



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

FIFTH SECTION

CASE OF IZZETOV v. UKRAINE

(Application no. 23136/04)

JUDGMENT

STRASBOURG

15 September 2011

FINAL

15/12/2011

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

In the case of Izzetov v. Ukraine,

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

Dean Spielmann, *President*,

Elisabet Fura,

Karel Jungwiert,

Mark Villiger,

Isabelle Berro-Lefèvre,

Ann Power, *judges*,

Mykhaylo Buromenskiy, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 23 August 2011,

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

PROCEDURE

1. The case originated in an application (no. 23136/04) 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 Refat Khayriyevich Izzetov (“the applicant”), on 22 June 2004.

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

3. The applicant alleged, in particular, that the conditions of his pre-trial detention had been degrading; that he had been remanded in custody unlawfully and that his detention and criminal trial had lasted an unreasonably long time.

4. On 24 September 2009 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. Mrs G. Yudkivska, the judge elected in respect of Ukraine, was unable to sit in the case (Rule 28 of the Rules of Court). The President of the Chamber decided to appoint Mr Mykhaylo Buromenskiy to sit as an *ad hoc* judge (Rule 29 § 1(b)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1971 and lives in Trudolyubove, the Autonomous Republic of Crimea (“the ARC”).

A. The applicant’s detention and criminal proceedings against him

7. On 28 November 1998 a criminal case (no. 91241) was initiated into the circumstances under which money was extorted from the I. family.

8. On 2 August 1999 the applicant, a police officer at the material time, was arrested on suspicion of taking part in this crime.

9. On 5 August 1999 the applicant was charged with robbery of the I. family, although no formal case concerning robbery had been initiated and the case on extortion had not been formally terminated. On the same date the Prosecutor of the ARC remanded the applicant in custody for two months.

10. On 7 October 1999 the Prosecutor of the ARC extended the applicant’s detention for three more months, referring to the need to carry out further investigative actions.

11. On 2 January 2000 the Prosecutor of the ARC extended the applicant’s detention for one further month.

12. On 27 January 2000 the Prosecutor General of Ukraine extended the applicant’s detention for six further months. The order concerned extension of detention of thirteen persons, including the applicant, with reference to a different case (no. 8229), which concerned robberies and organisation of a gang by Mr S. P., another policeman. At the material time the applicant had no formal procedural status in this latter case.

13. On 20 March 2000 case no. 91241 and case no. 8229 were joined.

14. On 19 May 2000 the Prosecutors’ Office of the ARC rejected the applicant’s request for release, referring to the need to take further investigative action.

15. During the pre-trial investigation, the authorities questioned some 120 witnesses concerning some thirty-four criminal episodes, carried out some twenty reconstructions of the crime scenes and ordered numerous expert assessments.

16. On 20 July 2000 the investigation was completed and the applicant, along with eighteen other individuals implicated in gang membership, was committed for trial to the Supreme Court of the ARC (subsequently renamed the Court of Appeal of the ARC (hereafter “the ARC Court”).

17. On 4 May 2001, following familiarisation of the defendants with the materials in the case file and completion of other procedural formalities, the

ARC Court held a preliminary hearing in the case and scheduled the trial for 5 June 2001.

18. Having held some eighteen hearings between June and December 2001, the ARC Court adjourned the proceedings following a request by one of the defendants that the hearings be recorded, for which the technical means were not available at the time.

19. On 15 May 2002 the ARC Court resumed consideration of the case and held some 150 hearings up to 22 May 2004.

20. According to the applicant, the episode with which he had been charged (the I. family robbery) was examined by the court only in February 2003 in the course of five hearings.

21. On several occasions during the trial stage the applicant unsuccessfully attempted to institute criminal proceedings against investigator D., alleging that she had infringed his right to defend himself by concealing the fact that she had ordered ten expert assessments in the case, the results of which he had discovered only upon the completion of the pre-trial investigation.

22. On an unspecified date the applicant also attempted to institute criminal proceedings against the investigating authorities for unlawfully detaining him. In particular, they allegedly had no regard to his serious illness (pleuritis) at the time of his arrest, had charged him with robbery within the framework of an extortion case, and had obtained an extension of the detention order within the framework of a case in which he had no procedural status at the material time.

23. On 8 November 2002 the Prosecutors' Office of the ARC refused to institute criminal proceedings, finding however that investigator Ch., who had been in charge of the case at the material time, had infringed Articles 26 and 156 of the Code of Criminal Procedure when processing the case file material. In particular, he was obliged to join the cases before seeking an extension of the detention order.

24. On several occasions during his trial the applicant requested to be released from custody on account of alleged illegality of the orders detaining him issued during the pre-trial investigation. The ARC Court rejected his requests, noting that at the material time the initial omissions in case-processing, if any, had been remedied and the seriousness of the charges against the applicant warranted holding him in custody.

25. On 17 November 2004 the ARC court pronounced its judgment (which was presented on some 200 pages), according to which the applicant was convicted of gang membership and of robbery of the I. family and sentenced to six and a half years' imprisonment.

26. The applicant appealed in cassation, alleging that the trial court had erred in its assessment of the facts and application of the law, and had also not summoned a further witness suggested by him. The applicant also allegedly requested to be represented by Yustis, a public organisation of law students, in his appeal proceedings. This request was refused.

27. On 2 February 2006 the applicant was released from detention as the term of his imprisonment was up.

28. On 16 March 2006 the Supreme Court dismissed the applicant's appeal in cassation.

B. The conditions of the applicant's detention

29. Following his arrest on 2 August 1999, the applicant was placed in the Saky Temporary Detention Centre (ITU). According to the applicant, he was held in the same cell as serial offenders, in spite of the fact that he was a policeman, and offered no medical assistance for his serious illness (pleuritis).

30. On 9 August 1999 the applicant was transferred to the Simferopol no. 15 Pre-trial Detention Centre ("the SIZO") and stayed there until his release in February 2006.

31. According to the applicant, the cells in the SIZO were grossly overcrowded, as there was between 1.5 and 1.9 square metres per detainee in a cell. The detainees were confined to their cells for most of the day. Tuberculosis and other infectious diseases were rife among the inmates. Overall, the SIZO had some 230 cells and only twenty-four outdoor yards, which made it impossible to ensure that every detainee had outdoor exercise on a regular basis. The sanitary facilities were inadequate for detainees to keep themselves clean.

32. The Government submitted that throughout his stay in detention the applicant was held in seven different cells, designed for occupancy by up to ten inmates. The space per inmate was between 1.2 and 3.6 square metres. At some point the applicant was held in a single occupancy cell of 8.2 square metres. Each of the cells had a window enabling natural ventilation and penetration of daylight. All cells were equipped with ventilating equipment, water supply and sewerage, a table, chairs, a metal cupboard for food products and a radio. The cells had central heating. In the evenings the cells had electric light, enabling the detainees to read and write without damaging their eyes. Sanitary facilities available in each cell were separated from the living area and each morning the detainees were provided with a disinfectant solution to clean them. The detainees were likewise provided with linen at State expense and had weekly access to bathing facilities. On a daily basis the detainees were taken out for one hour's exercise in the outdoor yards of the SIZO, where they could also have access to facilities where they could do physical exercises.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL MATERIALS

33. Relevant provisions of domestic law can be found in the judgment in the case of *Yeloyev v. Ukraine* (no. 17283/02, § 35, 6 November 2008).

34. Relevant provisions of the Report by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment and Punishment can be found in the judgment in the case of *Dvoynych v. Ukraine* (no. 72277/01, §§ 39-40, 12 October 2006).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

35. The applicant complained that the conditions of his detention in the Simferopol no. 15 SIZO were incompatible with Article 3 of the Convention. The provision at issue reads as follows:

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

A. Admissibility

36. The Government submitted that the applicant had failed to exhaust domestic remedies in respect of the above complaint. In particular, he could have brought his case at three levels of domestic jurisdiction (in this respect they referred to Article 55 of the Constitution, Article 248-1 of the Code of Civil Procedure and Article 2 of the Code of Administrative Justice) or addressed it to the Prosecutor’s Office. They further submitted that in any event the applicant’s complaint was vague, general and unsubstantiated.

37. The applicant disagreed. He alleged that the conditions of his detention were degrading, on account of overcrowding, insanitary conditions and lack of outdoor exercise, and that the authorities were well aware of his situation and had failed to take any action to remedy it.

38. The Court observes that it has rejected non-exhaustion arguments, similar to those raised by the Government in the present case in a number of other cases, where the complaints concerned problems of a structural nature in the domestic prison system in question (see, for example, *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001; *Melnik v. Ukraine*, no. 72286/01, §§ 69-71, 28 March 2006; *Koktysh v. Ukraine*, no. 43707/07, § 86, 10 December 2009; and *Logvinenko v. Ukraine*, no. 13448/07, § 57, 14 October 2010). It does not see any reason to depart from its previous approach in the present case. The Court therefore rejects the Government’s objection concerning non-exhaustion.

39. As regards the Government’s argument concerning the general character of the applicant’s complaint, the Court considers that the level of detail submitted by the applicant (see paragraph 31 above) is sufficient to

require examination of this complaint on the merits. The Court considers that the present aspect of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

40. The applicant maintained that the conditions of his detention were degrading on account of overpopulation of the cells, lack of sanitary arrangements and lack of access to outdoor exercise.

41. The Government contested this view. They stated that the conditions of the applicant's detention were adequate and met his basic needs.

42. The Court observes that the applicant's complaints about the material conditions of his detention in the Simferopol SIZO relate to the period between 2 August 1999 and 2 February 2006. It reiterates that it has already found violations of Article 3 of the Convention in a number of applications brought by individuals detained in the same facility for various periods between these years (see, for example, *Dvoynikh*, cited above, §§ 64-69; *Znaykin v. Ukraine*, no. 37538/05 §§ 49-53, 7 October 2010; and *Visloguzov v. Ukraine*, no. 32362/02, §§ 58-61, 20 May 2010). The Court notes that the matters giving rise to the finding of violations in the above cases are similar to those described by the applicant in the present case. The Court does not find any reason to depart from its previous approach in assessing these matters, and considers that the material conditions of the applicant's detention were degrading.

43. There has accordingly been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 (C) OF THE CONVENTION

44. The applicant further complained under Article 5 § 1 (c) of the Convention that his placement and holding in custody prior to his conviction were arbitrary and not in compliance with applicable domestic law. The provision at issue, in so far as relevant, reads as follows:

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

...

- (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;

...”

A. Admissibility

45. The Government did not submit any comments on the admissibility of this complaint.

46. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

47. The applicant submitted that he was detained and held in custody in breach of the applicable domestic law and that in any event the custodial measure was unfair and unreasonable. He noted, in particular, that on 2 August 1999 he had been remanded in custody on a charge of robbery of the I. family, while no criminal proceedings concerning the robbery of the I. family were ever instituted. The relevant criminal proceedings concerned extortion of money from them. Further, the applicant had not been made aware of the contents of the indictment. Next, in January 2000 he was arbitrarily added to a list of defendants in a different criminal case, whose custodial measure was extended. It was not until 20 March 2000 that the two criminal cases were formally joined. Further, following the applicant's committal for trial no further procedural decisions concerning his detention were ever taken. After the end of the pre-trial investigation the applicant was therefore held in custody in the absence of any formal decision on the matter.

48. The Government contested this view. They submitted that the applicant had been remanded in custody pursuant to the provisions of the Code of Criminal Procedure in force in the material time. Likewise, all the extensions of the measure were based on the applicable law, which was sufficiently foreseeable to enable the applicant to regulate his conduct.

49. Examining the facts of the present case in light of its case-law (see *Yeloyev v. Ukraine*, no. 17283/02, §§ 41-42, 6 November 2008) the Court notes that the Government have not provided any arguments to rebut the applicant's allegation that his initial arrest was not in accordance with the law.

50. Further, the Court has already found in other judgments against Ukraine that the procedures where (1) detention during pre-trial investigation has been extended by a prosecutor; (2) detention during the period after the completion of the investigation and before the opening of trial proceedings did not need to be covered by any decision, and (3) the

judge did not need to provide any reasons for extending the detention measure for the duration of the trial did not conform to the requirements of Article 5 of the Convention (see, among other authorities, *Kharchenko v. Ukraine*, no. 40107/02, §§ 66-76, 10 February 2011). As the procedure governing the extension of the applicant's detention in the present case was the same as the one which has already been found to be in violation of Article 5 § 1 (c) of the Convention, regardless of whether or not there were in addition administrative irregularities in extending the applicant's detention, the Court does not see any reasons to depart from its earlier jurisprudence.

51. In light of the above, the Court considers that the applicant's detention between 2 August 1999 and 17 November 2004 was not in accordance with Article 5 § 1 (c) of the Convention.

52. There has therefore been a violation of Article 5 § 1 (c) of the Convention.

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

53. The applicant next complained that his pre-trial detention had been unjustifiably long. He relied on 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

54. The Government did not submit any comments on the admissibility of this complaint.

55. The Court notes that the period to be taken into account commenced on 2 August 1999 (the date of the applicant's arrest) and ended on 17 November 2004 (the date when the applicant was convicted pursuant to the judgment of the first-instance court). It therefore lasted five years and three months. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

56. The applicant contended that his pre-trial detention had lasted an unreasonably long time.

57. The Government contested this view. They argued that the charges against the applicant were very serious. They further noted that the case was exceptionally complicated. It involved nineteen defendants implicated in over thirty episodes of various crimes. During the pre-trial investigation the authorities questioned eighteen victims, 120 witnesses, carried out twenty reconstructions of crime scenes and ordered more than fifty various expert assessments, the total length of which was 726 days. At the trial stage seventy-seven witnesses and eight experts were questioned. Regard being had to the seriousness of the charges against the applicant, the risk that he would abscond or tamper with evidence and the complexity of the proceedings, the length of his detention was not unreasonable.

58. Having regard to general principles established in its case-law (see *I.A. v. France*, judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VII, § 102; *Labita v. Italy* [GC], no. 26772/95, § 153, ECHR 2000-IV; and *Iłowiecki v. Poland*, no. 27504/95, §§ 61-63, 4 October 2001), the Court considers that, regard being had to the particularly lengthy period of detention of the applicant in the present case, the reasons for it must have been exceptionally serious.

59. In the meantime, it does not appear, either from the Government's observations or from other materials in the case file, that any such exceptional reasons existed. Lacking any specific indications of how the applicant's release pending trial would have been dangerous or detrimental to a resolution of the case, the Court cannot accept that the general complexity of the case against the nineteen gang members could be regarded as a "sufficient" reason for holding the applicant, who had no prior criminal record and had been charged with only one count of robbery, in pre-trial detention for over five years.

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

IV. ALLEGED VIOLATION OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME

61. The applicant further complained under Article 6 § 1 of the Convention that the length of the criminal proceedings against him had been incompatible with the "reasonable time" requirement.

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

A. Admissibility

62. The Government did not comment on the admissibility of this complaint.

63. The Court notes that in criminal matters the “reasonable time” referred to in Article 6 § 1 of the Convention begins to run as soon as a person is “charged”, in other words, given the official notification by the competent authority of an allegation that he has committed a criminal offence. This definition also corresponds to the test whether “the situation of the [suspect] has been substantially affected”. As regards the end of the “time”, in criminal matters the period governed by Article 6 § 1 of the Convention covers the whole of the proceedings in issue, including appeal proceedings (see *Merit v. Ukraine*, no. 66561/01, § 70, 30 March 2004).

64. The period to be taken into account in the present case thus commenced on 2 August 1999 (the date of the applicant’s arrest) and finished on 16 March 2006 (the date of pronouncement of the final judgment by the Supreme Court of Ukraine). It therefore lasted six years and seven months at two levels of jurisdiction.

65. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

66. The applicant alleged that the proceedings were unreasonably long, having particular regard to the fact that he personally was implicated in only a single count of robbery and that examination of evidence concerning the charge in issue took only five of some 170 hearings.

67. The Government alleged that the length of the proceedings was not unreasonable, regard being had to the exceptional complexity of the case. There were no unreasonable delays for which the authorities could be held responsible.

68. The Court observes that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

69. The Court further observes that for the entire period of the criminal proceedings the applicant in the present case was held in custody – a fact which required particular diligence on the part of the authorities dealing with the case to administer justice expeditiously (see, for example, *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 83, ECHR 2003-IX, and *Yurtayev v. Ukraine*, no. 11336/02, § 37, 31 January 2006).

70. The Court appreciates that the criminal proceedings at issue, which concerned more than thirty counts of criminal activity of nineteen individuals, were of particular complexity. It notes that the trial court held over 160 hearings within a three-year period and produced a judgment some 200 pages long.

71. On the other hand, the Court considers that these circumstances are not sufficient to justify the entire delay in the resolution of the applicant's case, particularly as he personally was implicated in only one single count of robbery. It is not for the Court to substitute its view for that of the domestic authorities in deciding whether or not it was feasible to disjoin the applicant's case and whether all the investigative actions and hearings that took place were necessary and were organised in an efficient manner. At the same time, it notes that there were some delays in the proceedings which remained unexplained by the Government in their observations. These included the nine-month delay between the completion of the investigation on 20 July 2000 and the first preparatory hearing of the case on 4 May 2001; the five-month delay in arranging for technical recording of the hearings (between December 2001 and May 2002); the six-month delay between the last hearing in the first-instance court on 22 May 2004 and the pronouncement of the judgment on 17 November 2004, and a delay of over one year between the pronouncement of the sentence and its review by the Supreme Court of Ukraine.

72. Having examined all the material submitted to it, the Court is unable to conclude that the authorities handled the applicant's case with requisite diligence. The Court considers that in the instant case the length of the criminal proceedings against the applicant was excessive and failed to meet the "reasonable time" requirement.

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

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

74. In addition to the above complaints, the applicant also complained under Article 3 of the Convention about the conditions of his detention in the ITU in 1999; under Article 5 § 2 of the Convention about not having been informed promptly about the charges against him; under Article 6 § 1 of the Convention that the criminal proceedings against him had been unfair, as the courts had incorrectly assessed the facts and applied the law to his case. In addition, the applicant complained under Article 6 § 3 (c) and (d) that the investigator D. had allegedly concealed from him that she had ordered ten expert assessments, that the Supreme Court refused to allow the Yustis public organisation to represent him in appeal proceedings, and that the trial court refused to question a further witness.

75. In the light of all the material before it, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the provisions relied upon by the applicant.

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

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. 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

78. The applicant claimed 65,000 euros (EUR) in respect of non-pecuniary damage.

79. The Government submitted that this claim was exorbitant and unsubstantiated.

80. The Court considers that the applicant must have suffered anguish and distress on account of the facts giving rise to the finding of violations of the Convention in the present case. Ruling on an equitable basis, the Court awards him EUR 13,000 in respect of non-pecuniary damage.

B. Costs and expenses

81. The applicant submitted no claim under this head. The Court therefore makes no award.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the conditions of the applicant's detention, lawfulness and length of detention before trial and length of

criminal proceedings against the applicant admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention;
4. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
5. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
6. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 13,000 (thirteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of Ukraine at the rate applicable on the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 September 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President