three years in detention, he no longer suffered from physical withdrawal symptoms. Moreover, his condition with regard to his HIV and hepatitis C infections was stable and did not require any therapy for which substitution treatment was a necessary precondition. As suggested by the prison doctor, the applicant should use the opportunity to wean himself off opioids, such as heroin and its substitutes, while in prison, as it was very difficult to obtain drugs there.

18. With regard to the applicant's social rehabilitation and treatment (sections 2 and 3 of the Bavarian Execution of Sentences Act, see paragraph 27 below), the prison authorities added that the main reason for

which addicts underwent drug substitution therapy was to prevent them from becoming impoverished and from becoming involved in drug-related criminality. In prison, these risks were not present. Furthermore, the applicant had already shown that substitution therapy while he was at liberty had not prevented him from consuming other drugs or committing crimes, which had been caused by his antisocial nature. Moreover, the applicant had also consumed drugs while in detention. Therefore, providing him substitution treatment could lead to a risk to life and limb.

2. The proceedings before the Augsburg Regional Court

19. On 26 January 2012 the applicant, relying on the reasons he had submitted to the prison authorities, appealed against the decision of the prison authorities to the Augsburg Regional Court. He further submitted that the authorities of Kaisheim Prison, where no substitution treatment had ever been provided, had omitted to examine the medical necessity of drug substitution therapy under the relevant criteria laid down, in particular, in the Federal Medical Association's Guidelines for the Substitution Treatment of Opiate Addicts, which were clearly met in his case. He further argued that under the applicable administrative rules for substitution treatment in prison in the *Land* of Baden-Württemberg, he would be provided with drug substitution therapy, which is carried out in the prisons of the majority of the German *Länder*.

20. On 28 March 2012 the Augsburg Regional Court, endorsing the reasons given by the prison authorities, dismissed the applicant's appeal. It added that it was not necessary to obtain the opinion of a drug addiction expert. The prison doctors of Kaisheim Prison had sufficient training to decide on the medical necessity of drug substitution therapy, irrespective of the fact that drug substitution therapies might never have been used in that prison. The administrative rules for substitution treatment in prison applicable in the *Land* of Baden-Württemberg were irrelevant, given that Kaisheim Prison was situated in the *Land* of Bavaria.

3. The proceedings before the Munich Court of Appeal

21. On 4 May 2012 the applicant lodged an appeal on points of law with the Munich Court of Appeal. He submitted that the Regional Court's failure to investigate sufficiently whether drug substitution treatment was necessary, under the applicable Federal Medical Association's Guidelines and with the help of an independent doctor specialised in drug addiction treatment, had breached section 60 of the Bavarian Execution of Sentences Act and Article 3 of the Convention. Refusing him the alleviation of his intense neurological pain with an existing and medically necessary treatment constituted inhuman treatment.

22. On 9 August 2012 the Court of Appeal dismissed the appeal as ill-founded. In the court's view, the applicant had failed to show why drug substitution therapy was the one specific medical treatment he needed. He had further failed to prove that the prison doctors of Kaisheim Prison were not qualified to decide about the medical necessity of heroin substitution. The applicant's objection against the Court of Appeal's decision was rejected.

4. The proceedings before the Federal Constitutional Court

23. On 10 September 2012 the applicant lodged a constitutional complaint with the Federal Constitutional Court. He complained that his right to respect for his physical integrity under the Basic Law had been breached because he was denied drug substitution therapy, the only suitable therapy to treat his chronic pain, which would make Interferon therapy possible and allow him to reduce his craving for heroin and lead a "normal" everyday prison life without isolation. He further complained that his right to be heard under the Basic Law had been violated as the domestic courts had not taken into consideration the medical opinions he had submitted to show that a substitution treatment was necessary and had failed to consult an independent specialised expert.

24. On 10 April 2013 the Federal Constitutional Court declined to consider the applicant's constitutional complaint without giving reasons (file no. 2 BvR 2263/12).

C. Subsequent developments

25. On 17 November 2014 the Kaisheim prison authorities rejected the applicant's fresh request to be provided with substitution treatment in preparation for his release. The applicant's counsel was advised to ensure that the applicant was taken to a drug rehabilitation clinic immediately on his release in order to prevent him from taking an overdose of heroine as soon as he was at liberty.

26. On 3 December 2014 the applicant was released. When examined by a doctor on 5 December 2014 he tested positive for methadone and cocaine. The doctor confirmed that the applicant would receive drug substitution treatment from 8 December 2014 onwards.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Provisions of the Bavarian Execution of Sentences Act

27. The relevant provisions of the Bavarian Execution of Sentences Act (*Bayerisches Strafvollzugsgesetz*) concerning the examination of applications for drug substitution therapy read as follows:

Section 2: Objectives of the execution of sentences

“The execution of a prison sentence serves to protect the public from further crime. It shall enable prisoners to lead a socially responsible and law-abiding life in the future (obligation of treatment).”

Section 3: Treatment during the execution of a sentence

“Treatment shall include all measures which may promote a crime-free life in the future. Its purpose is to prevent the commission of further crime and to protect victims. ...”

Part 8: Health care

Section 58: General Rules

“(1) The physical and mental health of the prisoner must be ensured. ...”

Section 60: Medical Treatment

“Prisoners are entitled to medical treatment if such treatment is necessary in order to detect or cure an illness, to prevent the aggravation of an illness or to alleviate its symptoms. Medical treatment includes:

1. treatment by a doctor,
- ...
4. the provision of medicine, dressings, and other health aids,
- ...”

B. Legal provisions and guidelines concerning drug substitution treatment

28. Under section 13 §§ 1 and 3 of the Narcotic Substances Act (*Betäubungsmittelgesetz*), doctors may only provide a person with drugs covered by the Act (notably methadone) if their use can be justified. The Federal Government is authorised to issue a Regulation covering the prescription and provision of such drugs, including the prescription of substitution drugs for drug addicts.

29. Section 5 of the Prescription of Narcotic Substances Regulation (*Betäubungsmittel-Verschreibungsverordnung*), issued in accordance with section 13 of the Narcotic Substances Act, lays down rules on the prescription of narcotic substances for substitution treatment. Under

section 5 § 1, the treatment of drug addicts with substitution drugs serves to treat a patient's drug addiction with the aim of gradually restoring his abstinence from narcotic substances, including the improvement and stabilisation of the patient's state of health. It may also serve to support the treatment of a serious illness the patient is suffering from alongside his or her drug addiction. Section 5 § 2 provides that a doctor may prescribe a substitution drug under the conditions laid down in section 13 of the Narcotic Substances Act unless, in particular, there are indications that the patient is consuming substances of a type or quantity endangering the objective of the substitution treatment. In accordance with section 5 § 11, the Federal Medical Association may issue guidelines codifying the recognised state of the medical art with regard to various aspects of drug substitution treatment. Compliance with the state of the medical art shall be assumed if and insofar as the guidelines in this respect were observed.

30. Relying on section 5 § 11 of the Prescription of Narcotic Substances Regulation, the Federal Medical Association issued its Guidelines for the Substitution Treatment of Opiate Addicts of 19 February 2010. In the Guidelines' preamble, it is clarified that opiate addiction is a serious chronic disease requiring medical treatment and that substitution treatment was a scientifically tested form of therapy for manifest opiate addiction. The aims of drug substitution therapy included securing the survival of the patient, the reduction of the use of other drugs, the stabilisation of the patient's health and the treatment of further diseases, the participation in social and work life and a drug-free life. Paragraph 2 of the Guidelines provides that drug substitution treatment is indicated in cases of manifest opiate addiction as defined by the International Classification of Diseases if, in the circumstances of the case, it has more prospects of success than abstinence-based therapies. In individual reasoned cases, drug substitution treatment may also be started in case of drug addicts who are currently abstinent but placed in a protective environment such as a prison. Paragraph 8 of the Guidelines provides that in case of imprisonment, the continuity of the substitution treatment by the institution in which the patient is placed is to be secured. Under paragraph 12 of the Guidelines, substitution treatment shall be discontinued if it is accompanied by a continuous, problematic consumption of other dangerous substances.

C. Research on drug substitution treatment

31. A study commissioned by the Federal Ministry of Health and carried out by the University of Dresden, published in 2011, on Predictors, Moderators and Outcome on Substitution Treatments (the PREMOS study) confirmed that opioid addiction was a serious chronic disease. Drug substitution treatment had been tested for the first time in the United States of America in 1949 and has been considered subsequently as both an

established and the best possible therapy for opioid addiction. One of the commonly used medications for drug substitution therapy is methadone, a synthetic opioid with strong pain-killing effects. Long-term substitution treatment had proved effective in that the primary aims of that treatment (that is, continuity of treatment, securing survival, reduction of drug consumption, stabilisation of comorbidity and social participation) were attained. Stable abstinence from opioids was a rare phenomenon in the long run (attained by less than 4% of the opioid addicts examined) and was associated with considerable risks (notably death). The termination of substitution treatment should therefore be envisaged only if, in particular, there was a stable motivation and a good psycho-social environment and treatment of the patient (see pp. 4-15 and 125-133 of the study report).

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

32. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of the Council of Europe issues the CPT standards, in which the “substantive” sections of the CPT’s yearly General Reports are summarised. In its CPT standards as established at the time of the applicant’s detention (CPT/Inf/E (2002) 1 - Rev. 2010), which have not been amended since then in respect of the issues relevant here (see CPT/Inf/E (2002) 1 - Rev. 2015), the CPT made the following relevant findings and recommendations:

“Health care services in prisons

Extract from the 3rd General Report [CPT/Inf (93) 12], published in 1993

31. ... the CPT wishes to make clear the importance which it attaches to the general principle - already recognised in most, if not all, of the countries visited by the Committee to date - that prisoners are entitled to the same level of medical care as persons living in the community at large. This principle is inherent in the fundamental rights of the individual. ...

Equivalence of care

i) general medicine

38. A prison health care service should be able to provide medical treatment and nursing care, as well as appropriate diets, physiotherapy, rehabilitation or any other necessary special facility, in conditions comparable to those enjoyed by patients in the outside community. Provision in terms of medical, nursing and technical staff, as well as premises, installations and equipment, should be geared accordingly.”

33. Recommendation Rec(2006)2 of the Committee of Ministers to member States on the European Prison Rules, adopted on 11 January 2006 at the 952nd meeting of the Ministers’ Deputies (“the European Prison Rules”), provides a framework of guiding principles for the treatment of persons deprived of their liberty. The relevant extracts in Part III of the appendix to the Recommendation, on “Health”, provide:

“Organisation of prison health care

... 40.3 Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

40.4 Medical services in prison shall seek to detect and treat physical or mental illnesses or defects from which prisoners may suffer.

40.5 All necessary medical, surgical and psychiatric services including those available in the community shall be provided to the prisoner for that purpose.”

34. Recommendation no. R (98) 7 of the Committee of Ministers to member States concerning the ethical and organisational aspects of health care in prison, adopted on 8 April 1998 at the 627th meeting of the Ministers’ Deputies, provides, in its Appendix, in so far as relevant:

“7. The prison administration should make arrangements for ensuring contacts and co-operation with local public and private health institutions. Since it is not easy to provide appropriate treatment in prison for certain inmates addicted to drugs, alcohol or medication, external consultants belonging to the system providing specialist assistance to addicts in the general community should be called on for counselling and even care purposes. ...

Equivalence of care

10. Health policy in custody should be integrated into, and compatible with, national health policy. A prison health care service should be able to provide medical, psychiatric and dental treatment and to implement programmes of hygiene and preventive medicine in conditions comparable to those enjoyed by the general public. Prison doctors should be able to call upon specialists. If a second opinion is required, it is the duty of the service to arrange it. ...

45. The treatment of the withdrawal symptoms of abuse of drugs, alcohol or medication in prison should be conducted along the same lines as in the community.”

35. According to the Policy paper on preventing risks and reducing harm linked to the use of psychoactive substances adopted in November 2013 by the Permanent Correspondents of the Co-operation Group to Combat Drug Abuse and Illicit trafficking in Drugs (Pompidou Group) of the Council of Europe (P-PG (2013) 20), there is a growing recognition that drug dependence must be understood and treated as a chronic, preventable, treatable and recoverable disease. At the same time national differences in political acceptance, interpretation and variance in the type of feasible measures, as well as access to them and their availability, persist. Despite these differences, there is a general prevailing consensus that abstinence and recovery-oriented policies need to be supplemented by measures that can demonstrably reduce the harms and risks of psychoactive substance use (*ibid.*, § 10).

IV. RELEVANT STATISTICAL DATA

36. According to the data collected by Harm Reduction International (HRI), a non-governmental organisation, in 2012 opioid substitution therapy

programmes were operational in the community in 41 of the Council of Europe Member States. No such programmes existed in Andorra, Monaco, the Russian Federation and Turkey (in the latter country, they were introduced by 2015); no statistical data was available in respect of Liechtenstein and San Marino. In 2012, opioid substitution programmes were available also in prison in 30 of the Council of Europe Member States whereas no such treatment was available in prison in 15 of the Council of Europe Member States (Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Greece, Iceland, Lithuania, Monaco, the Russian Federation, the Slovak Republic, Turkey and Ukraine); no statistical data was available in respect of Liechtenstein and San Marino. By 2015, opioid substitution programmes had been made available also in prison in Bulgaria, Estonia, Turkey and Ukraine.

37. The HRI data for 2012 correspond to those published by the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), a European Union decentralized agency, in their 2012 study entitled "*Prisons and drug abuse in Europe: the problem and responses*", which contains data in respect of all (then) European Union Member States, Croatia, Turkey and Norway.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

38. The applicant complained that the refusal to grant him drug substitution therapy in prison, which had made him suffer considerable pain and had caused damage to his health, and the refusal to have the necessity of drug substitution therapy examined by an external medical expert amounted to inhuman treatment. He relied on Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

39. The Government contested that argument.

A. Admissibility

40. The Court notes that 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.

B. Merits

1. The parties' submissions

(a) The applicant

41. According to the applicant's submission, the authorities' refusal to offer him drug substitution therapy in detention, without having consulted an external medical expert, had constituted inhuman treatment in breach of Article 3 of the Convention.

42. The applicant argued that in the circumstances of his case, drug substitution therapy had been the only suitable treatment for his condition. By refusing him that treatment, the authorities had exceeded the margin of appreciation they had in respect of the provision of medical treatment to prisoners and had therefore disregarded their positive obligations under Article 3.

43. In order to support this view, the applicant submitted that he has been addicted to heroin for some forty years. The Munich Court of Appeal itself, in its decision of 25 June 2010 (see paragraph 8 above), had considered that he stood no chance of leading a drug-free life for a considerable time. Prior to his imprisonment, he had received drug substitution therapy without interruption from 1991 to 2008.

44. In the applicant's view, drug substitution therapy had been necessary to alleviate his severe neurological pain and had previously proved successful in attaining that aim. In contrast, the mere treatment of his pain with painkillers had been ineffective and thus insufficient. Drug substitution therapy had also been the adequate treatment for reducing his craving for heroin and allowing for the proper treatment of his other serious disease, namely the treatment with Interferon of the hepatitis C from which he suffered. It would have enabled him, as it had during the time when he had received substitution treatment, to lead a "normal" everyday life. By illegally refusing him that treatment, the authorities had caused him to suffer intense physical and mental pain.

45. Furthermore, the applicant submitted that the authorities had not sufficiently examined the necessity of providing him with drug substitution therapy. The necessity to offer him such treatment should have been examined by an independent medical expert, as requested by him throughout the proceedings before the domestic authorities. In the applicant's view, the prison doctors of Kaisheim Prison, where no drug substitution treatment had ever been carried out, did not have the professional training and experience to assess the necessity of substitution therapy.

46. The applicant further stressed that neither the prison doctor nor the courts had had regard to, or at least mentioned, the applicable provisions (section 13 of the Narcotic Substances Act, read in conjunction with

section 5 of the Prescription of Narcotic Substances Regulation and the Federal Medical Association's Guidelines for the Substitution Treatment of Opiate Addicts) which regulated the provision of drug substitution therapy. The requirements for drug substitution therapy had been met in his case. In accordance with section 5 § 1 of the Prescription of Narcotic Substances Regulation, it would have served to support the necessary treatment of the serious illnesses, namely hepatitis C, HIV and polyneuropathy, from which he was suffering alongside his drug addiction. Moreover, as required by section 5 § 2 of the said Regulation, there were no indications that the applicant would consume, in prison, substances of a type or quantity endangering the objective of the substitution treatment. His drug substitution treatment had been interrupted in breach of paragraph 8 of the Federal Medical Association's Guidelines when he started serving his sentence.

47. The applicant also claimed that he had been discriminated against by the refusal of drug substitution treatment in comparison to other heroin addicts who were not imprisoned and those who were imprisoned in the *Land* of Baden-Württemberg, who had the opportunity to obtain substitution treatment in accordance with the relevant medical guidelines. Substitution had been denied to him as a matter of principle and for outdated ideological, rather than medical, reasons.

(b) The Government

48. The Government took the view that the refusal to grant the applicant drug substitution therapy in prison, without an external medical expert having been consulted, had not violated Article 3 of the Convention.

49. According to the Government's submission, the applicant had received the required adequate medical treatment in detention. They contested that drug substitution therapy had been necessary treatment for the applicant's condition, and still less the only treatment suitable to sustain the applicant's health. As found by the prison doctor, substitution treatment had not been necessary on medical grounds. Such treatment had equally been unnecessary to attain the aims pursued by the execution of a term of imprisonment. It would have run counter to the aim of rehabilitating of the applicant in prison and enabling him to lead a drug-free life. Therefore, the refusal of drug substitution treatment had fallen within the State's margin of appreciation in respect of the choice between different types of medical treatment of a detainee. This applied all the more as the applicant's diseases had not been caused by State action.

50. The Government explained that the applicant, having been properly examined by the prison doctor, had received comprehensive medical care in accordance with sections 58 and 60 of the Bavarian Execution of Sentences Act (see paragraph 27 above). He received suitable treatment for his diseases, including painkillers as well as psychiatric care, to alleviate the

chronic pain from which he was suffering and to treat his drug addiction. He had also been examined by specialised doctors regarding his HIV and hepatitis C infections and was given medication accordingly. His state of health had been stable while in detention and, at the relevant time, he no longer suffered from physical withdrawal symptoms.

51. Furthermore, the Government expressed doubts as to whether the relevant requirements for offering drug substitution treatment laid down in section 13 of the Narcotic Substances Act, read in conjunction with section 5 of the Prescription of Narcotic Substances Regulation and the Federal Medical Association's Guidelines for the Substitution Treatment of Opiate Addicts (see paragraphs 28-30 above) were met in the applicant's case. Contrary to the requirements laid down in section 5 § 1 of the Prescription of Narcotic Substances Regulation, the applicant did not pursue the aim of gradually restoring his abstinence from narcotic substances. Moreover, it was doubtful whether the requirements of section 5 § 2 of the said Regulation were met as it was to be expected that the applicant, just as in the past, would consume substances of a type or quantity endangering the objective of the substitution treatment, namely heroin, in addition to his substitution treatment, which would be life-threatening. Furthermore, in accordance with the Federal Medical Association's Guidelines, drug substitution treatment was to be provided in prison only in individual reasoned cases. The prison doctors had not considered this requirement to be met.

52. The Government conceded that a recent expert study commissioned by the Federal Ministry of Health (see paragraph 31 above) had revealed that stable abstinence from narcotic substances was a rare phenomenon in practice and appeared to be an unrealistic treatment objective in the long run. However, according to the experts' findings, abstinence could nevertheless be a legitimate aim of substitution treatment fixed between doctor and patient.

53. The Government further argued that the authorities had sufficiently examined the necessity to provide the applicant with drug substitution treatment. They stressed that the applicant, prior to his detention in Kaisheim Prison, had been detained in the Günzburg drug rehabilitation centre, where the doctors specialised in treatment for drug addiction had not considered it necessary to provide him with drug substitution treatment. Moreover, they submitted that one of the applicant's treating doctors in prison had carried out drug substitution therapy many times while employed in the *Land* of Lower Saxony. He had therefore equally had the necessary professional qualifications and experience to assess the necessity of providing the applicant with drug substitution treatment. This had been verified by the domestic courts. The applicant did not have a right to choose freely his medical treatment and his treating doctor while in detention and therefore could not ask to be examined and treated by an external doctor.

2. *The Court's assessment*

(a) **Recapitulation of the relevant principles**

54. The Court reiterates that to come within the scope of the interdiction contained in Article 3 of the Convention the treatment inflicted on or endured by the victim must reach a minimum level of severity. The assessment of this minimum level of severity is a relative one, depending on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, *inter alia*, *Blokhin v. Russia* [GC], no. 47152/06, § 135, ECHR 2016, with further references).

55. The Court further reiterates that Article 3 of the Convention imposes on the State a positive obligation to ensure that a person is detained under conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject the individual to distress or hardship exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, the person's health and well-being are adequately secured by, among other things, the provision of the requisite medical assistance and treatment (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI; *McGlinchey and Others v. the United Kingdom*, no. 50390/99, § 46, ECHR 2003-V; and *Farbtuhs v. Latvia*, no. 4672/02, § 51, 2 December 2004). In this connection, the "adequacy" of medical assistance remains the most difficult element to determine. Medical treatment provided within prison facilities must be appropriate, that is, at a level comparable to that which the State authorities have committed themselves to provide to the population as a whole. Nevertheless, this does not mean that every detainee must be guaranteed the same level of medical treatment that is available in the best health establishments outside prison facilities (see, *inter alia*, *Blokhin*, cited above, § 137).

56. The Court has clarified in this context that it was essential for a prisoner suffering from a serious illness to undergo an adequate assessment of his or her current state of health, by a specialist in the disease in question, in order to be provided with appropriate treatment (compare *Keenan v. the United Kingdom*, no. 27229/95, §§ 115-116, ECHR 2001-III, concerning a mentally ill prisoner; *Khudobin v. Russia*, no. 59696/00, §§ 95-96, ECHR 2006-XII (extracts), concerning a prisoner suffering from several chronic diseases including hepatitis C and HIV; and *Testa v. Croatia*, no. 20877/04, §§ 51-52, 12 July 2007, concerning a prisoner suffering from chronic hepatitis C).

57. The prison authorities must offer the prisoner the treatment corresponding to the disease(s) the prisoner was diagnosed with (see *Poghosyan v. Georgia*, no. 9870/07, § 59, 24 February 2009), as prescribed by the competent doctors (see *Xiros v. Greece*, no. 1033/07, § 75,

9 September 2010). In the event of diverging medical opinions on the treatment necessary to ensure adequately a prisoner's health, it may be necessary for the prison authorities and the domestic courts, in order to comply with their positive obligation under Article 3, to obtain additional advice from a specialised medical expert (compare *Xiros*, cited above, §§ 87 and 89-90; and *Budanov v. Russia*, no. 66583/11, § 73, 9 January 2014). The authorities' refusal to allow independent specialised medical assistance to be given to a prisoner suffering from a serious medical condition on his request is an element the Court has taken into account in its assessment of the State's compliance with Article 3 (compare, for instance, *Sarban v. Moldova*, no. 3456/05, § 90, 4 October 2005).

58. The Court further reiterates, being sensitive to the subsidiary nature of its role, that it is not its task to rule on matters lying exclusively within the field of expertise of medical specialists and to establish whether an applicant in fact required a particular treatment or whether the choice of treatment methods appropriately reflected the applicant's needs (see *Ukhan v. Ukraine*, no. 30628/02, § 76, 18 December 2008; and *Sergey Antonov*, no. 40512/13, § 86, 22 October 2015). However, having regard to the vulnerability of applicants in detention, it is for the Government to provide credible and convincing evidence showing that the applicant concerned had received comprehensive and adequate medical care in detention (see *Sergey Antonov*, *ibid.*).

(b) Application of these principles to the present case

59. The Court is called upon to determine whether, in the light of the foregoing principles, the respondent State complied with its positive obligation under Article 3 of the Convention to ensure that the applicant's health was adequately secured during his detention by providing him with the requisite medical treatment, at a level comparable to that which the State authorities have committed themselves to provide to persons in freedom.

60. The Court observes that it is contested between the parties whether, in the circumstances of the case, drug substitution therapy was to be regarded as the necessary medical treatment which had to be provided to the applicant in order for the State to comply with its said obligation.

61. The Court accepts that the States have a margin of appreciation in respect of the choice between different suitable types of medical treatment for a prisoner's diseases. This holds true, in particular, where medical research does not lead to a clear result as to which of two or more possible therapies is more suitable for the patient concerned. The Court, having regard to the material before it, is aware of the fact that drug substitution therapy with methadone entails the replacement of an illicit drug with a synthetic opioid. While drug substitution treatment has become increasingly widespread in the Council of Europe Member States during the past years, the measures to be taken to treat drug addiction are still the subject of

controversy. The States' margin of appreciation in respect of the choice of medical treatment for a prisoner's diseases applies, in principle, also to the choice between abstinence-oriented drug therapy and drug substitution therapy and to the setting-up of a general policy in this field, as long as the State ensures that the standards set by the Convention in the field of medical care in prison are complied with.

62. The Court considers that in the present case, it does not need to decide whether the applicant in fact needed drug substitution therapy. It rather has to determine whether the respondent State has provided credible and convincing evidence proving that the applicant's state of health and the appropriate treatment were adequately assessed and that the applicant subsequently received comprehensive and adequate medical care in detention.

63. In this context, the Court notes that there are a number of strong elements indicating that drug substitution treatment could be regarded as the requisite medical treatment for the applicant in view of the following. First, it is uncontested between the parties that the applicant is a manifest and long-term opioid addict. At the relevant time of the domestic authorities' decisions, he had been addicted to heroin for some forty years. All his attempts to overcome his addiction, including five in-house drug rehabilitation therapies, had failed. In the light of these circumstances, a domestic court itself had confirmed, in proceedings related to those here at issue, that it could no longer be expected with sufficient probability that the applicant could be cured of his drug addiction or prevented for a considerable time from relapsing into drug abuse (see paragraph 8 above). It is further uncontested that the applicant suffered from chronic pain linked to his long-term drug consumption and polyneuropathy.

64. In view of his state of health, prior to his detention here at issue, the applicant's heroin addiction had been treated with medically prescribed and supervised drug substitution therapy for seventeen years, from 1991 until 2008. The Court notes in this context that according to the relevant domestic guidelines, that is, the Federal Medical Association's Guidelines for the Substitution Treatment of Opiate Addicts of 19 February 2010, adopted in accordance with section 5 § 11 of the Prescription of Narcotic Substances Regulation, opiate addiction was a serious chronic disease requiring medical treatment. It is further clarified that substitution treatment was a scientifically tested therapy for manifest opiate addiction (see paragraph 30 above). According to a study commissioned by the Federal Ministry of Health, drug substitution treatment was to be considered as an established therapy and the best possible therapy in that case (see paragraph 31 above). The statistical data before the Court show, accordingly, that opioid substitution therapy programmes were operational already at the relevant time of the proceedings at issue in 41 out of 47 of the Council of Europe

Member States in the community and 30 out of 47 of those State also provided such therapy to prisoners (see paragraphs 36-37 above).

65. The Court further observes that it is uncontested by the Government that drug substitution therapy is, in principle, available in prisons in Germany, as it is outside prison, and is actually provided in practice in prisons in several *Länder* other than Bavaria. The applicable provisions of domestic law (section 13 of the Narcotic Substances Act, read in conjunction with section 5 of the Prescription of Narcotic Substances Regulation and paragraph 8 of the Federal Medical Association's Guidelines for the Substitution Treatment of Opiate Addicts) specify, in particular, that in case of imprisonment, the continuity of the substitution treatment started outside prison by the institution in which the patient is placed, is to be secured (see paragraph 30 above).

66. The Court would note in that context that this approach is in line with the standards fixed by the Council of Europe in respect of health care services in prison. Both the CPT standards and the Committee of Ministers' Recommendation Rec(2006)2 on the European Prison Rules (which do not specifically focus on drug therapy), as well as the Committee of Ministers' Recommendation no. R (98) 7 concerning the ethical and organisational aspects of health care in prison, lay down the principle of equivalence of care. Under that principle, prisoners are entitled to medical treatment in conditions comparable to those enjoyed by patients in the outside community and should have access to the health services available in the country without discrimination on grounds of their legal situation (see paragraphs 32-34 above and for the Court's own definition paragraph 55 above).

67. The Court further observes that not only the doctors having prescribed the applicant drug substitution therapy prior to his detention considered that treatment to be necessary in the applicant's case. An external doctor for internal medicine commissioned by the prison authorities, H., who had examined the applicant in person, had suggested that the prison medical service, who had not considered it necessary to provide the applicant with such treatment, reconsider granting the applicant drug substitution treatment (see paragraph 10 above). Moreover, a doctor specialised in drug addiction treatment (B.) had equally confirmed, albeit only on the basis of the written findings of doctor H., that from a medical point of view, drug substitution treatment had to be provided to the applicant (see paragraph 11 above).

68. The Court would add that the strong indication that drug substitution treatment could be regarded as the requisite medical treatment for the applicant was subsequently further supported by the fact that the applicant was again prescribed and provided with drug substitution treatment immediately after his release from detention.

69. The Court would refer in this context to its case-law under which it is for the Government to provide convincing evidence showing that the applicant concerned received comprehensive and adequate medical care in detention (see paragraph 58 above). It notes that abstinence-oriented therapy constituted a radical change in the medical treatment the applicant had received for seventeen years prior to his detention and that the domestic courts, based on the opinion of the treating doctors in the drug detoxification centre, considered that this therapy had failed. The Court finds that, in these circumstances, the domestic authorities were under an obligation to examine with particular scrutiny if maintaining the abstinence-oriented therapy was to be considered as appropriate.

70. The Court considers, in this context, the authorities' argument that, at the time when the applicant was transferred from the drug rehabilitation centre to Kaisheim Prison, where he applied for drug substitution treatment, he had not been provided with drug substitution therapy for several months and no longer suffered from physical withdrawal symptoms. However, in the Court's view, this element does not militate against the potential necessity of drug substitution treatment. The applicant's health in detention was characterised, in particular, by chronic pain which he suffered independently of previous physical withdrawal symptoms. Moreover, it emerges from the material before the Court that the treatment with Polamidon was interrupted against the applicant's will, and apparently contrary to what is provided by the above-mentioned Federal Medical Association Guidelines (see paragraph 30 above), at the outset of his detention and during his stay in the drug rehabilitation centre, where abstinence-based treatment for his addiction was carried out without additional substitution treatment. The authorities cannot, therefore, rely on a situation which they themselves brought about. Furthermore, given that the abstinence-oriented therapy had failed both in the view of the treating doctors in the drug detoxification centre and in the view of the domestic courts (see paragraph 8 above), the authorities were called upon to assess anew which therapy was suitable for the applicant.

71. The Court further considers that its above findings are not called into question by the Government's argument that drug substitution therapy would run counter to the aim of rehabilitating the applicant by making him overcome his drug addiction in prison and thus enabling him to lead a life free of illegal drugs outside prison. The Court considers that this objective is, in principle, a legitimate aim which may be taken into account in the assessment of the necessity of the medical treatment of a drug addict. However, the Court notes that in the applicant's case, the authorities themselves had considered, prior to refusing the applicant drug substitution treatment in the proceedings at issue, that having regard to his history of drug addiction, this aim could not reasonably be expected to be attained. In particular, the Court of Appeal, when confirming the termination of the

applicant's treatment in a detoxification facility after consultation of the applicant's treating doctors, considered that it could no longer be expected with sufficient probability that the applicant could be cured of his drug addiction (see paragraph 8 above).

72. The authorities' assessment in this respect is equally confirmed by medical research showing that stable abstinence from opioids was a rare phenomenon and should, in the case of manifest opioid addicts, only be attempted if the patient was motivated to attain that aim (see paragraph 31 above), which was clearly not the applicant's case at the relevant time. Therefore, the refusal of drug substitution treatment could not be based on that unattainable objective.

73. Furthermore, the Court takes note of the Government's argument that providing the applicant with substitution treatment would have put his life and limb in jeopardy as he might have consumed additional illegal drugs in prison. In the Government's submission, he therefore also had not met the requirements for drug substitution treatment under section 5 § 2 of the Prescription of Narcotic Substances Regulation. The Court considers that this argument is somewhat at odds with another argument the authorities forwarded in the context of their refusal to provide substitution treatment, namely that it was very difficult to obtain opioids in prison. In any event, the Court observes that this risk appeared to have been manageable even in the community over the previous seventeen years during which the applicant had received drug substitution treatment. In contrast, the risk caused to the life and limb of a drug addict who was released from prison without substitution treatment was acknowledged also by the prison authorities (see paragraph 25 above). The Court therefore finds that this element equally did not exempt the domestic authorities from analysing in detail the suitable treatment options for the applicant.

74. The Court would add that it is aware that medical treatment in the prison context may entail additional difficulties and challenges for the domestic authorities, notably those related to security concerns. However, the Government have not forwarded any reasons for finding that providing the applicant with drug substitution treatment was incompatible with the practical demands of imprisonment. In contrast, as expert B. had stressed, such treatment would help prevent the spread of infectious diseases such as HIV and hepatitis C from which the applicant suffered, in the interests of his fellow prisoners and the community as a whole. The Court further accepts that the provision of such treatment may serve to diminish the trafficking and uncontrolled consumption of illegal drugs in prison.

75. Furthermore, the Court would stress that, in order for a State to comply with its positive obligation to ensure that a prisoner's health was adequately ensured, it is not only necessary to assess adequately a prisoner's state of health which, in case of serious illnesses, requires consultation of a specialist doctor (see paragraph 56 above). The necessary medical treatment

adequately addressing the prisoner's state of health must also be determined with the help of the medical expert and provided to the detainee. The Court notes in this context that the importance of drawing on external medical experts providing specialised assistance to addicts in order to provide prisoners with appropriate treatment is equally stressed in the Committee of Ministers' Recommendation no. R (98) 7 concerning the ethical and organisational aspects of health care in prison (see paragraph 34 above).

76. In the present case, the Court cannot but note that the domestic authorities had strong elements before them indicating that drug substitution therapy could be the adequate medical treatment for the applicant's state of health. Moreover, as shown above (see paragraph 67), following the termination of the abstinence-oriented therapy for lack of success, they were faced with several opinions of medical doctors, including specialists in drug addiction treatment, diverging from that of the specialised internal doctors treating the applicant in prison and, before the abstinence-oriented therapy failed, in the detoxification facility, on the question of the necessary medical treatment to be provided to the applicant. The Court further cannot but note in that context that it is uncontested that no drug substitution treatment had ever been provided in practice to prisoners in Kaisheim Prison.

77. In these circumstances, the Court considers that in order to ensure that the applicant received the necessary medical treatment in prison the domestic authorities, and in particular the courts, were required to verify, in a timely manner and with the help of an independent doctor skilled in drug addiction treatment, whether the applicant's condition was still adequately treated without such therapy. However, there is no indication that the domestic authorities, with the help of medical expert advice, examined the necessity of drug substitution treatment with regard to the criteria set by the relevant domestic legislation and medical guidelines. Despite the applicant's previous medical treatment with drug substitution therapy for seventeen years, no follow-up was given to the opinions expressed by external doctors H. and B. on the necessity to consider providing the applicant again with drug substitution treatment.

78. As regards the effects of the refusal of drug substitution treatment in prison on the applicant, the Court, having regard to the material before it, considers that drug withdrawal as such causes serious physical strain and extreme mental stress to a manifest and long-term opioid addict which may attain the threshold of Article 3. It notes that, while the applicant was found no longer to suffer from the physical withdrawal symptoms which occur at the beginning of forced abstinence, the – albeit limited – material before the Court, in particular external doctor H.'s assessment, suggests that the chronic pain from which the applicant was suffering throughout the relevant period could have been alleviated more effectively with drug substitution treatment than with the painkillers he received. It was also not contested that this pain in his feet, neck and spine was such that, at least during certain

periods of time during the applicant's detention at issue, some three and a half years, the applicant spent most of his time in bed. The Court further accepts that his suffering was exacerbated by the fact that he was aware of the existence of a treatment which had previously alleviated his pain effectively, but which he was refused.

79. The Court further considers it established that the refusal to provide the applicant continuously with drug substitution treatment despite his manifest opioid addiction caused him considerable and continuous mental suffering for a long time. The applicant also made it plausible that the deterioration of his already poor state of health, and in particular his chronic pain, combined with his craving for heroin, reduced his ability to participate in social life. In the light of these elements, the Court is satisfied that the physical and mental strain the applicant suffered as a result of his health condition as such could, in principle, exceed the unavoidable level of suffering inherent in detention and attain the threshold of Article 3. The domestic authorities therefore had to properly evaluate which was the adequate treatment for his disease in order to secure that he received adequate medical care but, as shown above, failed to prove that the applicant's treatment with painkillers alone was sufficient in the circumstances.

80. In the light of the foregoing, the Court concludes that the respondent State failed to provide credible and convincing evidence showing that the applicant had received comprehensive and adequate medical care in detention, at a level comparable to that which the State authorities have committed themselves to provide to persons in freedom, where drug substitution treatment was available. In coming to this conclusion, the Court bears in mind the particular circumstances of the applicant's case as a long-term drug addict without any realistic chance of overcoming addiction and having received substitution treatment for many years. In this context, the authorities failed to examine with particular scrutiny and with the help of independent and specialist medical expert advice, against the background of a change in the medical treatment, which therapy was to be considered as appropriate. The respondent State therefore failed to comply with its positive obligation under Article 3.

81. There has accordingly been a violation of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. 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

83. The applicant claimed 11,911.20 euros (EUR) in respect of pecuniary damage. He argued that as a result of the refusal of drug substitution treatment he had been unable to work in prison, where he would have earned EUR 14.18 per day on twenty working days per month during his three years and six months' imprisonment. He further claimed EUR 10,000 in non-pecuniary damages. He claimed, in particular, that as a result of the refusal of drug substitution treatment, he had suffered from serious neurological pain throughout his detention, craving for drugs and social isolation resulting from his poor health.

84. The Government contested that the applicant had suffered pecuniary damage by the alleged breach of Article 3. They submitted that the applicant, who had worked for the last time in the 1980s, would not have worked in prison. As for the non-pecuniary damages claimed, the Government considered that the applicant's claim was excessive. They stressed that the applicant could only claim compensation for damage caused by the refusal of drug substitution treatment since June 2011.

85. As for the applicant's claim in respect of pecuniary damage, the Court observes that it emerges from the documents before it that the applicant has been receiving an employment disability pension since 2001 (see paragraph 6 above). It therefore does not consider it proved that it was as a result of the refusal of drug substitution treatment that the applicant had been unable to work and draw wages in prison. It therefore rejects the applicant's claim in this respect for lack of a causal link between the violation found and the pecuniary damage alleged.

86. As for the applicant's claim in respect of non-pecuniary damage, the Court refers to its above finding that the domestic authorities breached Article 3 in that they did not sufficiently examine whether the applicant, for whose diseases as such the respondent State is not responsible, received adequate medical care in detention. The Court does not wish to speculate on the outcome of a proper examination of the question which was the adequate treatment for the applicant and on the effects of the potentially adequate drug substitution treatment compared to the treatment with painkillers the applicant received. The Court therefore considers that in the particular circumstances of the case, the finding of a violation of Article 3 constitutes in itself sufficient just satisfaction for any non-pecuniary damage suffered.

B. Costs and expenses

87. Submitting documentary evidence, the applicant also claimed EUR 1801.05 (including value-added tax (VAT)) for the lawyers' costs and expenses incurred before the domestic courts and EUR 833 (including

VAT) for those incurred before the Court. He explained that the lawyers' costs had been advanced on loan by third persons and that he was obliged to reimburse the costs to them as soon as possible following his release from detention.

88. The Government did not comment on this point.

89. 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. In the present case, regard being had to the documents in its possession and the above criteria, the Court awards the applicant the sum of EUR 1,801.05 (including VAT) claimed for costs and expenses in the domestic proceedings, plus any tax that may be chargeable to the applicant. As for the costs and expenses for the proceedings before this Court, the Court, having regard to the sum claimed and the fact that the applicant was granted legal aid for these proceedings, does not make an award under this head.

C. Default interest

90. 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 3 of the Convention;
3. *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, EUR 1,801.05 (one thousand eight hundred and one euros and five cents), including VAT, 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 1 September 2016 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Ganna Yudkivska
President