



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

FIFTH SECTION

**CASE OF USTYANTSEV v. UKRAINE**

*(Application no. 3299/05)*

JUDGMENT

STRASBOURG

12 January 2012

**FINAL**

*12/04/2012*

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



**In the case of** Ustyantsev 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 6 December 2011,

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

## PROCEDURE

1. The case originated in an application (no. 3299/05) 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 Sergey Vladimirovich Ustyantsev (“the applicant”), on 1 November 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 in the Odessa Remand Centre had been in breach of Article 3 of the Convention, that his pre-trial detention and trial had been excessively long and that he could not receive compensation for his lengthy detention.

4. On 16 March 2009 the President of the Fifth Section decided to communicate the above-mentioned complaints to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1972 and is currently in custody.

## **A. Criminal proceedings against the applicant**

### *1. Events of September 2001 and investigation into them*

6. On 7 September 2001 a group of persons, allegedly including the applicant, entered the house of a certain S. and burgled it.

7. On 10 September 2001 the police instituted an investigation into the burglary. In the course of the investigation, charges were brought against several persons and proceedings were pending against them in parallel.

8. On 12 September 2001 the applicant stole a car belonging to a certain K. and was involved in a collision. He was caught by the police on the same day and criminal proceedings were instituted against him.

9. The next day the applicant was charged with car theft.

10. On 14 September 2001 the applicant's detention on remand on account of the car theft charge against him was authorised by the Leninskyy District Court of Odessa ("the District Court", which was apparently joined to the Suvorovsky District Court of Odessa after an administrative reform).

11. By 7 November 2001 the pre-trial investigation was completed and the applicant's car theft case was transferred to the District Court for examination on the merits.

12. On 11 January 2002 the court, having found out that criminal proceedings on other charges were also pending against the applicant (i.e. burglary charges, of which the applicant claims to have been unaware), remitted the car theft case to the investigator to be joined to the burglary case and investigated further. The court also confirmed the applicant's further detention on remand.

13. On 17 January 2002, after the District Court had decided to join the applicant's car theft and burglary cases, the applicant attempted to commit suicide in protest. There were further attempts to commit suicide on 28 February 2003 and 11 November 2005, in response to the court's allegedly unlawful acts. On several occasions the applicant went on hunger strike.

### *2. Joined examination of the charges against the applicant and his conviction for car theft*

14. On an unspecified date the investigator, having taken over the remitted case, joined the two cases against the applicant.

15. On 2 February 2002 the applicant was formally charged with burglary.

16. By 14 March 2002 the pre-trial investigation was completed and the applicant's case in respect of the car theft and burglary charges was transferred to the District Court for examination on the merits.

17. On 11 November 2002 the victim and witnesses failed to appear before the court. The court rescheduled the hearing and ordered that their

attendance at the next court hearing be secured by the authorities (prosecutor and police). The next four court hearings were also rescheduled for the same reason, extending the proceedings by three months. On 26 November and 13 December 2002 and 21 January 2003 the court complained to the authorities about their failure to enforce its instructions to secure attendance at its hearings. It noted, *inter alia*, that delays in the examination of a case lengthened the detention of the accused in the SIZO, which was overcrowded and had poor sanitary conditions.

18. On 3 March 2003 the District Court convicted the applicant as charged and sentenced him to nine years' imprisonment. It also ordered that his detention be continued pending the appeal proceedings. According to the applicant, the judgment was given in his and his lawyer's absence and he was informed of it only on 11 March 2003.

19. On 31 July 2003 the Odessa Regional Court of Appeal partly allowed the applicant's appeal, quashing the judgment relating to the burglary charge and remitting it for retrial, and reducing his sentence to five years and six months for car theft. When the applicant complained that he had been deprived of an opportunity to complete his last appeal, the court found that he had waived his right as he had failed to take several opportunities provided by the lower court. With respect to the applicant's complaint that the judgment had not been pronounced in his presence, the court noted that initially the judgment had been pronounced in the applicant's absence as the applicant had refused to be present in the courtroom; however, on 11 March 2003 the applicant had been taken to the courtroom once again and the judgment had ultimately been pronounced in his presence.

20. On 22 March 2005 the Supreme Court of Ukraine dismissed a cassation appeal by the applicant. As the applicant had appealed against the sentence, the Supreme Court did not examine the remitted part of the case but limited its examination to the challenged part alone. The applicant received that decision on 11 April 2005.

21. The applicant further attempted to have his case reviewed under the extraordinary procedure but was unsuccessful.

### *3. Retrial on the burglary charge*

22. On an unspecified date the District Court resumed examination of the burglary charge against the applicant.

23. From 23 October 2003 to 2 March 2004 all seven court hearings were rescheduled owing to the applicant's lawyer's and other defence lawyers' failure to appear before the court. Later, for the same reasons, the hearings were rescheduled at least eleven times, delaying the proceedings by approximately two months more. In addition, on numerous occasions the witnesses and other participants also failed to appear and the court ordered that their attendance at the following hearing be secured by the police.

24. On 29 April 2005 a forensic handwriting examination was ordered, in order to check the authenticity of the applicant's signatures on several procedural documents. The report was completed by 19 May 2005.

25. On 1 June 2005, referring to the above report, the court found that the applicant's signature had been forged on a number of crucial procedural documents drawn up at the beginning of 2002, and accordingly remitted the case for additional investigation. On the same date the court issued a special ruling (*окрема постановова*) informing the local prosecutor and the head of the police that it was the investigator who had forged the applicant's signature and that criminal proceedings should therefore be brought against him.

26. On 4 October 2005 the investigator discontinued the proceedings against the applicant for lack of proof of his guilt. According to the applicant, he found out about that decision only after receipt of the Government's observations.

## **B. The applicant's detention**

### *1. Periods of detention*

27. According to the Government, the applicant was held in the SIZO from 15 September 2001 to 20 August 2003, from 2 October 2003 to 20 November 2005, from 6 to 8 December 2005, from 26 December 2005 to 8 January 2006 and from 8 to 10 February 2006. From 23 November 2004 to 6 December 2005 the applicant was held in the Daryivska Correctional Colony No. 10. Between 9 and 24 December 2005 the applicant was held in the Buchach Correctional Colony No. 85. From 14 January 2003 to 2 October 2003 and from 10 February 2006 to 22 January 2007 he was held in the Raykiv Correctional Colony No. 73.

28. According to the applicant, however, in the periods from 1 to 28 February and from 9 to 17 July 2002 he was detained in a temporary detention centre (*Ізолятор тимчасового тримання*), and from 20 November to 26 December 2005 he was detained in correctional colonies nos. 10 and 85, where he underwent medical treatment.

29. On 22 January 2007 the applicant was released on parole.

30. On 22 August 2007, being suspected of having committed a new crime, the applicant was arrested again.

### *2. Conditions of the applicant's detention*

#### **(a) Facts submitted by the applicant**

31. According to the applicant, in the temporary detention centre the detainees were fed only once a day and the lights were not switched off at

night. The poor conditions of detention prevented him from keeping basic standards of personal hygiene and preparing his defence.

32. As to the SIZO, in the cell where the applicant was held on 4 July 2005 space was limited to one square metre per person (later, in reply to the Government's observations, the applicant explained that the cell, in which four detainees were held, measured 7.5-10 square metres, 1.5 square metres of which was taken up by a toilet and washstand), the lighting remained on at night, there was a concrete floor, which the applicant considered unacceptable, and he had no facilities to prepare his defence. The SIZO authorities did not provide him with basic necessities, normal medical assistance, press or audiovisual media, gym facilities or the right to have private correspondence. The applicant accepted that after his suicide attempts (see paragraph 13 above) his life had been saved by the SIZO's medical personnel.

33. According to the applicant, prison vans were overcrowded, the detainees' room in the District Court lacked normal standards of detention and detainees were not fed.

34. As a result of the above conditions of detention, the applicant's state of health has deteriorated. In particular, he suffers from chronic prostatitis, thrombophlebitis and a venereal disease.

**(b) Facts submitted by the Government**

35. According to the Government, cells in the SIZO are equipped with basic furniture, toilets separated from the living space, sufficient artificial light, and windows and ventilation that let in sufficient fresh air and daylight. The detainees are fed in compliance with the requirements of the domestic legislation, and allowed daily one-hour walks and eight hours' uninterrupted sleep a day. Each of them has access to a bath once a week for half an hour. The SIZO has its own library open to the detainees.

36. The SIZO cells in which the applicant was held measured no less than 2.5 square metres per person. Upon arrival, he was provided with a bunk and basic necessities.

37. According to the outline of the applicant's medical record submitted by the Government, upon arrival at the SIZO the applicant also underwent a medical examination. It was established as a result that in 2000 he had been diagnosed with chronic prostatitis and in 2001 (but before his arrival) he had had a craniocerebral trauma. Later, in 2003, the applicant was diagnosed with syphilis. In 2005 he underwent medical treatment for his prostatitis in a correctional colony. On 3 April 2008 the applicant was examined by a dermatovenereologist and diagnosed with active chronic mycotic urethritis (*хронічний трихомонадний уретрит в стадії загострення*). On 21 May 2008, after proper treatment, no pathology was revealed. The applicant was prescribed further treatment for his prostatitis on 19 September 2008 and 3 March 2009.

### *3. Proceedings instituted by the applicant*

38. On 15 March 2006 the applicant brought a civil action against the SIZO, seeking compensation for the inappropriate conditions of his detention, among other things.

39. On 17 April 2006 the Prymorsky District Court of Odessa dismissed the applicant's claim on account of his failure to rectify its procedural shortcomings within the time-limit allotted by the court.

40. The applicant appealed against that decision but on 11 September 2006 the Odessa Regional Court of Appeal dismissed his appeal as having been lodged without a request for renewal of a missed statutory time-limit.

### *4. Other relevant facts*

41. According to the applicant, on 2 June 2009 he submitted a written complaint concerning the conditions of his detention to a prosecutor who visited the SIZO.

## **C. Other domestic proceedings**

42. According to the applicant, on 23 March 2005, in the course of the criminal proceedings against him, he brought an action before the Prymorsky District Court of Odessa (no copy is available and no details are specified) claiming a violation of his rights as a result of a miscarriage of justice. On 19 April 2005 he repeated his application, but received no reply.

## **D. Proceedings before the Court**

43. The applicant initially submitted only a few documents to the Court in support of his complaints. He contended that the authorities had not provided him with copies of any other documents.

44. On 11 August 2005 (followed by a reminder on 3 October 2005) the Court's Registry requested the applicant to provide copies of all the court decisions taken in his case(s) after 31 July 2003, as well as proof of the alleged ill-treatment.

45. In his reply of 12 September 2005 the applicant stated that he was unable to provide the requested copies. He explained, in particular, that on 25 August 2005, following the Registry's request, he had sent a letter to the District Court requesting copies of the court decisions taken in his case within the specified period. On 8 September 2005 the applicant was informed that the District Court had sent his case file to the prosecutor. The applicant then complained to the prosecutor, but he never received the requested documents. In his letters to the domestic authorities the applicant

did not refer to the Registry's request; nor is it apparent from the available documents that the Registry's request was appended to his letters.

46. The applicant further explained that he had also requested the SIZO authorities to provide him with copies of his medical file (no copy of his request is available). The authorities gave him access to the file but refused to make copies for him, stating that they could be given only to legal entities.

## II. RELEVANT DOMESTIC LAW

### A. Pre-trial Detention Act

47. Under section 4 of the Pre-trial Detention Act, during the investigation and trial suspects may be held in a SIZO (temporary detention centre) or in a prison that serves as a SIZO. Exceptionally suspects may be kept in an IVS (cells for short-term detention in police stations). If a convicted person is under investigation in respect of another offence, he or she may be held in the disciplinary detention unit of the correctional colony. Section 8 of the Act provides that suspects who have been convicted of a different offence must be separated from other detainees.

### B. Correctional Labour Code (prior to 1 January 2004).

48. The Correctional Labour Code provided that a convicted person should normally be held in the same custodial institution (Article 22). Under Article 23 of the Code, a person who was sentenced to imprisonment in a colony could be temporarily held in a SIZO or prison in connection with different criminal proceedings, as a witness (for up to six months with the authorisation of the prosecutor) or as a suspect, in accordance with the general rules governing detained suspects under Article 156 of the Code of Criminal Procedure.

### C. Code on Enforcement of Criminal Sanctions (since 1 January 2004)

49. The Code on Enforcement of Criminal Sanctions replaced the Correctional Labour Code.

50. Article 87 of this Code provides that convicted persons must be sent to serve their sentence within ten days after the conviction becomes final.

51. Article 90 of the Code provides that the convicted person can remain in the SIZO or be temporarily transferred from a prison or a colony back to

the SIZO for investigative activities or to put him/her on trial (for a different offence) or for the purposes of proceedings against a third party.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

52. The applicant complained that the conditions of his detention in the temporary detention centre, in the detainees' room at the District Court and in the SIZO, his medical treatment in the last-mentioned facility, and the conditions of his transportation in the prison vans, had been in breach of Article 3 of the Convention, which reads as follows:

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

53. In his complaints relating to the conditions of detention and medical treatment in the SIZO, the applicant referred to the whole period between 17 September 2001 and 10 November 2005.

#### A. Admissibility

##### *1. The applicant's detention in the temporary detention centre*

54. The Court notes that the applicant's detention in the temporary detention centre ended on 17 July 2002 at the latest, whereas the complaints about conditions of detention were lodged with the Court on 1 November 2004, that is, more than six months later (see *Novinskiy v. Russia* (dec.), no. 11982/02, 6 December 2007, and *Malenko v. Ukraine*, no. 18660/03, § 40, 19 February 2009). It follows that – assuming that the applicant was detained in the temporary detention centre until 17 July 2002, and that these complaints can be regarded as separate from those concerning the remainder of his detention – the complaints in respect of the conditions of detention in the temporary detention centre have been introduced out of time and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

##### *2. The applicant's transportation in the prison vans and his detention in the detainees' room at the court*

55. The Court further notes that the applicant's complaints about the conditions of his transportation in the prison vans and his detention in the detainees' room at the court are unclear and lacking in detail such as dates, duration of trips and stays in the detainees' room. The Court therefore

concludes that the applicant has not made out an arguable claim in that connection. It dismisses this complaint as manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

### 3. *The applicant's detention in the SIZO*

56. The Government objected that the applicant had not exhausted the effective domestic remedies available to him. In particular, they contended that all decisions, actions or omissions of State bodies could be challenged in court. In support of the effectiveness of the proposed remedy, they submitted a copy of the domestic court's decision of 4 February 2009 in the case of K. and B. against SIZO no. 13. The claimants' daughter and mother had died in that SIZO because of a lack of medical assistance. The court awarded the claimants 25,000<sup>1</sup> Ukrainian hryvnias (UAH) each in compensation for non-pecuniary damage. Although the applicant had instituted proceedings against the SIZO administration, he had failed to comply with the procedural requirements and his claim had thus not been examined on the merits; his appeal had been dismissed as being lodged outside the statutory time-limit. Nor had the applicant complained to the prosecutor, a remedy which in the Government's view was also effective.

57. The applicant disagreed, noting that he had complained to the prosecutor in June 2009.

58. The Court notes that it has already dismissed similar objections by the Government in a number of cases, having found that the problems arising from the conditions of detention were of a structural nature and no effective remedy was available in this respect, as it had not been sufficiently established that recourse to the remedies suggested by the Government would have been capable of affording redress to the applicant and that a single example of successful litigation, cited by the Government in this case too (see paragraph 56 above), in a case in which a violation had previously been found by this Court (see *Kats and Others v. Ukraine*, no. 29971/04, 18 December 2008), could not serve as proof of the effectiveness of the remedies proposed by the Government (see *Petukhov v. Ukraine*, no. 43374/02, §§ 76-79, 21 October 2010 with further references). The Court sees no reason to depart from those findings in the present case and therefore considers that this complaint cannot be rejected for failure to exhaust domestic remedies.

59. However, by virtue of Article 35 § 4 of the Convention, the Court may declare a complaint inadmissible "at any stage of the proceedings", and the six-month rule is a mandatory one which the Court has jurisdiction to apply of its own motion (see, among other authorities, *Assanidze v. Georgia* [GC], no. 71503/01, § 160, ECHR 2004-II). The absence of an objection

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<sup>1</sup> At the material time around 2,411 euros (EUR).

from the respondent Government does not change the situation (see *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I).

60. The Court observes that the applicant's detention in the SIZO consists of several periods interrupted apparently by transfers to other detention facilities (see paragraphs 27 and 28 above). Given that these facilities were located in different places, the applicant's detention in these facilities ended on clearly identifiable dates and nothing in the parties' submissions suggests that the measurements of the applicant's cells, the cell layouts or any other relevant characteristics were identical or remarkably similar, and especially as, in respect of certain facilities, the applicant did not raise any complaint, these periods cannot be regarded as a "continuing situation" for the purposes of calculation of the six-month time-limit (see and compare, for example, *Novinskiy*, cited above). The Court concludes therefore that the six-month period provided for in Article 35 § 1 of the Convention must be counted from the dates on which the periods in question ended. Thus, only the complaint relating to the period between 2 October 2003 and 10 November 2005 falls within its six-month jurisdiction and the complaints concerning other periods must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

61. The Court further notes that there are two distinguishable aspects of the complaint relating to the period between 2 October 2003 and 10 November 2005, the admissibility of which should be examined separately. The first part concerns the material conditions of the applicant's detention (overcrowding in cells, lighting regime, and so on) and the second concerns the allegations of inadequate medical care.

**(a) Material conditions of the applicant's detention**

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

**(b) Medical treatment and assistance to the applicant**

63. The Court notes that the applicant's submissions in this connection are limited to general statements, either that there was no adequate medical treatment or assistance, or that his state of health deteriorated during his detention (see paragraphs 32 and 34 above). Neither allegation is sufficient *per se* for the Court to reach the conclusion that Article 3 of the Convention has been breached. In particular, there is no evidence that the applicant's diseases were caused or exacerbated by inadequate medical treatment. Indeed, the Court takes note of the applicant's statements to the contrary concerning his medical treatment after his suicide attempts (see paragraph 32 *in fine*). Nor did the applicant suggest that medical assistance had been delayed or that his requests for assistance had been ignored. On the contrary, it appears from the Government's submissions (see

paragraph 37 above), which the applicant did not challenge, that, albeit during other periods, he did receive medical treatment for his ailments with some degree of success. The Court is not in a position to speculate on the adequacy of the medical treatment prescribed to the applicant.

64. In the absence of concrete facts and necessary details in support of these allegations, the Court finds that the applicant has not sufficiently made out his complaints under Article 3 of the Convention as to the alleged inadequacy of medical treatment and assistance in the SIZO (see, *mutatis mutandis*, *Dvoynych v. Ukraine*, cited above, §§ 55-58, and *Okhrimenko v. Ukraine*, no. 53896/07, §§ 70-74, 15 October 2009).

65. 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.

## **B. Merits**

66. The applicant, referring to his above-mentioned submissions on the facts, argued that the authorities had failed to comply with their obligations under Article 3 of the Convention.

67. The Government, referring to their own submissions on the facts, argued that there had been no violation of that provision.

68. The Court reiterates that under Article 3 of the Convention the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, and 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 (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI).

69. The Court considers that in the present case the respondent Government alone had access to information capable of disproving the applicant's allegations. A failure on the Government's part to submit such information which is in their hands without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see, *mutatis mutandis*, *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004).

70. The Court observes that the Government did not provide any information as to the number of persons detained together with the applicant in the relevant cells, thus precluding any estimation of the living space per detainee. However, even if the applicant had approximately 2.5 square metres of space, as submitted by the Government (see paragraph 36 above), that was clearly insufficient in view of the relevant standards developed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (which are quoted, for example, in *Kalashnikov v. Russia*, no. 47095/99, § 97, ECHR 2002-VI, and *Melnik*, cited above, § 47).

71. Neither did the Government prove in any manner that the lighting regime was adequate. Certain inferences in this respect, however, can be drawn from the domestic court's assessment of such conditions (see paragraph 17 above *in fine*).

72. The foregoing considerations are sufficient to enable the Court to conclude that the conditions of the applicant's detention during the period under review amounted to degrading treatment contrary to the requirements of Article 3 of the Convention (see, *mutatis mutandis*, *Koktysh v. Ukraine*, no. 43707/07, §§ 98-100, 10 December 2009).

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

## II. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

73. The applicant complained that the length of his detention on remand had been excessive. He relied on 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.”

74. The Government contended that the complaint had been introduced outside the six-month period set out in Article 35 § 1 of the Convention. In particular, referring to *B. v. Austria* (28 March 1990, Series A no. 175), they submitted that, for the purposes of Article 5 § 3 of the Convention, the applicant's detention on remand had ended on 3 March 2003, the date when the District Court convicted the applicant; from that date on, the applicant had been detained “after conviction by a competent court”, within the meaning of Article 5 § 1 (a). The Government consequently invited the Court to declare this complaint inadmissible.

75. The applicant considered that his detention in the SIZO had been too long.

76. The Court reiterates that Article 5 of the Convention is in the first rank of the fundamental rights that protect the physical security of an individual, and that three strands in particular may be identified as running through the Court's case-law: the exhaustive nature of the exceptions, which must be interpreted strictly and which do not allow for the broad range of justifications under other provisions (Articles 8-11 of the Convention in particular); the repeated emphasis on the lawfulness of the detention, procedurally and substantively, requiring scrupulous adherence to the rule of law; and the importance of the promptness or speediness of the requisite judicial controls under Article 5 §§ 3 and 4 (see *McKay v. the United Kingdom* [GC], no. 543/03, § 30, ECHR 2006-X). On this latter point, it should be recalled that Article 5 § 3 applies solely in the situation envisaged in Article 5 § 1 (c), with which it forms a whole. It ceases to apply on the

day when the charge is determined, even if only by a court of first instance, as from that day on the person is detained “after conviction by a competent court” within the meaning of Article 5 § 1 (a) (see, among many other authorities, *Labita v. Italy* [GC], no. 26772/95, §§ 145 and 147, ECHR 2000-IV). Furthermore, a person who has cause to complain of continuation of his detention after conviction because of delay in determining his appeal, cannot avail himself of Article 5 § 3 but could possibly allege a disregard of the “reasonable time” provided for by Article 6 § 1 (see *Solmaz v. Turkey*, no. 27561/02, §§ 24 to 26, 16 January 2007, with further references).

77. The Court further reiterates that the applicability of one ground listed in Article 5 § 1 of the Convention does not necessarily preclude the applicability of another and detention may be justified under more than one sub-paragraph of that provision (see, among many others, *Brand v. the Netherlands*, no. 49902/99, § 58, 11 May 2004, and *Johnson v. the United Kingdom*, 24 October 1997, § 58, *Reports of Judgments and Decisions* 1997-VII). Therefore, the Court is called upon to decide whether in such circumstances Article 5 § 3 is applicable to the period in question too.

78. Article 5 § 3 is structurally concerned with two separate matters: the early stages following an arrest, when an individual is taken into the power of the authorities, and the period pending any trial before a criminal court, during which the suspect may be detained or released with or without conditions. These two limbs confer distinct rights and are not on their face logically or temporally linked (see *McKay v. the United Kingdom* [GC], cited above, § 31).

79. Since the case of *Wemhoff v. Germany*, the Court, in deciding the moment from which Article 5 § 3 ceased to apply, has considered the legal basis for detention “autonomously”. It noted, among other things, that guarantees of Article 5 § 3 could not depend on the specificities of the domestic legal system and that the person complaining of the continuation of his detention after conviction cannot avail himself of Article 5 § 3. In the above judgment, Court further noted that it could not be overlooked that the guilt of a person who was detained during appeal or review proceedings had been established in the course of a trial conducted in accordance with the requirements of Article 6 (see *Wemhoff v. Germany*, 27 June 1968, p. 23, § 9, Series A no. 7).

80. Turning to the circumstances of the present case, the Court notes that from 31 July 2003, when the applicant’s conviction for car theft was upheld and his conviction for burglary was quashed on appeal and remitted for additional investigation, until 4 October 2005, when the investigator discontinued these proceedings, the applicant’s deprivation of liberty could be argued to have fallen within the ambit of both sub-paragraphs (a) and (c) of Article 5 § 1. However this period was a part of a longer period which started on 3 March 2003 with the applicant’s conviction and ended with his

release on parole on 22 January 2007. This deprivation of liberty of the applicant was clearly justified under Article 5 § 1 (a) of the Convention.

81. The applicant's complaint concerns the detention pending trial, in respect of which this Court has constantly held that the presumption under Article 5 is in favour of release. As established in *Neumeister v. Austria* (27 June 1968, § 4, Series A no. 8), the second limb of Article 5 § 3 does not give judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until conviction, he must be presumed innocent, and the purpose of the provision under consideration is essentially to require his provisional release once his continuing detention ceases to be reasonable (as confirmed in *McKay*, cited above, § 41).

82. Indeed, the Court finds it difficult to see any practical purpose in requesting the State authorities to justify the applicant's detention under Article 5 §§ 1 (c) and 3 of the Convention in the circumstances, when such detention was justified under Article 5 § 1 (a). Any request for release would thus be limited to the purely hypothetical question whether the person could be released if he was not already serving a prison sentence. Therefore, even if the applicant's continuing detention within the meaning of Article 5 § 1 (c) ceased to be reasonable, it would not automatically cease to be lawful and justified under Article 5 § 1 (a). In short, the applicant cannot argue that while serving his prison sentence, he was "entitled ... to release pending trial" in the parallel judicial proceedings which did not concern his original conviction. Accordingly, Article 5 § 3 of the Convention does not apply to the applicant's detention between 31 July 2003 and 4 October 2005, which amounted to "lawful detention after conviction by a competent court" within the meaning of Article 5 § 1 (a) of the Convention.

83. The Court further notes that the applicant's stay in a pre-trial detention facility (SIZO) rather than in a correctional colony for part of this period does not affect his status as detainee within the meaning of Article 5 of the Convention.

84. Accordingly, the period to be taken into consideration for the purposes of Article 5 § 3 ended on 3 March 2003. It follows that this complaint must be rejected for having been submitted outside the six-month time-limit for the purposes of Article 35 § 1 of the Convention.

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

85. The applicant complained that he had had no right to compensation for his unlawful detention. He relied on Article 5 § 5 of the Convention, which reads as follows:

“Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

86. In the Government’s view, as the complaint under Article 5 § 3 of the Convention was inadmissible, Article 5 § 5 was therefore inapplicable.

87. The Court reiterates that Article 5 § 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4 (see *Stoichkov v. Bulgaria*, no. 9808/02, § 72, 24 March 2005). The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the preceding paragraphs of Article 5 has been established, either by a domestic authority or by the Court (see *N.C. v. Italy* [GC], no. 24952/94, § 49, ECHR 2002-X.). In the absence of any such finding in the present case, it follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

#### IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION (LENGTH OF THE CRIMINAL PROCEEDINGS AGAINST THE APPLICANT)

88. The applicant further complained that the length of the criminal proceedings against him had been excessive. He relied on Article 6 § 1 of the Convention, which 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. Periods to be taken into consideration

###### 1. *Proceedings concerning the car theft charge*

89. The period to be taken into consideration began on 12 September 2001 and ended on 22 March 2005. It thus lasted three years and six months before the investigating authorities and the courts at three levels of jurisdiction.

###### 2. *Proceedings concerning the burglary charge*

90. The Government pleaded that the period to be taken into consideration had started on 2 February 2002, when the applicant had been charged, and ended on 4 October 2005 when the proceedings against him had been discontinued. The impugned proceedings, in their view, had thus lasted three years and eight months before the courts at three levels of jurisdiction.

91. The Court observes that, although the investigation was instituted on 10 September 2001, there is no evidence that the applicant was “charged” within the meaning of Article 6 § 1 of the Convention at that stage. The first mention of the proceedings pending against the applicant was made on 11 January 2002 and, according to him, he had been unaware of those proceedings before that (see paragraph 12 above). In the absence of more specific information, the Court will take this date as the *dies a quo* for the purposes of the present examination. The proceedings in question ended on 4 October 2005. The period to be taken into consideration thus lasted three years and almost nine months before the investigating authorities and the courts at two levels of jurisdiction (as the Supreme Court did not deal with this part of the applicant’s case in the cassation proceedings: see paragraph 20 above).

#### **B. Court’s assessment**

92. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the 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).

93. Regard being had to all the circumstances, the Court considers that in the present case the overall length of the impugned proceedings was not excessive and cannot be considered unreasonable (see, for example, *Shavrov v. Ukraine* (dec.), no. 11098/03, 11 March 2008).

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

#### **V. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION**

95. The applicant further complained that he had been unable to adduce copies of documents in support of his application and that his relevant requests and complaints had been disregarded by the authorities.

The above complaints fall to be examined under 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.”

96. The Government limited their submissions to the objection that the complaint was inadmissible for non-exhaustion of domestic remedies.

97. 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 *Chaykovskiy v. Ukraine*, no. 2295/06, § 83, 15 October 2009, with further references). The Government's objection is therefore not appropriate.

98. The Court points out that the general principles regarding the obligation on a Contracting State not to hinder the right of individual petition, as guaranteed by Article 34 of the Convention, have been stated in a number of its previous judgments (for instance, *ibid.*, §§ 84-88).

99. Turning to the facts of the present case, the Court observes that there is nothing in the case file to suggest that the applicant ever informed the State authorities, either explicitly or implicitly, that the requested copies of documents were necessary for him for the purpose of defending his rights before the Court (see paragraph 45 *in fine* and compare *Boicenco v. Moldova*, no. 41088/05, § 158, 11 July 2006). Furthermore, it should be observed that the requested documents – the courts' decisions – had to be served on the convicted person by law and from the facts of the case it appears that he challenged those decisions in higher courts and might have had copies of them in that connection. In the light of the above, the alleged inaction on the part of the domestic authorities does not amount to "hindrance" within the meaning of Article 34.

100. As to the authorities' alleged refusal to make copies from the applicant's medical file, the Court notes that, even assuming that the authorities were informed what the applicant intended to do with them, the applicant was given access to the file in question, and he has not suggested that he was denied the possibility of copying the documents himself (by hand, for instance; compare *Chaykovskiy*, cited above, §§ 94-97).

101. Accordingly, the authorities did not fail to comply with their obligations under Article 34 of the Convention.

## VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

102. Lastly, the applicant complained under Article 6 §§ 1 and 3 (b) and (d) of the Convention that the criminal proceedings against him had been unfair. In this context he also complained that from 31 July 2003 his detention had been unlawful and contrary to Article 5 § 1 (a) of the Convention. The applicant further stated that he had no means of obtaining compensation for his wrongful conviction and ensuing detention, in breach of Article 3 of Protocol No. 7. He also relied on Article 14 of the Convention.

103. Having carefully 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.

104. 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

105. 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

106. The applicant claimed UAH 20,000<sup>1</sup> in respect of pecuniary damage and UAH 200,000<sup>2</sup> in respect of non-pecuniary damage. The first-mentioned amount was for income lost because of his detention in the SIZO, where no work was available.

107. The Government challenged these amounts.

108. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him 6,000 euros (EUR) under that head.

### B. Costs and expenses

109. The applicant did not submit any claim under this head. The Court therefore makes no award.

### C. Default interest

110. 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.

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<sup>1</sup> About EUR 1,895.85.

<sup>2</sup> About EUR 18,958.50.

## FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaint under Article 3 of the Convention concerning the conditions of the applicant's detention in the SIZO in the period between 2 October 2003 and 10 November 2005 admissible;
2. *Declares* by a majority the complaint under Article 5 § 3 of the Convention inadmissible;
3. *Declares* unanimously the remainder of the application inadmissible;
4. *Holds* unanimously that there has been a violation of Article 3 of the Convention;
5. *Holds* unanimously that Ukraine has not failed to comply with its obligations under Article 34 of the Convention;
6. *Holds* unanimously
  - (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 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 the respondent State 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;
7. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek  
Registrar

Dean Spielmann  
President