

FIFTH SECTION

CASE OF TRETYAKOV v. UKRAINE

(Application no. 16698/05)

JUDGMENT

STRASBOURG

29 September 2011

FINAL

29/12/2011

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

In the case of Tretyakov v. Ukraine,

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

Dean Spielmann, *President*,

Elisabet Fura,

Boštjan M. Zupančič,

Mark Villiger,

Isabelle Berro-Lefèvre,

Ann Power,

Ganna Yudkivska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 6 September 2011,

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

PROCEDURE

1. The case originated in an application (no. 16698/05) 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 Valeriy Valeriyevich Tretyakov (“the applicant”), on 29 April 2005.

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

3. The applicant alleged, in particular, that he had been unlawfully arrested and detained pending trial, that his detention before conviction and the criminal proceedings against him had been excessively long and that he had been deprived of an effective opportunity to bring proceedings by which the lawfulness of his detention would be decided speedily.

4. On 16 November 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).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1971 and lives in Kharkiv.

6. On 22 November 2001 B.'s body affected with injuries was found in his apartment. On the same date the Dzerzhinsky District Police of Kharkiv instituted a criminal investigation into the incident.

7. On 23 November 2001 A. reported to the police that he had witnessed the applicant beating B. on the head with a frying pan at a party in B.'s apartment. He further confessed that after B. had fallen to the floor unconscious, he and the applicant had taken valuables and left.

8. On 26 November 2001 the police drafted a bill of indictment charging the applicant with B.'s murder. Unable to establish the applicant's whereabouts and question him, they subsequently put him on the "wanted" list.

9. On 5 December 2001 the investigation obtained a decision to remand the applicant in custody from the Dzerzhinsky District Court of Kharkiv (hereafter "the District Court"). In its decision, the court referred to the gravity of the charges against the applicant, his recent criminal record and his disappearance after the incident with B.

10. On 8 December 2001 the investigating authorities added to the case file a letter of confession addressed by the applicant to the President of the District Court and dated 26 November 2001. In this letter the applicant explained, in particular, that he had partied with A. and B. in B.'s apartment and a fight had started between A. and B., during which the applicant had escaped.

11. On 4 February 2002 the applicant was arrested. On the same date he signed the arrest record (*протокол*), stating that he had been detained pursuant to the decision of the District Court of 5 December 2001, on suspicion of murder. According to the applicant, he was not apprised of the content of the decision of 5 December 2001. He presented no documents in evidence that he had lodged any relevant requests or complaints before the commencement of the trial.

12. On 18 February 2002 the applicant was presented with a new bill of indictment drafted on that day, according to which he was charged with murdering B. and theft from his apartment.

13. On 28 February 2002 the case was transferred to the District Court for trial.

14. On 1 March 2002 the Dzerzhinsky District Prosecutors' Office of Kharkiv modified the indictment, having substituted the murder charge with that of infliction of grievous bodily injuries resulting in death.

15. On 7 March 2002 the District Court held a preparatory hearing and scheduled the case for trial for 17 April 2002. According to the Government, at the preparatory hearing the District Court upheld the decision to keep the applicant in custody, having found no grounds for his release. The copy of the decision taken by the District Court on that date provided by the parties contains no reference to any ruling concerning the applicant's release or continuing detention.

16. Between March 2002 and February 2003 the District Court scheduled some nine hearings; however, none of them took place. On five occasions the hearings were rescheduled on account of the judge's inability to hear the case (sickness, vacations or being occupied in other proceedings). On other occasions the hearings were adjourned to accommodate procedural requests made by the parties or on other grounds.

17. On 17 and 18 February 2003 the District Court held the first hearings and adjourned the proceedings until 18 March 2003 in order for the expert who had examined B.'s corpse to be summoned.

18. Between March 2003 and June 2004 the court scheduled some ten hearings. Seven of them were adjourned or rescheduled on various grounds, including failure of the prosecutor or the witnesses to appear; failure of the detention-facility authorities to bring the defendants to the hearings; granting of the parties' motions for additional time to study the case-file; and ordering further investigative activities and an expert assessment.

19. On 14 June 2004 the District Court remitted the case for additional investigation, referring to various procedural and substantive shortcomings in the pre-trial investigation. The court further ordered, without providing any reasoning, that the applicant remain in custody.

20. On 12 October 2004 the Kharkiv Regional Court of Appeal (hereafter "the Court of Appeal") annulled this decision and remitted the case back to the trial court. The court further ordered that the applicant remain in custody, without expounding on the reasons for his detention.

21. On 7 February 2005 the District Court allowed the applicant's request for additional time to familiarise himself with the case-file materials and established a schedule for him to do so. It rejected the applicant's request to be provided with photocopies of the case-file materials.

22. On 22 March 2005 the applicant requested that the case be transferred to another judicial panel, alleging numerous procedural irregularities in the conduct of the proceedings. In particular, he complained that the present panel had ignored the fact that his detention had been in breach of applicable law. Namely, the decision to place the applicant in custody had been taken in his absence and following his arrest he had not been brought before a judge to present his case, in contravention of the provisions of Article 165-2 of the Code of Criminal Procedure of Ukraine (hereafter "the CCP"). Further, contrary to the requirements of Article 165-1 of the CCP, he had not been provided with a copy of the decision to remand him in custody, and had not been afforded an opportunity to appeal against it. In addition, according to Article 148 of the CCP, the investigative authorities had to either present him with an indictment by 14 February 2002 or release him on that date. However, the bill of indictment in the applicant's respect had only been drawn up on 18 February 2002. From 14 February 2002 onwards the applicant had therefore been held in custody

arbitrarily. The applicant also complained that the District Court had refused to provide him with photocopies of various case-file materials at his request.

23. On 31 March 2005 the District Court rejected the applicant's request, having found that it had not been based on law. It further ruled, without providing reasoning in response to the applicant's arguments, that there had been no reasons to release him from custody. On 19 April 2005 the court rejected a further analogous request from the applicant without expounding on his arguments concerning the lawfulness of his detention.

24. On 12 April 2005 the applicant requested the District Court to renew the time-limit for appealing against the decision of 5 December 2001 to remand him in custody, alleging that he had not been apprised of this decision within the time-limit normally allowed for the appeal.

25. On 21 April 2005 the applicant inquired with the District Court about the status of the consideration of his request and on 26 April 2005 re-lodged it anew.

26. By letter of 27 May 2005 G., the Judge presiding over the applicant's case, notified him that his requests had been received and added to the case file and that they would be taken into account in adjudicating his case.

27. On 18 July 2005 the applicant's advocate complained to the District Court that the applicant had been detained in violation of Article 165-1 of the CCP and requested his release.

28. On the same day the District Court ruled, without providing any reasoning, that there were no reasons for releasing the applicant.

29. Between November 2004 and July 2005 the District Court held some five hearings in the case and on 25 July 2005 convicted A. and the applicant of infliction of grievous bodily injuries on B. and theft from his apartment and sentenced the applicant to ten years' imprisonment.

30. On 28 July 2005 T., the applicant's mother and his defence in the criminal proceedings, complained to the Kharkiv Regional Qualification Commission of Judges about the unlawfulness of the applicant's detention, the lack of a response to his relevant complaints by the District Court and its refusal to provide her with photocopies of documents from the applicant's case file in order to submit a case to the Court. On 2 August 2005 she was informed that the Commission was not competent to consider her complaints.

31. On 12 October 2005 the District Court found that the applicant and his representatives had been protracting the consideration of the case on appeal by repeated requests to familiarise themselves with the case-file materials, and gave them five more days to finish.

32. On 16 November 2005 the applicant's mother complained to the President of the District Court about the refusals to provide her with photocopies of documents to be submitted to the Court. She specified the particular pages of the case-file to be copied (some sixty pages in total) and

expressed her willingness to pay for the copies made using the court's equipment. As an alternative, she requested permission to take the case file off the court premises, if need be, in presence of a court employee, to order copies from a commercial copier.

33. On 2 December 2005 the President of the District Court informed the applicant's mother that the applicable law did not entitle the parties' representatives to obtain photocopies of case-file documents.

34. On 23 December 2005 G., the Judge presiding over the applicant's case, advised him in a letter that he had been granted twenty more days to study the case file, following which the case would be transferred to the Court of Appeal. She noted that, according to the case-file materials, the applicant and his representatives had already had three rounds of familiarising themselves with the case-file.

35. On 9 January 2007 the Kharkiv Regional Court of Appeal quashed the judgment of 25 July 2005 and remitted the case for a fresh consideration, referring primarily to procedural omissions in announcing the modified charges to the defendants.

36. Between 9 February and 11 April 2007 the applicant and A. familiarised themselves with the case-file materials. On 11 April 2007 they signed affidavits specifying that they had familiarised themselves with the case-file in full.

37. On 30 March 2007 the applicant's mother requested the District Court for permission to use portable equipment to photocopy material from the case-file.

38. On 5 April 2007 the District Court noted in a letter that a similar request had already been granted to her and that T. had already used the copying equipment as she had wished. It further confirmed that she could continue using the copying equipment to copy material from the case file as needed.

39. On 11 April 2007 the District Court rejected the applicant's request to be released from custody pending trial lodged on 21 February 2007. The court found that this request had been premature, as the case had been at the preparatory stage following its remittal from the Court of Appeal, and that the applicant had not been precluded from re-lodging his request during the trial.

40. On 21 August 2007 the District Court rejected a further request by the applicant to be released, having found that his detention had been in compliance with Article 148 of the CCP. It further noted, referring to the same grounds as mentioned in its decision of 5 December 2001 (the gravity of the charges, the applicant's prior criminal record and his absconding at the beginning of the proceedings), that there had been no reasons for releasing the applicant.

41. On 7 September 2007 the District Court convicted the applicant and A. of having inflicted grievous bodily injuries on B. and theft from his

apartment, sentenced the applicant to five year seven month and three days' imprisonment and immediately released him from custody, as he had already served the term to which he had been sentenced.

II. RELEVANT DOMESTIC LAW

42. The text of the relevant provisions of the Constitution of Ukraine of 1996 (Article 29) and the Code of Criminal Procedure of Ukraine of 1960 (the CCP) can be found in the judgment in the case of *Molodorych v. Ukraine* (no. 2161/02, §§ 54 and 57, 28 October 2010).

THE LAW

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

43. The applicant complained that his arrest and detention pending trial had been in breach of applicable domestic law. The applicant referred to Article 5 § 1 (c) of the Convention in respect of the above complaints, which reads as follows:

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

...

(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

44. The Government presented no comments on the admissibility of this complaint.

45. The Court notes that the applicant never lodged a formal appeal against the decision of 5 December 2001 to remand him in custody during the pre-trial investigation stage, while Ukrainian law generally provides a possibility of appeal against a decision to remand an individual in custody pending pre-trial investigation (see, for example, *Khayredinov v. Ukraine*, no. 38717/04, §§ 10-12, 14 October 2010). However, regard being had to the applicant's submissions and in the absence of any plea concerning non-

exhaustion on the Government's part, the Court will normally consider that in the particular circumstances of the case there was no further effective remedy for the applicant to exhaust (see *Dobrev v. Bulgaria*, no. 55389/00, §§ 112-114, 10 August 2006).

46. The Court notes that the above 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 had been remanded and held in custody in breach of applicable provisions of the CCP. In particular, upon his arrest, he had not been familiarised with the decision of 5 December 2001 remanding him in custody against his signature and, lacking the necessary information, was not afforded an opportunity to appeal against it, contrary to the provisions of Article 165-1 of the CCP. Secondly, in breach of Article 165-2 of the CCP, he had not been brought before a judge following his arrest. Thirdly, contrary to the requirements of Article 148 of the CCP, he had not been issued with a bill of indictment within ten days of his arrest, namely, on 14 February 2002. Instead, he had been provided with this bill only on 18 February 2002. The applicant argued that, since no bill of indictment had been presented to him within ten days of his detention, the decision of 5 December 2001 had automatically lost its force and he had to be released. Instead, he had been held in custody until his conviction in the absence of any legal basis whatsoever.

48. The Government did not share this view. They submitted that the applicant's detention had been neither unlawful, nor arbitrary. In particular, on 5 December 2001 the decision to remand him in custody had been taken in the applicant's absence, as he had been in hiding. As by that time the investigation had already collected ample evidence that the applicant had participated in the killing of B. and stealing his valuables, and as the applicant had absconded, there were sufficient grounds for taking the decision to remand him in custody. The provisions of Article 148 of the CCP concerning the need to produce a bill of indictment within ten days of the arrest of a suspect were not applicable in the present case, since the initial bill of indictment in the applicant's respect had been drawn up before his arrest (on 26 November 2001) and he therefore had no longer been a suspect upon his arrest. The decision of 5 December 2001 had accordingly been valid for holding the applicant in custody during the two-month period following his arrest in accordance with Article 156 of the CCP. Should the pre-trial investigation have lasted longer, the authorities would have needed to re-apply to the District Court to extend the applicant's detention. However, as the investigation ended on 28 February 2002, the applicant

having been committed for trial, his further detention pending trial had been ordered by the District Court itself.

49. The Court reiterates that the expression “lawful” in Article 5 § 1 of the Convention essentially refers back to national law and lays down an obligation to conform to the substantive and procedural rules thereof. The Court may review whether national law has been observed for the purposes of this Convention provision; however, it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law (see, among other authorities, *Zakharkin v. Ukraine*, no. 1727/04, § 84, 24 June 2010). For the detention to be lawful, it is further essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of “lawfulness” set by the Convention – a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Baranowski v. Poland*, no. 28358/95, § 52, ECHR 2000-III).

50. Turning to the facts of the present case, the Court notes that based on the materials in the case file the applicant first raised the argument that the decision of 5 December 2001 was unlawful in spring 2005 (see paragraphs 22, 24 and 25 above). Although the applicant complains that he was not duly apprised of the decision of 5 December 2001 against his signature, from his signature on the arrest record of 4 February 2002 it follows that he was notified of the existence of the above decision no later than on that date. In these circumstances it is unclear why he lodged a relevant complaint only three years later.

51. In any event, the Court notes that the judicial authorities reviewed the lawfulness of the applicant’s detention on several occasions before and after he lodged the aforementioned complaints. In particular, according to the Government, the application of the custodial measure was first upheld by the District Court on 7 March 2002. According to the materials in the case file, the applicant’s continuing detention was further upheld on 14 June 2004 when the case was remitted for additional investigation; on 12 October 2004 when the case was referred back to trial; as well as on 31 March, 19 April and 18 July 2005 and 21 August 2007 in response to the applicant’s complaints. The Court notes that the copy of the decision of 7 March 2002 taken at the close of the preparatory hearing and available to it does not contain any decision concerning either the applicant’s detention or his release. No copy of any other decision on the subject taken on that date has been provided by the parties. However, it appears from the Government’s submissions that such a decision was taken with reference to the absence of any reasons for releasing the applicant, rather than in the form of a statement of reasons for holding him in custody. The Court further notes that the subsequent decisions concerning the applicant’s detention

lack any express reasoning for his continuing detention and do not set time-limits for it. The Court has already held in other cases that such a practice, which is recurrent in Ukraine, whereby court orders made during the trial stage set no time-limits for the further detention of a defendant, and uphold rather than extend his or her previous detention, is not compatible with the requirements of Article 5 § 1 (c) of the Convention (see, for example, *Kharchenko v. Ukraine*, no. 40107/02, § 98, 10 February 2011). The Government have not provided any arguments warranting the Court's departure from this approach in the present case.

52. The Court considers that the above findings are sufficient to conclude that there has been a violation of Article 5 § 1 (c) of the Convention in the present case, and that it is not necessary to examine the applicant's arguments with respect to the lawfulness of the decision of 5 December 2001 separately.

II. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF DETENTION BEFORE CONVICTION

53. The applicant next complained that his detention before conviction had been unreasonably long. He referred to Article 5 § 3 of the Convention, which reads as follows:

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

A. Admissibility

54. The Government presented no comments on the admissibility of this complaint.

55. The Court considers that the above 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 submitted that the length of the applicant's pre-conviction detention had been reasonable, regard being had to the gravity of the charges against him and his personality, in particular, the fact that he had a prior criminal record and had absconded at the beginning of the investigation.

58. The Court notes that the period to be taken into account commenced on 4 February 2002 (the date of the applicant's arrest) and ended upon his release on 7 September 2007. However, the period between 25 July 2005 (the date on which the applicant was convicted following the first round of proceedings) and 9 January 2007 (the date when the above-mentioned judgment was quashed on appeal) should be deducted (see, *mutatis mutandis*, *B. v. Austria*, no. 11968/86, § 39, 28 March 1990). The overall period of detention for the purposes of Article 5 § 3 of the Convention therefore lasted four years and nearly two months.

59. Examining the present case in light of the 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 notes that the initial decision of 5 December 2001 to remand the applicant in custody was based on a strong suspicion that he had committed the offences with which he had been charged (see paragraph 9 above). It accepts that this fact, along with the applicant's disappearance, may have initially warranted ordering his detention. However, after a certain lapse of time the judicial authorities were obliged to re-assess the applicant's personal situation and to give express grounds for his continued detention. In the meantime, the only decision citing the grounds for upholding the applicant's continued detention, which is presented in the case file, was taken on 21 August 2007 (see paragraph 40 above). The reasons, cited in this decision, are essentially the same as those mentioned in the initial decision given some five years earlier, without any updated details. Furthermore, at no stage did the domestic courts consider applying any alternative preventive measures, and by relying essentially on the gravity of the charges and the fact that the applicant had absconded at the beginning of the investigation, the authorities extended the applicant's detention on grounds which, regard being had to the length of the detention at issue, cannot be regarded as "sufficient".

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.

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

61. The applicant further complained that his requests for release pending trial had not been examined. He relied on 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

62. The Government presented no comments on the admissibility of this complaint.

63. 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

64. The applicant alleged that during his trial he had lodged numerous complaints about the unlawfulness of his detention, raising the same arguments he had put forward with respect to his complaint under Article 5 § 1 (c). However, his submissions had been ignored by the District Court.

65. The Government contested this view. They submitted that the applicant's complaints had been examined and rejected on 31 March, 19 April and 18 July 2005, on 11 April and 21 August 2007. They further maintained that the fact that the applicant's complaints had been rejected does not in itself mean that the procedure complained about lacked effectiveness.

66. The Court notes that in several cases against Ukraine it has already found that for the purposes of Article 5 § 4 of the Convention the fact that a detainee's complaint about the unlawfulness of his detention was reviewed did not suffice and that it was necessary that the grounds for detention were examined on the merits in the circumstances of the applicant's particular situation (see, for example, *Buryaga v. Ukraine*, no. 27672/03, §§ 73-74, 15 July 2010; *Vitruk v. Ukraine*, no. 26127/03, §§ 92-93, 16 September 2010; and *Kharchenko v. Ukraine*, no. 40107/02, § 84-85, 10 February 2011). The Court observes that in the judicial authorities' decisions, the applicant's arguments concerning the unlawfulness of his detention remained largely unanswered. In light of this, the Court cannot come to a conclusion that the procedure by which the lawfulness of the applicant's detention was reviewed met the standards required by Article 5 § 4 of the Convention.

67. In light of the above, there has been a breach of Article 5 § 4 of the Convention.

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

68. The applicant further complained that the criminal proceedings against him had lasted an unreasonably long time. He referred to Article 6 § 1 of the Convention, which, insofar as relevant, reads as follows:

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

A. Admissibility

69. The Government presented no comments on admissibility of this complaint.

70. 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

71. The applicant maintained that the criminal proceedings against him had lasted an unreasonably long time.

72. The Government contested this view. They alleged that the domestic courts had scheduled hearings at regular intervals and taken all reasonable efforts to expedite consideration of the case. The length of the proceedings could be explained by the fact that the case had been rather complicated, as it had concerned two serious crimes and involved two defendants. Moreover, the applicant had added to the protraction by his own conduct. He had lodged numerous procedural requests, which had needed to be examined. On many occasions he had sought adjournments of the proceedings, in particular, demanding numerous rounds of familiarisation with the case-file materials. He and his representatives had spent some 110 days studying the case file. Other delays were attributable to other objective reasons, such as the failure of the witnesses to appear. In order to ensure their attendance, the District Court had had to order some witnesses to be summoned by the police.

73. 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 (*Vergelskyy v. Ukraine*, no. 19312/06, § 114, 12 March 2009).

74. As regards the facts of the present case, the Court considers that the period to be taken into consideration should be counted from 26 November 2001, when the initial bill of indictment in the applicant’s respect was drawn up. The period in question ended on 7 September 2007, when the District Court gave its judgment, which then became final. The

proceedings thus lasted five years and nine months. During this period the case was reviewed twice by the second-instance court; however, the final decision of the first-instance court was not appealed against.

75. 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 complexity of the case and 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). The Court further points out that for the entire period of the criminal proceedings at issue 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).

76. The Court considers that neither the complexity of the criminal case nor the applicant's conduct can explain the length of the aforementioned proceedings. It appears that a number of delays (including extensive periods of inactivity, rescheduling and adjournment of hearings on various grounds, in particular, those referring to the absence of judges, prosecutors, or defendants who were held in custody and remittals of the case for additional investigation and re-trial) are attributable to the domestic authorities.

77. The Court has already found violations of Article 6 § 1 of the Convention in other cases against Ukraine featuring similar delays (see, for example, *Antonenko and Others v. Ukraine*, no. 14183/02, §§ 45-46, 22 November 2005; *Kobtsev v. Ukraine*, no. 7324/02, § 71, 4 April 2006; and *Ivanov v. Ukraine*, no. 15007/02, §§ 69, 74-75, 7 December 2006). It does not find any reason to depart from its jurisprudence in the present case.

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

V. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

79. The applicant also complained that the District Court had hindered his ability to bring his case before the Court by refusing his requests for photocopying documents from his case file. He invoked Article 34 of the Convention, which reads as follows:

“The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

80. The Government submitted that there had been no hindrance of the applicant's right of individual petition. The fact that at one point the District Court had refused to provide photocopies of the documents requested by the

applicant had been due to a lack of technical facilities on the court premises. On the whole, the applicant and his representatives had had ample access to the case-file materials. Overall, they had been given 110 days to familiarise themselves with the case file, 66 of which they had spent copying various materials by hand. Furthermore, once the District Court had acquired the necessary equipment, it had provided the applicant with the photocopies requested, albeit with a delay. On 7 September 2007 the applicant had been released and, should he have needed to obtain further copies of any documents, he could have applied to the District Court in person.

81. The applicant did not comment on this aspect of the application in his observations.

82. According to the Court's case-law, a complaint under Article 34 of the Convention is of a procedural nature and therefore does not give rise to any issue of admissibility under the Convention (see, among other authorities, *Chaykovskiy v. Ukraine*, no. 2295/06, § 83, 15 October 2009).

83. The Court has established that Article 34 of the Convention may impose on the State authorities an obligation to provide copies of documents to applicants who find themselves in situations of particular vulnerability and dependence and are unable to obtain the documents needed for their files without State support (see, as a recent authority, *Naydyon v. Ukraine*, no. 16474/03, § 63, 14 October 2010). On the other hand, it has also found that the obligation not to hinder the right of individual petition does not automatically mean that the State has a duty to provide applicants with copies of all or any desired documents or to furnish them with the technical facilities of their choice to make their own copies (see *Kornakovs v. Latvia*, no. 61005/00, §§ 171-174, 15 June 2006, and *Chaykovskiy*, cited above, § 96, 15 October 2009).

84. The Court notes with concern that, as it transpires from the case-file, for a certain period of time the applicant appears to have been in a difficult situation with respect to receiving copies of the documents he deemed necessary to support his application (see paragraphs 32-33 above). In particular, requesting copies of documents on the applicant's behalf, his mother unsuccessfully approached the District Court with a number of options, including a request for permission to obtain those copies at her expense using the court's equipment or a commercial copier. It appears that no satisfactory solution was proposed to her at the material time.

85. On the other hand, the Court notes that it is unclear from the applicant's submissions which documents he had wanted photocopied, what their significance for the Convention proceedings was, and why it was necessary that they be photocopied, as opposed, for example, to being photographed or copied by hand. The applicant did not contest the Government's submission that he and his representatives had had ample access to the case-file materials and had not been precluded from copying them by hand. It further appears that the applicant's representatives were

allowed to use portable equipment for copying the documents on the District Court's premises (see paragraph 38 above). Finally, it appears that eventually the applicant was able to submit to the Court all the documents he deemed to be of relevance, while the Registry of the Court, in turn, never indicated a need for any such documents for the examination of the application.

86. In the light of the foregoing, the Court finds that the refusal of the District Court to provide the applicant with photocopies of unspecified documents from his case file did not amount to a hindrance of the exercise of his right of individual petition. Accordingly, Ukraine has not failed to comply with its obligations under Article 34 of the Convention with respect to this complaint.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

87. Lastly, the applicant complained under Article 5 § 3 of the Convention that he had not been brought promptly before a judge following his arrest and invoked Articles 1, 5 § 2, 13, 17 and 53 to the facts of the present case.

88. Having considered the applicant's submissions in the light of all the material in its possession, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

89. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

90. 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

91. The applicant claimed 200,000 euros (EUR) in respect of "moral and physical harm" and a further amount of EUR 100,000 "for other infringements of [his] rights ... including every day of [his] unlawful detention".

92. The Government alleged that insofar as the applicant's claim related to pecuniary damage, it was wholly unsubstantiated. As regards non-

pecuniary damage, this claim should also be rejected, as the applicant's right to liberty had not been breached.

93. The Court notes that, insofar as the applicant may be understood to be claiming pecuniary damage, his claim should be rejected as unsubstantiated. On the other hand, the applicant must have suffered anguish and distress on account of the facts giving rise to the findings of violations of his Convention rights in the present case. Ruling on an equitable basis, the Court awards the applicant EUR 8,000 in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

95. 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 unlawfulness and unreasonable length of the applicant's detention before conviction, inability to take proceedings to have the lawfulness of his detention decided speedily and unreasonable length of criminal proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
4. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
5. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
6. *Holds* that Ukraine has not failed to comply with its obligations under Article 34 of the Convention with respect to the refusal of the judicial authorities to provide the applicant with copies of documents for his application before the Court;

7. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,000 (eight 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 at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 29 September 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President