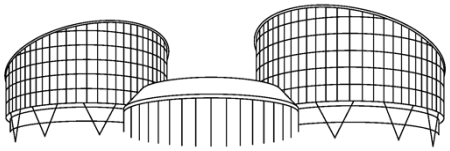

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF KHANH v. CYPRUS

(Application no. 43639/12)

JUDGMENT

STRASBOURG

4 December 2018

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

In the case of Khanh v. Cyprus,

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

Branko Lubarda, *President,*
Pere Pastor Vilanova,
Georgios A. Serghides, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 13 November 2018,

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

PROCEDURE

1. The case originated in an application (no. 43639/12) against the Republic of Cyprus lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Vietnamese national, Ms Thi Nguyen Khanh ("the applicant"), on 2 July 2012.

2. On 12 May 2015 the complaint concerning the applicant's conditions of detention at Limassol Police Station Detention Centre ("Limassol Police Station") was communicated to the Government under Article 3 of the Convention and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

3. The applicant was initially represented by S.E., a Cypriot national, who was not a lawyer. Following the communication of the application, the applicant appointed Ms C. Toka, a lawyer practising in Limassol, to represent her before the Court. The Cypriot Government ("the Government") were represented by their Agent, Mr C. Clerides, Attorney General of the Republic of Cyprus.

4. The Government did not object to the examination of the application by a Committee.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1980 and lives in Vietnam.

6. From 1 March 2012 until 25 July 2012 she was detained at Limassol Police Station pending her deportation. She was deported on the latter date.

A. Conditions of the applicant's detention

1. The applicant's description of the conditions of her detention

7. The applicant submitted that throughout her detention the women's wing at Limassol Police Station had been overcrowded. As result, most of the time she had shared cells with other detainees. When the applicant had been in a double occupancy cell with two bunks, she had shared the cell with up to four other detainees. They all had to share the two bunks. When the applicant had been in a single occupancy cell, which she had initially estimated to measure about 3 to 3.5 sq. m, she had had to share with another detainee and a mattress of about 1.90 m would be placed on the dirty floor alongside her bed. This left only about 30 cm of free space between the mattress and the bed. The mattresses placed in the cells to accommodate additional detainees were filthy and sleeping on the concrete floor with only one blanket was very uncomfortable. The detainees therefore shared the bunks as they could share two blankets this way, which made it warmer.

8. The cells lacked fresh air. Furthermore, the air-conditioning/heating system did not function properly. In addition to a disruption that had lasted three days in March, there were electrical failures or system failures quite frequently, for up to four hours. During this period the cell temperature would drop to two or three degrees above zero and the detention authorities refused to provide more blankets. For this reason, the applicant had asked S.E. to bring her a blanket and a jumper. The disruption of the air-conditioning system also meant that there was no ventilation and the air became foul with so many women in the wing when the weather was warmer in May and June.

9. The applicant was allowed to go to the courtyard for half an hour per day but only when a guard was available. As there was a shortage of police officers to supervise the detainees, in practice this happened every three days. When police officers were absent they were never replaced and as there was overcrowding at the station the detainees' exercise time was consequently reduced. The applicant was deprived of fresh air, light and exercise on most days of her detention.

10. The detention authorities refused to provide basic hygiene products. From the very beginning of her detention, the applicant had contacted S.E. by telephone asking him to bring her soap, shampoo, toilet paper and toothpaste. He had continued to regularly provide her with basic hygiene products.

11. Lastly, the applicant submitted that during her detention the food which was provided by an external restaurant was not compatible with her religious beliefs – she did not eat beef – or with her nutritional habits, which involved eating rice and fish on a daily basis. As the food provided often made her sick, S.E. would regularly bring her meals.

2. The Government's description of the conditions of the applicant's detention

12. The Government submitted that throughout her detention the applicant had been detained in the women's wing at the police station. The wing had eight cells, which could accommodate a total of ten detainees. It had two double occupancy cells which measured 9.99 sq. m (cell no. 27) and 6.48 sq. m (cell no. 28). The remaining eight cells (cells nos. 29-34) were single occupancy cells, each measuring 5.94 sq. m. When it was necessary to place a second detainee in a single occupancy cell or a third detainee in a double occupancy cell, another mattress was placed inside the cell and the additional detainee was provided with, *inter alia*, sheets and blankets. Additional blankets were provided upon request.

13. The Government provided copies of the station's daily occupancy records (*κατάσταση υποδικών-καταδίκων*) indicating the number of detainees (both men and women) held during the relevant period. However, they submitted that no consistent records were kept in relation to the occupancy of particular cells. There was therefore no record as to the precise cells or type of cells in which the applicant had been held. Notwithstanding this, in certain of the daily occupancy records where the cell was recorded, it was consistently noted that the applicant had been detained in cell no. 29.

14. On the basis of the above records, the Government had put together a daily occupancy table for the purposes of the present case concerning the women's wing. According to the table, it was estimated that between 1 March 2012 and 25 July 2012 the wing had accommodated between eight and twenty detainees per day. That meant that when there were ten detainees, the applicant would have been alone in her cell and would thus have had 5.94 sq. m of personal space. When there were eleven to twenty detainees, it was likely that she had shared a cell with another detainee, and would therefore have had 2.97 sq. m of personal space. It was not, however, possible to estimate the length and frequency of the periods during which the applicant had shared a cell with another detainee. According to the table, during the relevant period there had been fifteen days when there were eight to ten detainees in the wing, three when there were eleven detainees in the wing, and at least sixty-three days where there were between twelve and twenty detainees. The remaining sixty-five days were unaccounted for.

15. There were shared toilets and showers in the wing. There were two toilets, two showers, three washbasins and three mirrors. The detainees were provided with toilet paper and hygiene products (soap, sanitary towels and toothpaste) on a daily basis. There was a central air-conditioning system, which provided either heat or cold air. During the period of the applicant's detention, the air conditioning was permanently switched on, with the exception of three days in March 2012 when it was under maintenance. Furthermore, each cell had a ventilation system which also operated around

the clock. All cells had glass block windows measuring 0.62 m by 0.95 m, which were properly insulated against draughts. The cells had lamps which provided artificial light.

16. Female detainees were allowed to move freely in the open courtyard, which measured approximately 172 sq. m, for four hours per day between 3 p.m. and 7 p.m.

B. The applicant's complaints to the authorities

17. On 9 March 2012 and 4 May 2012 S.E. sent letters on behalf of the applicant to the Commissioner for Administration of the Republic of Cyprus ("the Ombudsman") complaining, *inter alia*, about the conditions of the applicant's detention. By a letter dated 20 August 2012 the Ombudsman replied that she had carried out a visit to Limassol Police Station and had submitted a report to the competent authorities with her observations and recommendations. She assured the applicant that her office would continue to closely observe the conditions of detention in that station.

18. On 10 April 2012 S.E. sent a letter on behalf of the applicant to the Independent Authority for Investigation of Allegations and Complaints against the Police ("IAIACAP") complaining about the conditions of her detention and disputing the lawfulness of her arrest and detention. By a letter dated 6 July 2012 the IAIACAP informed the applicant that, following a preliminary investigation into her complaint, there was no basis for any further steps to be taken. In the actual report by the investigator dated 25 June 2012, in so far as the applicant's conditions of detention were concerned, it was stated that the heating at the station had been functioning in March 2012, apart from three days when the system had been under maintenance, and that blankets had been provided.

19. In the meantime, S.E. sent a letter dated 4 April 2012 to the President of the Supreme Court of Cyprus informing him of the problems and violations of rights that the applicant had suffered during her detention. The President of the Supreme Court informed the applicant by a letter dated 5 April 2012 that this matter did not fall within his competence.

20. On 8 June 2012 Mr L. Loucaides, a lawyer who had been hired by S.E., sent a letter of complaint to the General Director of the Ministry of Interior about the conditions of the applicant's detention and the detention itself. As no response was received Mr L. Loucaides sent a follow-up letter on 9 January 2013. This also remained unanswered.

II. RELEVANT INTERNATIONAL AND DOMESTIC REPORTS

A. Relevant international standards: report by the European Committee for the Prevention of Torture

21. On 6 December 2012 the European Committee for the Prevention of Torture ("the CPT") released its report on its visit to Cyprus from 12 to 19 May 2008.

22. The relevant extracts of the report concerning Limassol Police Station read as follows:

> "**5. Conditions of detention**
>
> 55. However, the delegation observed that some cells at *Limassol Police Station* had no windows, and, as a result, no access to natural light or ventilation. **The CPT recommends that these deficiencies be remedied without delay.**
>
> **...**
>
> 56. Once again, the delegation heard consistent complaints about the provision of food, especially as regards quantity, but also as regards quality. Persons remanded in police custody were not provided with food in the evening for the first eight days at *Larnaca Central Police Station*. For the first 15 days of custody at *Pafos* and *Limassol Police Stations*, only cold food was provided, once a day. **The CPT recommends that all persons held on police premises are provided with appropriate food at regular intervals (including at least one full meal every day).**
>
> 57. The CPT has reiterated in the report on each visit to Cyprus that all persons detained longer than 24 hours must be offered the opportunity of one hour of outdoor exercise every day. However, in 2008, outdoor exercise was provided only at *Police Prison (Block 10)* and *Larnaca* and *Paralimni Police Stations*. At *Aradippou* and *Limassol Police Stations*, detained persons were offered, at best, access for several hours to a courtyard covered by corrugated plastic sheeting. Thus, outdoor exercise was still not provided at most police establishments, including those which held primarily or exclusively long-term immigration detainees, such as the *former Famagusta detention facility in Larnaca* and *Lakatamia Police Stations*.
>
> ...
>
> **The CPT calls upon the Cypriot authorities to ensure that all persons detained in police stations for longer than 24 hours are offered one hour of daily outdoor exercise.**
>
> 58. Subject to remedying the shortcomings identified above, the existing police detention facilities visited in Cyprus were suitable for accommodating detained persons for short periods of time, i.e. for a few days. However, as the CPT has stressed in the past, police detention facilities will generally remain inappropriate for holding persons for prolonged periods. Indeed, none of the police establishments visited offered the material conditions or the opportunities for activities that persons detained for prolonged periods are entitled to expect. ...
>
> At the end-of-visit talks with the Cypriot authorities, the visiting delegation made an immediate observation pursuant to Article 8, paragraph 5, of the European Convention for the prevention of Torture and Inhuman or Degrading Treatment or Punishment, requesting that the Cypriot authorities take immediate steps to improve

the conditions of detention of persons held in police custody for prolonged periods. The delegation requested to be informed, within three months, of action taken in response to the immediate observation.

59. By letter of 8 September 2008, the Cypriot authorities informed the CPT that remand police custody rarely lasts longer than 16 days, and that, as regards immigration detention, pursuant to a recent decision of the Minister of Interior, he personally examines, on a case-by-case basis, the files of non-EU nationals detained for longer than six months. Where there is no prospect of deportation and the individual has not committed any criminal act, he or she is set free and issued with a 12-month temporary residence/employment permit, after which the case is re-examined. The Cypriot authorities also informed the CPT that a new establishment for the detention of up to 300 aliens was planned for 2012.

...

61. The CPT remains concerned by the persistence of the Cypriot authorities in using unsuitable premises for persons detained pursuant to the aliens legislation, and for prolonged periods.

It is certainly positive that the Cypriot authorities state that they intend not to keep aliens in detention for longer than 6 months. However, the fact remains that holding such persons in police stations for months on end is not acceptable. A solution to this problem cannot await the opening of the new aliens centre planned for 2012. The CPT has already described, in its previous report, the standards that accommodation provided to persons detained for prolonged periods under aliens an asylum legislation should meet.

The CPT once again recommends that the Cypriot authorities urgently review the conditions in the existing centres designed to hold persons deprived of their liberty under aliens/asylum legislation, in the light of the aforementioned standards, and that they ensure that any additional centres they establish comply with those standards.

..."

B. Relevant domestic reports: the report of the Ombudsman

23. On 31 July 2012 the Ombudsman released a report on the conditions of detention and the treatment of detainees at Limassol Police Station following a visit carried out on 23 May 2012 by her office. In the report the Ombudsman observed, in so far as relevant to the present case, the following.

24. The station was overcrowded: it could house a maximum of thirty-seven men and ten women but on the day of the visit there had been forty-two men male detainees and nineteen women. It had thus substantially exceeded its capacity.

25. The facilities were old and totally unsuitable for long-term detention and did not provide dignified conditions of detention. Taking into account the CPT's recommendations, none of the cells were of an adequate size. The hygiene and sanitation facilities, as well as nutrition, were inadequate and although the cell temperature was satisfactory there was no natural light or

proper ventilation, contrary to both CPT and United Nations standards (referring to CPT/Inf/E (2002) 1 - Rev. 2010 and the United Nations Standard Minimum Rules for the Treatment of Prisoners (1957)). The cells had no windows but just glass blocks which did not allow natural ventilation and light.

26. Furthermore, the Ombudsman observed that although the station's director had informed her that the detainees had access to hygiene products (for example, toilet paper, soap and shampoo), he had also informed her that in 2012 the budget for these products had been reduced from 3,000 euros (EUR) to EUR 400. This drastic cutback was not in line with the relevant CPT standards and the sum allocated was not enough to cover the needs of all the detainees.

27. Although she had been informed that sheets were sent to the laundry once a week, there had been complaints by detainees that there were not enough sheets to go round and that they were often dirty. Similarly, complaints had been made to her about the cleanliness of mattresses, many of which were placed on the floor because of overcrowding.

28. The centre had an internal courtyard with natural light and ventilation which female detainees could use from 3 p.m. to 7 p.m. In the Ombudsman's view this was satisfactory as it secured, in line with CPT standards, the detainees' right to least one hour's daily exercise.

29. The Ombudsman concluded that the infrastructure of the facilities had serious shortcomings and inadequacies and was not compatible with the fundamental principles for the treatment of prisoners and international standards for detention and imprisonment. In particular, in addition to overcrowding, the shortcomings that existed as to natural ventilation, minimum/basic hygiene conditions and the failure to separate pre-trial detainees from immigration detainees, rendered the centre completely unsuitable for detention, especially for a period exceeding six months.

30. The Ombudsman made recommendations which included the immediate adoption of measures to add a window to each cell, to end overcrowding and the practice of detainees sleeping on mattresses on the floor, to provide personal hygiene products to detainees at any time and to review the budget that was allocated for this purpose.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

31. The applicant complained that the conditions of her detention at Limassol Police Station had been inadequate. The complaint falls to be considered under Article 3 of the Convention, which reads as follows:

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

32. The Government contested that argument.

A. Admissibility

33. In their initial observations of 18 September 2015 the Government questioned whether the applicant wished to pursue her application before the Court. The applicant contested this in her observations in reply.

34. Furthermore, in their final observations of 8 December 2015 the Government contested the representation of the applicant both by S.E. at the initial stages and by Ms C. Toka subsequent to communication of the application.

35. Taking into account all the documents in the case file, the Court is satisfied that the application was validly lodged, that both S.E. and Ms C. Toka were duly authorised to represent the applicant and that the applicant wishes to pursue her application before the Court. The Government's objections on these matters must therefore be dismissed.

36. 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

37. The applicant submitted that the conditions of her detention at the police station for a period of approximately five months constituted inhuman and degrading treatment in breach of Article 3 of the Convention. As found by the CPT in its 2012 report and the Ombudsman in her report of 31 July 2012, police detention facilities in Cyprus were inadequate for holding people for prolonged periods. The detention facilities at Limassol Police Station had been unsuitable for detaining people for long periods: there had been overcrowding, the sanitary facilities had been inadequate and the applicant had been deprived of fresh air, natural light and exercise during most of her detention.

38. From the very beginning of her detention, the applicant had contacted S.E. by telephone asking him to supply her with various necessities that the station's authorities had refused to provide. She had asked him for a blanket and a jumper because it had been cold, the heating had not been working and there had not been enough blankets to go round.

She pointed out in this respect that the Ombudsman had visited the station on 23 May 2012, when the weather had been warm.

39. S.E. had also repeatedly provided the applicant with hygiene products. The Ombudsman in her report had pointed to the insufficiency of the budget allocated for such products *vis-à-vis* the needs of the detainees.

40. The applicant pointed out that in accordance with the Government's calculations, she had shared her cell for fifty-eight out of the eighty days the authorities had recorded, and out of the total of 145 days of her detention the estimate had been that for 104 days she must have shared her cell with one detainee when she was in cell no. 29 and more than one detainee when she was in cell no. 28. It also appeared from the records submitted by the Government that on some days up to twenty-one women had been held in the wing and that throughout almost her entire detention the numbers of detainees had significantly exceeded the formal capacity of ten women. This was corroborated by the Ombudsman's report of 31 July 2012.

(b) The Government

41. The Government submitted that in assessing the conditions of detention, account had to be taken of the specific allegations made by the applicant (referring to *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). In the present case the applicant's allegations had been too general. In any event, it appeared from the documents provided by the authorities that the applicant's description of the conditions of her detention was unfounded.

42. The applicant had not been held with four other women in the cell in which she had been placed. There was evidence showing that she had been held in a single occupancy cell – that is, cell 29 – and that it was likely that she had shared that cell with one other detainee. When she had shared her cell she had had 2.97 sq. m of personal space. This situation had not pursued the aim of humiliating or debasing her. Although it may have caused her some inconvenience, it had not adversely affected her. The lack of space had been compensated for by the fact that she had been able to move freely in the open courtyard for four hours per day. The courtyard provided access to natural light and the detainees had between 8.6 sq. m and 17.2 sq. m of personal space depending on the number of detainees housed in the wing. When a female police officer had been sick or otherwise engaged, she had been replaced by another female officer. Thus, contrary to the applicant's claim, the daily exercise schedule had not been affected.

43. Similarly, although this had been inconvenient, the applicant had not been adversely affected when the air-conditioning system had not functioned for three days in March 2012 owing to maintenance work. In connection with the latter, the Government pointed out that apart from those three days, the system had functioned properly throughout the applicant's

detention. The Ombudsman in her report had observed that the temperature in the wing had been satisfactory.

44. The Government concluded that the authorities had not failed to comply with their obligation to ensure that the applicant was not subjected to distress or hardship exceeding the unavoidable level of suffering inherent in detention. In any event, they argued that the conditions of the applicant's detention had not met the threshold required for a violation of Article 3.

2. The Court's assessment

(a) General principles

45. The Court refers to the principles summarised in its case-law regarding inadequate conditions of detention (for a summary of the relevant general principles see the recent Grand Chamber judgment in the case of *Muršić v. Croatia* [GC], no. 7334/13, §§ 96-141, 20 October 2016).

(b) Application to the present case

46. The Court notes at the outset that the applicant was detained for nearly five months at Limassol Police Station, a police establishment designed for short periods of detention. The Court has already ruled that police stations and other similar establishments which, by their very nature, are places designed to accommodate people for very short durations, are not appropriate places for the detention of people who are waiting for the application of an administrative measure, such as deportation (see, for example, *Thuo v. Cyprus*, no. 3869/07, § 159, 4 April 2017 with further references). On that point, the Court observes that the Cypriot authorities' practice of detaining aliens subject to deportation procedures in police facilities for long periods has been explicitly mentioned by the CPT, *inter alia* in its 2012 report describing such establishments as unsuitable for detaining people under immigration legislation for prolonged periods (see paragraph 22 above). It is true that the CPT's visit in 2008 took place nearly three years and ten months before the applicant's detention in the present case. However, there is nothing to suggest that the material conditions at the station changed dramatically between 2008 and 2012. This is evident from the description of the facilities set out in the Ombudsman's report of 31 July 2012 following her visit on 23 May 2012 during the applicant's detention (see paragraphs 23-29 above). The Ombudsman pointed out, *inter alia*, that the facilities were old and totally unsuitable for long-term detention and did not provide dignified conditions of detention (see paragraph 25 above).

47. The applicant submitted that throughout her detention the women's wing at the station had been full beyond its capacity, to the point that there was a flagrant lack of personal space. The Ombudsman's report following her visit during the relevant period lends credence to the applicant's allegations (see paragraphs 24, 25 and 29 above). Thus, having in mind the

above-mentioned inadequacy of the police station for accommodating the applicant for a long period of time, the Court will examine her complaint of overcrowding on the basis of the principles set out in the *Muršić* case.

48. The Court reiterates that Convention proceedings such as those relating to the present application do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation), as in certain instances the respondent Government alone have access to information capable of corroborating or refuting allegations. A failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see, among many other authorities, *Mela v. Russia*, no. 34044/08, § 62, 23 October 2014; *Mitrokhin v. Russia*, no. 35648/04, § 51, 24 January 2012; and *Grigoryevskikh v. Russia*, no. 22/03, § 59, 9 April 2009; see also, for the burden of proof in such cases, *Muršić*, cited above, § 128).

49. The Court notes that the documents submitted by the Government for the period of the applicant's detention are incomplete as no consistent and continuous records were kept as to the precise cells in which the applicant was held and the number of detainees held in them every day. The table they prepared concerning the number of detainees in the women's wing during the relevant period is also incomplete. It does appear from this table, however, that the women's wing was overcrowded for the majority of the days recorded and, overall, for more than two months during the applicant's detention. During the period of nearly five months, there are only fifteen days recorded where there were eight to ten detainees and only three when there were eleven detainees in the wing. The Government admitted that when the number of detainees exceeded the wing's capacity it was likely that the applicant would have shared a cell with another detainee, and therefore would have had 2.97 sq. m of personal space (see paragraphs 14 and 42 above).

50. The Government have failed to submit information capable of refuting the applicant's allegations that the women's wing at the police station was overcrowded and that for the greater part of her detention she was held in cells in which she had less than 3 sq. m. Consequently, a strong presumption of a violation of Article 3 arises in the case at hand (see *Muršić*, cited above, §§ 136-37). As the Government have not shown that there were only short, occasional and minor reductions in the required personal space (ibid., §§ 151-53), this presumption cannot be called into question.

51. Accordingly, the Court finds that during the relevant period the conditions of the applicant's detention subjected her to hardship going beyond the unavoidable level of suffering inherent in detention and thus amounted to degrading treatment prohibited by Article 3 of the Convention.

52. In view of that conclusion, the Court does not need to examine the applicant's remaining complaints concerning the conditions of her detention at Limassol Police Station.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant claimed EUR 40,000 in respect of non-pecuniary damage. She submitted that she had suffered both mentally and physically during her detention for nearly five months in inhuman and degrading conditions.

55. The Government rejected the applicant's claim as excessive.

56. The Court accepts that the applicant has suffered non-pecuniary damage as a result of the conditions of her detention in Cyprus and, ruling on an equitable basis, awards her EUR 6,500 under that head, plus any tax that may be chargeable.

B. Costs and expenses

57. The applicant claimed a total of EUR 4,070 for costs and expenses incurred in connection with her case. Firstly, she claimed EUR 3,570 for the work carried out by her lawyer before the Court, submitting a pro-forma invoice itemising the fees incurred on this account. This amount was broken down as follows: EUR 476 for preparatory work and letters sent to the Registry; EUR 1,904 for eight hours' work carried out on research and studying the documents of the case; and EUR 1,190 for five hours' work on preparing the submissions in the case. The amounts included VAT at 19%.

58. Secondly, the applicant also claimed the sum of EUR 500 which had been paid to Mr L. Loucaides by her previous representative S.E. in connection with her case. She submitted a receipt for that payment.

59. The Government submitted that the applicant could not recover costs which had not been actually incurred, which had not been necessarily incurred to prevent or redress the breach of the Convention found by the Court and which were not reasonable as to quantum. They submitted that the applicant had not paid, and was not bound by any legal or contractual obligation to pay, the amounts on the pro-forma invoice and the receipt. In

the alternative, they claimed that the amount claimed under this head was excessive.

60. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the amount claimed in full, plus any tax that may be chargeable to the applicant.

C. Default interest

61. 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, the following amounts:
      (i) EUR 6,500 (six thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 4,070 (four thousand and seventy euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 4 December 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Branko Lubarda
President