



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

FIFTH SECTION

CASE OF VITRUK v. UKRAINE

(Application no. 26127/03)

JUDGMENT

STRASBOURG

16 September 2010

FINAL

21/02/2011

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

In the case of Vitruk v. Ukraine,

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

Peer Lorenzen, *President*,
Renate Jaeger,
Rait Maruste,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Ganna Yudkivska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 24 August 2010,

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

PROCEDURE

1. The case originated in an application (no. 26127/03) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Nikolay Anatolyevich Vitruk (“the applicant”), on 26 July 2003.

2. The applicant was represented by Mr M. Stadnyuk, a lawyer practising in Kyiv. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev, from the Ministry of Justice.

3. The applicant alleged, in particular, that his pre-trial detention had been unlawful and excessively long, that the domestic courts had failed to consider his complaints about the unlawfulness of his detention properly and that the length of the criminal proceedings against him had been excessive.

4. On 7 July 2009 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Mr Nikolay Anatolyevich Vitruk, is a Ukrainian national who was born in 1979 and lives in Kiev.

6. On 8 May 1999 the Kyiv Vatutinsky District Prosecutor Office instituted proceedings into the murder of Mr S.

7. On 10 May 1999 criminal proceedings were instituted against the applicant and two other individuals – Mr Suptel¹ and Mr N.

8. On 13 May 1999 the police apprehended the applicant. According to the applicant, the police officers severely beat him for several hours, forcing him to confess to the murder.

9. On 14 May 1999 a medical expert examined the applicant and established that he had four scratches on his finger and a black eye. The expert noted that the applicant could have injured his finger with the knife used to stab the victim Mr S. Later, at the court hearing, the applicant claimed that he had injured his finger while moving furniture.

10. On 16 May 1999 the Vatutinsky District Prosecutor ordered the applicant's detention on the grounds that he was suspected of a serious crime and that there was a danger that he could abscond and interfere with the course of justice.

11. On 24 May 1999 the applicant was questioned in the presence of a lawyer and claimed his innocence. The same day he was officially charged with murder.

12. On 23 June 1999 the applicant sent a complaint to the Kyiv Vatutinsky District Prosecutor's Office (the VDPO) alleging ill-treatment by the police on 13 May 1999.

13. On 9 July and 7 September 1999 the military prosecutor of the Central Region extended the applicant's pre-trial detention to four and six months respectively.

14. On 22 September 1999 the applicant complained again to the VDPO with respect of his alleged ill-treatment on 13 May 1999.

15. On 29 October 1999 the VDPO refused to institute criminal proceedings into the applicant's allegations of ill-treatment. It was established that the applicant had a black eye which had been inflicted by the police at the moment of arrest because of the applicant's resistance. The only other injuries found were the scratches on one of the applicant's fingers which had occurred prior to the date of his arrest. The decision referred also to the fact that the applicant's father who was himself a police officer had seen his son during the questioning and the applicant had made no complaints to him about any ill-treatment. On the same day a copy of this decision was sent to the applicant. It does not appear from the case-file materials or the applicant's submissions that he appealed against this refusal to the court.

16. On 5 November 1999 the investigation was completed and the applicant was given access to the case file.

¹ See *Suptel v. Ukraine*, no. 39188/04, 19 February 2009

17. On 23 November 1999 the Vatutinsky District Court rejected the applicant's complaint against the detention order having found that it had been issued in accordance with the law.

18. On 19 April 2000 the defendants finished examining the case-file materials.

19. On 24 April 2000 the criminal case was referred to the Kyiv City Court of Appeal (the Kyiv Court).

20. On 10 May 2000 the Kyiv Court held the committal hearing and decided to maintain the applicant's detention.

21. On 5 October 2000 the Kyiv Court refused to change the preventive measure (detention) in respect of the applicant.

22. On 31 October 2000 the Kyiv Court found the applicant guilty of murder and sentenced him to fifteen years' imprisonment. The court considered the applicant's allegations of ill-treatment and found them unsubstantiated on the ground that his account of the events did not correspond to the findings of the forensic medical examination of 14 March 1999. The medical expert confirmed at the court hearings that he had thoroughly examined the applicant and found no injuries other than those indicated in his report (see paragraph 9 above).

23. On 17 May 2001 the Supreme Court of Ukraine quashed the decision of the city court and remitted the case for further investigation. It maintained the applicant's detention without indicating any grounds.

24. On 25 June 2001 the Vatutinsky District Prosecutor ordered the applicant's detention for one month – up to 25 July 2001.

25. On 24 July 2001 the prosecutor issued a new decision extending the applicant's detention for one month – until 25 August 2001. This decision was cancelled by the Kyiv Prosecutor's Office on 6 August 2001 for being unlawful.

26. On 8 August 2001 the prosecutor requested the Kyiv Court to extend the applicant's detention for up to nine months.

27. On 20 August 2001 the Kyiv Court extended the applicant's detention for up to nine months (25 September 2001) on the ground that he had committed a serious crime and there was a danger that he could abscond or interfere with the investigation.

28. The applicant examined the case-file materials between 18 September and 13 December 2001 and between 7 February and 13 February 2002.

29. On 21 February 2002 the investigation was completed and the case referred to the Kyiv Court.

30. On 26 March 2002 the Shevchenkivsky District Court of Kyiv rejected the applicant's complaint against SIZO no. 13 for failure to release him after the expiry of the nine-month period of pre-trial detention ordered by the court. On 4 July 2002 the Kyiv Court quashed the decision of 26 March 2002 and terminated the proceedings on the ground that the

disputed actions had to be considered under the criminal, rather than the civil, procedure. On 24 December 2002 the Supreme Court upheld the decision of the Kyiv Court.

31. On 10 April 2002 the Kyiv Court held the committal hearing and decided to remit the criminal case for further investigation. It also maintained the applicant's detention on the ground that he was accused of a serious crime and the possibility that he might attempt to escape or interfere with the course of justice could not be ruled out.

32. On 13 June 2002 the Supreme Court upheld the decision of 10 April 2002. It also noted that the decision on the applicant's detention was lawful and well-reasoned.

33. On 2 July 2002 the VDPO received the criminal case file.

34. On 15 July 2002 the Vatutinsky District Prosecutor extended the period of the investigation for one month. It was also indicated in this decision that the period of detention for the accused should not exceed two months and should be calculated from the date when the criminal case arrived at the prosecutor's office. The prosecutor also noted that it was impossible to change the preventive measure (detention) in respect of the applicant and the other accused since they had committed a serious crime and if released could reoffend or abscond.

35. On 16 August 2002 the additional investigation was completed.

36. From September 2002 to 4 October 2002 the applicant examined the case-file materials.

37. On 1 November 2002 the case was submitted to the Kyiv Court.

38. On 16 December 2002 the Kyiv Court held a committal hearing. It maintained the applicant's detention because of the seriousness of the accusations against him.

39. On 25 March, 10 April 2003, 26 June and 21 October 2003, the Kyiv Court rejected the applicant's requests for release because of the seriousness of the accusations against the applicant and the lack of grounds for changing the preventive measure.

40. On 6 November 2003 the Kyiv Court remitted the case for further investigation. It maintained the applicant's detention on the grounds of the seriousness of the accusations against the applicant and the risk of his absconding and interfering with the investigation.

41. On 15 April 2004 the Supreme Court of Ukraine remitted the case for further investigation. It maintained the applicant's detention stating that given the seriousness of accusation against him there were no grounds for changing the preventive measure.

42. On 21 July 2004 the applicant was released by the prosecutor under an obligation not to abscond. The decision noted that it was no longer necessary to hold the applicant in custody and there were no grounds to believe that he might abscond or influence further investigation.

43. On 11 October 2006 the criminal proceedings were terminated. The applicant's obligation not to abscond was lifted. Later the same month the criminal proceedings were renewed.

44. On 28 December 2006 the criminal proceedings were terminated.

45. On 13 August 2007 the General Prosecutor's Office quashed the decision of 28 December 2006 and referred the case for further pre-trial investigation.

46. On 27 August 2007 the pre-trial investigation was resumed.

47. On 11 September 2007 Desnyansky District Prosecutor's Office suspended the investigation because of the impossibility of establishing the whereabouts of the suspect Mr N.

II. RELEVANT DOMESTIC LAW

48. Relevant domestic law is summarised in the cases of *Shalimov v. Ukraine* (no. 20808/02, § 39-41, 4 March 2010), *Solovey and Zozulya v. Ukraine* (nos. 40774/02 and 4048/03, § 43, 27 November 2008), and *Kozinets v. Ukraine* (no. 75520/01, §§ 39-42, 6 December 2007).

THE LAW

I. SCOPE OF THE CASE

49. In his reply to the Government's observations, the applicant submitted new complaints under Article 3 of the Convention, alleging that the conditions of his detention were poor and he had not received proper medical treatment – having contracted hepatitis while in detention. The Court notes that these new belated complaints are not an elaboration of the applicant's original complaints on which the parties have commented. The Court considers, therefore, that it is not appropriate now to take these matters up separately (see, *mutatis mutandis*, *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

50. The applicant complained under Article 3 of the Convention that he had been ill-treated by the police on the day of his arrest and that his allegedly unlawful detention for a long period of time constituted, in itself, inhuman and degrading treatment. Article 3 of the Convention reads as follows:

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

A. Alleged ill-treatment of the applicant

51. The Government considered that the applicant's complaint of alleged ill-treatment must be rejected as it was submitted too late. They maintained the last decision, in which this issue had been examined, had been given by the Supreme Court of Ukraine on 13 June 2002 while the application had been lodged on 26 July 2003.

52. The applicant disagreed. He noted that his complaints of alleged ill-treatment had been considered by the courts also in further proceedings in 2003 and not in 2002 as the Government maintained.

53. The Court notes that the parties disagreed as to the moment from which the six-month period should run as regards the applicant's case. Both of them refer, however, to the criminal proceedings against the applicant in which the issue of his alleged ill-treatment had been raised. The Court notes that examination of allegations of ill-treatment of the accused in the criminal trial against him or her may only exceptionally be considered a remedy to be exhausted for the purpose of Article 35 § 1 of the Convention (see and compare, *Yakovenko v. Ukraine*, no. 15825/06, § 72, 25 October 2007 and *Yaremenko v. Ukraine*, no. 32092/02, § 65, 12 June 2008), but at this stage of examination it is for the Government to raise any objection regarding the exhaustion of domestic remedies. Nevertheless, the Court does not see a need to discuss the above issues in the present case, given that this complaint of the applicant must be declared inadmissible for the reasons which follow.

54. The applicant maintained that after his arrest he had been severely beaten by the police for hours, although the following day when he was examined by a medical expert it was established that he had a black eye and scratches on one of his fingers. The latter injury was examined by the law-enforcement and judicial authorities as possible proof of his involvement in the crime, while at the court hearing the applicant claimed that he had caused it himself when he had been moving furniture. According to the forensic examination which was conducted within hours of the alleged ill-treatment and the conclusions of which the applicant did not dispute, the only injury that could have been caused by the police was the black eye and this injury alone does not appear to match the applicant's description of his alleged ill-treatment, namely, long severe beatings by the police on different parts of his body. The domestic authorities therefore rejected this complaint and it remains unsubstantiated before this Court.

55. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Lawfulness and length of the applicant's detention

56. The Government noted that the applicant had not complained about the conditions of his detention, but only about its unlawfulness and length. However, in their opinion, these issues fall to be examined under Article 5 of the Convention.

57. The applicant made no further comments.

58. The Court, which is master of the characterisation to be given in law to the facts of the case, decides to examine this problem raised by the applicant under Article 5 of the Convention which is the relevant provision.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

59. The applicant complained under Article 5 § 1 (a) of the Convention that he remained in custody for more than five years without being convicted by a court. The applicant complained under Article 5 § 4 of the Convention that his detention was not extended by the courts as required by domestic law. Under Article 5 § 5 of the Convention, he complained that his numerous complaints about the unlawfulness of his detention were unsuccessful. He also complained that he was detained unlawfully and for an excessive period of time in violation of Article 5 § 3 of the Convention.

60. The Court reiterates that Article 34 requires that individual applicants should claim to be a victim “of a violation of the rights set forth in the Convention”; it does not oblige them to specify which Article, paragraph or sub-paragraph, or even which right, they are praying in aid. Any greater strictness would lead to unjust consequences; for the vast majority of “individual” petitions are received from laymen applying to the Court without the assistance of a lawyer (see, *mutatis mutandis*, *Guzzardi v. Italy*, 6 November 1980, § 61, Series A no. 39).

61. The Court observes that prior to communication of the application to the respondent Government the applicant had not been represented by a lawyer. The Court, as master of the characterisation to be given in law to the facts of the case, will look at the substance of the complaints made by the applicant under Article 5, rather than the provisions to which he referred. The Court has decided, therefore, to examine the applicant's complaints about the unlawfulness of his pre-trial detention under Article 5 § 1 (c), his complaints about length of his pre-trial detention under Article 5 § 3, and his complaints about the ineffectiveness of the review of his applications for release under Article 5 § 4 of the Convention.

62. The relevant provisions of Article 5 read as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

A. Admissibility

63. The Government maintained that the applicant's detention on remand had consisted of two separate periods which were interrupted by the applicant's conviction on 31 October 2000. Given that the application had been lodged on 26 July 2003, in the Government's opinion the complaints about the length of the applicants' detention on remand prior to 31 October 2000 were inadmissible under the six-month rule.

64. The applicant made no comments.

65. The Court first points out that, in determining the length of detention pending trial under Article 5 § 3 of the Convention, the period to be taken into consideration begins on the day the accused is taken into custody and ends on the day when the charge is determined, even if only by a court of first instance (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, §§ 145 and 147, ECHR 2000-IV).

66. Furthermore, the Court observes that, in view of the essential link between Article 5 § 3 of the Convention and paragraph 1 (c) of that Article, a person convicted at first instance cannot be regarded as being detained “for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence”, as specified in the latter provision, but is in the position provided for by Article 5 § 1 (a), which authorises deprivation of liberty “after conviction by a competent court” (see *Kudła v. Poland* [GC], no. 30210/96, § 104, ECHR 2000-XI, and *Panchenko v. Russia*, no. 45100/98, § 93, 8 February 2005). Accordingly, the applicant's detention from 31 October 2000, the date of his original first-instance conviction, to 17 May 2001, the date on which that conviction was quashed and the case remitted, cannot be taken into account for the purposes of Article 5 § 3.

67. The Court also notes that when there are two separate periods of detention on remand, as in the present case, the question whether or not the Court can look into complaints referring to the first period, if such period taken separately falls outside the six-month time-limit, depends on the nature of the complaints and the type of violation alleged. Given that detention on remand is a continuous situation and that the Court on many occasions has decided that where an accused person is detained for two or more separate periods pending trial, the reasonable-time guarantee of Article 5 § 3 requires a global assessment of the aggregate period (see *Kemmache v. France (no. 1 and no. 2)*, 27 November 1991, § 44, Series A no. 218; *Vaccaro v. Italy*, no. 41852/98, 16 November 2000, §§ 31-33; *Mitev v. Bulgaria*, no. 40063/98, 22 December 2004, § 102; and *Kolev v. Bulgaria*, no. 50326/99, § 53, 28 April 2005; *Solovey and Zozulya v. Ukraine*, cited above, § 56) the Court does not see any reason to depart from the above case-law in the present case. The Court therefore dismisses this objection of the Government.

68. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Lawfulness of the detention under Article 5 § 1 (c)

1. Parties' submissions

69. The applicant complained that his pre-trial detention had been unlawful.

70. The Government maintained that the grounds of the applicant's pre-trial detention were clearly defined and the law itself was foreseeable in its application, so that it met the standard of "lawfulness" set by the Convention. They maintained that the applicant had been detained on the ground of suspicion of having committed a serious crime and with the aim of ensuring his continued participation in the legal process. Furthermore, the periods of the applicant's detention covered by the court decisions protected the applicant from "arbitrariness", which protection is intrinsic to the meaning of "lawfulness" of detention under Article 5 of the Convention.

2. Court's assessment

(a) General principles enshrined in the case-law

71. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and lay down an obligation to conform to the

substantive and procedural rules thereof. While it is for the national authorities, notably the courts, to interpret and apply domestic law, the Court may review whether national law has been observed for the purposes of this Convention provision (see, among other authorities, *Assanidze v. Georgia* [GC], no. 71503/01, § 171, ECHR 2004-II).

72. However, the “lawfulness” of detention under domestic law is the primary, but not always the decisive element. The Court must, in addition, be satisfied that the detention, during the period under consideration, was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary manner. Moreover, the Court must ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein (see *Winterwerp v. the Netherlands*, 24 October 1979, § 45, Series A no. 33).

(b) Application to the present case

73. The Court notes that the applicant's pre-trial detention falls into three categories: the period during which the applicant's custody was covered by the detention orders issued by prosecutors; the period during which the applicant's detention was not covered by any decision; and the period during which his detention was covered by the court decisions.

(i) Applicant's detention under prosecutors' orders

74. The Court notes that the applicant's detention was initially ordered by the Kyiv Vatutinsky District Prosecutor on 16 May 1999. The relevant period covered by this decision of the prosecutor was between 13 May and 13 July 1999. Detention under this procedure was covered by a reservation to Article 5 § 1 (c) of the Convention that had been entered by Ukraine in accordance with Article 57 of the Convention with the intention of maintaining the procedure governing arrest and detention in force at the material time until 29 June 2001. It refers to its findings in the *Nevmerzhitsky* case that under the terms of the above reservation, Ukraine was under no Convention obligation to guarantee that the initial arrest and detention of persons such as the applicants should be ordered by a judge. The Court also found in that case, however, that the issue of continued detention was not covered by the above reservation (see *Nevmerzhitsky v. Ukraine*, no. 54825/00, §§ 112-114, ECHR 2005-II).

75. The Court notes that several further periods of the applicant's detention were also covered by the decisions of a prosecutor. These were the periods between 13 July and 13 November 1999, between 13 September and 13 November 1999 and between 25 June and 20 August 2001.

76. The Court notes that there were no court decisions taken as to the applicant's continued detention during the above periods. The decisions to extend the applicant's detention were taken by prosecutors, who were a

party in the proceedings, and cannot in principle be regarded as “independent officers authorised by law to exercise judicial power” (see *Merit v. Ukraine*, no. 66561/01, § 63, 30 March 2004). In these circumstances, the Court concludes that the applicant's continued detention as ordered by the prosecutors was not lawful within the meaning of Article 5 § 1 (c) of the Convention.

(ii) Applicant's detention not covered by any decision

77. The Court notes that no domestic decision was required to validate a period of detention during which a person had been given access to the case file, in accordance with Article 156 of the Code of Criminal Procedure as then in force. Furthermore, the periods of transmittal and transfer of the case from the prosecutor to the court and back were often not covered by any decision either. In the present case, these periods were between 13 November 1999 and 10 May 2000 and between 25 September 2001 and 10 April 2002.

78. The Court notes that relevant domestic law regulates procedural steps concerning the study of the case-file, the committal proceedings and transmittals of the case for further investigation, but it does not set clear rules as to by what authority, on what grounds and for what term the detention of the accused can be extended (see *Solovey and Zozulya v. Ukraine*, cited above, § 72). The Court has held on many occasions that the practice of keeping defendants in detention without a specific legal basis or clear rules governing their detention – with the result that they may be deprived of their liberty for an unlimited period without judicial authorisation – is incompatible with the principles of legal certainty and protection from arbitrariness, which are common threads throughout the Convention and the rule of law (see *Korchuganova v. Russia*, no. 75039/01, § 57, 8 June 2006; *Nakhmanovich v. Russia*, no. 55669/00, §§ 67-68, 2 March 2006; and *Khudoyorov v. Russia*, no. 6847/02, §§ 146-148, ECHR 2005-X).

79. Therefore, those periods of the applicant's detention without any decision ordering such detention were not in accordance with Article 5 § 1 of the Convention.

(iii) Lawfulness of the applicant's detention under the court orders

80. The Court observes that under Article 242 of the Code of Criminal Procedure, a domestic court, when committing a person for trial, must assess whether the preventive measure that was selected at the investigation stage is appropriate. Reasons for the preventive measure are required from the court only when it decides to change the measure (Article 244 of the CCP). It does not appear that the court is required to give reasons for continuing the accused's detention or to fix any time-limit when maintaining

the detention (see *Solovey and Zozulya v. Ukraine*, cited above, §§ 43, 74-76).

81. The Court considers that the absence of any precise provisions laying down whether – and if so, under what conditions – detention ordered for a limited period at the investigation stage could properly be extended at the stage of the court proceedings does not satisfy the test of “foreseeability” of a “law” for the purposes of Article 5 § 1 of the Convention (see *Baranowski v. Poland*, no. 28358/95, § 55, ECHR 2000-III, and *Kawka v. Poland*, no. 25874/94, § 51, 9 January 2001).

82. The Court observes that, although the domestic courts upheld the pre-trial detention measure in respect of the applicant on 10 May 2000, 17 May 2001, 10 April and 16 December 2002, 6 November 2003, they did not set a time-limit for his continued detention and sometimes did not give any reasons for their decisions (see paragraphs 20, 23, 31, 38 and 40 above). This left the applicant in a state of uncertainty as to the grounds for his detention. In this connection, the Court reiterates that the absence of any grounds given by the judicial authorities in their decisions authorising detention for a prolonged period of time is incompatible with the principle of protection from arbitrariness enshrined in Article 5 § 1 (see *Nakhmanovich*, cited above, §§ 70-71, and *Stašaitis v. Lithuania*, no. 47679/99, § 67, 21 March 2002). In these circumstances, the Court considers that the above decisions did not afford the applicant the adequate protection from arbitrariness, which protection is intrinsic to the meaning of “lawfulness” of detention under Article 5 § 1 of the Convention, and that, therefore, the applicant's detention on remand during the periods covered by the judicial decisions was likewise not in accordance with Article 5 § 1 of the Convention.

(c) Conclusion

83. The Court concludes that there has been a violation of Article 5 § 1 of the Convention in the above respects.

C. Unreasonable length of detention under Article 5 § 3

84. The applicant complained that his detention on remand had been excessively long.

85. The Government maintained that the length of the applicant's detention had been reasonable and that there had been sufficient grounds for holding the applicant in custody during the whole period of his detention given that the applicant was suspected of having committed a serious crime and could abscond or interfere with the course of justice.

86. The Court reiterates its above reasoning as to the necessity of a global assessment of the aggregate duration of two or more separate periods of detention on remand for the purposes of the reasonable-time guarantee of

Article 5 § 3 and finds that the period to be taken into consideration in the present case consisted of two separate terms, the first lasting from 13 May 1999 to 31 October 2000 and the second from 17 May 2001 to 21 July 2004, and amounted, in total, to four years and almost eight months.

87. The Court recalls that the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. This must be assessed in each case according to its special features, the reasons given in the domestic decisions and the well-documented facts mentioned by the applicant in his applications for release. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see, among others, *Labita v. Italy* [GC], cited above, § 153).

88. The Court notes that the seriousness of the charges against the applicant and the risk of his absconding and interfering with the course of justice had been put forward in the initial order on the applicant's detention (see paragraph 10 above). Thereafter, the prosecutors and the courts put forward the same grounds or did not put forward any grounds whatsoever for maintaining the applicant's detention but simply stated that the previously chosen preventive measure was the correct one. However, Article 5 § 3 requires that, after a certain lapse of time, the persistence of a reasonable suspicion does not in itself justify the deprivation of liberty and the judicial authorities should give other grounds for continued detention (see *Jabłoński v. Poland*, no. 33492/96, § 80, 21 December 2000, and *I.A. v. France*, no. 28213/95, § 102, *Reports of Judgments and Decisions* 1998-VII). Those grounds, moreover, should be expressly stated by the domestic courts (see *Iłowiecki v. Poland*, no. 27504/95, § 61, 4 October 2001). No such reasons were given by the courts in the present case. Furthermore, at no stage did the domestic courts consider any alternative preventive measures instead of detention on remand, and by relying essentially on the gravity of the charges, the authorities extended the applicant's detention on grounds which cannot be regarded as "relevant and sufficient".

89. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 5 § 3 of the Convention.

D. Lack of review of the lawfulness of the detention under Article 5 § 4 of the Convention

90. The applicant considered that the courts did not review his complaints about the unlawfulness of his detention properly but referred to the correctness of the previously selected preventive measure.

91. The Government noted that the lawfulness of the applicant's detention had been reviewed on many occasions between November 1999

and April 2004 and the courts always came to the conclusion that there were sufficient grounds for maintaining the applicant's detention. They considered that the applicant had an effective procedure for challenging the lawfulness of his detention.

92. The Court reiterates that Article 5 § 4 of the Convention entitles arrested or detained persons to a review bearing upon the procedural and substantive conditions which are essential for the “lawfulness”, in Convention terms, of their deprivation of liberty. This means that the competent court has to examine not only compliance with the procedural requirements of domestic law but also the reasonableness of the suspicion underpinning the arrest, and the legitimacy of the purpose pursued by the arrest and the ensuing detention (see *Butkevičius v. Lithuania*, no. 48297/99, § 43, ECHR 2002-II).

93. The Court notes that in the circumstances of the present case the lawfulness of the applicant's detention was considered by the domestic courts on many occasions. However, the court decisions on the applicant's detention do not fully satisfy the requirements of Article 5 § 4. The decisions in questions seem to reiterate the standard set of grounds for the applicant's detention without any examination of the plausibility of such grounds in the circumstances of the applicant's particular situation (see, *mutatis mutandis*, *Belevitskiy v. Russia*, no. 72967/01, §§ 111-112, 1 March 2007).

94. The Court considers that there has accordingly been a violation of Article 5 § 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

95. The applicant further complained about the length of the criminal proceedings against him. He referred to Article 6 §§ 1 and 2 of the Convention. Article 6 § 1, which is a relevant provision to the above complaint, reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

A. Admissibility

96. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 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 period to be taken into account*

97. The Court notes that, in criminal matters, the “reasonable time” referred to in Article 6 § 1 of the Convention begins as soon as a person is “charged”, in other words, upon the official notification to the applicant by the competent authority of the allegation that he has committed a criminal offence. This definition also applies to the question of whether or not “the situation of the [suspect] has been substantially affected”. As regards the end of the “relevant period”, in criminal matters the period governed by Article 6 § 1 of the Convention covers the whole of the proceedings in issue, including appeal proceedings (see *Merit v. Ukraine*, cited above, § 70).

98. As regards the facts of the present case, the Court notes that criminal proceedings against the applicant were instituted on 10 May 1999. According to the information submitted by the Government these proceedings were still at the preliminary-investigation stage. They have lasted to date almost eleven years.

2. *Reasonableness of the length of the proceedings*

99. The Court observes that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II). It further notes that an accused in criminal proceedings should be entitled to have his case conducted with special diligence, especially when he is kept in custody (see, among other authorities, *Yurtayev v. Ukraine*, no. 11336/02, § 37, 31 January 2006; *Nakhmanovich v. Russia*, cited above, § 89; and *Ivanov v. Ukraine*, no. 15007/02, § 71, 7 December 2006).

100. The Court appreciates that the criminal proceedings at issue, which concerned multiple defendants, involved evidential and procedural aspects of a certain complexity.

101. On the other hand, the Court observes that the delays in resolving the matter have been primarily due to the numerous remittals of the case for reinvestigation and the rectification of procedural errors. After some eleven years of inquiries, the pre-trial investigation concerning the murder was still pending.

102. Having examined all the material submitted to it in the light of its jurisprudence (see, among other authorities, *Ivanov v. Ukraine*, cited above, § 74; and *Benyaminson v. Ukraine*, no. 31585/02, §§ 104 and 106, 26 July 2007) the Court considers that the Government have not provided a

plausible explanation for the delay. The length of the criminal proceedings against the applicant has thus been excessive and fails to meet the “reasonable-time” requirement.

103. There has accordingly been a breach of Article 6 § 1.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

104. 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

105. The applicant claimed 26,653.00 euros (EUR) in respect of pecuniary damage and EUR 700,000.00 in respect of non-pecuniary damage.

106. The Government maintained that there is no causal link between the alleged violations and the pecuniary damage claimed. They also considered that the applicant's claim for non-pecuniary damage should be rejected as his rights had been not violated.

107. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

108. The applicant also claimed EUR 132 for making copies from his criminal case file to submit them to the Court.

109. The Government maintained that this claim is exaggerated and the expenses not necessarily incurred.

110. 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 were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 20 covering the claimed costs.

C. Default interest

111. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning unlawfulness and length of the applicant's pre-trial detention, lack of proper review of lawfulness of such detention and the length of criminal proceedings in the case admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
4. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
5. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
6. *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 6,000 (six thousand euros), in respect of non-pecuniary damage and EUR 20 (twenty euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant, to be converted into Ukrainian hryvnias at the rate applicable at the date of settlement;
 - (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;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President