



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

FIFTH SECTION

CASE OF MOLODORYCH v. UKRAINE

(Application no. 2161/02)

JUDGMENT

STRASBOURG

28 October 2010

FINAL

28/01/2011

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

In the case of Molodorych 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 5 October 2010,

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

PROCEDURE

1. The case originated in an application (no. 2161/02) 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 Oleksiy Sergiyovych Molodorych (“the applicant”), on 24 November 2000.

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

3. On 9 May 2006 the Court declared the application partly inadmissible and decided to communicate to the Government the complaints under Article 3 of the Convention concerning the applicant's detention conditions, treatment and medical care, under Article 5 §§ 3 and 4 of the Convention concerning the lawfulness and duration of his detention, and the lack of effective and expeditious judicial review of the lawfulness of his detention, and under Article 6 §§ 1 and 3 (c) of the Convention concerning the alleged violation of the applicant's right to defend himself through legal assistance. It also decided to examine the merits of that part of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1982. He is currently serving a prison sentence at Cherkasy Correctional Colony (Prison) (*Черкаська Виправна Колонія № 62*) (“the Colony”).

A. Criminal proceedings against the applicant

5. On 12 September 2001 the applicant was arrested by the police on suspicion of causing grievous bodily harm to D. According to the police, on 11 September 2001 the applicant broke into D.'s house and attacked him with a knife as he was sleeping. D. received wounds to the left side of the chest, the left forearm and the left knee. As D. resisted the attack, the applicant pulled back. The applicant stayed at the scene of the crime and called the police and an ambulance.

6. On 12 September 2001 the applicant was questioned by the police concerning the incident. The applicant was not assisted by a lawyer during his questioning.

7. On 21 September 2001 the applicant was officially charged with aggravated hooliganism (Article 296 § 4 of the Criminal Code).

8. For an unspecified period before the end of 2001 the applicant was assisted by a lawyer of his own choosing, Mr N.

9. On 25 December 2001 the investigations were completed and the case was referred to Tarasha Court (*Таращанський районний суд Київської області*) for trial.

10. At a preliminary hearing on 18 January 2002 the court decided to remit the case for additional investigation.

11. On 23 April 2002 the additional investigation was completed and the case was sent to the same court.

12. On 12 August 2002 Tarasha Court granted the applicant leave to be defended in the proceedings by his mother, who was not a lawyer.

13. Between May 2002 and March 2003 the court held several hearings on the merits of the case and ordered a psychiatric examination of the applicant, which was completed by March 2003. In the course of the court proceedings during the aforementioned period and during the ensuing investigations the applicant was assisted by a lawyer of his own choosing, Mr M.

14. On an unspecified date the prosecutor taking part in the proceedings requested the court to remit the case for additional investigation, stating that there was evidence that the applicant had committed a more serious crime than the one with which he had been charged.

15. On 12 March 2003 the court found that the criminal qualification of the applicant's actions was incorrect and remitted the case to the prosecutors for additional investigation. On 28 May 2003 the Kyiv Regional Court of Appeal (*Апеляційний суд Київської області*) dismissed an appeal by the applicant's lawyer against that decision, holding that the reasons for the remittal were based on the case materials and the prosecutor's request. The decision of the Court of Appeal did not suggest that it was subject to a further appeal.

16. On 17 July 2003 the prosecutors brought new charges against the applicant, accusing him of attempted murder for hooligan motives and of unlawful entry into a private residence (Articles 15 § 2, 115 § 2 (7), and 162 § 1 of the Criminal Code). One of the possible sanctions under Article 115 § 2 of the Criminal Code was life imprisonment.

17. On 25 July 2003 the case was referred to the Court of Appeal for trial.

18. On an unspecified date a new lawyer, Mr T., appointed by the applicant, joined the proceedings before that court.

19. On 15 October 2003 the court found the applicant guilty of unlawful entry into a private residence and aggravated hooliganism and sentenced him to six years' imprisonment.

20. On 25 March 2004 the Supreme Court quashed the judgment of 15 October 2003, holding that the Court of Appeal had wrongly assessed evidence and misapplied substantive law in the case. It decided to remit the case to the same court for fresh consideration.

21. In May-June 2004 the applicant appointed a new lawyer to assist him, Mr V., the other lawyers, Mr M. and Mr T., having ceased to represent the applicant for unspecified reasons.

22. On 4 June 2004 the Court of Appeal remitted the case for additional investigation, finding that the prosecutors had failed to establish the motive for the applicant's actions on 11 September 2001.

23. On 29 July 2004 the Supreme Court upheld the ruling of 4 June 2004. In the proceedings before the Supreme Court the applicant was represented by his mother.

24. On 8 June and 1 September 2004, respectively, the applicant was allowed to familiarise himself with the decisions of 4 June and 29 July 2004. No copies of those decisions were given to him.

25. According to the Government, on 27 September 2004 the case was received by the prosecutors, who started additional investigations. The applicant submitted that the case had been received by the prosecutors on 1 September 2004.

26. In the course of the additional investigations the prosecutors questioned several witnesses and ordered an expert examination of the knife with which the applicant had attacked the victim. The examination was completed on 18 October 2004.

27. On 21 October 2004 a lawyer, Mr L., was appointed by the prosecutors to assist the applicant in the proceedings. According to the applicant, Mr L. did not assist him at all.

28. On the same day the applicant was questioned by the prosecutors concerning the issues raised before the expert examining the knife. It is unclear whether the lawyer L. was present during the applicant's questioning.

29. On 23 October 2004 the investigators brought new charges against the applicant, following a requalification of his actions on 11 September 2001. The applicant was accused of attempted murder for mercenary motives and robbery accompanied by infliction of grievous bodily harm (Articles 15 § 3, 115 § 2 (6), and 187 § 3 of the Criminal Code).

30. On 24 October 2004 the additional investigations were completed and on 12 November 2004 the case was sent to the Court of Appeal for trial.

31. On 2 December 2004 the court held a preliminary hearing in the case, which the applicant's lawyer failed to attend.

32. On 24 December 2004 the Court of Appeal found the applicant guilty of attempted murder for mercenary motives and of robbery accompanied by infliction of grievous bodily harm. The applicant was sentenced to ten years' imprisonment, which was to be calculated from 12 September 2001, with confiscation of all his property. He was also ordered to pay 10,711.90 Ukrainian hryvnias (UAH)¹ to D. in compensation and UAH 984.90² to a hospital in which D. had been treated.

33. The court based its judgment partially on the statements of the applicant made before it and his statements obtained during the pre-trial investigations, the statements of the victim, an eyewitness and three other witnesses heard by the court, and reports from seven experts.

34. The court noted that the applicant did not deny that he was involved in the incident, though his submissions concerning it during various stages of the proceedings differed substantially.

35. By a separate ruling of 24 December 2004, the Court of Appeal found that the persons responsible for the pre-trial investigations had not complied with the requirements of promptness, objectivity and completeness, because of which the case had been remitted for additional investigation on three occasions. It ordered the prosecutors to adopt relevant measures in respect of those irregularities.

36. The applicant's mother, acting on his behalf, and the applicant himself, lodged separate appeals in cassation with the Supreme Court. They alleged that the Court of Appeal had erred in its assessment of the evidence and had wrongly applied the law in the case, that the pre-trial investigations had not been completed in due time, that the applicant had not been given

1. About 1,454 euros (EUR).

2. About EUR 134.

accurate information concerning the charges against him, that his right to defence had been violated as no lawyer had been appointed to assist him from the beginning of the additional investigations in September 2004, and that because of this the applicant had not had sufficient time to prepare his defence.

37. According to the applicant, the lawyer appointed for him by the authorities did not assist him in the preparation of his appeal in cassation.

38. On 17 March 2005 the Supreme Court upheld the judgment of 24 December 2004, finding, *inter alia*, that the applicant's right to defence had not been violated.

B. The applicant's pre-trial detention

39. Following his arrest on 12 September 2001, the applicant was placed in Tarasha Police Preliminary Detention Centre (*Ізолятор тимчасового тримання Таращанського РВ ГУ МВС України в Київській області*) ("the ITT").

40. On 14 September 2001 Tarasha Court remanded the applicant in custody in view of the pending criminal investigations against him and ordered his placement in Kyiv Pre-Trial Detention Centre (*Слідчий ізолятор № 13 Управління Державного Департаменту України з питань виконання покарань в м. Києві та Київській області*) ("the SIZO"). The court found that the applicant was accused of a particularly serious crime (aggravated hooliganism) punishable by the deprivation of liberty for a term of over ten years and that if the applicant remained at liberty he might seek to evade investigation and trial and obstruct the establishment of the truth in the case.

41. By a decision of 12 November 2001, the maximum period of the applicant's detention was extended for four months. Tarasha Court put forward similar reasons for the applicant's continued detention as were contained in its decision of 14 September 2001.

42. Subsequently, the applicant's continued pre-trial detention was ordered by Tarasha Court decisions of 18 January, 22 May and 22 August 2002 and 12 March 2003, and of the Court of Appeal of 4 June and 2 December 2004, according to which that there were no grounds for changing the preventive measure applied in respect of the applicant.

43. For the same reasons, the applicant's requests of 12 August 2002, 11 March 2003 and 27 May 2004 for release from detention raised at court hearings in his case were rejected by Tarasha Court on 12 August 2002 and 11 March 2003 and by the Court of Appeal on 27 May 2004 respectively. On 21 March 2003 the Court of Appeal refused to consider the applicant's appeal against the decision of 11 March 2003, holding that procedural decisions adopted in the course of a trial, including decisions concerning preventive measures, were not subject to appeal.

44. The applicant's request for release, which he had lodged with the Tarasha Court on 22 January 2002, was not considered on the merits, the applicant having been informed by a letter from that court that the matter had already been determined in its decision of 18 January 2002.

45. The applicant's requests for release were mainly based on the following arguments: after the incident on 12 September 2001 the applicant had not tried to run away and had made no attempts to obstruct the collection of evidence or to destroy it; the charges against him were groundless; he was detained for a long period of time after his arrest in September 2001; and he had health problems for which he could not receive adequate treatment while in detention. In his submissions before the courts, the applicant suggested that he could be released on an undertaking not to abscond.

46. Relying on the same arguments, the applicant appealed against the decision of 12 March 2003 (see paragraph 42 above). In its decision of 28 May 2003 the Court of Appeal acknowledged the applicant's appeal, though it did not elaborate on the matter.

47. According to the applicant, on 24 November 2003 he lodged with the Court of Appeal an appeal in cassation against the decisions of 12 March and 28 May 2003, though this was not considered by the courts. The applicant did not provide a copy of his appeal in cassation. The Government submitted that the applicant had not appealed in cassation against the decisions of 12 March and 28 May 2003.

C. Medical treatment and assistance to the applicant in detention

48. The applicant was detained in the ITT until 11 September 2002, when he was placed in the SIZO. On 7 June 2005 he was transferred to the Colony.

49. According to the applicant, on 20 January 2001 he became ill and was seen by an ambulance paramedic, who was not competent to establish a diagnosis or prescribe treatment. The applicant raised this matter before Tarasha Court in one of his requests for release, but to no avail. The applicant provided no further details of the incident on 20 January 2001.

50. During his detention in the SIZO and the Colony the applicant underwent medical checks, including X-ray examinations and blood tests, on 12 September 2001, 11 September 2002, 18 April and 24 October 2003, 17 May, 7 June and 20 August 2005, and 26 June 2006. There were no serious health issues noted by the doctors examining the applicant.

51. The applicant requested medical assistance on three occasions, namely on 14 September and 28 October 2005 and 27 April 2006. He was diagnosed with bronchitis and periodontitis, for which he was treated by doctors.

52. On 27 June 2006 the applicant was examined by a medical panel composed of a prison doctor, a general practitioner, a dentist and a psychiatrist. They concluded that the applicant was “practically healthy” and that his state of health had not deteriorated since his arrival at the Colony. An additional medical examination of the applicant on 12 December 2006 confirmed those conclusions.

53. According to the applicant, in the Colony he was at risk of contracting tuberculosis, as prisoners suffering from that condition were detained in the same building as the applicant, though on another floor. He also stated that between September and October 2005 the building had not been sufficiently heated and he had had no warm clothes. The applicant alleged that the light in the Colony was inadequate, but provided no further details.

II. RELEVANT DOMESTIC LAW

A. Constitution of Ukraine

54. The relevant provisions of the Constitution read as follows:

Article 29

“Every person has the right to freedom and personal inviolability.

No one shall be arrested or held in detention other than pursuant to a substantiated court decision and only on the grounds and in accordance with the procedure established by law ...”

B. Code of Criminal Procedure of 1960

55. The relevant extracts from Chapter 3 (Persons participating in the proceedings, their rights and obligations) read as follows:

Article 45

Compulsory participation of a defence lawyer

“Participation of a defence lawyer in the inquiry, pre-trial investigations and trial by the first-instance court is compulsory:

...

(4) from the moment of the person's arrest or when he or she is [officially] charged with a criminal offence carrying a penalty of life imprisonment...”

56. The relevant extracts from Chapter 10 (Inquiry), as worded at the material time, read as follows:

Article 106**Arrest of a suspect by a body of inquiry**

“A body of inquiry shall be entitled to arrest a person suspected of having committed a crime for which imprisonment may be imposed, subject to the existence of one of the following grounds:

- 1) that the person was discovered whilst committing the crime or immediately after committing it;
- 2) that eyewitnesses, including victims, directly identify that person as the one who committed the crime;
- 3) that clear traces of the crime are found on the body of the suspect, or on his clothes, or in his home.

If there are other data constituting grounds for suspecting a person of having committed a crime, he may be detained only if he has attempted to escape, or if he has no permanent place of residence, or if the identity of the suspect has not been established.

...

Within seventy-two hours of the arrest the body of inquiry shall:

- 1) release the arrested person if the suspicion that he has committed the crime has not been confirmed, or the [maximum] term of detention following arrest has expired, or if the arrest was carried out in violation of the requirements provided for in parts 1 and 2 of this Article;
- 2) release the arrested person and select a non-custodial preventive measure;
- 3) bring the arrested person before a judge with a request for his placement in custody...

The suspect's detention following arrest shall not last more than seventy-two hours...”

Article 106-1**The procedure for short-term detention of suspects**

“The procedure for short-term detention of persons suspected of committing a crime shall be determined by the [relevant] regulations...”

Article 107**Questioning of a suspect**

“... If the suspect has been arrested or placed in custody ... he shall be questioned immediately, or, if an immediate questioning is not possible, within twenty-four hours of his arrest ...”

Article 115
Arrest of a suspect by an investigator

“An investigator may arrest and question a person suspected of having committed a crime according to the procedure provided for in Articles 106, 106-1, and 107 of the Code...”

57. The relevant extracts from Chapter 13 (Preventive measures) read, as worded at the material time, as follows:

Article 148
The aim and grounds for the application of preventive measures

“Preventive measures shall be applied in respect of a suspect, accused, defendant or convict with the aim of preventing attempts to abscond from the investigation or trial, to obstruct the establishment of the truth in a criminal case or to pursue criminal activities, and in order to ensure the execution of procedural decisions.

Preventive measures shall be applied if there are sufficient grounds to consider that the suspect, accused, defendant or convict will try to abscond from the investigation or trial, or evade complying with procedural decisions, or obstruct the establishment of the truth in a criminal case, or pursue criminal activities.

If there are not sufficient grounds to apply a preventive measure, the suspect, accused, defendant or convict shall be required to give a written undertaking to appear when summoned by the person conducting the inquiry, the investigator, prosecutor, or the court, and to inform them of any change of his place of residence.

In the case of the application of a preventive measure in respect of a suspect, he shall be [officially] charged within ten days of the date the preventive measure was applied. If no charges are brought [against him] within that period, the preventive measure shall be lifted.”

Article 149
Preventive measures

“The preventive measures shall be as follows:

- 1) a written undertaking not to abscond;
- 2) a personal surety;
- 3) the surety of a non-governmental organisation or labour collective;
- 3-1) bail;
- 4) placement in custody;
- 5) supervision by the command of a military unit.

The arrest of a suspect is a temporary preventive measure applied on the grounds and according to the procedure provided for in Articles 106, 115, and 165-2 of the Code.”

Article 150

Circumstances to be taken into account in choosing a preventive measure

“In deciding on the application of a preventive measure, in addition to the circumstances specified in Article 148 of the Code, such circumstances as the gravity of the crime of which the person is suspected or with which he is charged, his age, state of health, family and financial status, type of activity, place of residence and other circumstances relating to the person shall be taken into consideration.”

Article 155

Placement in custody

“Placement in custody, as a preventive measure, shall be applied in cases concerning criminal offences carrying a penalty of more than three years' imprisonment. In exceptional circumstances this preventive measure may be applied in cases concerning criminal offences for which the law provides for a punishment of up to three years' imprisonment...”

Article 156

Term of pre-trial detention

“Detention during a pre-trial investigation shall not last more than two months.

When it is impossible to complete the investigation within the period provided for in part 1 of this Article and there are no grounds for discontinuing the preventive measure or replacing it with a less restrictive measure, [the term of pre-trial detention] may be extended:

(1) for up to four months – upon a request approved by the prosecutor supervising the compliance with the laws of the bodies of inquiry and investigation, or at the same prosecutor's [request], by a judge of the court which ordered the application of the preventive measure;

(2) for up to nine months – upon a request approved by the Deputy Prosecutor General of Ukraine, the Prosecutor of the Autonomous Republic of the Crimea, regional prosecutors, Kyiv and Sevastopol prosecutors, and prosecutors of equal rank, or on the same prosecutor's [request] in cases concerning serious and particularly serious crimes, by a judge of the court of appeal;

(3) for up to eighteen months - upon a request approved by the Prosecutor General of Ukraine and his Deputy, or at the same prosecutor's [request] in particularly complex cases concerning particularly serious crimes, by a judge of the Supreme Court of Ukraine;

In each case, when it is impossible to complete the investigation within the periods specified in parts 1 or 2 of this Article and there are no grounds for changing the preventive measure, the prosecutor supervising compliance with the law in the course

of the investigation in the case shall have the right to approve the referral of the case to the court in the part relating to proven charges. In such an event, the part of the case relating to criminal offences or episodes of criminal activity the investigation of which has not been completed shall be disjoined from the proceedings pursuant to the requirements of Article 26 of the Code and completed in accordance with the general rules.

The term of pre-trial detention shall be calculated from the moment when the person was placed in custody, or, if his placement in custody was preceded by his arrest [within the meaning of Article 115 of the Code], from the time of the arrest. The term of pre-trial detention shall include time during which the person has undergone in-patient expert examination in a psychiatric medical institution of any type. If the person is repeatedly placed in custody within the framework of the same proceedings ... or if new charges are brought against him, the time the person has spent in detention before this shall be taken into account when calculating the term of pre-trial detention.

The term of pre-trial detention shall end on the day the court receives the case file. If the case is withdrawn from the court by the prosecutor pursuant to Article 232 of the Code, the running of the time shall resume on the day on which the prosecutor receives the case.

The materials of the criminal case in which the investigation has been completed shall be given to the detainee and his defence no later than a month before the expiry of the maximum term of detention set by part 2 of this Article.

If the time-limit for providing the accused and his defence with the case materials is not complied with ... the accused shall be released immediately after the expiry of the maximum term of detention set by part 2 of this Article. In such a case, the accused and his defence shall continue to be entitled to familiarise themselves with the case materials.

If the time-limit for providing the accused and his defence with the case materials is complied with ... but the time allowed for the accused and his defence to familiarise themselves with the case materials appears to be insufficient, the maximum term of detention set by part 2 of the Article may be extended by a judge of the court of appeal at the investigator's request approved by the Prosecutor General of Ukraine or his Deputy, or upon the same prosecutor's or his deputy's request. If there are several accused held in detention and the period provided for in part 6 of this Article appears to be insufficient for at least one of them to familiarise himself with the case materials, such a request may be submitted in respect of an accused who has already familiarised himself with the case materials, provided it remains necessary to keep that person or persons in detention and there are no grounds for the application of another preventive measure.

If the case is returned by the court to the prosecutor for additional investigation, the term of pre-trial detention shall be calculated from the time the case is received by the prosecutor and shall not exceed two months. Further extension of that term shall be ordered in accordance with the procedure and within the limits provided for in part 2 of this Article, and the time the accused was held in detention before the referral of the case to the court shall be taken into account.

If the term of pre-trial detention ... provided for in parts 1 and 2 of this Article has ended and if this term was not extended in accordance with the procedure laid down in the Code, the body of inquiry, investigator or prosecutor shall immediately release the person from detention.

Governors of pre-trial detention centres shall immediately release from detention accused persons in respect of whom no court resolution extending the term of pre-trial detention has been received on the day of expiry of the term of pre-trial detention provided for in parts 1, 2, and 6 of this Article. They shall accordingly notify the person or authority before whom the case is pending and the prosecutor supervising the investigation.”

Article 165

General provisions concerning the procedure on the application, discontinuation and change of a preventive measure

“Placement in custody, as a preventive measure, shall be applied only pursuant to a reasoned resolution of a judge or ruling of a court...

A preventive measure may be replaced by another preventive measure or lifted by the body of inquiry, investigator, prosecutor, judge or a court in accordance with part 1 of the Article.

A preventive measure may be changed or lifted if there is no need for it to be applied ...”

Article 165-1

Resolution (ruling) on the application, discontinuation or change of a preventive measure

“A judge shall issue a resolution and a court shall issue a ruling on the application, discontinuation or change of a preventive measure...

In the resolution (ruling) on the application or change of a preventive measure ... reasons for its application or change shall be mentioned... In the resolution (ruling) discontinuing the application of a preventive measure reasons shall be mentioned...

The person concerned shall be immediately notified of the resolution (ruling)... At the same time the person shall be informed about the procedure and time-limits for challenging the resolution or ruling.”

Article 165-2

Procedure for selection of a preventive measure

“At the stage of pre-trial investigation a non-custodial preventive measure shall be selected by a body of inquiry, investigator [or] prosecutor.

If a body of inquiry [or] investigator considers that there are grounds for ... placement in custody [it or] he shall, with the prosecutor's consent, submit a request to the court. The prosecutor is entitled to submit a similar request. When considering the matter the prosecutor shall familiarise himself with all the material containing grounds

for placement in custody, check whether the evidence was lawfully obtained and whether it is sufficient to bring charges [against the suspect].

The request shall be considered within seventy-two hours of the arrest of the suspect or accused.

If the request concerns placement in custody of [a suspect or accused] who is at liberty, the judge shall have the power ... to issue a warrant for [his] arrest and escort to the court. In such case, the detention shall not exceed seventy-two hours, or, if the person concerned is outside the locality in which the court operates, [the detention] shall not exceed forty-eight hours from the time the arrested person was brought to the locality.

Upon receipt of the request, the judge shall study the material in the criminal case file submitted by the body of inquiry, investigator [or] prosecutor, question the suspect or accused, and, if necessary, obtain explanations from the person dealing with the case, hear the prosecutor, [and] the defence lawyer if [the latter] has appeared before the court, and deliver a resolution:

- 1) refusing the preventive measure, if there are no grounds for its application;
- 2) ordering placement in custody...

Having refused ... to place the suspect [or] accused in custody, the court shall have the power to apply a non-custodial preventive measure to him or her.

The judge's resolution may be appealed against to the court of appeal by the prosecutor, suspect, accused, his defence or representative within three days of its delivery. The introduction of an appeal shall not suspend the execution of the judge's resolution.

If it is necessary to study further the personal circumstances of the arrested person or to establish other circumstances relevant for the question of the application of a preventive measure ... the judge shall have the power to extend the applicant's detention for up to ten or, at the request of the suspect or accused, fifteen days..."

Article 165-3 **Procedure for extending the term of pre-trial detention**

"When there are no grounds for changing the preventive measure or if it is impossible to complete the investigation of the case in the part relating to proven charges, an investigator, upon the relevant prosecutor's approval, or the same prosecutor, shall apply to the court with a request for an extension of the term of pre-trial detention. The request shall contain reasons, in connection with which it is necessary to extend the term, circumstances which must be examined, evidence that the detainee committed the crime [of which he or she is accused], and grounds for the necessity to maintain the preventive measure.

The request for extension of the term of the person's pre-trial detention shall be submitted to the court:

(1) in the event of an extension of the term of pre-trial detention for up to four months not later than five days before the expiry of the term of the person's detention;

(2) in the event of an extension of the term of pre-trial detention for up to nine months not later than fifteen days before the expiry of the term of the person's detention;

(3) in the event of an extension of the term of pre-trial detention for up to eighteen months not later than twenty days before the expiry of the term of the person's detention;

(4) in the event of an extension of the term of pre-trial detention for the accused and his defence to familiarise themselves with the case materials not later than five days before the expiry of the maximum term of pre-trial detention;

Having received the request, the judge shall examine the materials of the criminal case; if necessary, [the judge shall] question the accused, the investigator, hear the prosecutor, the defence if [the latter] has appeared [before the judge], following which [the judge] shall issue a resolution extending the term of pre-trial detention, if there are grounds for this, save in the case envisaged in paragraph 7 of Article 156 of the Code, or [the judge] shall refuse its extension.

The prosecutor, suspected, accused or his defence or legal representative may lodge an appeal against the resolution of the judge within three days of its delivery. Such an appeal shall not suspend the execution of the judge's resolution. The resolutions issued by judges of a court of appeal and of the Supreme Court shall not be subject to an appeal...”

58. The relevant extracts from Chapter 23 (Preliminary consideration of the case by the judge) read as follows:

Article 237

Matters examined by the judge in the course of preliminary consideration of a case

“The judge shall examine ... the following matters:

...

(4) whether there are grounds for changing, discontinuing or applying a preventive measure;

...”

Article 240

Procedure of preliminary consideration of a case

“Preliminary consideration of a case shall be performed by a single judge with the compulsory participation of a prosecutor. Other persons taking part in the proceedings shall also be informed about the day of the preliminary hearing, though their failure to appear shall not prevent [the judge] from considering the case...”

Article 246
Remittal of a case for additional investigation

“In the course of preliminary consideration of a case the judge ... shall issue a resolution remitting the case for additional investigation if there were [procedural shortcomings] ... in the course of institution of the proceedings, inquiry or pre-trial investigation, without rectification of which the case may not be admitted for trial.

...The judge may also remit a case for additional investigation if there are grounds for charging the accused with a more serious crime ... or with a crime with which he or she was not charged earlier...

In the resolution the judge shall state reasons for remitting the case for additional investigation... In the same resolution [the judge] shall decide on the preventive measure in respect of the accused.

...

The parties may lodge an appeal with a court of appeal, or if the case has already been considered by a court of appeal acting as a first-instance court, [the parties may lodge] an appeal in cassation with the court of cassation against the resolution within seven days of its delivery.”

Article 253
Matters to be resolved by the judge in view of the preparation of a case for trial

“Having decided to commit [an accused] for trial, the judge shall resolve the following issues:

- (1) concerning the appointment of a defence lawyer, if his or her participation in the case is compulsory;
- (2) concerning the change, discontinuation or application of a preventive measure;

...”

59. The relevant extracts from Chapter 24 (General provisions on judicial consideration (trial)) read as follows:

Article 274
The selection, discontinuation and change of a preventive measure by the court

“In the course of consideration of a case the court may issue a ruling changing, discontinuing or selecting a preventive measure in respect of a defendant, if there are grounds for this.

The procedure for selecting detention as a preventive measure shall be governed by the relevant provisions of Chapter 13 of the Code.”

Article 281

Remittal of a case for additional investigation

“A case may be remitted for additional investigation on the ground of incompleteness or wrongfulness of the pre-trial investigations only if such incompleteness or wrongfulness cannot be remedied [in the trial].

The question concerning the remittal of a case for additional investigation shall be determined by a reasoned ruling of the court or a resolution by the judge...

The parties may lodge an appeal with a court of appeal, or if the case has already been considered by a court of appeal acting as a first-instance court, [the parties may lodge] an appeal in cassation with the court of cassation against the resolution within seven days of its delivery.”

60. The relevant extracts from Chapter 30 (Consideration of the case on appeal), as worded at the material time, read as follows:

Article 347

Judicial decision against which an appeal may be lodged

“An appeal may be lodged against:

- (1) judgments adopted by local courts which have not entered into force;
- (2) resolutions adopted by local courts concerning the application or non-application of forced measures of an educational or medical nature;

An appeal may also be lodged against:

- (1) rulings (resolutions) adopted by a local court discontinuing the proceedings in a case or remitting a case for additional investigation;
- (2) separate rulings (resolutions) adopted by a local court;
- (3) other resolutions of local courts in cases envisaged by the Code.”

Article 348

Persons entitled to lodge an appeal

“The following persons are entitled to lodge an appeal:

- (1) a convict, his legal representative and defence concerning the part of the case relating to the interests of the convict;

...

- (6) an accused whose case has been remitted for additional investigation, his legal representative and defence, concerning the reasons and grounds for the remittal of the case for additional investigation;

...

(12) other persons in cases envisaged by the Code.”

Article 360

Terms for consideration of a case by a court of appeal

“A court of appeal shall consider the case on the day determined by the first-instance court...”

Article 366

Outcome of consideration of a case on appeal

“...

Having considered appeals against the decisions envisaged in part 2 of Article 347 of the code, a court of appeal [has the power to]:

(1) adopt a ruling leaving the ruling or resolution without any changes and dismissing appeals, quashing the ruling or resolution and remitting it to the court of first instance for fresh consideration ... changing the ruling or resolution;

(2) dopt a ruling while quashing the first-instance court's ruling or resolution in full or in part.”

Article 382

Review [on appeal] of court rulings and resolutions of judges

“Judicial decisions listed in part 2 of Article 347 of the Code shall be reviewed on appeal in accordance with the requirements of this Chapter... Appeals lodged against resolutions of a judge delivered pursuant to Articles 52-5, 165-2, 165-3, 177, [and] 205 of the Code shall be considered not later than three days of its arrival at the court of appeal. [Case] material pertinent to the consideration of such appeals shall be obtained promptly on demand.

...”

61. The relevant extracts from Chapter 31 (Cassation proceedings), as worded at the material time, read as follows:

Article 383

Judicial decision which may be reviewed in cassation

“The [following decisions] may be reviewed in cassation:

(1) judgments, rulings and resolutions of a court of appeal which it has adopted acting as a court of first instance;

(2) udgments and resolutions of a court of appeal adopted on appeal.

Judgments and resolutions of [local] ... courts and rulings of a court of appeal concerning those judgments and resolutions may also be reviewed in cassation.”

Article 384**Persons entitled to lodge an appeal in cassation**

“The persons listed in Article 348 of the Code may lodge an appeal in cassation against the judicial decisions envisaged in part 1 of Article 383 of the Code.

[The following persons] are entitled to lodge appeals in cassation against the judicial decisions envisaged in part 2 of Article 383 of the Code:

(1) a convict, his legal representative and defence concerning the part of the case relating to the interests of the convict;

...”

Article 392**Term for consideration of a case by the court of cassation**

“An appeal in cassation ... against the judicial decisions envisaged in part 1 of Article 383 of the Code shall be scheduled for a hearing in cassation within two months of its submission to the court of cassation, an appeal in cassation ... against the judicial decisions envisaged in part 2 of Article 383 of the Code – within two months of the delivery of a ruling admitting the case for consideration in cassation.”

Article 396**Outcome of consideration of a case by the court of cassation**

“Having considered a case in cassation, the court of cassation shall adopt one of the following decisions:

(1) a decision leaving the judgment, resolution or ruling unchanged and dismissing appeals in cassation;

(2) a decision quashing the judgment, resolution or ruling and remitting the case for additional investigation or fresh trial or consideration on appeal;

(3) a decision quashing the judgment, resolution or ruling and discontinuing the proceedings;

(4) a decision changing the judgment, resolution or ruling.

...”

C. Pre-Trial Detention Act of 1993

62. The relevant extracts from Section 9 of the Act, as worded at the material time, read as follows:

“Detainees have the right to:

defence in accordance with the legislation on criminal procedure;

...”

63. The above provisions were amended on 12 January 2005 and read as follows:

“Detainees have the right to:

defend their rights and interests in person or through the assistance of a defence lawyer from the moment of the arrest or placement in custody, as well as to be informed during the placement in custody of the reasons and causes for that placement in custody, to challenge [the reasons and causes] before the court, to receive in writing an explanation of the provisions of Articles 28, 29, 55, 56, 59, 62, and 63 of the Constitution of Ukraine, of this section and of other rights of detainees established by law, including the right to defend their rights and interests in person or through the assistance of a defence lawyer from the moment of the arrest (placement in custody), the right to refuse to testify before a defence lawyer arrives;

...”

D. Resolution no. 2 of the Plenary Supreme Court of 11 February 2005 concerning the application by the courts of Ukraine of legislation on remittal of criminal cases for additional investigation

64. The relevant extracts from the Resolution of the Plenary Supreme Court read as follows:

“14. ... Resolutions of local courts remitting cases for additional investigation and rulings [adopted by] courts of appeal [concerning such resolutions], as well as rulings of courts of appeal quashing judgments of local courts and remitting cases for fresh investigation or trial shall not be reviewed in cassation (according to the procedure envisaged by Articles 383 § 2 and 386 § 2 of the Code of Criminal Procedure), as they do not, as such, hinder further proceedings in cases.”

THE LAW

I. SCOPE OF THE CASE

65. The Court notes that, after the communication of the case to the respondent Government, the applicant introduced new complaints under Article 3 of the Convention, alleging that the colony cells were overcrowded and that prisoners had to sleep on bunk beds and were not provided with bed linen, under Article 4 of the Convention about the length of his pre-trial detention and the conditions of his detention in the Cherkasy colony, and under Article 5 § 1 (b) and (d) of the Convention that his placement in

custody in September 2001 was unlawful. He also raised new complaints under Articles 13 and 14 of the Convention concerning the alleged unfairness of the civil proceedings against a local employment office in February-March 2001.

66. In the Court's view, the new 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 in the present context 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

67. The applicant complained that the conditions of his detention were inhuman. In particular, he submitted that he suffered from heart, stomach, kidney and liver pain, was constantly at risk of contracting tuberculosis and was not provided with adequate medical treatment in detention. He further complained of lack of food, leading to significant weight loss, and inadequate heating and light in the Colony. The applicant invoked Article 3 of the Convention, which reads as follows:

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

68. The Government contended that the applicant's complaints were groundless. In particular, they submitted that during his detention the applicant's state of health had been satisfactory and that he had been examined regularly by doctors.

69. The applicant contested the Government's submissions. In particular, he alleged that during his stay in the ITT he had not been seen by a doctor and that the medical commission's conclusion of 27 June 2006 that he was healthy had not been accurate, as he had not been examined by a surgeon, a neurologist, an otolaryngologist, or an ophthalmologist. According to the applicant, his medical checks had not been regular or sufficient. Because of this, he had not received the medical treatment he required.

70. The Court will examine the applicant's submissions in the light of the general principles enshrined in its case-law on health care in detention (see, for example, *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI; *Mouisel v. France*, no. 67263/01, §§ 38-40, ECHR 2002-IX; and *Aleksanyan v. Russia*, no. 46468/06, § 140, 22 December 2008). The Court observes that the applicant's allegations, that the medical assistance he received while in detention was inadequate, lack substantiation. In particular, judging on the basis of the applicant's medical data available from the case file, the Court notes that he did not have serious health problems and that his state of health was generally satisfactory during his detention. The Court further notes that the applicant was successfully

treated in respect of the minor health problems he had in September-October 2005 and August 2006. While it might have been preferable for the applicant to be examined by a doctor during his detention in the ITT, the lack of such an examination does not raise an issue under Article 3 of the Convention in the present circumstances, in particular given the fact that the applicant was seen by doctors upon his arrival in the SIZO, who concluded that he was healthy. There is nothing in the case to suggest that the applicant's examination in the SIZO was inadequate or that he required additional examination. As to the fact that the applicant was detained in the same building as prisoners suffering from tuberculosis, this is not sufficient for the Court to conclude that the applicant's health was in danger.

71. The Court further notes the applicant did not raise his allegations of lack of food, adequate heating and light in the Colony before the authorities (see *Vinokurov v. Ukraine and Russia* (dec.), no. 2937/04, 16 October 2007).

72. On the whole, the Court concludes that there is no appearance of a violation of Article 3 of the Convention in the case and that the applicant did not provide arguments capable of persuading the Court to reach a different conclusion. It follows that this part of the application must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

73. The applicant complained that the length of his pre-trial detention had not been “justified” or “reasonable” and invoked Article 5 § 3 of the Convention, which reads as follows:

“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.”

A. Admissibility

74. The Government maintained that the applicant could not claim to be a victim of a violation of Article 5 § 3 of the Convention, as the excessive length of the proceedings in his case had been ultimately recognised by the domestic courts and the period of his pre-trial detention had been included in his term of imprisonment (see paragraphs 32 and 35 above). The Government also argued that the applicant had not exhausted domestic remedies, as he had not claimed under the Act on procedure for

compensation for damage caused to the citizen by unlawful actions by bodies of inquiry, pre-trial investigation, prosecutors and courts, or for compensation for the excessive length of his detention on the basis of the above findings by the domestic courts.

75. The applicant disagreed.

76. The Court notes that the ruling of the Court of Appeal, on which the Government relied, did not concern the issue of excessive duration of the applicant's pre-trial detention. Furthermore, the Government did not demonstrate that there had been sufficient basis in the domestic law for the applicant to claim compensation in respect of the complaint at issue (see *Tkachev v. Ukraine*, no. 39458/02, § 36, 13 December 2007; *Doronin v. Ukraine*, no. 16505/02, § 45, 19 February 2009; and *Mironenko and Martenko v. Ukraine*, no. 4785/02, § 61, 10 December 2009). The Court also notes that the inclusion of the period of the applicant's pre-trial detention in the period of his imprisonment was not related to the alleged violation of Article 5 § 3 of the Convention (see *Pavletić v. Slovakia*, no. 39359/98, § 61, 22 June 2004; *Lebedev v. Russia*, no. 4493/04, §§ 47-48, 25 October 2007; and *Feldman v. Ukraine*, nos. 76556/01 and 38779/04, §§ 62-65, 8 April 2010).

77. Accordingly, the Court dismisses the Government's above objections. It finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. The Court further finds that it is not inadmissible on any other grounds and must therefore be declared admissible.

B. Merits

78. The applicant complained that his pre-trial detention had been excessively long.

79. The Government submitted that the period to be taken into consideration under Article 5 § 3 of the Convention lasted from 12 September 2001 to 24 December 2004.

80. As regards the period of the applicant's pre-trial detention, the Court agrees, for the most part, with the Government, though it must exclude from its consideration of this part of the case the period of the applicant's detention from 15 October 2003 to 25 March 2004 during which he was detained pursuant to the conviction by the Court of Appeal on 15 October 2003. Thus, the Court notes that the applicant's pre-trial detention lasted for two years and about ten months, which period is not short in absolute terms.

81. The Court observes that the seriousness of the charges against the applicant and the risk of his absconding and obstructing the justice, advanced in the initial order on the applicant's detention in September 2001, remained the only reasons for the courts not to change the preventive measure imposed on him. Furthermore, the courts often did not advance any

grounds whatsoever for maintaining the applicant's detention, simply stating that the previously chosen preventive measure was correct.

82. In this context, the Court notes that it has frequently found a violation of Article 5 § 3 of the Convention in cases raising issues similar to those raised in the present case (see, for example, *Tkachev*, cited above, §§ 47-53; *Yeloyev v. Ukraine*, no. 17283/02, §§ 60-61, 6 November 2008; *Doronin*, cited above, §§ 63-64; and *Sergey Volosyuk v. Ukraine*, no. 1291/03, §§ 40-42, 12 March 2009). There are no arguments in the case capable of persuading the Court to reach a different conclusion.

83. Accordingly, the Court concludes that there has been a violation of Article 5 § 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

84. The applicant complained that the lawfulness of his pre-trial detention was not reviewed by the courts in accordance with the requirements of Article 5 § 4 of the Convention, which reads as follows:

“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

85. The Government argued that the applicant had not exhausted the domestic remedies available to him under the national law, in particular under Articles 165-2 and 383 of the Code of Criminal Procedure and section 9 of the Pre-trial Detention Act, as he had not appealed in cassation against the decisions of 12 March and 28 May 2003 (see paragraph 47 above).

86. The applicant maintained that he had lodged with the courts an appeal in cassation against those decisions and that it had been the latter's fault that it had remained unexamined.

87. The Court notes that it cannot be established on the basis of the material available in the case that the applicant had appealed in cassation against the decisions at issue. However, the Court considers, for the reasons stated below, that he was not required to pursue the procedure suggested by the Government.

88. In particular, the Court observes that the decisions of 12 March and 28 May 2003 mainly concerned the remittal of the applicant's case for additional investigation. Although the Tarasha Court decision of 12 March 2003 also contained an order to keep the applicant in detention and the decision of the Court of Appeal of 28 May 2003 acknowledged the applicant's request for release, their object and purpose was to resolve the

issue of wrongful criminal qualification of the applicant's actions raised in a prosecutor's request (see paragraphs 14 and 15 above).

89. Having regard to the wording of Articles 246, 383 and 384 of the Code of Criminal Procedure and the position of the Supreme Court expressed in its resolution concerning the matter (see paragraphs 58, 61, and 64 above), the Court doubts that it was open for the applicant to appeal in cassation against the impugned decisions. As to Article 165-2 of the Code of Criminal Procedure and section 9 of the Pre-trial Detention Act on which the Government also relied in their submissions, the Court observes that these provisions concerned arrest or placement in custody at the pre-trial investigation stage and were not pertinent to this aspect of the case.

90. In any event the Court notes that the Government did not explain how an appeal against the decisions of 12 March and 28 May 2003 under the ordinary cassation procedure would have allowed the applicant to raise an issue of the lawfulness of his continued detention and how such a procedure would provide a direct, speedy, and not merely indirect, protection of the rights guaranteed by Article 5 of the Convention (see, *mutatis mutandis*, *Nevmerzhitsky v. Ukraine* (dec.), no. 54825/00, 25 November 2003, and *Solovey and Zozulya v. Ukraine*, nos. 40774/02 and 4048/03, § 77, 27 November 2008). They also failed to submit any examples of cases in which a decision authorising detention had been reviewed on the merits by a court of cassation.

91. The Court further observes that Articles 165-2 and 163-3 of the Code of Criminal Procedure provided detainees with the opportunity to appeal against judicial decisions ordering their placement in custody or extending the term of their detention at the stage of pre-trial investigation (see paragraph 57 above). As regards judicial decisions authorising detention at subsequent stages of criminal proceedings, the domestic law did not provide for the right to challenge such decisions on appeal or in cassation. This is partly confirmed by the refusal of the Court of Appeal to deal with the applicant's appeal against a decision of the trial court concerning his continued detention on the ground that it could not be appealed against (see paragraph 43 above).

92. Accordingly, the Court dismisses the Government's objection. It finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. The Court further finds that it is not inadmissible on any other grounds and must therefore be declared admissible.

B. Merits

1. *Submissions of the parties*

93. The applicant complained that the courts had not considered his arguments for release from detention and that their decisions ordering his continued detention had been ungrounded. He also complained that his appeal against the Tarasha Court decision of 11 March 2003 had not been considered on the merits and that he had not been given copies of the decisions of the Court of Appeal of 4 June 2004 and of the Supreme Court of 29 July 2004, which, *inter alia*, concerned his detention.

94. The Government argued that the lawfulness of the applicant's pre-trial detention had been duly considered by the courts. The applicant's requests for release had been dealt with by the courts without delay. In addition to this, a review of the lawfulness of the applicant's detention had been carried out automatically each time the case had been received by the courts or remitted for additional investigation or for fresh judicial consideration.

95. Referring to their submissions concerning the admissibility of this part of the case (see paragraph 85 above), the Government maintained that the applicant had not availed himself of the opportunity to appeal against the court decisions concerning his continued detention under the ordinary appeal and cassation procedures.

96. The Government also contended that the applicant was informed of the court decisions of 4 June and 29 July 2004 in timely fashion, enabling him to appeal in cassation against the former decision.

2. *The Court's assessment*

(a) General principles emerging from the Court's case-law

97. The Court reiterates that Article 5 § 4 of the Convention entitles arrested or detained persons to “take proceedings” bearing upon the procedural and substantive conditions which are essential for the “lawfulness”, in Convention terms, of their deprivation of liberty. This implies that a procedure for review of the lawfulness of detention must be available in the domestic legal system. Such a procedure must be in conformity with the principles emerging from the Court's case-law.

98. In particular, it must have a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question (see, for instance, *Assenov and Others v. Bulgaria*, 28 October 1998, § 162, *Reports of Judgments and Decisions* 1998-VIII). The procedure must be adversarial and must always ensure “equality of arms” between the parties (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II). In the case

of a person whose detention falls within the ambit of Article 5 § 1 (c) of the Convention a hearing is required (see *Assenov and Others*, cited above).

99. The opportunity to initiate such a procedure must be provided soon after the person is taken into detention and, if necessary, at reasonable intervals thereafter. The review procedure must be conducted with due diligence (see *Khudobin v. Russia*, no. 59696/00, § 115, ECHR 2006-XII (extracts)).

100. The competent courts reviewing the lawfulness of detention have 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 pursued by the arrest and the ensuing detention (see *Butkevičius v. Lithuania*, no. 48297/99, § 43, ECHR 2002-II (extracts)).

101. Whilst Article 5 § 4 of the Convention does not impose an obligation on the competent courts to address every argument contained in the detainee's submissions, when examining remand appeals they must take into account concrete facts which are referred to by detainees and which are capable of casting doubt on the existence of those conditions essential for the "lawfulness", for Convention purposes, of the deprivation of liberty (see *Nikolova*, cited above, § 61).

(b) Application of these principles to the present case

102. Turning to the circumstances of the present case, the Court observes that the lawfulness of the applicant's detention was considered by the domestic courts on a number of occasions at various stages of the proceedings (see paragraphs 40-44, 46 above). Furthermore, the applicant had the opportunity to initiate judicial review of the matter and his requests for release were considered by the courts on the whole speedily.

103. However, the Court notes that despite the fact that the applicant provided specific, pertinent and important arguments in support of his requests for release (see paragraph 45 above), the domestic courts did not address any of those arguments in their decisions rejecting the applicant's requests. Moreover, not a single decision on his detention issued after the initial review of the lawfulness of the applicant's arrest on 14 September 2001 referred to any particular circumstances or specific considerations justifying the applicant's continued detention.

104. The Court considers that the issue under Article 5 § 4 of the Convention raised in the present case does not merely concern an incidental failure of the domestic courts to address properly the lawfulness of the applicant's continued detention. It stems from a more general problem of a lack of clear and foreseeable domestic procedure of judicial review of the lawfulness of detention.

105. In particular, whilst the Code of Criminal Procedure requires the courts to give reasons for their decisions authorizing detention during pre-trial investigations and to fix a term of such detention (see paragraph 57

above), it does not provide for a similar requirement as regards the decisions concerning the issue of continued detention after a case is referred to a trial court. The Court further observes that, although Article 237 of the Code of Criminal Procedure provides for an obligation of a judge to examine the question of application of preventive measures during preliminary consideration of a case, such consideration may be completed without participation of the person concerned or his lawyer, given the provisions of Article 240 of the Code (see paragraph 58 above).

106. In this respect, the Court notes that it has found on a number of occasions in other cases against Ukraine which concerned the same legal framework, though in the context of Article 5 § 1 complaints, that Ukrainian detention procedures did not afford applicants adequate protection from arbitrariness (see, for instance, *Yeloyev*, cited above, § 54).

107. In so far as the Government argued that the applicant could have challenged on appeal the decisions concerning his detention, the Court observes that it has already dealt with this argument concerning the admissibility of this part of the case (see paragraphs 91-92 above).

108. In these circumstances, the Court finds that contrary to Article 5 § 4 of the Convention the domestic courts failed to examine the circumstances or specific considerations justifying his continued detention after the initial review of the lawfulness of his arrest on 14 September 2001 (see *Svershov v. Ukraine*, no. 35231/02, § 71-72, 27 November 2008, and *Sergey Volosyuk*, cited above, § 54). For the reasons stated in paragraphs 105 and 106 above, the Court further finds that on the whole the domestic law does not provide for the procedure of review of the lawfulness of continued detention after the completion of pre-trial investigations satisfying the requirements of Article 5 § 4 of the Convention.

109. In view of its above findings, the Court does not consider it necessary to rule whether the failure of the authorities to provide the applicant with copies of certain procedural decisions, which, *inter alia*, concerned his detention and Tarasha Court's refusal to examine the applicant's request for release of 22 January 2001 on the ground that it had ruled on the matter on a previous occasion were also contrary to the requirement of an adequate judicial response under the same provision of the Convention.

110. Accordingly, there has been a violation of Article 5 § 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (c) OF THE CONVENTION

111. The applicant complained that his right to defence had been violated in the course of the criminal proceedings against him. In particular, he argued that the State-appointed lawyer had not been able to effectively

assist the applicant, as he had been appointed in the case only some days before the completion of the additional investigations in October 2004, in the course of which new charges had been brought against the applicant. The applicant invoked Article 6 §§ 1 and 3 (c) of the Convention, which reads, in so far as relevant, as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair... hearing ...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require ...”

112. The Government submitted that there had been no violation of Article 6 of the Convention, as the applicant had been represented by his mother for the entire duration of the proceedings against him and that this provision of the Convention did not require an accused to be represented by a lawyer. According to the Government, even assuming that the applicant had not been duly represented at the pre-trial stage of the proceedings, a State-appointed lawyer had assisted him during the trial. The latter had been able to raise before the trial court complaints concerning any irregularities in the course of the investigations.

113. The Court does not find it necessary to address the Government's above arguments in detail, as it considers that the complaint under Article 6 §§ 1 and 3 (c) of the Convention is unsubstantiated for the following reasons.

114. In particular, the Court notes that the applicant's complaint concerns the period during which the case was pending additional investigations in September-November 2004. The additional investigations resulted in the criminal qualification of the applicant's actions being changed and new charges of serious crimes, for one of which life imprisonment was a possible sanction, being brought against him. The applicant was provided with a State-appointed lawyer when the new charges were brought against him, in accordance with the requirements of Article 45 of the Code of Criminal Procedure (see paragraphs 27 and 55 above). This lawyer continued representing the applicant until the completion of the trial.

115. The Court further notes that about six weeks elapsed before the court commenced the applicant's trial after the completion of the additional investigations. The applicant did not suggest that during that period he or his lawyer had not had access to the case materials, that the authorities had prevented him from having contact with the lawyer, or that they had otherwise limited the applicant's opportunity to obtain the lawyer's advice and assistance with the preparation of his defence.

116. The applicant's allegation that the State-appointed lawyer had not provided him with any assistance lacks detail and relevant substantiation. Even assuming that, as the applicant submitted, the lawyer had failed to attend a preliminary hearing on 2 December 2004 and that he had not assisted the applicant in the preparation of his appeal in cassation, this does not raise an issue under Article 6 § 3 (c) of the Convention in the circumstances of the case. In particular, the applicant did not specify whether the lawyer had discontinued representing the applicant after the trial or that he had simply failed to fulfil his duties. Furthermore, the applicant did not argue that he had been unable to hire a new lawyer to defend him in the ensuing proceedings. In any event, the Court reiterates that a State cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal-aid purposes (see *Kamasinski v. Austria*, 19 December 1989, § 65, Series A no. 168).

117. In these circumstances, the Court considers that the applicant's complaint does not disclose any breach of his rights under Article 6 §§ 1 and 3 (c) of the Convention and must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

118. 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

119. The applicant claimed 1,021,596 euros (EUR) in respect of pecuniary damage, which included loss of earnings for a period prior to his arrest in September 2001, during which the State had allegedly failed to provide him with a job, as well as for the period during which he had stayed in detention from 12 September 2001 onwards, and medical, sanitary and food expenses he had had to bear because of the allegedly unacceptable conditions of his detention.

120. The applicant also claimed EUR 670,000 in respect of non-pecuniary damage caused by the allegedly ungrounded conviction in 1998, the Ombudsman's refusal to deal with his complaints about his conviction in 1998, the failure of the authorities to provide him with a job, the allegedly unlawful arrest in September 2001 and his subsequent detention, and the conditions of his detention.

121. The Government noted that the amounts claimed were exorbitant, partly bore no relation to the matters raised in the present case and partly were ungrounded. They also submitted that social disruption, including inability to work and raise money, was an inevitable element of the applicant's detention. In any event, if the Court found a violation of the Convention in the present case, the Government asked it to award a sum on an equitable basis.

122. The Court notes that the pecuniary and non-pecuniary damage alleged by the applicant do not directly concern the violations of Article 5 §§ 3 and 4 of the Convention, which the Court found in the case (see paragraphs 83, 108 and 110 above). However, it transpires from the applicant's claims for compensation for non-pecuniary damage that he must have suffered some distress and anxiety on account on account of the length of his pre-trial detention and the lack of review of the lawfulness of his detention. Ruling on an equitable basis, the Court awards him EUR 2,600 under this head.

B. Costs and expenses

123. The applicant claimed EUR 1,000 for costs and expenses incurred in the domestic proceedings and EUR 2,000 for those incurred before the Court.

124. The Government submitted that the claims were unsubstantiated.

125. The Court notes that the applicant did not provide any documents in support of his claims. Accordingly, the Court rejects them as unsubstantiated.

C. Default interest

126. 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 applicant's complaints under Article 5 §§ 3 and 4 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

4. *Holds*

- (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, EUR 2,600 (two thousand six hundred euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 28 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President