



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

FIFTH SECTION

CASE OF YELOYEV v. UKRAINE

(Application no. 17283/02)

JUDGMENT

STRASBOURG

6 November 2008

FINAL

06/02/2009

This judgment may be subject to editorial revision.

In the case of Yeloyev v. Ukraine,

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

Rait Maruste, *President*,
Volodymyr Butkevych,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 7 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 17283/02) 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 Aleksandr Vladimirovich Yeloyev (“the applicant”), on 18 March 2002.

2. The applicant, who had been granted legal aid, was represented by Mr S. Shevchenko, a lawyer practising in Kharkiv. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev.

3. The applicant alleged, in particular, that his pre-trial detention had been unlawful and excessively long, that there had been no review of its lawfulness and that the length of the proceedings against him had been excessive.

4. On 5 September 2006 the Court declared the application partly inadmissible and decided to communicate the complaints under Article 5 of the Convention and the complaint concerning the excessive length of the proceedings to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1968 and lives in Kherson.

6. On 26 April 1995 the investigator of the Kharkiv Regional Department for Combating Organised Crime of the Ministry of the Interior instituted criminal proceedings for tax evasion against officials of the Bystryye Dengi open joint-stock company, managed by the applicant. At that time the applicant was also a member of the Dzerzhynskiy District Council of Kharkiv ("the District Council") and enjoyed immunity from criminal prosecution.

7. On 30 January 1996 the Ordzhonikidzevskiy District Police Department instituted criminal proceedings against the applicant for tax evasion.

8. On 14 March 1996 the investigator charged the applicant with tax evasion and ordered him not to leave his place of residence. The same day, having established that the applicant's whereabouts were unknown, the investigator suspended the investigation and placed him on the wanted list.

9. On 2 October 1996 the Prosecutor of the Kharkiv Region requested the District Council to lift the applicant's immunity. On 1 November 1996 the Council rejected this request by a secret vote. Following this, the criminal proceedings against the applicant were discontinued and the order relating to his obligation not to abscond was cancelled.

10. On 12 March 1997 the prosecutor repeatedly requested the District Council to lift the applicant's immunity.

11. On 20 March 1997 the applicant was stopped while crossing the Ukrainian-Russian border and was sent back to Kharkiv. On his way there he escaped.

12. On 17 April 1997 the Kharkiv City Council decided to lift the applicant's immunity.

13. The same day the investigator ordered the applicant's arrest.

14. On 18 April 1997 the preliminary investigation was suspended as the applicant's whereabouts were unknown. The applicant was placed on the wanted list.

15. On 8 August 1998 the applicant was arrested and charged with tax evasion under Article 148-2 of the Criminal Code. On the same day the Deputy Prosecutor of the Kharkiv Region ordered his pre-trial detention.

16. The applicant's detention was extended on successive occasions: to six months on 6 October 1998 by the Prosecutor of the Kharkiv Region, to ten months on 25 January 1999 and to twelve months on 25 May 1999 by the Deputy Prosecutor General of Ukraine. The period of the applicant's

detention on remand pursuant to the prosecutors' decisions expired on 8 August 1999.

17. On 15 January 1999 the investigator reclassified the charges against the applicant and instituted criminal proceedings against him for fraud, tax evasion, illegal business activities, embezzlement and abuse of power.

18. On 4 August 1999, four days before the approved period of the applicant's detention on remand was due to expire (8 August 1999), the investigation was completed and the applicant was given access to the case file.

19. On 30 May 2000 both the applicant and his lawyer finished consulting the case file.

20. On 2 June 2000 the case was referred to the Dzerzhinskiy District Court of Kharkiv ("the District Court").

21. On 13 July 2000 a judge of the District Court committed the applicant and three other individuals for trial. In her decision, the judge noted that "[t]he preventive measure with respect to the accused was chosen in accordance with the material in the case file" and ruled that the preventive measure chosen by the investigating authorities should be maintained.

22. On 15 December 2000 and on several further occasions in November 2002 and February and May 2003 the court granted the applicant several days to study the case file further.

23. On 11 January 2000, following numerous health complaints by the applicant, the court ordered a forensic medical examination to establish whether he suffered from any chronic illnesses that would prevent his participating in the trial. The examination revealed no such disease or medical condition.

24. On 29 January 2002 the District Court rejected a request by several aggrieved parties to replace the applicant's detention with an obligation not to abscond. The necessity to maintain the preventive measure of deprivation of liberty for the applicant was explained by the fact that he was charged with a crime which was punishable by imprisonment for a term of more than three years. This ruling was not subject to appeal.

25. During the trial the applicant's lawyer applied for the applicant's release. She complained that the case file contained no reasoned decision by a court on the applicant's detention and that the original charges against him no longer constituted a criminal offence. On 25 March 2002 the District Court rejected the application. It noted that the applicant had been detained on the prosecutor's orders and that the court, when committing the applicant for trial, had agreed with and maintained the preventive measure of detaining him. The court further noted that the applicant had been on the wanted list. Taking this into account, as well as the fact that the applicant was charged with several crimes punishable by imprisonment for a term of

more than three years, the court rejected the lawyer's application. This ruling was not subject to appeal.

26. On 25 October 2002 the detention centre provided information that the applicant had been taken to the court 246 times, including 110 times for court hearings and 91 times to study the case file.

27. On 18 November 2002 the judge issued a separate ruling that the absence of the applicant's lawyer in court without good reason was to be regarded as unwillingness to defend him.

28. On 9 December 2002 the court rejected a request by the applicant for release, applying the same reasoning as in the ruling of 25 May 2002 (see paragraph 25 above).

29. On 16 December 2002, following numerous disturbances in court by the applicant, the court issued him with a final warning for contempt of court.

30. On 31 March 2003 the judge ordered the applicant's removal from the hearing room until the end of examination of his case on account of frequent infringements of law and order during the hearings.

31. In May 2003 the applicant's lawyer submitted one more application for his release, stressing that the applicant had been detained for more than four years without legal grounds. On 12 May 2003 the District Court rejected the application, stating that this issue had been already considered by the court.

32. On 1 September 2003 the District Court convicted the applicant of fraud, embezzlement and abuse of power, and sentenced him to eleven years' imprisonment.

33. On 27 April 2005 the Kharkiv Regional Court of Appeal upheld the judgment with minor changes.

34. On 20 June 2006 the Supreme Court of Ukraine upheld the decisions of the lower courts.

II. RELEVANT DOMESTIC LAW

35. The relevant provisions of the CCP read as follows:

Article 148 (as worded at the material time): Grounds for the application of preventive measures

"If there are sufficient grounds to consider that the accused, if at liberty, will abscond from an investigation or the court, or will obstruct the establishment of the truth in a criminal case or will pursue criminal activities, and in order to ensure the execution of the sentence, the investigator and prosecutor shall be entitled to impose on the accused one of the preventive measures envisaged by Article 149 of the Code..."

Article 149 (as worded at the material time): Preventive measures

“The preventive measures shall be as follows:

- (1) a written undertaking not to abscond;
- (2) a personal surety;
- (3) the surety of a public organisation or labour collective;
- (3-1) bail;
- (4) remand in custody;
- (5) supervision by the command of a military unit.”

Article 155 (as worded at the material time): Detention on remand

“Detention on remand as a preventive measure shall be applied in cases concerning offences for which the law envisages a penalty of more than one year’s imprisonment. In exceptional circumstances this preventive measure can be applied also in cases concerning offences for which the law envisages a penalty of up to one year’s imprisonment...”

Article 156 (as worded at the material time): Term for holding a person in custody

“The term for remanding a person in custody during the investigation of criminal offences shall not be more than two months. This term may be extended to four months by district, city or military prosecutors, prosecutors of the fleet or command garrison, or prosecutors of the same rank, if it is not possible to terminate the criminal investigation, and in the absence of any grounds for changing the preventive measure. A further extension of this term to six months from the moment of arrest shall be effected only if the case is exceptionally complex, by the Prosecutor of the Republic of the Crimea, regional prosecutors, Kyiv prosecutors, military prosecutors of the district or fleet, or prosecutors equal to them in rank.

Further periods of remand in custody may be extended for up to one year by the Deputy Prosecutor General of Ukraine, and up to eighteen months by the Prosecutor General.

After that, no further extensions of detention on remand shall be allowed. The accused must then be immediately released.

If it is impossible to terminate the investigation within these remand periods and there are no grounds for changing the preventive measure, the Prosecutor General or his Deputy shall be entitled to refer the case to a court in the part which relates to accusations which can be proved. As regards the incomplete investigation, the case shall be divided into separate proceedings and completed in accordance with the general rules.

The material relating to the completed part of the criminal case shall be provided to the accused and his representative for examination not later than one month before the expiry of the remand period, established by paragraph 2 of this Article.

The time taken by the accused and his representative to familiarise themselves with the materials in the case file shall not be taken into account in calculating the overall term of remand in custody.

If the court refers the case back for a fresh investigation, and where the term of remand in custody has ended, and an alternative preventive measure cannot be applied in the circumstances of the case, the prolongation of detention on remand shall be effected by the prosecutor, whose task is to supervise the lawfulness of the pre-trial investigation in the case, within one month from the moment he receives the case file. Further prolongation of the detention, before the case is remitted to the court, shall be governed by paragraphs 1, 2, and 6 of this Article.”

Article 236 (as worded prior to 21 June 2001): Complaints in respect of the prosecutor’s actions

“Complaints in respect of the prosecutor’s actions during the conduct of the pre-trial investigation or other individual investigative actions in the case shall be submitted to the superior prosecutor, who shall consider them in accordance with the procedure and within the terms prescribed by Articles 234 and 235 of this Code.

A complaint about the prosecutor’s actions may be lodged with the court.

Complaints about the prosecutor’s actions shall be considered by the first-instance court in the course of the preliminary consideration of the case or in the course of its consideration on the merits, unless otherwise provided for by this Code.”

Article 242 (as worded at the material time): Issues considered when committing the accused for trial

“Single judges or a court in the preparatory sitting shall consider the following issues with respect to each of the accused:

...

(7) whether the preventive measure with respect to the accused has been selected correctly;

...

(9) whether measures have been taken to ensure compensation for damage caused by the crime...”

Article 244 (as worded at the material time): Decision of a court or of a single judge at the preparatory hearing

“... If it is necessary to change the preventive measure, the court in a ruling and the judge in a resolution shall give reasons for the decision taken to that effect.”

36. Article 148-2 of the Criminal Code provides in so far as relevant:

Article 148-2. Evasion of taxes, fees or other compulsory payments

“1. Wilful evasion of taxes, fees or other compulsory payments, by an official of an enterprise, institution or organisation of any ownership status, or by a physical person,
...

3. Any such actions as referred to in paragraph 1 of this Article, ... where they resulted in non-receipt of especially large amounts by budgets or special State funds, shall be punishable by imprisonment of five to ten years, together with confiscation of property and deprivation of the right to occupy certain positions or engage in certain activities for a term of up to five years.

Note: ... an especially large amount means any amount of taxes, fees or other compulsory payments which equals or exceeds 1,000 times the tax-free minimum income as established by law.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

37. The applicant complained that his detention on remand had been unreasonably long and unlawful. He further complained that the lawfulness of his detention had not been reviewed. He relied on Article 5 §§ 1 (c), 3 and 4 of the Convention, which reads in so far as relevant 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:

...

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation 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;

...

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.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful..."

A. Admissibility

38. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Article 5 § 1 of the Convention

(a) The parties' submissions

39. The Government maintained that the applicant's detention was in accordance with the law and was necessary to prevent his escape. They noted that the applicant had been originally placed under an obligation not to abscond, but he had failed to appear for questioning and had tried to leave for abroad. Furthermore, he had strong links abroad, including business and financial resources. Therefore, in accordance with Articles 148, 149 and 155 of the Code of Criminal Procedure, the law-enforcement authorities and the courts had had grounds to deprive the applicant of his liberty as a preventive measure to ensure his appearance at the trial. They further maintained that given the substantial amount of civil damage caused by the applicant, his detention had also been justified under Article 5 § 1 (b) of the Convention.

40. The applicant made no comments.

(b) General principles enshrined in the case-law

41. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and lay down an obligation to conform to the substantive and procedural rules thereof. While it is for the national authorities, notably the courts, to interpret and apply domestic law, the Court may review whether national law has been observed for the purposes of this Convention provision (see, among other authorities, *Assanidze v. Georgia* [GC], no. 71503/01, § 171, ECHR 2004-II).

42. However, 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. Moreover, the Court must ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein (see *Winterwerp v. the Netherlands*, judgment of 24 October 1979, Series A no. 33, pp. 19-20, § 45).

(c) The lawfulness of the applicant's detention

43. The Government maintained that the applicant's detention could be justified under Article 5 § 1 (b) "in order to secure the fulfilment of any obligation prescribed by law". This contention was based on the large number of civil claims and decisions of the civil courts against the applicant in the context of the business activities which served as the basis of the criminal proceedings against him. The Court notes, however, that according to the material in the case file, this reason was never advanced by the domestic courts when they were deciding on the lawfulness of the applicant's detention. Moreover, the Government did not contest the applicability of Article 5 § 1 (c) to the whole period of the applicant's detention. The Court will therefore proceed to examine this complaint under Article 5 § 1 (c) of the Convention (see, *mutatis mutandis*, *Harkmann v. Estonia*, no. 2192/03, § 35, 11 July 2006).

44. The Court further notes that the applicant's pre-trial detention can be divided into three periods. The first period, covered by the detention orders issued by the prosecutors, lasted from the day of the applicant's arrest on 8 August 1998 until 8 August 1999, when the last extension of his detention ordered by the prosecutor expired (see paragraph 16 above). The second period, which was not covered by any decision, lasted from 8 August 1999 until 13 July 2000, when the judge ordered the applicant's detention pending trial. Finally, the third period, which was covered by the above-mentioned court decision of 13 July 2000 and several consecutive court orders, started on 13 July 2000 and finished with the applicant's conviction on 1 September 2003.

(i) Lawfulness of the applicant's detention from 8 August 1998 to 8 August 1999

45. The Court notes that the applicant's detention was initially ordered by the Deputy Prosecutor of the Kharkiv Region on 8 August 1998. Detention under this procedure was covered by a reservation to Article 5 § 1 (c) of the Convention that had been entered by Ukraine in accordance with Article 57 of the Convention with the intention of preserving the procedure governing arrest and detention in force at the material time until 29 June 2001. The Court refers to its findings in the *Nevmerzhitsky* case that under the terms of the above reservation, Ukraine was under no Convention obligation to guarantee that the initial arrest and

detention of persons such as the applicant were ordered by a judge. The Court further found in that case, however, that the issue of continued detention was not covered by the reservation (see *Nevmerzhitsky v. Ukraine*, no. 54825/00, §§ 112-114, ECHR 2005-II).

46. The applicant's detention was extended on three successive occasions by the relevant prosecutors from six to twelve months. The last decision to extend the applicant's detention was given on 25 May 1998 by the Deputy Prosecutor General (see paragraph 16 above).

47. The Court notes that there were no court decisions taken as to the applicant's continued detention from 6 October 1998 to 8 August 1999. The decisions to prolong the applicant's detention were taken by prosecutors, who were a party to the proceedings, and cannot in principle be regarded as "independent officers authorised by law to exercise judicial power" (see *Merit v. Ukraine*, no. 66561/01, § 63, 30 March 2004). In these circumstances, the Court concludes that the applicant's continued detention from 6 October 1998 to 8 August 1999 was not lawful, within the meaning of Article 5 § 1 (c) of the Convention.

(ii) Lawfulness of the applicant's detention from 8 August 1999 until 13 July 2000

48. The Court notes that no domestic decision was required to validate a period of detention during which a person had been given access to the case file, in accordance with Article 156 of the Code of Criminal Procedure as then in force. In the present case, the final order by the prosecutor for the applicant's continued detention expired on 8 August 1999, four days after he received the case file for examination. Even though the statutory time-limit could be prolonged for another six months by the Prosecutor General, no such prolongation had been ordered and the applicant remained in custody between 8 August 1999 and 30 May 2000 without any decision being taken as to his detention while he studied the case file, and then until the case file was transmitted to the first-instance court for examination.

49. The Court further notes that the applicant's detention on remand from 30 May 2000 to 13 July 2000 was justified by the sole fact that the investigating authorities were completing the preparation of the bill of indictment (30 May 2000 to 2 June 2000) and the case file was being transmitted to the court for examination (2 June 2000 to 13 July 2000). However, no decision was taken as to the applicant's detention during this period as well, even though, as the present case demonstrates, a significant period could elapse between the time when the applicant finished studying the case file and the time when the court ruled on his further detention pending trial.

50. The Court has already examined and found a violation of Article 5 § 1 of the Convention in a number of cases concerning the practice of holding defendants in custody solely on the basis of the fact that a bill of

indictment has been submitted to the trial court. It has held that the practice of keeping defendants in detention without a specific legal basis or clear rules governing their situation – with the result that they may be deprived of their liberty for an unlimited period without judicial authorisation – is incompatible with the principles of legal certainty and the protection from arbitrariness, which are common threads throughout the Convention and the rule of law (see *Korchuganova v. Russia*, no. 75039/01, § 57, 8 June 2006; *Nakhmanovich v. Russia*, no. 55669/00, §§ 67-68, 2 March 2006; and *Khudoyorov v. Russia*, no. 6847/02, §§ 146-148, ECHR 2005-X).

51. Therefore, the period of the applicant's detention between 8 August 1999 and 13 July 2000 was not in accordance with Article 5 § 1 of the Convention.

(iii) Lawfulness of the applicant's detention from 13 July 2000 until 1 September 2003

52. The Court further observes that under Article 242 of the Code of Criminal Procedure, a domestic court, when committing a person for trial, must check whether the preventive measure that was selected at the investigation stage is appropriate (see paragraph 35 above). Reasons for the preventive measure are required from the court only when it decides to change the measure (Article 244 of the CCP). It does not appear that the court is required to give reasons for continuing the accused's detention or to fix any time-limit when maintaining the detention.

53. The Court considers that the absence of any precise provisions laying down whether – and if so, under what conditions – detention ordered for a limited period at the investigation stage could properly be prolonged at the stage of the court proceedings does not satisfy the test of "foreseeability" of a "law" for the purposes of Article 5 § 1 of the Convention. The Court also reiterates that the practice which developed in response to the statutory lacuna, whereby a person may be detained for an unlimited and unpredictable time without the detention being based on a concrete legal provision or on any judicial decision, is in itself contrary to the principle of legal certainty, a principle which is implied in the Convention and which constitutes one of the basic elements of the rule of law (see *Baranowski v. Poland*, no. 28358/95, §§ 55-56, ECHR 2000-III, and *Kawka v. Poland*, no. 25874/94, § 51, 9 January 2001).

54. The Court observes that, although the District Court upheld the pre-trial detention measure in respect of the applicant on 13 July 2000, it did not set a time-limit for his continued detention and did not give any reasons for its decision (see paragraph 21 above). This left the applicant in a state of uncertainty as to the grounds for his detention after that date. In this connection, the Court reiterates that the absence of any grounds given by the judicial authorities in their decisions authorising detention for a prolonged period of time is incompatible with the principle of the protection from

arbitrariness enshrined in Article 5 § 1 (see *Nakhmanovich*, cited above, §§ 70-71, and *Stašaitis v. Lithuania*, no. 47679/99, § 67, 21 March 2002). In these circumstances, the Court considers that the District Court's decision of 13 July 2000 did not afford the applicant the adequate protection from arbitrariness which is an essential element of the "lawfulness" of detention within the meaning of Article 5 § 1 of the Convention, and that, therefore, the applicant's detention on remand after 13 July 2000 was likewise not in accordance with Article 5 § 1 of the Convention.

55. There has accordingly been a violation of Article 5 § 1 (c) of the Convention.

2. Article 5 § 3 of the Convention

56. The Government maintained that the length of the applicant's pre-trial detention had been reasonable in view of the complexity of the case and the large number of investigative measures that had had to be taken. The Government further contended that they could not be held responsible for the long period taken by the applicant to study the case file. They further maintained that the length of the examination of the case by the first-instance court could also be explained by the complexity of the case, as well as by the behaviour of the applicant and his lawyers. On several occasions the lawyers had failed to appear before the court. Moreover, the applicant himself had on many occasions complained of health problems (see paragraph 23 above). The doctors who had been called to examine the applicant had found his complaints to be groundless. The applicant had also often misbehaved in the courtroom, thus preventing the court from conducting the hearings. This behaviour had ultimately resulted in his removal from the courtroom (see paragraphs 29 and 30 above).

57. The applicant made no comments.

58. The Court notes that the investigating authorities placed the applicant on the wanted list on 18 April 1997, after his escape. The applicant absconded until 8 April 1998, when he was apprehended. He was sentenced to imprisonment on 1 September 2003; thus the period of his detention on remand lasted five years and five months (see *B. v. Austria*, judgment of 28 March 1990, Series A no. 175, § 39).

59. The Court further reiterates that it is necessary, when examining the question whether Article 5 § 3 has been observed, to consider and assess the reasonableness of the grounds which persuaded the judicial authorities to decide, in the case brought before the Court, on this serious departure from the rules of respect for individual liberty and of the presumption of innocence which is involved in every detention without a conviction (see *Stogmüller v. Austria*, judgment of 10 November 1969, Series A no. 9, § 4).

60. The Court notes that, although the applicant's absconding for a period of one year appears to have given the authorities a good reason for keeping him imprisoned during the pre-trial investigation and trial, the

seriousness of the charges against him and the risk of his absconding remained the only reasons for the court not to change the preventive measure imposed on him. The first judicial ruling to that effect was adopted two years and three months after his arrest. However, Article 5 § 3 requires that after a certain lapse of time the persistence of reasonable suspicion does not in itself justify deprivation of liberty and the judicial authorities should give other grounds for continued detention (see *Jabłoński v. Poland*, no. 33492/96, § 80, 21 December 2000, and *I.A. v. France*, no. 28213/95, *Reports of Judgments and Decisions* 1998-VII, § 102). Those grounds, moreover, should be expressly mentioned by the domestic courts (see *Iłowiecki v. Poland*, no. 27504/95, § 61, 4 October 2001). No such reasons were given by the courts in the present case. Furthermore, at no stage did the domestic courts consider any alternative preventive measures instead of detention on remand, and by relying essentially on the gravity of the charges, the authorities prolonged the applicant's detention on grounds which cannot be regarded as "relevant and sufficient".

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

3. Article 5 § 4 of the Convention

62. The Government maintained that all requests by the applicant during the proceedings to change his detention to a less strict preventive measure had been expeditiously and carefully examined by the courts. Furthermore, two requests by other parties to the proceedings to change the preventive measure in respect of the applicant had likewise been examined by the court, a fact which, in the Government's opinion, demonstrated that the applicant's right to a review of the lawfulness of his detention had been ensured to an even larger extent than that required by Article 5 § 4 of the Convention.

63. The applicant made no comments.

64. The Court reiterates that Article 5 § 4 of the Convention entitles arrested or detained persons to a review bearing upon the procedural and substantive conditions which are essential for the "lawfulness", in Convention terms, of their deprivation of liberty. This means that the competent court has to examine not only compliance with the procedural requirements of domestic law but also the reasonableness of the suspicion underpinning the arrest, and the legitimacy of the purpose pursued by the arrest and the ensuing detention (see *Butkevičius v. Lithuania*, no. 48297/99, § 43, ECHR 2002-II).

65. As regards the facts of the present case, the Court observes that after several reviews of the reasons for the applicant's continued detention (see paragraphs 25, 28, 60, and 61 above), on 12 March 2003 the domestic court refused to look again into the reasonableness of the applicant's detention on the ground that it had ruled on the lawfulness of his detention on several

previous occasions, therefore denying the applicant's right to a review of the lawfulness of his detention as guaranteed by Article 5 § 4. In the Court's view, there was thus no adequate judicial response to the applicant's complaints, contrary to the requirements of Article 5 § 4.

66. The Court considers that there has accordingly been a violation of Article 5 § 4 of the Convention.

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

67. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in 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..."

68. The Government contested that argument.

69. The period to be taken into consideration began only on 11 September 1997, when the recognition by Ukraine of the right of individual petition took effect. However, in assessing the reasonableness of the period that elapsed after that date, account must be taken of the state of proceedings at the time.

70. Furthermore, the period during which the applicant was on the run (11 September 1997 to 8 August 1998) should be excluded from the overall length of the proceedings (see *Girolami v. Italy*, judgment of 19 February 1991, Series A no. 196-E, § 13, *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 81, ECHR 2003-IX).

The period in question started on 8 August 1998 and ended on 20 June 2006. It thus lasted 7 years 10 months and 12 days for three levels of jurisdiction.

A. Admissibility

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

B. Merits

72. The Government maintained that the criminal case against the applicant had concerned several accused persons and a large number of aggrieved parties. Moreover, it had involved very complicated issues of financial fraud that required numerous forensic examinations, interviews

and requests for legal assistance from the countries in which the applicant conducted his business and held his assets.

73. 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 following criteria: the complexity of the case, 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).

74. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Pélissier and Sassi*, cited above).

75. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Despite the fact that the applicant contributed to the length of the proceedings, his behaviour cannot justify the overall length of the proceedings. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. 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.”

77. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
4. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

5. *Holds* that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 6 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Rait Maruste
President