



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

FIFTH SECTION

CASE OF BILYY v. UKRAINE

(Application no. 14475/03)

JUDGMENT

STRASBOURG

21 October 2010

FINAL

21/01/2011

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

In the case of Bilyy v. Ukraine,

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

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

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 28 September 2010,

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

PROCEDURE

1. The case originated in an application (no. 14475/03) 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 Valentyn Valentynovych Bilyy (“the applicant”), on 29 August 2001.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev, of the Ministry of Justice of Ukraine.

3. On 22 May 2007 the Court declared the application partly inadmissible and decided to communicate the complaints about the applicant's alleged ill-treatment by the police and the lack of an effective remedy in this respect (Articles 3 and 13 of the Convention), the conditions of his detention in the Mykolaiv Temporary Detention Centre (hereinafter “the SIZO”) (Article 3 of the Convention), the alleged unlawfulness of his detention on remand from 25 June to 26 December 2000 and from 22 June to 28 December 2001 (Article 5 § 1 (c) of the Convention), the allegedly unreasonable length of his detention on remand (Article 5 § 3 of the Convention) and the allegedly unreasonable length of the criminal proceedings against him (Article 6 § 1 of the Convention) to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1977.

A. Ill-treatment of the applicant and criminal proceedings brought against him

5. The applicant is a former police officer, who resigned from the police force in May 2000. As he maintained good relations with his former colleagues, on 21 June 2000 he participated in a party at the police station. A couple of hours later he was again passing by the police station when he saw S., who was on the night shift, and suggested that they share a bottle of cognac. S. agreed. Soon, alone at the station, the applicant and S. began to practise disarming techniques with S.'s service pistol. A fatal shot was fired accidentally in the process. The applicant had believed that the pistol was empty; however, one cartridge had been left inside by S. According to the forensic autopsy report, at that time S. had been heavily drunk (blood alcohol content of 4.59 ‰). Anticipating accusations of murder, the applicant decided to fake an attack on the police station. To that end he broke a door leading to the office of the commander of the police station and took away S.'s pistol, wallet and bag. The bag contained, *inter alia*, the official stamp of the police station and the deceased's police ID. He hid the pistol at his father's country residence and destroyed the stamp and ID.

6. On the next morning the applicant was arrested. Upon arrival at the police station the applicant was beaten up allegedly in order to force him to confess to the murder of S. At one point one of the police officers kicked the applicant so hard his head hit the window and broke the window pane.

7. A legal-aid lawyer invited by the police to advise the applicant during his first interrogation saw him being beaten up and informed his father about his arrest and ill-treatment.

8. In the morning of 23 June 2000 the applicant was taken to the Mykolaiv Temporary Detention Facility (*Ізолятор тимчасового тримання*, hereafter “the ITT”). According to a letter of the Mykolayiv City Police Department, dated 26 January 2001, because of the absence of a paramedic on admission to the ITT the applicant was examined by the officers on duty. The letter stated that the officers were now unable to confirm whether the applicant had had any bodily injuries at that time.

9. Later on 23 June 2000, at the request of the commander of the police station, the applicant was examined by an expert from the Mykolaiv Regional Bureau of Forensic Medical Examinations. The expert established that the applicant had a 1 cm long wound surrounded by fresh blood on his

forehead, a rounded abrasion (0.5 cm. diameter) on his palm, and two bruises of 2x1.5 cm and 0.7x0.5 cm on his left forearm. These injuries had, according to the expert, been inflicted on 21-22 June 2000. In particular, the head injury had been inflicted not earlier than the afternoon of 22 June 2000.

10. On 25 June 2000 the Prosecutor of the Leninsky District of Mykolaiv ordered the applicant's detention on remand.

11. On 26 June 2000 the police officers allegedly again subjected the applicant to ill-treatment by beating him and painfully tightening his handcuffs. Following the applicant's complaint, the investigator from the Leninsky District Prosecutor's Office, assigned to deal with his case, ordered that further medical evidence be obtained. On 28 June 2000 an expert from the Mykolaiv Regional Bureau of Forensic Medical Examinations drew up a report, stating that the applicant had an abrasion on his temple of 1.5x1 cm in size, two 0.2 cm-wide abrasions around his wrists, an abrasion of 1.5x1 cm near his right armpit and a wound of 5x3.5 cm on his left thigh. According to the expert, these injuries had been inflicted 2 – 2.5 days before the examination and some not earlier than 2 days.

12. On 30 June 2000 a prosecutor and several police officers, in the presence of the applicant and two witnesses, conducted a search of the country estate of the applicant's father, where they found the gun with which the police officer had been killed. The applicant had initially said that he had thrown the gun into a river, but after a team of divers found nothing in the river he had said that the gun was hidden at his father's estate. According to the applicant, the search was marred by numerous procedural irregularities. In particular, the officers involved were not officially assigned to his case, the search was carried out in the absence of the applicant's father, the alleged owner of the house, and the discovery of the gun in the backyard was not witnessed by either the applicant or the witnesses.

13. On 1 July 2000 a lawyer, hired by the applicant's family to represent him, was allowed to visit him for the first time. He reported to his father having seen signs of ill-treatment on the applicant's face and body.

14. On 4 July 2000 the applicant was transferred from the ITT to the SIZO.

15. On 5 July 2000 the applicant was officially charged with murder, theft, illegal possession and theft of firearms and theft of documents and an official stamp. The prosecution's case was that on 21 June 2000 the applicant, a former police officer, with a view to obtaining a gun for criminal purposes, had visited officer S., his acquaintance, at the police station. There, after having consumed alcoholic beverages, the applicant had allegedly attacked S., seized his service pistol and murdered him to conceal the crime. Then, according to the prosecution, the applicant had stolen the victim's documents and personal belongings, some of which he destroyed before his arrest.

16. The applicant pleaded not guilty to the murder charges. He stated, and this remained his main line of defence throughout the proceedings, that on 21 June 2000 the fatal shot had been fired accidentally and that, anticipating accusations of murder, he had decided to fake an attack on the police station.

17. On 27 July and 2 August 2000 the investigator conducted a crime-scene reconstruction. During these proceedings the applicant, in the presence of his lawyer, attempted to go through the sequence of events that, according to him, had taken place at the police station on the night of 21 June 2000. The proceedings were video recorded.

18. On 8 August 2000 the applicant was examined by a prison doctor, who diagnosed him as suffering from post-concussion symptoms (such as severe headaches) as a result of a head injury.

19. The term of the applicant's detention on remand was successively extended on 15 August, 20 September and 25 October 2000.

20. On 16 October 2000 the Leninsky District Court of Mykolaiv rejected the applicant's request for release.

21. On 6 November 2000 the investigator announced the completion of the pre-trial investigations. From that date until 15 December 2000 the applicant had access to the case-file.

22. On 26 December 2000 the prosecutor referred the indictment together with the case-file to the Mykolaiv Regional Court for trial.

23. On 11 January 2001 a judge of the Mykolaiv Regional Court held a preparatory hearing at which the applicant's detention was extended pending trial.

24. In its judgment of 1 March 2001 the Mykolaiv Regional Court found that the prosecution's charge of murder was based on assumptions and, accordingly, could not sustain a finding of guilt. Based on the applicant's statements and the evidence before it the court found that the applicant was guilty of unintentional homicide, theft of S.'s personal belongings, illegal possession of firearms, theft of firearms and theft of an official stamp and personal documents. The applicant was sentenced to a total of five years' imprisonment starting on 22 June 2000. The Mykolaiv Regional Court also decided that the applicant was to remain in detention pending the judgment's entry into force.

25. The court also found that the applicant's complaints of ill-treatment had been checked by the prosecutor's office and found to be unsubstantiated. In particular, on 14 February 2001 the deputy prosecutor of the Mykolayiv Region had refused to institute criminal proceedings following the applicant's complaints.

26. The applicant and the prosecution appealed in cassation. On 17 May 2001 the Supreme Court found that the Mykolaiv Regional Court had failed to consider contradictory evidence both for and against the applicant. The Supreme Court further held that the prosecution's charges were based on the

evidence collected at the initial stages of the investigation when the applicant had been denied any rights of defence and had been ill-treated by the police. In particular, the court stated that the applicant had been subjected to psychological pressure and had been beaten “so severely that a window pane had been broken”. The court sentenced the applicant to one and a half years' imprisonment for the theft of the official stamp and personal documents (Article 193 §§ 1 and 3 of the Criminal Code of 1961) and remitted the remainder of the case for a fresh investigation.

27. On 9 July 2001 the applicant's case file arrived at the Mykolaiv Regional Prosecutor's Office from the Supreme Court.

28. On 8 August 2001 the additional investigations were completed and the applicant was given access to the case file.

29. On 12 September 2001 the Supreme Court, acting on a complaint by the applicant, reviewed his sentence and admitted that it had erred in application of the criminal law. Namely, Article 42 of the Criminal Code 1961 provided that where a person was found guilty of several offences his or her combined sentence could not exceed the maximum penalty provided for the gravest of the offences concerned. As both paragraphs one and three of Article 193 of the Criminal Code of 1961 carried a maximum penalty of one year, the applicant's sentence could not exceed this term. The Supreme Court held that the applicant should be regarded as sentenced to a total of one year's imprisonment for the theft of the official stamp and personal documents. Although the applicant's sentence expired on 22 June 2001, the question of the applicant's detention was not addressed in this ruling.

30. In a letter dated 25 October 2001, issued in response to a complaint by the applicant, the Mykolaiv Regional Prosecutor's Office stated that his continued detention was based on an (unidentified) court ruling extending his detention pending additional investigations.

31. On 31 October 2001 the President of the Court of Appeal asked the Governor of the SIZO to specify the legal grounds for the applicant's detention. The President stated that according to the Supreme Court's ruling of 12 September 2001 the applicant's sentence should have expired on 22 June 2001 and his detention subsequent to that date had no legal basis. The outcome of this request is unknown.

32. On 2 November 2001 the Mykolaiv Regional Prosecutor's Office, again in response to a complaint filed by the applicant, issued a letter in which it stated that:

“Bilyy V.V. is being held in the Investigative Isolation Unit on the grounds that Article 156 § 6 of the Code of Criminal Procedure of Ukraine, in the event of remittal of the case by the court for fresh investigation, provides for a two-month extension of the accused's detention on remand.”

33. On 30 November 2001 the Prosecutor of the Mykolaiv Region indicted the applicant for murder, theft and theft and illegal possession of firearms and sent the case to the Court of Appeal.

34. On 28 December 2001 a preparatory hearing was held before a judge of the Court of Appeal. The judge considered that the case was ready for trial and decided that the applicant was to remain in detention on remand.

35. On 1 March 2002 the Court of Appeal, following adversarial hearings, found the applicant guilty as charged and sentenced him to fourteen years' imprisonment. The applicant's conviction was based on a wide range of witness and expert evidence, including the report of the medico-ballistic expert examination which stated that the gunshot wound sustained by officer S. could not have been inflicted in the circumstances described by the applicant and that, in all likelihood, the victim had been sitting when the fatal shot was fired. The court also referred to the video recording of the crime-scene reconstruction carried out on 27 July and 2 August 2000, in which the applicant had unsuccessfully attempted to show the disarming technique which he and the victim had allegedly been practising when the shot was fired. The Court of Appeal further relied on the results of the search of the estate of the applicant's father. Any statements the applicant may have made to the police on 22-25 June 2000 were not mentioned in the judgment.

36. The applicant appealed in cassation. On 4 July 2002 the Supreme Court of Ukraine held a hearing in the presence of the applicant's representative. The applicant's appeal was dismissed.

37. On 15 October 2002 the Governor of the SIZO informed the applicant's lawyer that the applicant had tuberculosis.

38. On 25 June 2004 the Supreme Court of Ukraine quashed the previous decisions and remitted the case for a fresh consideration. No copy of this decision was made available.

39. On 10 December 2004 the Mykolayiv Regional Court of Appeal sentenced the applicant to ten years' imprisonment.

40. On 14 April 2005 the Supreme Court of Ukraine quashed this decision and remitted the case for a fresh investigation.

41. On 23 November 2005 the Mykolayiv Regional Court of Appeal sentenced the applicant to five years' imprisonment for unintentional homicide, theft and unlawful possession of firearms. Since the applicant had already served his sentence the court ordered his release and the applicant was released.

42. On 6 February 2006 the Supreme Court of Ukraine quashed that decision and remitted the case for a fresh consideration.

43. On 11 July 2006 the case was remitted by the court for a fresh investigation.

44. On 5 November 2006 the Supreme Court of Ukraine quashed this decision and remitted the case for a fresh consideration to the court.

45. On 19 June 2007 the Kherson Regional Court of Appeal sentenced the applicant to five years' imprisonment for unintentional homicide, theft and unlawful possession of firearms. The court also mentioned that the

applicant's allegations of ill-treatment had been checked by the prosecutor and found to be untrue.

46. On 2 October 2007 the Supreme Court of Ukraine changed the judgment of 19 June 2007, found the applicant guilty of theft of firearms and sentenced him to four and a half years' imprisonment, holding that he had already served this sentence. The court discharged the applicant from liability for the remaining crimes because of the expiry of the statute of limitations.

B. Proceedings into the applicant's alleged ill-treatment

1. Criminal inquiries

47. On 31 August 2000 the applicant's requests to institute criminal proceedings following his ill-treatment were rejected.

48. On 18 October 2000 the Deputy Mykolayiv Regional Prosecutor, following the questioning of the applicant and the police officers involved, again decided not to institute criminal proceedings.

49. On 31 January 2001 the Mykolaiv Regional Court quashed the ruling of 18 October 2000, holding that the investigating authorities had failed to question the legal aid lawyer and the prosecutor, who had allegedly seen the applicant being beaten up, and had failed to establish the circumstances in which the applicant had sustained his injuries.

50. On 14 February 2001 the Deputy Regional Prosecutor, having questioned the legal aid lawyer, again refused to institute criminal proceedings into the alleged ill-treatment. No copy of this decision was made available.

51. On 4 May 2001 the Mykolaiv Regional Court, on an appeal by the applicant, reviewed this decision and upheld it. The court found that the argument advanced by the applicant that his ill-treatment was proved by two medical reports "was baseless, as it contradicted the real circumstances". The court noted that police officers, prosecutors and the applicant's lawyers had been questioned and the origin of his injuries had been established. The court did not provide any further details in support of its findings.

2. Administrative proceedings

52. On 8 September 2000 the applicant's lawyer asked the Head of the Mykolaiv City Police Department whether the applicant had had any injuries when he was admitted to the ITT. By letter dated 19 September 2000 the Deputy Head of the Mykolaiv City Police Department informed the lawyer that during the applicant's stay in the ITT no injuries to his body had been noted.

53. On 15 November 2000 the applicant and his father challenged this letter via the administrative complaint procedure provided by Chapter 31-A of the Code of Civil Procedure. They stated that the letter contained incorrect and misleading information.

54. On 19 December 2000 the Tsentralnyy District Court of Mykolaiv (hereafter “the Tsentralnyy Court”) found for the applicant and ordered that a new letter be issued. In particular, the court referred to the findings of the forensic experts that at the time of the applicant's staying in the ITT he had had bodily injuries (see paragraph 11). The outcome of these proceedings has not been specified.

C. Proceedings concerning the applicant's allegedly unlawful detention

55. On an unknown date in October 2001 the applicant filed an administrative complaint against the allegedly unlawful inactivity of the Governor of the SIZO. The applicant stated that his detention after 22 June 2001 had been unlawful and that the Governor was obliged to release him.

56. On 17 October 2001 the Tsentralnyy Court refused to entertain this complaint, holding that the applicant had failed to specify which law had been violated and under which procedure the complaint should be examined: as an administrative complaint or as a complaint about a violation of his constitutional rights. The Tsentralnyy Court also held that Article 415 of the Code of Criminal Procedure made it the task of the relevant Prosecutor's Office to exercise supervision over the activities of penitentiary establishments such as the SIZO. The applicant was given nine days to rectify those shortcomings.

57. On 29 October 2001 the Tsentralnyy Court found that the applicant had failed to rectify the procedural shortcomings identified in the ruling of 17 October 2001 and declared his complaint inadmissible.

58. On 1 November 2001 the applicant lodged this administrative complaint anew. On 25 April 2002 the Tsentralnyy Court, ruling on the merits, rejected the applicant's complaint. The court held, *inter alia*, that by 22 June 2001 the applicant has served his sentence and the Supreme Court, when remitting the case for additional investigations, had simultaneously ordered his detention on remand for a period of two months. This period had started to run on 9 July 2001 when the applicant's case-file was received by the Mykolaiv Regional Prosecutor's Office from the Supreme Court. As the time when the applicant had had access to the case file (from 8 August to 29 November 2001) was not taken into account in calculating the total period of detention on remand, the two-month extension ordered by the Supreme Court had been due to expire on 2 January 2002. However, on 28 December 2001 this period had been interrupted by the trial judge's decision to detain the applicant pending court hearings.

59. The applicant challenged this judgment. On 16 October 2002 the Court of Appeal upheld it. The applicant's appeal in cassation was pending before the Higher Administrative Court but no further information in this respect was provided by the parties.

II. RELEVANT DOMESTIC LAW

Code of Criminal Procedure

60. The provisions of the Code which concern detention on remand are summarised in the judgments of *Nevmerzhitsky v. Ukraine* (no. 54825/00, § 54, ECHR 2005-II (extracts)), and *Solovey and Zozulya v. Ukraine* (nos. 40774/02 and 4048/03, § 43, 27 November 2008)).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

61. The applicant complained that he had been ill-treated during his detention in the police station and the ITT and that the State authorities had failed to undertake a thorough and effective investigation into his complaints. He also complained of the inadequate sanitary conditions of detention in the SIZO. The applicant invoked Articles 3 and 13 of the Convention, which read as follows:

Article 3

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

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

62. The parties did not submit any observations on the admissibility and merits.

A. Alleged ill-treatment by the police and inadequacy of investigation

1. Admissibility

63. 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.

2. Merits

(a) Concerning the alleged ill-treatment

64. The Court reiterates the general principles determined in its case-law as regards Article 3 of the Convention in respect of ill-treatment (see, for example, *Kobets v. Ukraine*, no. 16437/04, §§ 40-43, 14 February 2008, with further references).

65. The Court also reiterates that “where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation as to the cause of the injury, failing which a clear issue arises under Article 3 of the Convention” (see *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, § 34; *Aksoy v. Turkey*, judgment of 18 December 1996, Reports 1996–VI, § 61; and *Bekos and Koutropoulos v. Greece*, no. 15250/02, § 47, ECHR 2005).

66. In the present case, the forensic expert twice established that the applicant had bodily injuries which had been inflicted on the dates when he had been detained by the police. It was further confirmed by the Tsentralnyy Court (see paragraph 54) and by the Supreme Court in its decision of 17 May 2001, which found that on one occasion the applicant was beaten so severely that he had hit and broken the window pane.

67. In the absence of the Government's observations, the available materials did not contain any other explanation as to the possible origin of the applicant's injuries apart from ill-treatment by the police officers. Although it was indicated in the court's decision of 4 May 2001 that the applicant's version of events “contradicted the real circumstances”, no further clarification was provided.

68. In such circumstances, the Court considers that in the present case there has been a violation of the substantive limb of Article 3 of the Convention (see *Afanasyev v. Ukraine*, no. 38722/02, §§ 61-66, 5 April 2005).

(b) Alleged failure to conduct an effective investigation

69. The Court further notes that where an individual raises an arguable claim that he or she has been ill-treated by the police in breach of Article 3, that provision requires that there should be an effective official investigation capable of leading to the identification and punishment of those responsible (see, among many others, *Menesheva v. Russia*, no. 59261/00, §§ 64 and 71-73, ECHR 2006).

70. Referring to its above findings under the substantive limb of Article 3 of the Convention, the Court notes that the applicant's allegations are well founded. However, the applicant's requests to institute criminal proceedings against the police officers were several times rejected until by the final decision of 4 May 2001 the national court upheld the last decision not to institute criminal proceedings into the applicant's complaints, stating that his version of events “contradicted reality”, without giving any further explanation. Given that the applicant's allegations were substantiated, it does not follow from the available materials that they had been ever properly addressed. In particular, it is unclear what investigative steps were done and what were the conclusions to rebut the applicant's allegations.

71. There has accordingly been a violation of the procedural limb of Article 3 of the Convention.

72. The Court further considers that in such circumstances no separate issue arises under Article 13 of the Convention (see *Timur v. Turkey*, no. 29100/03, §§ 35-40, 26 June 2007).

B. Conditions of detention

73. The applicant complained that he had contracted tuberculosis because of the unsatisfactory sanitary conditions in the SIZO.

74. The Court notes that apart from the letter of 15 October 2002 informing the applicant's lawyer that the applicant had tuberculosis, there is no information about the conditions of the applicant's detention, or the circumstances in which he had contracted tuberculosis.

75. Therefore, it follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 §§ 1 AND 3 OF THE CONVENTION

76. The applicant complained that his detention had been unreasonably long. Furthermore, his detention during specific periods, namely, between 25 June and 26 December 2000, and 22 June and 28 December 2001 had not been lawful as it had not been duly authorised.

77. He relied on Article 5 §§ 1 and 3 of the Convention, which reads 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...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

78. The parties did not submit any observations on the admissibility and merits.

A. Admissibility

79. 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. Merits

1. Article 5 § 1 of the Convention

80. 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).

81. However, the "lawfulness" of detention under domestic law is the primary, but not always 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*, judgment of 24 October 1979, Series A no. 33, pp. 19-20, § 45).

(a) Lawfulness of the applicant's detention from 25 June to 26 December 2000

82. The Court notes that the applicant's detention was initially ordered by the prosecutor on 25 June 2000. Detention under this procedure was

covered by a reservation made by Ukraine in respect of Article 5 § 1 (c) of the Convention in accordance with Article 57 of the Convention, with the intention of preserving the procedure governing arrest and detention in force at the material time until 29 June 2001. The Court 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 applicant were ordered by a judge. The Court further found in that case, however, that the issue of continued detention was not covered by the reservation (see *Nevmerzhitsky v. Ukraine*, cited above, §§ 112-114).

83. The Court notes that no copies of the decisions authorising the applicant's detention during the above period were presented before it but it follows from the available materials that the applicant's detention from 15 August 2000 up to 26 December 2000 was extended on three occasions by prosecutors, who were at the material time empowered to extend the terms of pre-trial detention.

84. The Court reiterates its findings in the cases of *Nevmerzhitsky v. Ukraine* and *Yeloyev v. Ukraine* that continued detention authorised by prosecutors, who are a party to the proceedings and cannot in principle be regarded as “independent officers authorised by law to exercise judicial power”, is not lawful within the meaning of Article 5 § 1 (c) of the Convention (see *Nevmerzhitsky v. Ukraine*, cited above, §§ 115-118, and *Yeloyev v. Ukraine*, no. 17283/02, §§ 45-47, 6 November 2008).

85. Finding no reasons to depart from this conclusion in the present case, the Court considers that the applicant's continued detention from 15 August to 26 December 2000 was not lawful within the meaning of Article 5 § 1 (c) of the Convention.

(b) Lawfulness of the applicant's detention from 26 December 2000 to 11 January 2001

86. As for the period between 26 December 2000 and 11 January 2001, the Court notes that no decision on the applicant's detention has been taken when his case was referred to the court for trial. This might give rise to an issue under Article 5 § 1 of the Convention (see *Doronin v. Ukraine*, no.16505/02, § 58, 19 February 2009), but the applicant did not expressly complain about unlawfulness of his detention during this period and the Court will not examine this matter.

(c) Lawfulness of the applicant's detention from 22 June to 28 December 2001

87. The Court notes that on 17 May 2001 the Supreme Court of Ukraine upheld the judgment sentencing the applicant to one and a half years' imprisonment for theft of an official stamp and personal documents and remitted the remainder of the case for a fresh investigation. However, on 12 September 2001 the Supreme Court of Ukraine brought its decision into

compliance with the Criminal Code and reduced the term of the applicant's imprisonment to one year. The applicant's detention had to be calculated from the date of his arrest, that is, 22 June 2000, and consequently it expired on 22 June 2001. Therefore, after that date it ceased to fall within the ambit of Article 5 § 1 (a) of the Convention.

88. Although the domestic authorities considered that the term of the applicant's further deprivation of liberty was extended for two months by virtue of the very fact of remittal of the case for a fresh investigation (see paragraph 58), there is no evidence that any court decisions were taken on the applicant's detention on remand after 22 June 2001.

89. Even assuming that for some periods between 22 June and 28 December 2001 the national law did not require a separate decision (time when the accused was studying the case file, the time taken for the case file to be transferred by the investigation authorities to the court and back), the Court has already found on a number of occasions that this practice is incompatible with the requirements of Article 5 § 1 of the Convention (see *Yeloyev v. Ukraine*, cited above, § 48-51, and *Doronin v. Ukraine*, no.16505/02, § 58, 19 February 2009).

90. Accordingly, the Court considers that in the present case there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention between 22 June and 28 December 2001.

2. Article 5 § 3 of the Convention

91. The Court reiterates that the persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of continued detention. However, after a certain lapse of time, it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, §§ 152-153, ECHR 2000-IV).

(a) Period to be taken into consideration

92. The Court notes that the applicant's detention started on 22 June 2000 and ended on 1 March 2001 by his first conviction.

93. On 17 May 2001 the Supreme Court of Ukraine upheld the applicant's conviction in part and remitted the remainder of the case for a fresh investigation. Accordingly, from 17 May 2001 to 22 June 2001, the applicant's deprivation of liberty fell within the ambit of sub-paragraph (a) of Article 5 § 1. Although it can be argued that during this period the applicant's deprivation of liberty fell within the ambit of both sub-paragraphs (a) and (c) of Article 5 § 1 (see *Polonskiy v. Russia*, no. 30033/05, §§ 141-144, 19 March 2009) since the investigation into the

major part of his criminal case was still pending, there was no separate decision on the applicant's detention pending trial between 17 May and 22 June 2001. The national authorities also regarded the applicant as serving his sentence and not being detained on remand (see paragraphs 31 and 58). Therefore, the Court considers that in the circumstances of the present case, and the applicant did not contest it, the applicant's detention between 17 May and 22 June 2001 was justified under Article 5 § 1 (a) of the Convention only.

94. The Court notes that further period to be taken into consideration consists of several terms, including the period between the expiration of the sentence and the second conviction (from 22 June 2001 to 1 March 2002), the period between the quashing of the decisions in the applicant's case under the extraordinary review procedure and the subsequent conviction (from 25 June 2004 to 10 December 2004) and one more period between the remittal of the case for a fresh investigation and the applicant's subsequent sentencing and release (from 14 April 2005 to 23 November 2005).

95. The total period to be taken into consideration is thus two years and four months.

(b) Reasonableness of the length of the applicant's detention on remand

96. The Court notes that no copies of the relevant decisions to extend the applicant's detention on remand were provided by the parties, thus the grounds for the applicant's detention remain unclear. However, given the overall length of detention, which was not short in absolute terms, and that no such decisions were taken during some periods (for example, between 22 June 2001 and 1 March 2002), the Court considers that there has been a violation of Article 5 § 3 of the Convention in the present case.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

97. Lastly, the applicant complained under Article 6 § 1 of the Convention that the criminal proceedings brought against him lasted an unreasonably long time. The relevant part of that provision 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 ...”

98. The parties did not submit any observations on the admissibility and merits.

A. Admissibility

99. 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

100. The Court notes that the relevant period commenced on 22 June 2000, when the applicant was arrested, and ended on 2 September 2007. The periods during which the domestic courts were deciding whether or not to re-open the case should be excluded since Article 6 does not apply to such proceedings (see, for example, *Rudan v. Croatia* (dec.), no. 45943/99, 13 September 2001, and *Petersen v. Denmark*, no. 28288/95, Commission decision of 16 April 1998). Therefore, in the present case, the Court will not take into account the period between the final decision of 4 July 2002 and 25 June 2004, when the Supreme Court of Ukraine allowed the extraordinary appeal (see, *mutatis mutandis*, *Yaroslavtsev v. Russia*, no. 42138/02, § 22, 2 December 2004, and *Klyakhin v. Russia*, no. 43082/99, § 91, 30 November 2004). Therefore, the length of proceedings in the present case amounts to five years and three months.

101. The Court reiterates 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, and the conduct of the applicant and that of the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II). What is at stake for the applicant must also be taken into consideration.

102. The Court notes that the applicant's case was not particularly complicated either legally or factually and there were no significant periods of inactivity attributable to the State authorities. Therefore, the length of proceedings in the present case could still be considered reasonable. However, their length was caused exclusively by the numerous re-examinations of the case. It follows from the available documents that the main point of disagreement between different courts and investigation authorities was about one particular aspect of the case, that is, the intentional or accidental nature of the applicant's actions, and it caused at least six remittals for a fresh investigation or consideration on the merits. Consequently in the applicant's case there were four periods of pre-trial investigations, six rounds of proceedings in the first-instance court and six rounds of proceedings in the Supreme Court of Ukraine.

103. Although the Court is not in a position to analyse the quality of the case-law of the domestic courts, it observes that, since remittal is usually ordered because of errors committed by lower courts, the repetition of such orders within one set of proceedings discloses a serious deficiency in the judicial system (see *Aybabin v. Ukraine*, no. 23194/02, § 42, 18 December 2008). Moreover, it is the role of the domestic courts to manage their

proceedings so that they are expeditious and effective (see *Scordino v. Italy* (no. 1) [GC], no. 36813/97, § 183, ECHR 2006-...).

104. The Court also observes that the applicant was kept in custody – a fact which required particular diligence on the part of the authorities and courts dealing with the case as regards the prompt administering of justice (see *Abdoella v. the Netherlands*, 25 November 1992, § 24, Series A no. 248-A).

105. In such circumstances, the Court considers that in the instant case the length of the proceedings could not be justified by the large number of court examinations involved and failed to meet the “reasonable time” requirement.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

106. 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, and costs and expenses

107. The applicant claimed a lump sum of 16,493.22 euros (EUR) in respect of pecuniary damage including costs and expenses and EUR 596,000 in respect of non-pecuniary damage.

108. The Government submitted that the applicant's claims should be rejected, either because his complaints were inadmissible or because they disclosed no violations of Convention provisions. They also argued that the costs and expenses claimed were unrelated to the complaints under consideration by the Court.

109. 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 10,000 in respect of non-pecuniary damage.

110. The Court further notes that, according to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these 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 considers it reasonable to award the sum of EUR 150 for the proceedings before the Court.

B. 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 the applicant's alleged ill-treatment by the police and the lack of an effective remedy in this respect (Articles 3 and 13 of the Convention); the alleged unlawfulness of his detention on remand from 25 June to 26 December 2000 and from 22 June to 28 December 2001 (Article 5 § 1 of the Convention); the allegedly unreasonable length of his detention on remand (Article 5 § 3 of the Convention); and the allegedly unreasonable length of the criminal proceedings against him (Article 6 § 1 of the Convention) admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention under its substantive head;
3. *Holds* that there has been a violation of Article 3 of the Convention under its procedural head;
4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;
5. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
6. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
7. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
8. *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 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage and EUR 150 (one hundred and fifty euros), plus any tax that may be chargeable, in respect of costs and expenses, 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;

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

Done in English, and notified in writing on 21 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President