



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

FIFTH SECTION

CASE OF TSYGONIY v. UKRAINE

(Application no. 19213/04)

JUDGMENT

STRASBOURG

24 November 2011

FINAL

24/02/2012

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

In the case of Tsygoniy v. Ukraine,
The European Court of Human Rights (Fifth Section), sitting as a
Chamber composed of:

Dean Spielmann, *President*,
Elisabet Fura,
Karel Jungwiert,
Boštjan M. Zupančič,
Mark Villiger,
Ganna Yudkivska,
Angelika Nußberger, *judges*,
and Claudia Westerdiek, *Section Registrar*,
Having deliberated in private on 3 November 2011,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 19213/04) 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 Vladimir Vladimirovich Tsygoniy (“the applicant”), on 2 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 detention had been unbearable and there had been no effective remedies available to him in relation to this complaint; that his pre-conviction detention had been unlawful and inordinately lengthy; and that there had been no opportunity for him to bring proceedings by way of which the lawfulness of his detention would have been speedily determined.

4. On 6 April 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 1976 and lives in Yevpatoriya.

A. The applicant's arrest and ensuing investigation of his related complaints

6. On 25 February 2004 the applicant was arrested by the police on suspicion of drug dealing. On the same date a sachet of poppy straw was seized from his pocket.

7. On the same date the applicant complained to the Yevpatoriya Prosecutors' Office that he had been ill-treated during his arrest, in particular that he had been handcuffed, beaten and blinded with a dark knitted hat and that he had suffered abrasions on his hands, face and back as a result of having been ill-treated.

8. On 16 March 2004 the Prosecutors' Office refused to institute criminal proceedings into the applicant's complaints, having found no appearance of criminal conduct on the part of the police officers.

9. On 13 April 2004 the Prosecutors' Office of the ARC revoked this decision and ordered a further inquiry. Having examined available evidence and questioned witnesses, on 15 May 2004 the Yevpatoriya Prosecutors' Office again refused to institute criminal proceedings for want of evidence of any ill-treatment. Based on the available materials, the applicant did not appeal against this decision.

10. On an unspecified date the applicant also complained to the Yevpatoriya Court that his detention had been unlawful. On 24 March 2004 the Yevpatoriya Court dismissed this complaint, attaching weight to the fact that on 27 February 2004 the lawfulness of the applicant's detention was verified by a judge within the statutory seventy-two-hour time-limit. On 18 May 2004 the Court of Appeal of the Crimea upheld this decision.

B. Criminal proceedings against the applicant and his detention before conviction

11. On 25 February 2004 criminal proceedings were instituted against the applicant on suspicion of drug dealing and following his arrest he was detained in a police station.

12. On 27 February 2004 the applicant was brought before the Yevpatoriya Court, which allowed the investigator's request to continue his detention for ten days pending a determination of whether he should be charged. The court referred to the fact that the applicant was suspected of having committed a serious offence and that a sachet of poppy straw had been found on him.

13. On 3 March 2004 the applicant was indicted for drug dealing.

14. On 5 March 2004 the Yevpatoriya Court decided, in the applicant's presence, that he should be remanded in custody for two months pending the outcome of the pre-trial investigation. By way of reasoning, the court cited Article 148 of the Code of Criminal Procedure and noted that the

applicant might abscond, as he had been charged with a serious offence, and also that he might tamper with evidence. Moreover, the court noted that the applicant was alleged to have committed the offence while he had been subject to an undertaking not to abscond in connection with an investigation for another unspecified offence, which, at the material time, had been pending since 2001.

15. On the same date the applicant, represented by two lawyers, appealed. He maintained, in particular, that he was a former policeman with a clean record and that he had never previously been convicted. Furthermore, he stated that he lived permanently in Yevpatoriya, had a child, and suffered from chronic health conditions, in particular pyelonephritis. The applicant acknowledged that at the material time he had been subject to an undertaking not to abscond in connection with a different criminal investigation, but noted that he had never breached that undertaking since it had been put in place in 2001. On an unspecified date the Court of Appeal of the Crimea held a hearing and dismissed the applicant's appeal. The applicant did not inform the Court whether he had been present at that hearing.

16. On 22 April 2004 the Yevpatoriya Court, having held a hearing in the applicant's presence, allowed the investigator's request to extend the applicant's detention until 25 May 2004. By way of reasoning, the court noted that the prosecution objectively needed more time to complete the investigation. The court further rejected the applicant's mother's proposal to pledge her apartment as bail for the applicant's release, referring to a risk that the applicant would reoffend given his previous conduct. Referring to a medical certificate, the court also dismissed the applicant's allegations that his state of health was incompatible with his continued detention.

17. The applicant appealed, requesting that he be transported to the Court of Appeal for the hearing. He maintained that the case was not complex and that the failure of the investigative authorities to complete the investigation was only on account of a lack of diligence on their part. On 1 June 2004 the Court of Appeal of the Crimea considered the matter in the presence of the applicant's advocate, but in the absence of the applicant himself, and upheld the previous decision.

18. In the meantime, on 24 May 2004 the Yevpatoriya Court, having held a hearing in the applicant's presence, extended his detention until 15 June 2004 on essentially the same grounds as before. It additionally noted that the investigation had not been completed on account of the applicant's own lack of cooperation. In particular, he had not agreed to confrontations taking place, his lawyer had been engaged in other activities on 14 May, and on 17 May he had also been examined by medical specialists. The applicant raised essentially the same arguments as stated above, and the court rejected them, referring to essentially the same reasons as it had previously. On 8 June 2004 the Court of Appeal of the Crimea

upheld the decision of 24 May 2004. The applicant did not inform the Court whether he had been present at this hearing.

19. On 10 June 2004 the Yevpatoriya Court, having held a hearing concerning the extension of the applicant's detention in his presence, authorised the extension until 25 June 2004 based on the necessity to carry out additional investigative activities, in particular to consider a request by the applicant's lawyer to conduct another expert assessment. The applicant appealed, raising essentially the same arguments as before, and noting that since the investigation had almost been completed there was no risk that he would tamper with evidence or otherwise interfere with its effectiveness. On 6 July 2004 the Court of Appeal of the Crimea upheld the decision of 10 June 2004. The applicant did not inform the Court whether he had been present at this hearing.

20. In the meantime, on 17 June 2004 the Court of Appeal of the Crimea considered, as a court of first instance, the investigator's request for an extension of the applicant's detention and authorised the extension until 25 July 2004. It found that the situation remained unchanged from the time of the previous review, that the applicant's detention was necessary to finish up the investigative activities, and that there was no reason to release the applicant. At the hearing the applicant himself was absent, but was represented by his advocate.

21. On 23 July 2004 the case was transferred to the Saky inter-regional prosecutor for approval of the indictment. By 28 July 2004 the case had been remitted to the Yevpatoriya Court for the commencement of trial proceedings. The applicant remained in custody, no new decision extending it having been taken.

22. On 31 August 2004 the Yevpatoriya Court held a preliminary hearing and found that the case was ready for trial. The court ordered that the applicant remain in detention, without specifying any reasons.

23. Between 1 September 2004 and 1 July 2005 the Yevpatoriya Court considered the applicant's requests for his detention pending trial to be lifted on some fourteen occasions, in each case doing so on the same date as the request was lodged. The court dismissed all of these requests as unsubstantiated.

24. On 1 July 2005 the applicant was found guilty of drug dealing and abuse of office and sentenced to five years' imprisonment. On 20 December 2005 and 17 March 2007 the Court of Appeal of the Crimea and the Supreme Court, respectively, dismissed the applicant's appeals. The applicant did not present copies of the court decisions taken on the merits of his criminal case.

C. Conditions of the applicant's detention

25. Between February and August 2004 the applicant was alternately held in the Yevpatoriya Temporary Detention Centre (the “IVS”) and two other facilities.

26. According to the applicant, the cell in which he was most often held in the Yevpatoriya IVS (cell no. 12) had measured about four square metres and had been shared by him with one to three other inmates. The cell had had no window. Sometimes a ventilator had been switched on, but the air it brought had come from other cells, including two cells where detainees who were sick with tuberculosis had been held. An electric light had been switched on all the time, interfering with detainees' ability to sleep. On the other hand, this light had been so dim that it had not been possible to read. The cell had had no furniture. Detainees had taken turns to sleep on two bare mattresses and had put their food and personal belongings on the floor near them. The toilet had not been separated from the living area, and detainees had lacked privacy when using it. There had not been a sink and a tap had been situated some forty centimetres above the toilet. The water from the tap had been used for drinking, washing and flushing the toilet. The food had been very poor. Specifically, detainees had been given a piece of bread with tea for breakfast and dinner, and a bowl of soup and a plate of porridge for lunch. The cell had been infested with insects. Between 10 and 13 March 2004 the applicant had been detained in cell no. 3, where seven detainees had taken turns to sleep on two bunk beds. Detainees had not been taken out for exercise and had not been able to take a shower. On numerous occasions the applicant had asked to see a doctor, but his requests had been refused on account of a lack of funds.

27. The Government acknowledged that cell no. 12 had not had a window or beds. They noted, however, that it had had wooden planks on which the detainees could sleep, a toilet and ventilation. They further noted that cell no. 3 had been equipped with four bunk beds. The Government further submitted that the applicant had not been able to take a shower between 1 and 18 March 2004 and between 20 April and 21 May 2004 in view of his medical condition. For the same reason he had not always been taken outside for walks. The Government additionally noted that the applicant had been given sufficient access to medical services and that during the period at issue he had been visited by a doctor at least twelve times.

28. On 18 March 2004 the applicant was diagnosed with pneumonia and placed on in-patient treatment in the Simferopol SIZO hospital for a period of about one month. Upon his return to the IVS, on 15 and 17 May 2004 respectively the applicant was examined by doctors, diagnosed with chronic prostatitis and scabies and prescribed an unspecified treatment.

29. On 4 June 2004 the applicant was found to need in-patient treatment for scabies, as the previous doctors' recommendations had not been followed.

30. On 8 June 2004 the applicant was hospitalised in the Saky hospital and was treated until 24 June 2004. According to the applicant, in the hospital he had stayed in a room with barred windows located on the fifth floor which had been guarded by two policemen, and he had been handcuffed to his bed at all times. He presented a photo of himself being handcuffed to a bed in support of his allegations.

31. On 17 June 2004 the Head of the Yevpatoriya Police Department conducted an internal investigation following the applicant's complaints about the conditions of his detention. He noted, in particular, that as of the date of his placement in the Yevpatoriya IVS (25 February 2004), the IVS had been overpopulated by more than half of its capacity. He further noted that cell no. 12, in which the applicant had been held at that time, had not been equipped with beds but had had wooden planks and a shelf for personal belongings, that the detainees had been provided with mattresses and linen, that the cell had been well ventilated, and that it had offered sufficient artificial light. He further noted that during the period of his stay in the IVS the applicant had twice taken a shower.

32. According to the applicant, between February and July 2004 he lost forty kilograms in weight altogether.

33. On 1 June 2009 the applicant lodged a civil action with the Yevpatoriya Court complaining about the conditions of his detention in the Yevpatoriya IVS and seeking moral damages.

34. On 3 June 2009 the applicant was given a time-limit to rectify the procedural shortcomings of his submissions, in particular, to present evidence in support of his allegations, grounds for releasing him from the need to present such evidence, to specify, what were the unlawful actions or omissions of the State authorities causing him damage and to present his calculations for the amount of damage claimed.

35. On 11 June 2009 the court decided to leave the applicant's claim without consideration on the basis that he had not rectified the procedural shortcomings of his submissions.

II. RELEVANT DOMESTIC LAW

36. The relevant provisions of the Constitution of Ukraine can be found in the judgment in the case of *Svershov v. Ukraine*, no. 35231/02, § 39, 27 November 2008.

37. The relevant provisions of the Code of Criminal Procedure of Ukraine of 1960 can be found in the judgments in the cases of *Molodorych v. Ukraine*, no. 2161/02, § 57, 28 October 2010 (insofar as it refers to Articles 148, 149, 150 and 237); *Khayredinov v. Ukraine*, no. 38717/04, § 21, 14 October 2010 and *Znaykin v. Ukraine*, no. 37538/05 (Sect. 5) (Eng).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF DETENTION

38. The applicant complained that the conditions of his detention in the Yevpatoriya IVS between February and August 2004 had been grossly inadequate. The applicant relied on Article 3 of the Convention in respect of the above complaints. This provision, insofar as relevant, reads as follows:

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

A. Admissibility

39. The Government raised non-exhaustion arguments, similar to those rejected by the Court in a number of other cases where the complaints concerned problems of a structural nature in the domestic penitentiary system in question (see, for example, *Kalashnikov v. Russia* (dec.), no. 47095/99, ECHR 2001-XI (extracts); *Melnik v. Ukraine*, no. 72286/01, §§ 69-71, 28 March 2006; and *Koktysh v. Ukraine*, no. 43707/07, § 86, 10 December 2009). They noted, in particular, that the applicant could have raised his complaints about the conditions of detention before the prosecutors’ office or the courts.

40. The applicant disagreed in general terms with the Government’s objection.

41. The Court notes that the applicant raised complaints about the conditions of his detention before the law-enforcement authorities and the court (see paragraphs 31 and 33-35 above). However, he received no redress, although to a certain extent his allegations as to the facts were acknowledged. In light of the above, the Court sees no reason to depart from its case-law in the present case. It therefore dismisses the Government’s objection.

B. Merits

42. The applicant submitted that the conditions of his detention in the Yevpatoriya IVS between February and August 2004 had been incompatible with the requirements of Article 3 of the Convention.

43. The Government maintained that the conditions of the applicant’s detention had not been such as to reach the Article 3 threshold.

44. The Court notes that the parties disagreed to a certain extent as regards the conditions in which the applicant was detained, and that certain

submissions by the applicant cannot be considered proved beyond a reasonable doubt. At the same time, the Court considers that even on the basis of the aspects of the applicant's detention which are not disputed, in particular, overcrowding, lack of basic furniture, sanitary arrangements and access to daylight and fresh air exercise, the applicant was detained in conditions that can be characterised as inhuman and degrading for the purposes of Article 3 of the Convention.

45. The Court also takes note of the fact that during his detention the applicant contracted various diseases, including pneumonia and scabies. Although this fact in itself does not imply a violation of Article 3, given, in particular, the fact that the applicant eventually received medical treatment, the Court considers this to be a characteristic element of the overall conditions of the applicant's detention.

46. Regard being had to the accounts provided by the parties in the present case and the Court's case-law (see, among other authorities, *Kalashnikov v. Russia*, no. 47095/99, § 102, ECHR 2002-VI; *Dvoynych v. Ukraine*, no. 72277/01, § 67, 12 October 2006; *Melnik v. Ukraine*, cited above, § 107-112; *Novoselov v. Russia*, no. 66460/01, § 44, 2 June 2005; *Trepashkin v. Russia*, no. 36898/03, § 93, 19 July 2007; and *Istratii and Others v. Moldova*, nos. 8721/05, 8705/05 and 8742/05, § 71, 27 March 2007), the Court finds that the conditions of the applicant's detention were inhuman and degrading.

47. There has therefore been a violation of Article 3 of the Convention in this respect.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S HANDCUFFING

48. The applicant also complained under the same provision of the Convention that he had been unreasonably handcuffed to his bed in the hospital round-the-clock between 8 and 24 June 2004.

49. The Government disputed his account of the facts. They noted, in particular, that according to the Ministry of Interior, the applicant had only been handcuffed during the occasions that he had been escorted outside his hospital room. They further alleged that the applicant had not complained to any domestic authority about the use of handcuffs and had therefore not exhausted available remedies.

50. The applicant maintained that he had remained handcuffed around the clock during his entire stay in the hospital and that this treatment had caused him severe mental and physical suffering.

51. The Court observes that the materials in the case file contain no evidence enabling it to conclude beyond reasonable doubt that the applicant was handcuffed in the hospital around the clock or that he ever lodged a relevant complaint with any authority. Even assuming that the applicant was

so handcuffed by his immediate guards, there is also no evidence that his round-the-clock handcuffing constituted a practice deliberately approved or tolerated by their supervisors (see, by contrast *Okhrimenko v. Ukraine*, no. 53896/07, § 94, 15 October 2009). The Court, therefore, agrees with the Government that the applicant should have made the authorities aware of his situation and alleged suffering in this respect (see *Aliev v. Ukraine (no. 2)* (dec.), no. 33617/02, 14 October 2008). In the meantime, the applicant has not presented any evidence that he had ever raised any complaint to this end in any form, whether before a court or any other competent authority.

52. In these circumstances the Court finds that the applicant failed to show that he had exhausted domestic avenues offering redress for his complaint about the handcuffing, and therefore upholds the Government's objection of non-exhaustion.

53. This part of the application should therefore be rejected as inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 1 (c) OF THE CONVENTION

54. The applicant also complained that his detention after the completion of the pre-trial investigation and until his conviction by the trial court (between 25 July 2004 and 1 July 2005) had not been based on a reasoned decision. The applicant relied on Article 5 § 1 (c) in respect of this complaint, which, insofar 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

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

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

B. Merits

57. The applicant submitted that domestic courts have failed to adduce any reasons for his detention between 25 July 2004 and 1 July 2005.

58. The Government contested this argument. They argued that the applicant's detention had been lawful. In particular, on 23 July 2004 the applicant had been committed for trial and, according to Article 241 of the Code of Criminal Procedure, the trial court had had thirty days to schedule a preliminary hearing at which the issue of the applicant's further detention would be decided. The hearing had taken place within this period, namely on 31 August 2004, and it had been decided to extend the detention of the applicant pending trial in view of the high risk of his absconding. In taking this decision, the trial court had given due regard to all the materials in the case file.

59. The Court notes that the period complained about can be divided into two sub-periods: (a) between 25 July and the preliminary hearing in the Yevpatoriya Court on 31 August 2004; and (b) between 31 August 2004 and the applicant's conviction on 1 July 2005.

60. As follows from the materials in the case file, during the first sub-period the applicant was held in detention solely on the basis of the fact that the indictment had been submitted to the court. The Court has already found that such practice, which is recurrent in Ukraine, is not compatible with the principles of legal certainty and protection from arbitrariness (see *Kharchenko v. Ukraine*, no. 40107/02, § 98, 10 February 2011). The Court does not see a reason to depart from its previous findings in the present case. Therefore, the period of the applicant's detention between 25 July and 31 August 2004 was not in accordance with Article 5 § 1 of the Convention.

61. As regards the subsequent sub-period (31 August 2004 – 1 July 2005), the Court notes that the applicant's continued detention was based on the order by the Yevpatoriya Court. The court, however, did not state the reasons for the prolongation of the measure and did not fix the date of its subsequent review. The Court has already found the recurrent Ukrainian practice whereby the courts were not obliged to give reasons for prolongation of the pre-conviction detention at the committal hearings incompatible with the lawfulness requirement enshrined in Article 5 § 1 (c) (see *Kharchenko*, cited above, § 98). It does not see any reason to modify its conclusion in the present case and finds that the applicant's detention during this sub-period was likewise unlawful.

62. In light of the above, there has been a violation of Article 5 § 1 (c) of the Convention in respect of the applicant's detention between 25 July 2004 and 1 July 2005.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF PRE-TRIAL DETENTION

63. The applicant further complained under Article 5 § 3 of the Convention that the overall length of his detention pending trial had been unreasonable. This provision 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

64. The Government did not comment on admissibility of this complaint.

65. The Court finds 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 period of his detention before conviction had been excessive.

67. The Government maintained that the length of the applicant's detention had been reasonable and that there had been sufficient grounds for holding the applicant in custody during the whole period of his detention, given that he was suspected of having committed a serious crime and that he could have absconded.

68. The Court observes that the period to be taken into consideration in the present case lasted one year and four months in total and consisted of three separate terms: (a) the period of detention during the preliminary investigation (25 February – 25 July 2004); (b) the period during which the applicant was held in custody based on the fact that the indictment had been submitted to the court (25 July – 31 August 2004); and (c) the period during which the applicant was held in custody based on the Yevpatoriya Court's decision that there was no reason to modify the preventive measure applying to him (31 August 2004 – 1 July 2005).

69. The Court further reiterates that it is necessary, when examining the question of whether Article 5 § 3 has been observed, to consider and assess the reasonableness of the grounds which persuaded the judicial authorities to decide, in the case brought before the Court, on this serious departure

from the rules of respect for individual liberty and of the presumption of innocence which is involved in every detention without a conviction (see, as a recent authority, *Svershov*, cited above, § 62).

70. The Court notes that the seriousness of the charges against the applicant and the risk of his absconding and tampering with evidence had been advanced and reviewed during the first detention period. Thereafter, no reasons whatsoever for maintaining the applicant's detention were advanced. As noted above, the detention during the second period was not based on any reasoned decision. The detention during the third period was based on the court's statement that the previously chosen preventive measure was correct.

71. Article 5 § 3 has as a consequence that after a certain lapse of time the persistence of a reasonable suspicion does not in itself justify deprivation of liberty and requires that the judicial authorities should give other grounds for any continued detention (see *Jabłoński v. Poland*, no. 33492/96, § 80, 21 December 2000, and *I. A. v. France*, no. 28213/95, § 102, *Reports of Judgments and Decisions* 1998-VII). Those grounds, moreover, should be expressly mentioned by the domestic courts (see *Iłowiecki v. Poland*, no. 27504/95, § 61, 4 October 2001). As the Court has already noted in considering the applicant's complaint under Article 5 § 1 (c) (see paragraph 61 above), no such reasons were given by the courts in the present case. Furthermore, at no stage did the domestic courts consider any alternative preventive measures instead of detention pending trial. The authorities prolonged the applicant's detention without grounds that can be regarded as "relevant and sufficient".

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

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

73. The applicant further complained under Articles 5 § 4 and 13 of the Convention that between 31 August 2004 and 1 July 2005 he had not been afforded an effective opportunity to take proceedings by which the lawfulness of his detention could have been decided speedily.

74. The Court considers that this complaint falls to be examined under Article 5 § 4 of the Convention, which is the relevant provision and 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

75. The Government did not comment on admissibility of this complaint. By way of comments on the merits, the Government submitted that during the period in question the applicant had lodged some fourteen requests for release pending trial, which had each been considered by the Yevpatoriya Court on the date they were lodged and dismissed as ill-founded.

76. The applicant disagreed in general terms with the Government's objection.

77. The Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and not inadmissible on any other grounds. It therefore declares it admissible.

B. Merits

78. The Court recalls its findings in respect of the applicant's complaints under Articles 5 §§ 1 (c) and 3 (see paragraphs 61 and 71) above and notes that the court did not produce reasoned decisions justifying prolongation of the applicant's detention following his committal to trial and assessing his arguments to the effect that his continuing detention was not warranted. It has already found that such practice, which is recurrent in Ukraine, was incompatible with the requirements of Article 5 § 4 (see *Molodorych v. Ukraine*, no. 2161/02, § 108, 28 October 2010). It considers that the same findings are pertinent in the present case.

79. There has therefore been a violation of Article 5 § 4 in this respect.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

80. The applicant also complained that he had had no effective domestic remedies for his complaint under Article 3 about the conditions of his detention. He relied on Article 13 of the Convention in this respect, which reads as follows:

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

81. The Government provided no comments with respect to this complaint.

82. The Court points out that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. With reference to its earlier case-law (see, among other authorities, *Melnik*, cited above, §§ 113-116, and

Dvoynyykh v. Ukraine, cited above, § 72), the circumstances of the present case and the Court's findings concerning lack of domestic remedies to exhaust with respect to the applicant's complaint about the conditions of his detention (see paragraphs 39 and 41 above), the Court finds that the Government have not shown that the applicant had in practice an opportunity to obtain effective remedies for the above complaint, that is to say, the remedies, which could have prevented the violations from occurring or continuing, or could have afforded the applicant appropriate redress.

83. The Court concludes, therefore, that there has been a violation of Article 13 of the Convention on account of the lack of an effective and accessible remedy under domestic law for the applicant's complaints in respect of the conditions of his detention.

VII. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

84. In addition, the applicant complained under Article 3 of the Convention that he had been ill-treated by the police to extract a confession to the crime and that there had been no effective investigation of his complaint to that effect.

85. The Court notes that the applicant provided no medical or other evidence in support of his allegation that he had been ill-treated. Likewise, he provided no evidence that he had aired the relevant complaint before the domestic courts within the framework of criminal proceedings against him or attempted to challenge the refusal of the prosecutors' office to institute criminal proceedings into his allegations. In light of the available materials, the Court considers that the present complaint is manifestly ill-founded and must be declared inadmissible pursuant to Article 35 § (a) and 4 of the Convention.

86. The applicant next complained under Article 5 § 1 (c) that the reasons for his arrest and detention had been insufficient from the very beginning; under Article 5 § 3 that he had not been brought promptly before a judge following his arrest and that on 1 and 17 June 2004 he had not been brought before the Court of Appeal to take part in the hearings concerning the extension of his pre-trial detention; under Article 5 § 4 that there had been no opportunity for him to bring proceedings to review the lawfulness of his detention between February and July 2004 and between 25 July 2004 and 31 August 2004; and under Article 13 about the lack of remedies for the foregoing complaints.

87. 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.

88. 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.

VIII. APPLICATION OF ARTICLE 46 OF THE CONVENTION

89. Before examining the claims for just satisfaction submitted by the applicant under Article 41 of the Convention, and having regard to the circumstances of the case, the Court considers it necessary to determine what consequences may be drawn from Article 46 of the Convention for the respondent State. Article 46 of the Convention reads as follows:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.”

90. Recently, in the judgment in the case of *Kharchenko*, cited above, the Court has held under Article 46 of the Convention that a number of violations of Article 5 of the Convention were of a structural nature. These included violations of Article 5 § 1 arising from detention not covered by any court order between the end of the investigation and the beginning of the trial and during the trial covered by court orders without fixed time-limits; of Article 5 § 3 arising from excessive periods of detention without appropriate justification and of Article 5 § 4 arising from the domestic courts’ failure to deal adequately with the applicants’ requests for release lodged during trial (see *Kharchenko*, cited above, §§ 98-100). The Court has emphasised that specific reforms in Ukraine’s legislation and administrative practice should be urgently implemented in order to bring the legislation and practice into line with the Court’s conclusions in the above judgment to ensure their compliance with the requirements of Article 5 (see *ibid.*, § 101).

91. The Court finds that the facts giving rise to the finding of violations of Article 5 of the Convention in the present case are broadly similar to those examined in the *Kharchenko* judgment. Consequently, the Court sees no reason to diverge from its findings made in *Kharchenko* as to the existence of the structural problem and underlines the urgent need for reforms in this field.

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

92. 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

93. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

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

95. The Court considers that the applicant must have suffered anguish and distress on account of the circumstances giving rise to the findings of violations of Articles 3 and 5 of the Convention in the present case. The amount claimed, however, is excessive. Ruling on an equitable basis, the Court awards the applicant EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

96. The applicant submitted no claim under this head. The Court therefore gives no award.

C. Default interest

97. The Court considers it appropriate that 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 in Yevpatoriya IVS between February and August 2004 and the lack of effective remedies in this respect, the lawfulness of his detention between 25 July 2004 and 1 July 2005, the duration of his pre-conviction detention, and the inability to bring proceedings by which the legality of his detention would be verified speedily, admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention in respect of the conditions of the applicant's detention;
3. *Holds* that there has been a violation of Article 5 § 1 in respect of the lawfulness of the applicant's detention between 25 July 2004 and 1 July 2005;
4. *Holds* that there has been a violation of Article 5 § 3 of the Convention in respect of the excessive length of the applicant's detention;
5. *Holds* that there has been a violation of Article 5 § 4 of the Convention in respect of the lack of opportunity for the applicant to obtain meaningful review of the lawfulness of his detention in the period between 31 August 2004 and 1 July 2005;
6. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of effective remedies in respect of the applicant's complaint about the conditions of his detention;
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 10,000 (ten thousand euros), plus any tax that may be chargeable to the applicant, 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;
8. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 November 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President