



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

FIFTH SECTION

CASE OF SAMOYLOVICH v. UKRAINE

(Application no. 28969/04)

JUDGMENT

STRASBOURG

16 May 2013

FINAL

16/08/2013

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

In the case of Samoylovich v. Ukraine,

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

Mark Villiger, *President*,

Ann Power-Forde,

André Potocki,

Paul Lemmens,

Helena Jäderblom,

Aleš Pejchal, *judges*,

Myroslava Antonovych, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 9 April 2013,

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

PROCEDURE

1. The case originated in an application (no. 28969/04) 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 Nikolay Vasilyevich Samoylovich (“the applicant”), on 9 July 2004.

2. The applicant, who had been granted legal aid, was represented by Mr T.N. Mikhaylov, a lawyer practising in Donetsk. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs V. Lutkovska and Mr N. Kulchytsky.

3. The applicant alleged, in particular, that he had been unlawfully arrested and detained in degrading conditions for an unreasonably long time and that the criminal proceedings against him had been inordinately lengthy.

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

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant, Mr Nikolay Vasilyevich Samoylovich, is a Ukrainian national who was born in 1969 and lives in Simferopol.

A. First set of criminal proceedings

7. On 29 January 1997 the Kyiv district prosecutor's office at Simferopol opened criminal proceedings against the applicant, who was serving as a police officer at that time, on suspicion that he had abused his authority.

8. On 24 November 1999 the Simferopol District Court convicted the applicant of abusing his authority and sentenced him to two and a half years' imprisonment.

9. On 6 February 2000 that decision was quashed and the case was sent back for a retrial and further investigation.

10. On 29 December 2003 the prosecutor's office discontinued the proceedings on exonerative grounds as it could find no reason to believe that a crime had been committed.

11. According to the Government, on 30 December 2003 that decision was served on the applicant in Simferopol no. 15 pre-trial detention facility (SIZO), where he was being detained at that time in connection with another set of criminal proceedings.

B. Second set of criminal proceedings and the applicant's pre-trial detention

12. On 2 August 1999 the applicant was arrested and detained on suspicion of robbery of the I. family.

13. On 5 August 1999 the prosecutor's office of the Autonomous Republic of the Crimea ("ARC") authorised the applicant's detention on remand for two months pending an investigation, on account of the gravity of the charges laid against him and the need to carry out certain procedural steps. Subsequently (on 10 October 1999, 2 January 2000 and 27 January 2000) the prosecutor's office extended the applicant's detention for further terms of three, one and six months, respectively, on the same grounds as those referred to in the order of 5 August 1999.

14. In September 1999 the applicant challenged his detention before the Central District Court of Simferopol, maintaining that it was in breach of a

number of applicable provisions of the procedural law in force at the material time.

15. On 25 February 2000 the court refused to examine the applicant's complaint on the merits, finding that he had been lawfully detained following his conviction on 24 November 1999 for abusing his authority and that there was no prosecutor's order of 5 August 1999 for his detention on remand in the file on his case.

16. In March 2000 the criminal case against the applicant was joined with another case, which concerned the activity of a gang led by P., another police officer from Simferopol, who was also charged with participating in the robbery of the I. family.

17. During the pre-trial investigation, the authorities questioned 120 witnesses concerning thirty-four criminal acts attributed to the gang members, carried out twenty reconstructions of the crime scenes and ordered numerous expert assessments.

18. On 20 July 2000 the pre-trial investigation was completed and the applicant, along with eighteen other individuals suspected of having committed various crimes as members of the aforementioned gang, was committed for trial before the Supreme Court of the ARC (subsequently renamed the Court of Appeal of the ARC, and hereinafter "the Court of the ARC").

19. On 4 May 2001, following the familiarisation of the defendants with the material in the case file and the completion of other procedural formalities, the Court of the ARC held a preliminary hearing in the case and scheduled the trial for 5 June 2001. The court also decided that there were no grounds for releasing the applicant pending trial.

20. Having held eighteen hearings between June and December 2001, the Court of the ARC adjourned the proceedings following a request by one of the defendants that the hearings be recorded, no recording devices being available at the time.

21. On 15 May 2002 the Court of the ARC resumed its consideration of the case.

22. On various dates the applicant made requests to the Court of the ARC to release him from custody. He contended that he had no reason to abscond, as he was innocent, had a permanent address in Simferopol and a family (wife, daughter of minor age and elderly mother), and that he was suffering from duodenal ulcers, aggravated as a result of his being in the SIZO. In his submissions the applicant also pointed to various procedural irregularities in the documents on which his detention was based. In particular, he noted that, according to the court decision of 25 February 2000, there was no record of any order of 5 August 1999, serving as the basis for his detention.

23. Those requests were rejected by the Court of the ARC on the basis of the gravity of the charges laid against the applicant.

24. On 9 October 2003 the Court of the ARC stated that there was no arbitrariness in the order for the applicant's detention and that the order of 5 August 1999 had been lawful.

25. On several occasions the applicant unsuccessfully attempted to institute criminal proceedings against the police officers and the prosecutor's office, citing various procedural irregularities in his placement in custody.

26. On 5 November 2003 the Central District Court of Simferopol overturned the refusal by the prosecutor's office to institute criminal proceedings concerning the lawfulness of the applicant's detention, referring to a number of procedural irregularities in the drafting of the documents concerning the applicant's detention. It noted, in particular, that there were two different copies of the above-mentioned order of 5 August 1999. According to that presented by the prosecutor's office, the applicant had been shown a copy of the order for his detention on 5 August 1999 and had refused to sign it. Nevertheless, a copy held in the SIZO records bore the signature of the applicant dated 5 August 1999. The court next instructed the prosecutor's office to investigate this and other procedural irregularities in the applicant's case file.

27. On 22 December 2003 the prosecutor's office again refused to institute criminal proceedings. It found, in particular, that it was unclear why there were two different copies of the detention order. However, neither this nor any other procedural irregularity in the case file was such as to warrant the opening of criminal proceedings.

28. On 15 March and 21 September 2004 the Central District Court of Simferopol and the Court of the ARC respectively upheld the prosecutor's office's refusal to institute criminal proceedings concerning the lawfulness of the applicant's detention.

29. Between May 2002 and May 2004 the Court of the ARC held some 150 hearings in the case.

30. On 17 November 2004 the Court of the ARC delivered a judgment, approximately 200 pages long, which stated that the applicant was convicted of being a member of P.'s gang and taking part in the robbery of the I. family. The applicant was further sentenced to seven years' imprisonment, to run from the date of his arrest (2 August 1999).

31. On 16 March 2006 the Supreme Court of Ukraine held a hearing in the applicant's presence and dismissed a cassation appeal he had lodged.

32. In August 2006 the applicant was released, having served the term of his prison sentence in full.

C. Conditions of the applicant's detention

33. From August 1999 until August 2006 the applicant was detained in the Simferopol SIZO.

1. The applicant's account of the conditions of his detention

34. According to the applicant, the physical conditions of his detention in the SIZO had been intolerable. He emphasised, in particular, that the size of the cells had allowed for less than 2.5 square metres' space per detainee. Cell no. 86, officially designated for six inmates, had in fact, contained only four beds and at times had been occupied by more than four persons, who had needed to take turns to sleep. The detainees had not been given bedding or toiletries and towels, and had had no access to laundry facilities so had to wash and dry their laundry in the cell, which became very humid.

35. Food, especially during the period between 1999 and 2002, had been insufficient and of poor quality. The bread had been made of such low-grade flour that it rather resembled dark brown gum. The detainees had been given hot cereal (*kauua*) without salt, sugar or fat, three times per day. For lunch they had also been given a bowl of soup, which had, in fact, consisted of the same cereal or dumplings made from poor quality flour floating in water. The portions had been meagre.

36. The applicant had been confined to his cell for most of the day. He was able to take a daily walk outside for some thirty to forty minutes although sometimes, particularly in bad weather, there had been no outdoor exercise at all. The situation had been particularly difficult during the period between 1999 and 2002, when the walks had taken place on a highly irregular basis. The exercise yard had measured five by five square metres. It had been bare concrete with no benches or exercise facilities and had smelled of human excrement.

37. In 2000 the applicant had been placed in a disciplinary cell for ten days, where the conditions had been even more severe than in the ordinary cells.

38. On numerous occasions the applicant had complained about the physical conditions of his detention and the quality of nutrition in his diet to various authorities, including to the Court of the ARC during the hearings. However, his complaints had been to no avail.

39. On several occasions the authorities had acknowledged some breaches of the applicant's and other inmates' rights. In particular, according to some correspondence from the SIZO administration, it had not been provided with a sufficient quantity of meat or fresh produce to ensure a varied diet for the inmates and had been obliged to make dietary substitutions. However, notwithstanding its acknowledgment of the problems complained of, the situation had not been remedied.

2. The Government's account of the conditions of the applicant's detention

40. According to the Government, the conditions of the applicant's detention had been adequate and sufficient for meeting his basic needs.

41. As regards the living conditions, from 6 August 1999 until 2 August 2000 the applicant had been held in cell no. 176, which measured 13.5 square metres and had eight beds. From 2 August 2000 until 7 June 2004 the applicant had been held in cell no. 170, which measured 32.4 square metres and had sixteen beds; from 7 June 2004 until 31 August 2004 the applicant had been detained in cell no. 89, which measured 8.2 square metres and had six beds. During the remaining period of his detention the applicant had been held in cell no. 86, which measured 8.2 square metres and had six beds. According to the records, the number of detainees held in those cells during the periods in question, had not exceeded the number of beds available and each detainee had had his own sleeping place.

42. Each cell had been equipped with both natural and artificial ventilation, a centralised twenty-four-hour heating system, water supply and a sanitation system. All cells had been provided with windows, letting in daylight. At night electric light of a sufficient strength had been available to enable the detainees to read or write. The cells had been equipped with the necessary amenities, including toilets, wash basins, tables, benches and storage boxes. The applicant had been provided with dishes and bed linen (which had been changed every week).

43. Every day the detainees had been afforded a one-hour walk in the outdoor courtyard, which measured 25.3 square metres. A light canopy above the courtyard had offered protection from rain and snow and had enabled the detainees to take outdoor exercise in any weather. The courtyard had been cleaned on a daily basis.

44. The detainees' diet had been prepared in compliance with applicable domestic standards and had been sufficient to meet their nutritional needs. For example, in their daily diet the detainees had received 100 to 150 grams of fish or meat, twenty grams of vegetable oil, forty grams of fat and a sufficient quantity of fresh vegetables from which to obtain the necessary vitamins.

D. Other events

45. According to the applicant's submissions, during routine searches the prison authorities had thrown the detainees' food, shoes and other belongings out of the cell into a dirty corridor. Often the authorities had confiscated objects which could not have presented any threat to prison security, such as plastic water bottles, newspapers or spoons.

46. The applicant also submitted that in detention he had never received a visit from a pastor and had had no opportunity to pray in private, as he had never been left alone. His relatives had only been able to see him through a glass partition during their visits. As a result of that lack of family contact the applicant's wife had divorced him in 2002. The applicant had been expelled from the university on account of the impossibility of pursuing

regular studies while in detention. The administration had regularly interfered with his correspondence and communication with the outside world and had not provided him with adequate medical and dental assistance. According to the case file, the applicant hadn't raised any of the complaints listed in this and the preceding paragraph at domestic level.

47. The applicant further submitted that on those days when he had attended the court hearings, in the period between 2000 and 2001, he and his co-accused would often spend the entire day in the courtroom without being provided with lunch or dinner. As the applicant had continually protested against this situation, in the autumn of 2001 the judge had ordered him to be removed from the courtroom until the end of the trial, for contempt of court.

48. At various times the applicant had unsuccessfully attempted to lodge civil actions against the police of the ARC (his former employer), alleging various violations of his labour rights. On several occasions the courts had refused to consider the merits of his application because he had not complied with the applicable procedural formalities.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL MATERIALS

49. Relevant provisions of domestic law concerning arrest and detention pending criminal investigation and trial can be found in the Court's judgment in the case of *Yeloyev v. Ukraine* (no. 17283/02, § 35, 6 November 2008).

50. Relevant international materials concerning the conditions of detention can be found in the judgment in the case of *Dvoynych v. Ukraine* (no. 72277/01, §§ 39-40, 12 October 2006).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

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

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

A. Admissibility

1. *Submissions of the parties*

52. The Government submitted that the applicant had failed to exhaust domestic remedies in respect of his complaint under Article 3. In particular, he could have addressed his concerns to the prosecutor supervising the detention facilities. Should the prosecutor not have dealt with them properly, the applicant could also have appealed to the courts, citing, in particular, Article 2 of the Code of Administrative Justice.

53. The Government further alleged that the applicant had missed the six-month time-limit for lodging the complaints concerning his detention in a disciplinary cell in 2000, as well as those concerning poor nutrition and insufficient access to outdoor exercise in the period between 1999 and 2002.

54. The applicant disagreed.

2. *The Court's assessment*

(a) **Compliance with the requirement to exhaust domestic remedies**

55. As regards the Government's argument concerning non-exhaustion of domestic remedies, the Court notes that the applicant in the present case complained, primarily about structural defects in the prison system in general, namely, lack of personal space, poor sanitary arrangements, catering and ventilation and lack of outdoor exercise. The Court observes that it has already dismissed similar objections of non-exhaustion in a number of other cases, where it found that the complaints concerned problems of a structural nature in the domestic prison system in question (see, for example, *Kalashnikov v. Russia* (dec.), no. 47095/99, ECHR 2001-XI; *Melnik v. Ukraine*, no. 72286/01, §§ 69-71, 28 March 2006; *Koktysh v. Ukraine*, no. 43707/07, § 86, 10 December 2009; and *Logvinenko v. Ukraine*, no. 13448/07, §§ 57-58, 14 October 2010). The Court does not see any reason to depart from its previous approach in the present case.

56. The Court therefore dismisses the Government's objection of non-exhaustion of domestic remedies.

(b) **Compliance with the six-month rule**

57. The Court observes that, in cases where there is a continuing situation and it is clear from the outset that no effective remedy is available to the applicant, the six-month period runs from the end of that situation (see, for example, *Dvoynykh*, cited above, § 46).

58. The Court further notes that the applicant in the present case first submitted his complaints about the conditions of his detention in the

Simferopol SIZO in 2004. It agrees that in so far as he complained about his detention in the disciplinary cell in 2000, this complaint has been submitted out of time and must therefore be rejected as inadmissible.

59. On the other hand, as regards the applicant's complaints about lack of outdoor exercise and poor nutrition, the Court refers to paragraphs 35 and 36 above and notes that these complaints pertained to the entire period of his detention, from August 1999 until August 2006. While it is true that the applicant complained that in the period between 1999 and 2002 the opportunities for taking outdoor exercise had been notably irregular and the food supplies had been particularly meagre, it transpires from his submissions that there were only slight improvements in the situation later in his detention and his personal circumstances did not change significantly. The Court considers that in these circumstances it would be artificial to disjoin the applicant's complaint about poor nutrition and lack of exercise during the period from 1999 to 2002 from his similar complaints concerning the later period of his detention. It therefore considers that the situation may be considered to be continuing.

60. In the light of the above, the Court dismisses the Government's objection concerning non-compliance with the six-month rule in respect of the applicant's complaints concerning poor nutrition and lack of outdoor exercise.

(c) Otherwise as to admissibility

61. The Court considers that the applicant's complaints about the physical conditions of his detention in the Simferopol SIZO (namely the lack of personal space, lighting, ventilation, sanitary arrangements, paucity of food and outdoor exercise) are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

62. The applicant maintained that the conditions of his detention had been inhuman and degrading.

63. The Government contested this view. They stated that the hardships suffered by the applicant on account of the conditions of his detention had not been such as to constitute a violation of Article 3 of the Convention.

64. The Court observes that the applicant's complaints about the physical conditions of his detention in the Simferopol SIZO relate to the period between August 1999 and August 2006. It reiterates that it has already found violations of Article 3 of the Convention in a number of applications brought by individuals detained in the same facility for various periods between these years (see, for example, *Dvoynikh*, cited above, §§

64-69; *Znaykin v. Ukraine*, no. 37538/05 §§ 49-53, 7 October 2010; *Visloguzov v. Ukraine*, no. 32362/02, §§ 58-61, 20 May 2010 and *Izzetov v. Ukraine*, no. 23136/04, §§ 42-43, 15 September 2011). The Court notes that the matters giving rise to the finding of violations in the above cases are similar to those complained about by the applicant in the present case.

65. The Court does not find any reason to depart from its previous approach in assessing the relevant matters, and considers that the physical conditions of the applicant's detention were degrading.

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

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

67. The applicant further complained under Article 5 § 1 (c) of the Convention that the order of 5 August 1999 to remand him in custody had been unlawful and that all the period of his detention before conviction had been arbitrary. The provision at issue, in so far as relevant, reads as follows:

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

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...”

68. The Court notes that the applicant's detention complained of consists of the period covered by the initial order of the prosecutor of 5 August 1999 to remand him in custody and the period after its expiration. This latter consisted of several sub-periods: (1) covered by the prosecutor's orders extending the initial detention; (2) covered by the judicial order of 4 May 2001; and (3) not covered by any decision, as appears from the available materials.

A. Admissibility

69. The Government contended that the complaint concerning the lawfulness of the order of 5 August 1999 had been lodged in breach of the six-month rule. They maintained that the six-month period had started to run from 25 February 2000, when the Central District Court of Simferopol had refused to consider the applicant's complaint concerning the lawfulness

of his detention. From that date on it should have been clear to the applicant that to continue the search for effective remedies for his complaint would be ineffective. Even assuming that the six-month period had started to run from 9 October 2003, when the Court of the ARC, in the criminal proceedings against the applicant, had dismissed his complaint concerning the alleged unlawfulness of his detention, the present complaint, which had been lodged in July 2004, was belated.

70. The applicant disagreed.

71. The Court observes that the applicant was arrested on 2 August 1999 and remained in detention throughout the duration of the investigation and the trial, which ended with his conviction on 17 November 2004. It has been the Court's settled practice to treat an uninterrupted detention pending criminal investigation and trial as a continuing situation for Convention purposes. The six-month period for lodging a complaint concerning the lawfulness of such detention has been calculated from the moment when such continuing situation ceased, that is, from the date when the trial court's judgment was delivered (see *Solovey and Zozulya v. Ukraine*, nos. 40774/02 and 4048/03, §§ 55-56, 27 November 2008; *Nikolay Kucherenko v. Ukraine*, no. 16447/04, § 29, 19 February 2009; *Gavazhuk v. Ukraine*, no. 17650/02, §§ 54-55, 18 February 2010; and, *mutatis mutandis*, *Doronin v. Ukraine*, no. 16505/02, § 55, 19 February 2009).

72. In so far as the Government have suggested that in the present case the starting point for the six-month period in respect of the complaint concerning the lawfulness of the order of 5 August 1999 should be calculated differently, their submissions imply that there were effective domestic remedies available to the applicant, which were exhausted either on 25 February 2000 or on 9 October 2003. The Court considers that these allegations are so closely linked to the merits of the present complaint, that they should be considered together.

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

B. Merits

1. Submissions of the parties

74. The applicant alleged that his detention had been unlawful, as it had been ordered and carried out in breach of numerous requirements of the applicable domestic procedural law and in an arbitrary manner.

75. The Government did not comment on the merits of the present complaint.

2. *The Court's assessment*

(a) General principles

76. The Court reiterates that where deprivation of liberty is concerned it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application (see *Baranowski v. Poland*, no. 28358/95, § 52, ECHR 2000-III). The expression “lawful” in Article 5 § 1 essentially refers back to national law and lays down an obligation to conform to the substantive and procedural rules thereof. The Court may review whether national law has been observed for the purposes of this Convention provision; however, it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law (see as a recent authority *Korneykova v. Ukraine*, no. 39884/05, § 33, 19 January 2012). The Court further reiterates that the “lawfulness” of detention under domestic law is the primary, but not always the decisive element. The Court must, in addition, be satisfied that the detention, during the period under consideration, was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary manner (see *Yeloyev v. Ukraine*, no. 17283/02, §§ 41-42, 6 November 2008).

(b) Lawfulness of the prosecutor's order of 5 August 1999 and the two-month period of detention covered by it

77. The Court notes that the applicant lodged numerous complaints before the domestic judicial authorities, referring to a number of specific procedural provisions of the national law, which, in his opinion, were breached during this initial period of his detention.

78. It transpires from the case file that the judicial authorities failed to act in a consistent manner in examining his allegations. In all three sets of proceedings initiated by the applicant, the courts acted independently from one another and did not consider themselves bound by the findings made in other proceedings.

79. In particular, firstly, on 25 February 2000 the Central District Court of Simferopol refused to consider the applicant's arguments concerning the lawfulness of his detention on remand, finding that at the material time he was lawfully detained on the basis of a criminal conviction in another set of proceedings. It appears that this finding was manifestly erroneous, as the applicant had been convicted only in November 1999 and by 6 February 2000 that conviction had already been quashed. However, the Court is not in a position to examine as such the lawfulness of the relevant court decision in the context of the present complaint.

80. Secondly, in so far as the applicant reiterated his previous complaints concerning the unlawfulness of the order of 5 August 1999 before the Court of the ARC in the main criminal proceedings against him, the court examined them for the first time on 9 October 2003. It found that the order was lawful and the applicant's detention was not arbitrary. Subsequently, the Court of the ARC examined similar complaints on a number of other occasions and confirmed its previous findings.

81. Finally, in so far as the applicant attempted to open a criminal investigation into the purported unlawfulness of his detention, on 5 November 2003 the Central District Court of Simferopol agreed that the documents concerning his detention showed a number of specific procedural irregularities. While eventually no criminal proceedings were instituted into the matter, regard being had to the reasons given for such refusal (see paragraph 27 above), the applicant's allegations concerning the procedural irregularities were not rebutted.

82. In sum, it appears that the domestic legal system did not produce a unified and coherent response to the applicant's complaints. The Court finds that in such situation the requirement of legal certainty in determining the lawfulness of the applicant's detention was compromised. It further notes that the applicant's specific allegations concerning procedural breaches were not dismissed in a reasoned court judgment. Likewise, they were not addressed in the Government's observations.

83. These findings are sufficient for the Court to conclude that the applicant's detention during the two-month period covered by the prosecutor's order of 5 August 1999 was not free from arbitrariness.

84. As the domestic judicial system acted incoherently in handling the applicant's complaint, and its dismissal in one forum did not preclude him from continuing to submit the same complaint in other forums, which provided differing results, there is no basis for the Court to consider that the court decisions of either 25 February 2000 or 9 October 2003 were decisive for the calculation of the six-month period for lodging the present complaint under Article 5 § 1 (c) of the Convention. The Court therefore dismisses the Government's objection raised in paragraph 69 above with respect to this period of detention.

85. There has therefore been a breach of Article 5 § 1 (c) of the Convention in respect of the present period of detention.

(c) Lawfulness of detention from the expiration of the initial two-month period envisaged in order of 5 August 1999 until the applicant's conviction on 17 November 2004

86. As regards the period of the applicant's detention after the expiration of the initial two-month period envisaged in the order of 5 August 1999, the Court observes that it has already found in other judgments against Ukraine that situations whereby (1) detention during a pre-trial investigation was

extended by a prosecutor; (2) detention for the duration of the trial was effected pursuant to a judicial order, which upheld the previous detention order rather than specifying the reasons justifying a custodial measure at the trial stage; and (3) detention was not covered by any judicial order, did not comply with the principles of legal certainty and protection from arbitrariness. Such situations, which stemmed from structural problems in the domestic legal system, were therefore considered not to be in accordance with Article 5 § 1 of the Convention (see, among other authorities, *Kharchenko v. Ukraine*, no. 40107/02, §§ 66-76, 10 February 2011). The Court does not see any reason to take a different approach in assessing the lawfulness of the applicant's detention during the period in issue in the present case.

87. There has therefore been a violation of Article 5 § 1 (c) of the Convention in respect of the applicant's detention during this period.

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

88. The applicant next complained that his pre-trial detention had been unjustifiably long. He relied on Article 5 § 3 of the Convention, which reads as follows:

“3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

A. Admissibility

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

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

B. Merits

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

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

93. Having regard to general principles established in its case-law (see *I. A. v. France*, judgment of 23 September 1998, § 102, *Reports of Judgments and Decisions* 1998-VII; *Labita v. Italy* [GC], no. 26772/95, § 153, ECHR 2000-IV; *Howiecki v. Poland*, no. 27504/95, §§ 61-63, 4 October 2001; and *Ustyantsev v. Ukraine*, no. 3299/05, § 81, 12 January 2012), the Court considers that, regard being had to the particularly lengthy period of the applicant's detention in the present case, the reasons for it should have been exceptionally serious.

94. However, it does not appear either from the Government's observations or from other material in the case file that any such exceptional reasons existed. The Court finds that the circumstances of the present case are similar to those which have given rise to the finding of a violation of Article 5 § 3 of the Convention in a case brought by the applicant's co-defendant in the same proceedings (see *Izzetov*, cited above, §§ 59-60). In both cases the applicants had no prior criminal record and were charged with one count of robbery only. In deciding to hold the applicants in custody the authorities relied mainly on the seriousness of the charges against them and did not advance any specific arguments as to why the applicants' release pending trial would have been dangerous or detrimental to the resolution of the case. Consequently, in analysing the circumstances of the present case, the Court reiterates its approach taken in the *Izzetov* case, and finds that the domestic authorities failed to provide sufficient reasons to justify the applicant's detention for a five-year term.

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

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE LENGTH OF THE CRIMINAL PROCEEDINGS

96. The applicant further complained under Article 6 § 1 of the Convention that the length of both sets of criminal proceedings against him had been incompatible with the “reasonable time” requirement.

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

A. Admissibility

1. The first set of proceedings

97. The Government submitted that the present complaint had been lodged out of time.

98. The applicant alleged that there had been a delay in providing him with the notification of the final decision in the case.

99. The Court notes that the final decision in the proceedings at issue was taken on 29 December 2003. According to the Government, it was served on the applicant on 30 December 2003. The Court notes that, while alleging that there had been a delay in receiving notification of the decision in question, the applicant did not provide any evidence of any such delay or even furnish the date of notification.

100. In such circumstances the Court considers that the present complaint was lodged by the applicant outside the six-month time-limit and must therefore be rejected as inadmissible pursuant to the provisions of Article 35 §§ 1 and 3 (a) of the Convention.

2. The second set of proceedings

101. The Government did not submit any comments regarding admissibility of the applicant’s complaint concerning the length of the second set of proceedings.

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

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

104. 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

105. The applicant alleged that the proceedings were unreasonably long.

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

107. The Court observes that it has already examined complaints about the length of the same set of proceedings brought by the applicant's co-defendants and found that the proceedings were inordinately lengthy (see *Paskal v. Ukraine*, no. 24652/04, §§ 59-62, 15 September 2011; *Izzetov*, cited above, §§ 71-73; and *Todorov v. Ukraine*, no. 16717/05, §§ 91-94, 12 January 2012).

108. The Court finds that its conclusions in the above-mentioned judgments are equally pertinent to the applicant's situation in the present case.

109. Regard being had to the above considerations, the Court finds that in the instant case the length of the second set of criminal proceedings against the applicant was excessive and failed to meet the "reasonable time" requirement.

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

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

111. In addition to the above complaints, in his application form and ensuing correspondence, the applicant also complained under Article 3 of the Convention of purportedly unreasonable and unlawful searches in the SIZO and the failure of the prison authorities to provide him with food during days he spent at court hearings; under Article 6 of the Convention that the second set of criminal proceedings against him was unfair and that he had been unfairly deprived of access to a court for his civil proceedings against the police; under Article 8 of the Convention of interference with his right to a family life and with his correspondence while he was detained in

the SIZO and about his expulsion from university; under Article 9 of the Convention of the lack of privacy afforded to him for private worship and the lack of visits by clergy in the SIZO; and under Article 13 of the Convention of the lack of domestic remedies for the above-mentioned complaints. Lastly, the applicant invoked Article 17 of the Convention in relation to the facts of the present case.

112. Following the notification of the case to the respondent Government, the applicant added to his initial submissions and submitted that the facts of the present case were also indicative of the breaches of Article 5 §§ 2, 3 and 4 and Article 6 § 1 of the Convention.

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

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

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

115. 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

116. The applicant claimed 50,000 euros (EUR) in respect of pecuniary damage and EUR 100,000 in respect of non-pecuniary damage purportedly inflicted on him as a result of breaches of his rights under Articles 3, 5, 6, 8, 9, 13 and 17 of the Convention. He noted, in particular, that as a result of these breaches he had been unlawfully dismissed from the police force, had not been able to work for a lengthy period of time and that his health had deteriorated while he was in detention.

117. The Government submitted that the present claim should be rejected, as there was no causal link between the damage alleged and the matters examined by the Court. In particular, they observed, the applicant’s dismissal from the police force fell outside the scope of the present application.

118. The Court observes that it has found breaches of the Convention only with regard to the complaints about the conditions, lawfulness and length of the applicant’s detention and the length of the second set of

criminal proceedings against him. Regard being had to the nature of the violations found in the present case, the Court finds no causal link between these and the pecuniary damage alleged by the applicant. It therefore dismisses the claim for pecuniary damage. On the other hand, the Court finds that the applicant must have suffered non-pecuniary damage on account of the circumstances which gave rise to the finding of violations in the present case. Ruling on an equitable basis, the Court awards the applicant EUR 15,000 in respect of non-pecuniary damage.

B. Costs and expenses

119. The applicant also claimed costs and expenses without specifying any particular amount.

120. The Government did not comment on this claim.

121. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the applicant's failure to specify the amount of his claim, the Court does not make an award under this head.

C. Default interest

122. The Court considers it appropriate that the default interest rate 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 physical conditions of the applicant's detention in the Simferopol SIZO, the lawfulness and length of his detention pending criminal investigation and trial and the length of the second set of criminal proceedings against him admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention;
4. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

5. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
6. *Holds*
- (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 15,000 (fifteen 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* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 May 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President