



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

FIFTH SECTION

CASE OF PLESHKOV v. UKRAINE

(Application no. 37789/05)

JUDGMENT

STRASBOURG

10 February 2011

FINAL

10/05/2011

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

In the case of Pleshkov v. Ukraine,

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

Peer Lorenzen, *President*,
Karel Jungwiert,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva,
Ganna Yudkivska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 6 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 37789/05) 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 Yevgeniy Vladislavovich Pleshkov (“the applicant”), on 8 October 2005.

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

3. The applicant complained, in particular, about the length of his pre-trial detention from 25 May 2004 to 31 July 2006 and about the alleged lack of an adequate judicial review of its lawfulness. He also complained about the length of the criminal proceedings against him.

4. By a partial decision of 7 July 2009, the Court decided to adjourn the examination of the above complaints, as well as the complaint about the alleged arbitrariness of the applicant's remand in custody on 25 May 2004, and declared the remainder of the application inadmissible. Under the provisions of Article 29 of the Convention, it was also decided to examine the merits of the adjourned part of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1960 and lives in Belgorod, Russia.

6. On 29 May 2003 a criminal case was opened against him, along with some other persons, on suspicion of trafficking in human beings, and on 31 May 2003 the applicant was arrested.

7. On 30 July 2003 the Kyivskyy District Court of Kharkiv (“the Kyivskyy Court”) released him subject to an undertaking not to abscond.

8. On 21 November 2003 the pre-trial investigation was declared complete and the case was sent to the trial court, which commenced the proceedings on 10 December 2003.

9. On 25 May 2004 the Kyivskyy Court, in a hearing in which the victims' representative took part, allowed the prosecutor's application for the applicant's (as well as the other co-defendant) remand in custody. The court agreed with the prosecutor's argument that the applicant had been putting pressure on the victims, which had led to changes in their testimonies. According to the applicant, his own argument, on which the court allegedly failed to comment, was that the changes in the victims' statements in the court might have been explained by the investigator's pressure on them in the course of the pre-trial investigation, which they were not any longer subjected to during the trial. The applicant was arrested in the hearing room.

10. He repeatedly and unsuccessfully requested to be released under an undertaking not to abscond. The applicant argued that there was no evidence of his guilt, that he had never faced any criminal charges before and had received some government awards. Furthermore, he referred to the facts that he had a permanent place of residence and elderly parents to take care of, and that his health had deteriorated in detention.

11. On 24 September 2004, 13 and 15 April, 31 May and 5 December 2005 the Kyivskyy Court rejected the applicant's requests for release. The reasoning of those rulings was practically identical. The court supported the prosecutor's opinion, which referred to the serious nature of the charges against the applicant and an inherent risk of his absconding. It further noted:

“The court considers that the issue of changing the preventive measure is premature. The issue of the preventive measure [“of the penalty” – in the rulings of 24 September 2004 and 5 December 2005] will be resolved when the verdict is pronounced in the case and [the applicant] is convicted or acquitted.”

12. The applicant unsuccessfully complained about the length of the trial to the Council of Judges of Ukraine, to the Kharkiv Court of Appeal and to various other authorities. He was informed in reply that it was caused by the complexity of the case and the large number of victims, as well as by the need to handle numerous requests and petitions from the applicant.

13. On 31 July 2006 the Kyivskyy Court found the applicant guilty of trafficking in human beings and production and distribution of pornographic materials, and sentenced him to ten years' imprisonment, with prohibition on working in any film, video or computer programme production and distribution area.

14. Overall, the Kyivskyy Court held over sixty hearings. It issued rulings requiring the presence of the victims and witnesses, enforceable by the police, on some ten occasions.

15. On 13 February 2007 the Kharkiv Court of Appeal quashed that verdict and remitted the case to the same first-instance court for fresh examination. The main point of criticism was the vagueness of the verdict, including, in particular, the charges against the co-defendants, the classification of the films in which the victims had appeared as pornographic, and the conclusions that the victims had been both deceived and coerced by the co-defendants. The appellate court made a general conclusion that the investigation of the case by the first-instance court had been unbalanced and incomplete. It released the co-defendants under an undertaking not to abscond.

16. On 13 March 2007 the Kharkiv Court of Appeal decided to examine the case itself as a court of first instance.

17. On 12 April 2007 it remitted the case to the Kharkiv Regional Prosecutor's Office for additional investigation.

18. On 10 July 2007 the Supreme Court quashed the ruling of 12 April 2007.

19. On 27 September 2007 the Kharkiv Court of Appeal started the examination of the case.

20. On 4 and 16 October 2007 the court adjourned hearings on account of the applicant's failure to attend.

21. On 24 October 2007 it ordered the applicant's remand in custody, examination of the case being stayed until his whereabouts had been established.

22. The case remains pending before the Kharkiv Court of Appeal.

23. In his submissions to the Court, the applicant admitted he had absconded and gave as the reason that he did not trust the Ukrainian judiciary.

II. RELEVANT DOMESTIC LAW

24. The relevant legal provisions can be found in the *Shalimov v. Ukraine* judgment, no. 20808/02, §§ 40-41, 4 March 2010).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

25. The applicant complained that his deprivation of liberty on 25 May 2004 had been arbitrary and that his subsequent continued detention had been unjustifiably long. He further complained that there had been no adequate judicial review of the lawfulness of his pre-trial detention. The applicant relied on Article 5 §§ 1, 3 and 4 of the Convention, the relevant parts of which read as follows:

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

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

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

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

A. Admissibility

1. Article 5 § 1 of the Convention

26. The Government submitted that the applicant's remand in custody had been based on a reasonable suspicion of a serious crime, had been ordered by a competent court in compliance with the national legislation and had been a justified measure for securing proper conduct of the proceedings. They therefore considered his complaint in that respect to be manifestly ill-founded.

27. The applicant contended that his deprivation of liberty on 25 May 2004 had been an unjustified and excessive measure taken on invented grounds, such as his allegedly unproven pressure on the victims.

28. The Court notes that Article 5 § 1 of the Convention requires in the first place that the detention be “lawful”, which includes the condition of compliance with a procedure prescribed by law. The Convention here

essentially refers back to national law and states the obligation to conform to the substantive and procedural rules thereof, requiring in addition that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness (see *Benham v. the United Kingdom*, 10 June 1996, § 40, *Reports* 1996-III). The Court accepts that a reasonable suspicion that a person has committed a serious offence may initially warrant his detention. Also, the need to secure the proper conduct of the proceedings, in particular the process of obtaining evidence from witnesses, constitutes a valid ground for such initial detention (see, for example, *Jamrózy v. Poland*, no. 6093/04, § 37, 15 September 2009).

29. Turning to the facts of the present case, the Court finds no indication of substantive or procedural unlawfulness of the applicant's detention under the domestic law. It was based on a suspicion of his involvement in trafficking in human beings, which, under the circumstances, could not be regarded unreasonable. Furthermore, the Court notes that before ordering the applicant's detention on 25 May 2004 the Kyivskyy Court examined the major argument of the investigator in that regard, namely the changes in the victims' statements coinciding with the applicant's being at liberty, at a hearing with participation of the applicant, the victims' representative and the investigator (see paragraph 9 above). The Court sees no reason to consider that its decision about replacing the applicant's undertaking not to abscond with pre-trial detention was arbitrary.

30. It follows that this part of the application is manifestly ill-founded and must be rejected under Article 35 §§ 3 (a) and 4 of the Convention.

2. Article 5 §§ 3 and 4 of the Convention

31. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) 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 § 3 of the Convention

32. The applicant maintained that his continued detention from 25 May 2004 until the pronouncement of the verdict in his case on 31 July 2006 had been excessively long.

33. The Government contested that view. They pointed out that once released by the Kharkiv Court of Appeal later on 13 February 2007, the applicant had not appeared for a single hearing, in which they saw an illustration of the propriety of his continued pre-trial detention. The Government also noted that the domestic authorities had been handling the applicant's case with due diligence.

34. The Court reiterates that, according to its well-established case-law, a person charged with an offence must always be released pending trial unless the State can show that there are “relevant and sufficient” reasons to justify the continued detention (see *Wemhoff v. Germany*, 27 June 1968, § 12, Series A no. 7, and *Yağcı and Sargin v. Turkey*, 8 June 1995, § 52, Series A no. 319-A). It falls in the first place to the national judicial authorities to ensure that in a given case the pre-trial detention of an accused person does not exceed a reasonable length of time. To this end, they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty, and set them out in their decisions dismissing the applications for release. It is essentially on the basis of the reasons given in these decisions and of the matters included by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV).

35. The Court notes that the contested pre-trial detention of the applicant in the present case lasted for two years, two months and six days, which is not short in absolute terms (see and compare with *Doronin v. Ukraine*, no. 16505/02, § 61, 19 February 2009). It is true that serious charges were raised against the applicant and the case was of a certain complexity, which influenced the length of the proceedings (see paragraph 52 below). However, during the impugned period of the applicant's detention the court dealing with his case rejected his requests for release five times in similarly worded rulings (see paragraph 11 above). Its line of reasoning remained unchanged and was twofold: firstly, the court referred, without any factual references or comments, to the seriousness of the charges against the applicant as an indication of the risk he would abscond and, secondly, it repeated on all five occasions – also without explanation – that it was premature, before the verdict, to change the preventive measure.

36. While the major reason for the applicant's remand in custody on 25 May 2004 was the assumption that he had been pressurising the victims, it remained without any re-evaluation during the whole period of his pre-trial detention lasting for over two years.

37. The Court therefore concludes that the domestic authorities failed to duly justify the applicant's continued detention from 25 May 2004 to 31 July 2006.

38. Accordingly, there has been a violation of Article 5 § 3 of the Convention.

2. Article 5 § 4 of the Convention

39. The applicant submitted that he had been denied an effective judicial review of the lawfulness of his pre-trial detention.

40. The Government argued that all the applicant's requests for release had been examined with due speediness and diligence. They underlined that one of them had even been successful and had resulted in the applicant's release on 13 February 2007.

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

42. The Court notes that the lawfulness of the applicant's detention was considered by the domestic courts several times. However, the respective decisions cannot be regarded as satisfying the requirements of Article 5 § 4, being in fact limited to the refusal to deal with the applicant's arguments. In this respect the Court recalls that it had already found that Ukrainian law did 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 (see *Molodorych v. Ukraine*, no. 2161/02, § 108, 28 October 2010). The fact that the applicant was eventually released after the verdict of 31 July 2006 was quashed on appeal, has not bearing for this finding.

43. It follows that there has been a violation of Article 5 § 4 of the Convention in this case too.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS

44. The applicant complained that the criminal proceedings against him had lasted an unreasonably long time. He relied on Article 6 § 1 of the Convention, which reads, in as far as relevant, as follows:

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

A. Admissibility

45. The Court notes that this part of the application is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

46. The applicant maintained his complaint.

47. The Government contested it. They submitted that the period to be taken into consideration was from 29 May 2003 (the date of the opening of the criminal case) to 24 October 2007 (the date when the Kharkiv Court of Appeal established that the applicant was on the run), and that it was not unreasonable, given the complexity of the case, the number of people involved, and the parties' behaviour.

48. The Court agrees with the Government's view concerning the period to be taken into consideration, as indeed the time when the applicant absconded (see paragraph 23 above) should be excluded from the overall length of the proceedings (see *Girolami v. Italy*, 19 February 1991, § 13, Series A no. 196-E, and *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 81, ECHR 2003-IX (extracts)).

49. 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, the conduct of the applicant and the relevant authorities (see, among many other references, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II). It further notes that an accused in criminal proceedings should be entitled to have his case conducted with special diligence, especially where he is kept in custody (see *Nakhmanovich v. Russia*, no. 55669/00, § 89, 2 March 2006).

50. The Court notes that the criminal proceedings against the applicant in the present case lasted for four years and almost five months.

51. A closer look is to be given to the events within that time span. The pre-trial investigation lasted for about half a year (see paragraphs 6–8 above), after which the Kyivskyy Court spent two years and eight months examining the case, holding some sixty hearings (see paragraphs 8, 13 and 14 above). Thereafter, the Kharkiv Court of Appeal quashed the verdict as vague and based on an unbalanced and incomplete investigation (see paragraph 15 above); a month later, it took the case over as a first-instance court (a delay of seven months) and unsuccessfully attempted to remit it for additional investigation (another delay of five months).

52. The Court accepts that, given a considerable number of victims and several co-defendants involved, the case was of a certain complexity. At the same time, it notes that the investigation and the trial, which had lasted for three years and two months in total, were recognised by the domestic authorities as seriously flawed (see paragraph 15 above). The attempt of the Kharkiv Court of Appeal to remedy the situation (taking the case over for its own examination and its eventually overturned remittal for additional investigation) took another year. In sum, as it appears from the facts of the case, the delay was attributable to the authorities rather than the applicant.

53. The Court therefore finds a violation of Article 6 § 1 of the Convention on account of the length of the criminal proceedings against the applicant.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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

55. The applicant claimed EUR 750,000 in respect of non-pecuniary and pecuniary damage.

56. The Government considered that there was no causal link between the pecuniary damage claimed and the violations alleged. They further considered the claim for non-pecuniary damage unsubstantiated and excessive.

57. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it considers that the applicant must have suffered non-pecuniary damage and, ruling on an equitable basis, awards him EUR 4,000 in that regard.

B. Costs and expenses

58. The applicant made no claim for costs and expenses. Accordingly, the Court makes no award.

C. Default interest

59. 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

1. *Declares* unanimously the complaints under Article 5 §§ 3 and 4 and Article 6 § 1 (length of proceedings) admissible and the remainder of the application inadmissible;

2. *Holds* unanimously that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds* unanimously that there has been a violation of Article 5 § 4 of the Convention;
4. *Holds* by four votes to three that there has been a violation of Article 6 § 1 of the Convention on account of the length of the proceedings;
5. *Holds* unanimously
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable on 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 ;
6. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following joined partially dissenting opinion of Judges Berro-Lefèvre, Kalaydjieva and Yudkivska is annexed to this judgment.

P.L.
C.W.

JOINED PARTIALLY DISSENTING OPINION OF JUDGES BERRO-LEFEVRE, KALAYDJIEVA AND YUDKIVSKA

Whilst we fully share the majority's conclusions concerning complaints under Article 5 of the Convention, we are unable to conclude that the length of proceedings in the present case failed to meet the reasonable time requirement.

The criminal proceedings against the applicant lasted four years and five months until the Kharkiv Court of Appeal found out that he evaded justice in October 2007. During that time a pre-trial investigation was completed and three levels of jurisdictions were further involved.

The Court's case-law always takes into account the complexity of the case. It is remarkable that the present case concerned human trafficking: investigation of this type of crime is particularly complex primarily because of the difficulties in obtaining evidence from victims. Victims in this category of cases are vulnerable; they mostly belong to disadvantaged social groups and try to avoid proceedings, fearing repressions against their close ones.

The present case is a good illustration - at least ten times the court had to order a compulsory attendance of victims and witnesses in court room, as they ignored summonses. It is true that Article 6 commands that judicial proceedings should be expeditious, but it also lays down the more general principle of the proper administration of justice (see *Boddaert v. Belgium*, 12 October 1992, § 39, Series A no. 235-D). In this situation we find it inappropriate to blame national judicial authorities that they held more than sixty hearings and even after that the investigation still appeared to be incomplete and the judgment was quashed by the Court of Appeal. Such an attempt to assure a thorough and elaborate investigation should be found compatible with good administration of justice, as “a concern for speed cannot dispense ... judges in the system of criminal procedure ... from taking every measure likely to throw light on the truth or falsehood of the charges” (see *Neumeister v. Austria*, 27 June 1968, p. 43, § 21, Series A no. 8). No significant period of inactivity attributable to the authorities can be marked here.

Therefore we remain convinced that in the particular circumstances of this case, even taking into consideration the interests at stake, the length of the proceedings was not excessive and the fair balance between the various aspects of Article 6 requirements was not upset. For that reason we voted against finding a violation of Article 6 of the Convention.