



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

FIFTH SECTION

CASE OF VENIOSOV v. UKRAINE

(Application no. 30634/05)

JUDGMENT

STRASBOURG

15 December 2011

FINAL

15/03/2012

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

In the case of Veniosov v. Ukraine,

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

Dean Spielmann, *President*,

Elisabet Fura,

Boštjan M. Zupančič,

Ann Power-Forde,

Ganna Yudkivska,

Angelika Nußberger,

André Potocki, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 22 November 2011,

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

PROCEDURE

1. The case originated in an application (no. 30634/05) 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 Dmitriy Valentinovich Veniosov (“the applicant”), on 27 July 2005.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Mr Y. Zaytsev and Mrs V. Lutkovska.

3. The applicant alleged, in particular, that he had been detained pending criminal proceedings against him in degrading conditions and unlawfully.

4. On 9 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****A. Criminal proceedings against the applicant**

5. The applicant was born in 1968 and lives in Stary Krym.

6. In February 2005 the Prosecutor's Office of the Autonomous Republic of Crimea (ARC) instituted criminal proceedings against several police officers, including the applicant, on charges of abuse of position.

7. On 28 February 2005 the applicant was arrested in connection with these proceedings. In the course of the proceedings the applicant was detained in various detention facilities, including the Feodosiya Temporary Detention Centre ("the Feodosiya ITT"), where he was held from 25 August 2005 to 5 January 2006 and from 25 January to 5 February 2006.

8. On 3 March 2005 the applicant was brought before the Central District Court of Simferopol (the "District Court") which ordered that more information on the applicant be obtained to decide on his further detention. The District Court also decided that, pending the collection of this information, the applicant's detention should be extended until 10 March 2005.

9. On 10 March 2005 the District Court extended the applicant's detention for two months. It noted, in particular, that the applicant had been charged with numerous counts of abuse of position, connected to ill-treatment of individuals and unlawful entry into residential premises. Regard being had to the nature of the charges and to the applicant's official status, there was a high risk that he would engage in new criminal acts, put pressure on witnesses or obstruct the investigation in other ways.

10. On 22 March 2005 the Court of Appeal of the ARC ("the Court of Appeal") upheld this decision.

11. On 26 April 2005, following a request by the prosecutors' office, the District Court extended the applicant's detention for another two months, noting that the investigation had still been unable to collect all the evidence, and that the applicant's personal situation had not changed.

12. On 17 May 2005 the Court of Appeal upheld this decision.

13. By 24 June 2005 the investigation had been completed and the prosecutors' office referred the case to the Chairman of the Court of Appeal to determine which trial court would consider the applicant's case.

14. On 26 June 2005 the applicant requested the governor of the detention facility to release him in view of the fact that the court order for his detention had expired. His request was refused, with reference to the fact that the pre-trial investigation was finished and the bill of indictment had been transferred to the judicial authorities.

15. On 4 July 2005 the Chairman of the Court of Appeal referred the case to the Feodosiya Town Court (hereafter "the Town Court") for trial.

16. On 10 August 2005 the Town Court committed the applicant for trial. According to the Government, on the same date the court upheld the applicant's detention, having found no reasons to release him. According to the applicant, the court did not decide on the issue of extension of his detention on that date. The parties did not provide a copy of the relevant Town Court decision.

17. On 4 January 2006 the Town Court, having examined the case in the course of adversarial proceedings, in which the applicant was represented by an advocate of his choice, found the applicant guilty of several counts of abuse of authority and sentenced him to three years and six months' imprisonment. The court also prohibited the applicant from occupying a law-enforcement post for three years.

18. On 25 May 2006 the Court of Appeal upheld the judgment of 4 January 2006.

19. On 30 November 2006 the Supreme Court dismissed a cassation appeal by the applicant as unsubstantiated.

B. The conditions of the applicant's detention in the Feodosiya ITT

20. From 25 August 2005 to 5 January 2006 and from 25 January to 5 February 2006 the applicant was held in the Feodosiya ITT (Temporary Detention Centre).

1. The applicant's account

21. According to the applicant, during his stay in the Feodosiya ITT he shared a five-square-metre cell with four to seven other detainees. The toilet and washstand in the cell were not separated from the living quarters. The cell had no windows, no table and no chairs, and the ventilation was unsatisfactory. For sleeping arrangements the cell had a wooden platform. Once every ten to twelve days the detainees were taken out for half an hour's exercise. At all other times they remained confined to their cells. Before he was detained, the applicant had been suffering from hypertension. While he was in detention his health worsened to the point that on two occasions an ambulance had to be called.

22. On 18 July 2006 the Prosecutors' Office of the ARC notified the applicant, in response to his complaints about the conditions of his detention, that disciplinary action had been taken against the Feodosiya ITT governor and three officers for unspecified breaches of the law.

23. On 19 July 2006 the ARC Department of the Ministry of Interior acknowledged to the applicant that the Feodosiya ITT had not been properly equipped and that the detainees had been taken out for exercise only once every ten to twelve days because of the overcrowding of the ITT facilities. They noted that the ITT building had been constructed in 1944 and had not undergone any capital renovations since that time. They also noted that the overcrowding of the ITT had been due to restrictions on the admission of detainees by the Simferopol no. 15 Pre-Trial Detention Facility (SIZO).

2. *The Government's account*

24. According to the Government, the Feodosiya ITT had seventeen cells, capable of accommodating thirty-seven inmates. All the cells were located in the basement and had no windows. However, the cells were well lit by electric light, enabling the detainees to read, equipped with a ventilating system ensuring circulation of air and furnished with wooden sleeping platforms, tables, toilets and wash-stands. The detainees were provided with pillows and mattresses. While he was in detention, the applicant was provided with meals, time for outdoor exercise and access to washing facilities. On two occasions (15 and 16 November 2005) an ambulance was called to examine the applicant at his request. He was diagnosed with a respiratory infection and hyperthermia and found not to need in-patient treatment. During his entire stay in the Feodosiya ITT, the applicant was examined regularly by medical professionals and made no other health complaints except those mentioned above.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL MATERIALS

25. The relevant domestic law concerning pre-conviction detention can be found in the judgment in the case of *Molodorych v. Ukraine*, no. 2161/02, §§ 57-58, 28 October 2010).

26. The relevant international material concerning the conditions of detention is summarised in the judgment in the case of *Melnik v. Ukraine* (no. 72286/01, § 47-49, 28 March 2006).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

27. The applicant complained that the conditions of his detention in the Feodosiya ITT had been degrading. He referred to Article 3 of the Convention, which reads as follows:

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

A. Admissibility

28. The Government offered no comments on the admissibility of this complaint.

29. 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

30. The applicant alleged that the conditions of his detention in the Feodosiya ITT had been degrading.

31. The Government disagreed. They maintained that the conditions of the applicant's detention had been satisfactory and sufficient to meet his basic needs.

32. The Court observes that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see as a recent authority *Znaykin v. Ukraine*, no. 37538/05, § 47, 7 October 2010). The Court has consistently stressed that the suffering and humiliation involved in any treatment or punishment must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. In accordance with this provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see as a recent authority *Kharchenko v. Ukraine*, no. 40107/02, § 51, 10 February 2011).

33. Turning to the facts of the present case, the Court notes that the applicant was detained in the Feodosiya ITT for about five months. Based on the available materials, most of the time throughout his stay in this facility the applicant remained confined to a cell allowing at most 1.25 square meters per detainee. The fact of overcrowding was acknowledged by the domestic authorities (see paragraph 23 above). Having regard to its case-law concerning overcrowding in detention facilities and the relevant standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (which are quoted, for example, in the judgment in the case of *Kalashnikov v. Russia*, no. 47095/99, § 97, ECHR 2002-VI, and *Melnik v. Ukraine*, no. 72286/01, § 47, 28 March 2006), the Court finds that the problem of overcrowding in

the applicant's case raises of itself a serious issue under Article 3 of the Convention.

34. The Court further notes that the overcrowding was aggravated by the fact that the applicant's cell had no windows. As a result, the applicant, who had been taken out for exercise only once every ten to twelve days, had no access to daylight and fresh air for prolonged periods of time, which might have been especially burdensome to him, regard being had to his hypertension.

35. The Court further notes that there is no evidence in support of the Government's assertion that the applicant had adequate sleeping arrangements, that his cell was equipped with necessary furniture and that the artificial ventilation and lighting systems operated properly. Regard being had to the fact that in November 2005 the ambulance doctors had diagnosed the applicant with hyperthermia, the Court is particularly doubtful as to the adequacy of the ventilation system.

36. Finally, the Government failed to counter the applicant's assertions that the toilet in his cell was not separated from the living area, which means that the applicant, who shared the cell with at least three other inmates at any given point of time, had no privacy when using it.

37. The foregoing considerations are sufficient for the Court to conclude that the physical conditions of the applicant's detention in the Feodosiya ITT, which lasted for some five months, amounted to degrading treatment, in breach of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

38. The applicant next complained that his detention from 27 June 2005 to the date of his conviction by the first-instance court had been unlawful. He relied on Article 5 § 1 (c) of the Convention, 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

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

40. 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

41. The Government maintained that the applicant's detention had been in compliance with applicable domestic law. In particular, in the period between 27 June and 10 August 2005 the applicant had been held in detention for the reason that he had been awaiting his committal to trial. That period of detention was therefore based on the legal procedure provided for by the Code of Criminal Procedure of Ukraine. Between 10 August 2005 and 4 January 2006 the applicant's detention had been based on the court decision of 10 August 2005 by which the Town Court, among other things, upheld the detention measure in his respect.

42. The applicant disagreed.

43. The Court reiterates that, in proclaiming the right to liberty, Article 5 § 1 contemplates the physical liberty of the person and its aim is to ensure that no one should be dispossessed of this liberty in an arbitrary fashion. The list of exceptions to the right to liberty secured in Article 5 § 1 is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision (see *Doronin v. Ukraine*, no. 16505/02, § 52, 19 February 2009, with further references).

44. Turning to the facts of the present case, the Court notes that between 27 June and 10 August 2005 the applicant's detention was not covered by any court decision and was justified merely by the fact that the file was being transferred from the investigator to the court and the applicant had been awaiting committal for trial. The Court has previously 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. Accordingly, the applicant's detention between 27 June and 10 August 2005 was not lawful.

45. As regards the period between 10 August 2005 and 4 January 2006, the parties disagree as to whether the Town Court took a decision concerning the applicant's detention on that date (see paragraph 16 above). No copy of the relevant decision has been provided. However, assuming that the decision in issue was in fact taken, as appears from the Government's submissions, in any event it upheld rather than extended the applicant's detention and no express reasons for extension of the measure were provided. 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*, cited above, § 98). The Government have not provided any arguments warranting the Court's departure from this approach in the present case.

46. Regard being had to its findings in paragraphs 44 and 45 above, the Court concludes that there has been a violation of Article 5 § 1 (c) of the Convention with respect to holding the applicant in custody between 27 June 2005 and 4 January 2006.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

47. The applicant also complained under Article 5 § 1 (c) of the Convention that his arrest and detention between 28 February and 27 June 2005 had not been based on relevant and sufficient reasons; under Article 5 § 3 of the Convention that the length of his detention before conviction had been excessive and under Article 6 § 3 (b) of the Convention that the conditions of his detention had impeded his ability to prepare his defence properly in the criminal proceedings.

48. 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.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicant asked the Court to award fair compensation for the violations found. He did not claim a specific amount.

52. The Government did not comment on this issue.

53. The Court has no doubt that the applicant must have suffered anxiety and distress as a result of the violations of the Convention that cannot be compensated for adequately by the Court's findings. Making its assessment

on an equitable basis, the Court awards the applicant the sum of 6,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

54. The applicant did not submit any claims for costs and expenses within the time-limit fixed. Consequently, the Court does not make any award under this head.

C. Default interest

55. 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 under Article 3 of the Convention (physical conditions of the applicant's detention in the Feodosiya ITT) and Article 5 § 1 (c) of the Convention (lawfulness of the applicant's detention between 27 June 2005 and 4 January 2006) 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*
 - (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 6,000 (six 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.

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

Claudia Westerdiek
Registrar

Dean Spielmann
President