



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

FIFTH SECTION

CASE OF SUPTEL v. UKRAINE

(Application no. 39188/04)

JUDGMENT

STRASBOURG

19 February 2009

FINAL

19/05/2009

This judgment may be subject to editorial revision.

In the case of Suptel v. Ukraine,

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

Peer Lorenzen, *President*,
Rait Maruste,
Karel Jungwiert,
Renate Jaeger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska, *judges*,
Stanislav Shevchuk, *ad hoc judge*,
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 27 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 39188/04) 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 Aleksandr Leonardovich Suptel (“the applicant”), on 14 October 2004.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev.

3. On 14 May 2007 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1963 and lives in Kyiv.

5. On 22 December 1998 the applicant, accompanied by S.N. and V.B., threw a burning torch into a car belonging to O.S. as a retaliatory measure for allegedly unfair business dealings with the applicant. The interior of the car was damaged. The police decided not to initiate criminal proceedings into the incident at the material time for lack of *corpus delicti*.

6. On 8 May 1999 O.S. was fatally injured in a stabbing.

7. Criminal proceedings into the circumstances of his death were initiated on the same date.

8. According to the applicant, at about 8 p.m. on 8 May 1999 he was arrested on suspicion of incitement to murder and taken to the Vatutinsky District Police Station, where he was severely ill-treated by some ten police officers until he confessed to the offence on 10 May 1999. In particular, he alleged that the police officers had handcuffed and kicked him and fractured his ankle with a crowbar. He had lost consciousness and, on coming round, had found himself suspended from a crowbar with his hands locked under his knees. After he had signed the confession, the officers had contacted his wife and requested her to bring fresh clothes and a coat, on which he was then carried down to a police cell. Afraid that the staff of the Temporary Detention Centre (the "IVS") would not admit the applicant on account of his injuries, the officers left him in a cell at the police station, unable to walk and without even the most basic care.

9. According to the official record, the applicant was arrested on 10 May 1999 at 3 p.m. in the premises of the Vatutinsky District Police Station.

10. On 10 May 1999 criminal proceedings were instituted against the applicant and two other individuals: M.V., who was suspected of O.S.'s stabbing, and S.N., who was suspected of having hired M.V. to do so.

11. On 19 May 1999 the applicant was admitted to the IVS. The officer on duty noted that he had a leg injury.

12. On 20 May 1999 the IVS paramedic called an ambulance. The ambulance paramedic found that the applicant had suffered a severe chest contusion and arranged for his admission to the Emergency Hospital, where he was treated until 17 June 1999. According to a medical certificate issued by the hospital, the applicant had suffered a closed chest injury, closed fragmental fracture of the right ankle and a haematoma in an ankle joint. He was operated on to drain abscesses on both ankles. 15 ml of puss was recovered from one ankle and 5 ml from the other.

13. On 22 May 1999 the applicant was officially indicted for incitement to murder.

14. On 29 October 1999 the Vatutinsky District Prosecutors' Office rejected a request by the applicant to initiate criminal proceedings against the police officers on account of his alleged ill-treatment, as it found his complaint unfounded.

15. On 24 April 2000 the case-file concerning the murder charges was sent with the bill of indictment to the Kyiv City Court for examination on the merits.

16. On 10 May 2000 the court held the first hearing.

17. Between May and October 2000 the court held some eleven hearings. At the trial all the defendants retracted their initial confessions. Two witnesses also complained that they had been ill-treated by the police,

who had incited them to give evidence against the defendants, who were friends of theirs. The applicant further alleged that the police officers had drafted a confession which they had forced him to sign.

18. On 31 October 2000 the Kyiv City Court found the defendants guilty as charged and sentenced the applicant to fifteen years' imprisonment. It rejected the defendants' allegations of ill-treatment, primarily on the strength of the testimony of eight police officers who had denied the allegations while admitting that force had been used to arrest the defendants. The court further referred to the prosecutors' office's decision of 29 October 1999, dismissing the applicant's request to institute criminal proceedings.

19. On 14 January 2001 the applicant filed a new request with the prosecutors' office for a criminal investigation into his alleged ill-treatment. This was rejected on 9 February 2001.

20. On 19 February 2001, following complaints by the defendants and several witnesses involved in the proceedings of ill-treatment, the Deputy Head of the Parliamentary Committee on Organised Crime and Corruption, R., sent a letter to the Prosecutor General requesting a criminal investigation.

21. In a letter of 2 March 2001 the Deputy General Prosecutor requested the Kyiv City Court to include his letter in the case-file and informed R. that no investigation had been possible at the material time, as the case had been pending before the judicial authorities, which prevented the prosecution from having access to the relevant materials annexed to the case-file.

22. On 27 March 2001 the Vatutinsky District Polyclinic issued the applicant with a certificate stating that, in addition to the injuries recorded in the hospital, in May 1999 he had also suffered injuries to his wrist and coccyx.

23. On 17 May 2001 the Supreme Court quashed the judgment of 31 October 2000 and remitted the case for additional pre-trial investigations. It found it peculiar that the applicant's confession was dated 8 May 1999, while the official record stated that he had first been questioned and arrested on 10 May 1999. Further, it noted that the trial court should have ordered a medical report on the applicant in order to obtain objective information concerning his injuries and an assessment by a handwriting expert to verify his allegation that his confession had not been drafted by him.

24. On 23 July 2001 the investigators decided to resume the criminal proceedings against the applicant, S.N. and V.B on suspicion of arson in connection with the torching of O.S.'s car in 1998. Subsequently, the applicant was formally charged with arson.

25. On 26 July 2001 the criminal cases concerning both the arson and murder charges were joined.

26. On 31 August 2001 the medical records of the applicant's injuries were assessed by a medical expert, who confirmed that in May 1999 the applicant had suffered a haematoma to his right ankle joint. At the same

time he found that the chest contusion diagnosis was insufficiently substantiated. He did not provide any conclusions concerning the other injuries listed in the applicant's records.

27. On 7 September 2001 the police instituted criminal proceedings against N.N., the applicant's wife on the grounds that, while working as a nurse, she had forged, in particular, a certificate that purported to have been issued by the Vatutinsky District Polyclinic on 27 March 2001. On 16 October 2001 she was amnestied.

28. On 30 September 2001 the Vatutinsky District Prosecutors' Office again refused to institute criminal proceedings in connection with the applicant's allegation of ill-treatment. It noted, in particular, that the applicant had been arrested on 8 May 1999 and that, as the arresting officers had been aware that the applicant, a former sportsman, was well-built, might have been armed and was implicated in a serious offence, they had had to use force to arrest him. In doing so, they had tripped him up, thrown him against the bonnet of a car, and handcuffed him. The Prosecutor's Office considered that this was what had caused the applicant to suffer the haematoma. As regards the other injuries noted in the applicant's medical records, they had not been confirmed by the recent medical expert report.

29. On 29 November 2001 the Kyiv Forensic Experts Institute found it probable that the applicant's confession had been dictated by a professional, skilled in the preparation of procedural documents, to an individual, who had written the text under stress, possibly on account of physical pain. No assessment was carried out to determine whether the statement had been written by the applicant's hand.

30. In February 2002 the criminal case concerning the murder and arson charges was sent to the Kyiv City Court of Appeal (the former Kyiv City Court) for trial.

31. On 10 April 2002 the court decided that further pre-trial investigations were necessary. It found, *inter alia*, that the investigation had not fully complied with the Supreme Court's instructions. In particular, it had not been established why the applicant's confession had been dated 8 May 1999, while no other procedural documents had been executed on that date; nor was there any indication as to where the applicant had been held between 8 and 18 May 1999 and why he had arrived in the IVS only on 19 May 1999. The court further noted that the officers manning the premises where the applicant had been kept before 19 May 1999 should have been questioned about his state of health during that period. Finally, the investigation should have established whether it was likely that the applicant's injuries had been caused in the manner he had described.

32. On 13 June 2002 the Supreme Court of Ukraine upheld the decision to order additional investigations.

33. On 31 October 2002 the case was referred to the Kyiv City Court of Appeal for trial. Between December 2002 and November 2003 that court held some forty hearings.

34. On 6 November 2003 the Kyiv City Court of Appeal remitted the case for a pre-trial investigation in respect of the murder charges. It found, in particular, that the materials relating to the applicant's first interrogation, in which he had confessed to the murder, were inadmissible as evidence, as he had been questioned as a witness in the absence of a lawyer, whose presence was obligatory in view of the gravity of the alleged offence. Furthermore, the court referred to the failure of the investigation to establish the facts concerning the drafting of the applicant's confession and the other circumstances of his arrest and initial interrogation, including the date. It noted, in particular, that the investigator had alleged that he had been unaware of the applicant's detention on 8 May 1999. According to him, the applicant had confessed on 10 May 1999. At the same time, several police officers had submitted that the investigative and prosecuting authorities had been fully aware of the applicant's arrest on 8 May 1999. The court also noted that the expert who had carried out the applicant's medical assessment had not made any findings concerning certain of his injuries, including the wrist injury and two abscesses that had been noted in various medical records. Moreover, the assessment had not been carried out by a panel of experts as required, but by a single expert.

35. On 14 November 2003 the court found the applicant, S.N. and V.B. guilty of arson and sentenced the applicant to seven years' imprisonment.

36. On 15 April 2004 the Supreme Court upheld the Court of Appeal's decision of 6 November 2003 and judgment of 14 November 2003.

37. On 26 July 2004 the investigators ordered the applicant's medical assessment by a panel of experts.

38. On 24 December 2004 the Kyiv City Bureau of Forensic Medical Experts found the diagnosis of the closed chest injury unfounded. They confirmed, however, that on 20 May 1999 the applicant had had the following injuries: a haemorrhage of the left ankle and contusion of soft tissue on the left arm, which qualified as light bodily injuries, and a haemorrhage of the right ankle and a closed fracture of the right ankle, which qualified as bodily injuries of "intermediate" gravity. Based on the available documents it was not possible to establish the exact date of the infliction of these injuries, however, their infliction in the period between 8 and 11 May 1999 was not improbable.

39. By 28 December 2006 the proceedings in respect of M.V., the alleged perpetrator of the murder, were terminated for want of evidence of his involvement. As of April 2008 the proceedings in respect of the applicant and S.N. were still pending.

II. RELEVANT DOMESTIC LAW

40. The relevant provisions of the Constitution and the Code of Criminal Procedure can be found in the judgment in the case of *Kozinets v. Ukraine* (no. 75520/01, §§ 39-42, 6 December 2007).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

41. The applicant complained under Article 3 of the Convention that he had been subjected to ill-treatment by police officers who had forced him to confess to incitement to murder. The relevant Convention provision reads as follows:

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

A. Admissibility

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

43. The Court finds that the 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

1. The submissions of the parties

44. The applicant maintained that he had not resisted arrest and that, in any event, his injuries had been inflicted on him in custody for the purposes of extorting a confession. They included a contusion of the chest, injuries to a wrist and the coccyx and fractures of an ankle and a cheek-bone. By keeping him in a police cell for over a week after the initial interrogation the police officers had denied him access to medical assistance, which had resulted in the aggravation of his condition. His wife had merely recorded what she had been told by a doctor when consulting the applicant’s medical file. In any event, the fact that she had drafted one certificate was

immaterial, as the case file contained various other independent pieces of evidence attesting to the applicant's numerous injuries.

45. The Government noted that there were inconsistencies in the medical records concerning the applicant's injuries, in particular, as a result of the forgery that had been committed by the applicant's wife. According to the expert assessment of 31 August 2001, however, the applicant had sustained a haematoma to his right ankle. The Government submitted that this was a light bodily injury only, and may have been caused by the arresting officers. Regard being had to the officers' reasonable suspicion that the applicant, who was implicated in a murder, would resist his arrest, was in all probability armed and was known to be a well-built sportsman, the force used to effect his arrest was not disproportionate.

2. The Court's assessment

46. The Court reiterates that Article 3 of the Convention prohibits in absolute terms torture and inhuman or degrading treatment. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see *Labita v. Italy* [GC], no. 26772/95, 6 April 2000, §§ 119-20, ECHR 2000-IV).

47. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons under their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as lying with the authorities to provide a satisfactory and convincing explanation (see *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336, and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

48. Turning to the facts of the case, the Court notes that on 20 May 1999, following the applicant's medical examination upon his transfer from the police department to the IVS, he was found to be suffering from various injuries and was admitted to hospital, where he was operated on and remained as an inpatient until 17 June 1999. The Court further notes certain discrepancies between various records concerning the gravity of his injuries. It observes, however, that the results of the medical assessment of

24 December 2004 have remained undisputed at the domestic level and the Government have not put forward any arguments that would undermine their validity. In these circumstances, the Court finds it reasonable to base its analysis on the results of that assessment, according to which the applicant sustained several injuries cumulatively characterised as being of “intermediate” gravity. The Court finds that these injuries were sufficiently serious to amount to ill-treatment within the meaning of Article 3.

49. As regards the Government’s contention that the applicant was injured as a result of the use of proportionate force during his arrest, the Court notes that no detailed account of the arrest operation (including the date, place, number of participating officers and the nature of the applicant’s resistance) has been supplied to corroborate this allegation. Moreover, that account only explains the haematoma, while the circumstances in which the other injuries were sustained have not been clearly established after some nine years of inquiries. In particular, as noted in the Kyiv City Court of Appeal’s decision of 6 November 2003, the investigation has not established clearly whether the applicant was first interrogated on 8 or 10 May 1999, why he was not transferred to the IVS immediately after the decision on his detention, in what conditions he was held before his transfer to the IVS and whether he was provided with appropriate medical assistance during that period.

50. Accordingly, although the case-file does not contain conclusive evidence as to the circumstances in which the applicant sustained his injuries, the Court finds that, viewed cumulatively, the medical evidence, the applicant’s detailed testimony, the failure of the authorities to provide a clear and consistent account of his whereabouts between 8 and 19 May 1999, his confession in circumstances in which he appeared to enjoy no procedural guarantees, and the lack of any plausible alternative explanation as to the origin of his injuries, give rise to a reasonable suspicion that they may have been caused by the police officers.

51. The Court reiterates that a State is responsible for the welfare of persons in detention and that the authorities have a duty to protect such persons. Bearing in mind the authorities’ obligation to account for injuries caused to persons under their control, the Court considers that the mere fact that no individuals have been found guilty of a crime of violence against a detainee, as in the instant case, cannot absolve the State of its responsibility under the Convention (see, *mutatis mutandis*, *Esen v. Turkey*, no. 29484/95, § 28; *Yaz v. Turkey*, no. 29485/95, § 30; and *Ayşe Tepe v. Turkey*, no. 29422/95, 22 July 2003).

52. The Court therefore concludes that there has been a breach of Article 3 of the Convention in this regard.

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

53. The applicant further complained that the length of the criminal proceedings against him was 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...”

A. Admissibility

54. 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

1. The period to be taken into account

55. The Court notes 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, upon 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 “relevant period”, 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).

56. As regards the facts of the present case, the Court notes on the basis of the materials before it that, notwithstanding the formal institution of criminal proceedings on 10 May 1999 and certain irregularities in the domestic records concerning the date of the applicant’s initial interrogation, according to the case-file materials the applicant made his confession, and was accordingly questioned about his involvement in the murder, on 8 May 1999. By April 2008 the criminal proceedings concerning the murder charge were still at the preliminary-investigation stage. They had by then lasted some nine years.

2. Reasonableness of the length of the proceedings

57. The Court observes 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). It further notes that an accused in criminal proceedings should be entitled to have his case conducted with special diligence, especially where he is kept in custody (see, among other authorities, *Yurtayev v. Ukraine*, no. 11336/02, § 37, 31 January 2006; *Nakhmanovich v. Russia*, no. 55669/00, § 89, 2 March 2006; and *Ivanov v. Ukraine*, no. 15007/02, § 71, 7 December 2006).

58. The Court appreciates that the criminal proceedings at issue, which concerned multiple defendants implicated in two offences – murder and arson – involved evidential and procedural aspects of a certain complexity. It also notes the efforts of the trial court to fix a tight hearing schedule.

59. On the other hand, the Court observes that the delays in resolving the matter have been primarily due to the numerous remittals of the case for reinvestigation and the rectification of procedural errors. By April 2008, after some nine years of inquiries, the pre-trial investigation concerning the murder was still pending. There is no evidence to show that any investigative activities have been carried out in the applicant's case since the completion of his medical assessment in December 2004.

60. Having examined all the material submitted to it in the light of its jurisprudence (see, among other authorities, *Ivanov v. Ukraine*, no. 15007/02, §§ 74, 7 December 2006, and *Benyaminson v. Ukraine*, no. 31585/02, §§ 104, 106, 26 July 2007) the Court considers that the Government have not provided a plausible explanation for the delay. The length of the criminal proceedings against the applicant has thus been excessive and fails to meet the "reasonable-time" requirement.

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

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

62. The applicant also complained under Article 5 §§ 1 (c), 3, 4 and 5 of the Convention of the unlawfulness of his detention on remand, of its length and of the lack of compensation. Lastly, he referred to Article 5 § 1 (a) and Article 6 § 2 of the Convention without clarifying his complaints under those provisions.

63. Having considered the applicant's submissions in the light of all the material in its possession, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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

66. The applicant claimed 46,292 euros (EUR) in respect of pecuniary damage under various heads and EUR 50,000 in respect of non-pecuniary damage.

67. The Government contested these claims.

68. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. As regards the claim in respect of non-pecuniary damage, the Court has found violations of Articles 3 and 6 § 1 of the Convention in the present case and considers that the applicant must have suffered anguish and distress as a result of those violations. Having regard to these considerations and to its case-law (see, for example, *Afanasyev v. Ukraine*, no. 38722/02, § 84, 5 April 2005; and *Lugovoy v. Ukraine*, no. 25821/02, § 46, 12 June 2008) and ruling on an equitable basis, the Court awards the applicant EUR 11,000 in respect of non-pecuniary damage.

B. Costs and expenses

69. The applicant also claimed EUR 4,000 for the costs and expenses, but did not produce any relevant receipts.

70. The Government contested that claim.

71. 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 were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim.

C. Default interest

72. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Articles 3 and 6 § 1 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 6 § 1 of the Convention;
4. *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 11,000 (eleven thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of Ukraine at the rate applicable 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President