



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

FIFTH SECTION

CASE OF DORONIN v. UKRAINE

(Application no. 16505/02)

JUDGMENT

STRASBOURG

19 February 2009

FINAL

19/05/2009

This judgment may be subject to editorial revision.

In the case of Doronin 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,
Mark Villiger,
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. 16505/02) 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 Igor Doronin (“the applicant”), on 30 May 2002.

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

3. The applicant alleged, in particular, that his detention on remand was unlawful and unreasonably long.

4. On 11 April 2007 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1960 and lives in Kharkiv.

6. On 31 March 2000 the applicant’s grandfather was murdered in his apartment. On 1 April 2000 the criminal investigation into the murder was initiated.

7. On 19 April 2000 the investigator of the Poltava Oktyabrskiy District Police Department ordered a search in the applicant’s apartment. The

investigator also ordered that the applicant be brought compulsorily before him (*примусовий привід*) as a suspect on 21 April 2000 at 9.00 a.m. in the framework of the criminal case of murder of the applicant's grandfather.

8. On 20 April 2000 the applicant was apprehended in Kharkiv and transferred to Poltava. Upon arrival the applicant allegedly attempted to escape from the police car and resisted the police officers who prevented his fleeing.

9. The same day the police officers drew up a report on the applicant's forceful resistance to the police. Following this report, on 21 April 2000 the Oktyabrskiy District Court of Poltava (*hereinafter* – the District Court) sentenced the applicant to five days' administrative arrest under Article 185 of the Code on Administrative Offences. This decision was final and not subject to appeal under Article 287 of the above Code, but the president of the higher court could review it on its own motion under Article 294. The applicant requested the higher courts on two occasions for a review of his case, but the requests were rejected, respectively, by the President of the Poltava Regional Court on 12 May 2000 and by the President of the Supreme Court on 25 September 2001.

10. According to the applicant he wrote confession statements, admitting the murder of his grandfather, on 22 April 2000. These statements were allegedly dictated by the police officer K., who signed and backdated them to 20 April 2000. On the same date K. made minutes of the applicant's interrogation as a suspect, also dated 20 April 2000. During this period he was not represented by a lawyer.

11. On 25 April 2000 the applicant was charged with intentional murder of his grandfather and was temporarily detained as a suspect.

12. On 27 April 2000 the prosecutor of Oktyabrskiy District ordered the applicant's detention on remand for two months.

13. On 31 May 2000 the District Court rejected the applicant's complaint against the prosecutor's detention order of 27 April 2000.

14. From 22 June to 30 June 2000 the applicant and his lawyer studied the case-file.

15. On 13 July 2000 the case was referred to the District Court.

16. On 21 August 2000 the court conducted a preparatory hearing and maintained the applicant's detention on remand.

17. On 10 November 2000 the applicant's lawyer requested the applicant's release. The court rejected this request.

18. During the trial the applicant denied the accusations and stated that he had been forced to confess. On 6 June 2001 the District Court remitted the case for additional investigation on that matter and for examination of the applicant's allegation of ill-treatment during the investigation. The court further rejected the applicant's request for release and maintained his detention. On 4 July 2001 the Poltava Court of Appeal (former Poltava Regional Court) upheld this ruling.

19. On 18 July 2001 the Prosecutor's Office received the case-file.

20. On 1 August 2001 the investigator of the Prosecutor's Office requested the District Court to extend the applicant's detention from 18 July to 18 September 2001.

21. On 8 August 2001 the District Court issued a ruling extending the applicant's preventive detention for the requested period on the grounds that the applicant was suspected of a serious crime and could obstruct justice.

22. On 31 August 2001 the Poltava Court of Appeal quashed the ruling of 8 August 2001 and remitted the case for a fresh consideration to the District Court. No decision on the applicant's further detention was given.

23. On 5 September 2001 the District Court extended the applicant's preventive detention from 18 July to 8 September 2001 on the grounds that the applicant could obstruct the investigation or flee from justice.

24. On 13 September 2001 the Court of Appeal upheld this ruling.

25. Between 17 August and 6 September 2001 the applicant was given access to the case-file.

26. On 6 September 2001 the case was referred to the District Court.

27. On 3 October 2001 the court remitted the case for additional investigation and maintained the applicant's detention.

28. On 21 November 2001 the Poltava Regional Court of Appeal quashed the decision of 3 October 2001 and referred the case for new trial proceedings.

29. On an unspecified date the applicant's mother requested the Poltava Regional Prosecutor's Office to institute criminal proceedings against the investigator for unlawful detention of her son. On 3 December 2001 the Prosecutor's Office rejected this request as unsubstantiated.

30. On 17 December 2001 the District Court maintained the applicant's detention.

31. On 5 February 2002 the applicant's lawyer requested the applicant's release. This request was rejected by the court on the same day.

32. On 7 March 2002 the additional forensic examination established that the death of the applicant's grandfather had taken place at a time when the applicant could not have been present at the scene of crime.

33. On 10 May 2002 the District Court sent the criminal case against the applicant for further investigation and released the applicant under the obligation not to abscond.

34. On 30 December 2002 the criminal case against the applicant was terminated for lack of proof of his involvement in the murder.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Criminal Procedure of 28 December 1960

35. Article 135 of the Code provides that in case of failure to appear without valid reason the accused can be brought before the investigator. Under Article 136 of the Code, bringing of the accused before the investigator is performed by the police under the reasoned decision of the investigator.

36. Other relevant provisions of the Code are summarised in the judgments of *Yeloyev v. Ukraine* (no. 17283/02, § 35, 6 November 2008) and *Svershov v. Ukraine* (no. 35231/02, § 40, 27 November 2008).

B. Code on Administrative Offences

37. Article 32 of the Code provided that administrative detention could be imposed and applied in exceptional circumstances for certain administrative offences for a maximum period of 15 days.

38. Article 185 of the Code foresaw punishment by a fine or administrative detention for up to 15 days for forceful resistance to the police.

39. Article 287 of the Code provided that the decision imposing an administrative sanction could be appealed, except for the decisions given by the first instance court. The latter were final and were not subject to the ordinary administrative appeal procedure, unless the legislation provided otherwise.

40. Article 294 of the Code provided that a court decision on an administrative offence could be reviewed by the judge of the same court upon an extraordinary appeal lodged by a prosecutor, or by a judge of a higher court on his or her own motion.

B. The Law of Ukraine “on the procedure for the compensation of damage caused to the citizen by the unlawful actions of bodies of inquiry, pre-trial investigation, prosecutors and courts” of 1 December 1994

41. The relevant provisions of the Law read as follows:

Article 2

“The right to compensation for damages in the amount and in accordance with the procedure established by this Law shall arise in the cases of:

acquittal by a court;

termination of a criminal case on grounds of absence of proof of commission of a crime, absence of *corpus delicti*, or lack of evidence of the accused's participation in the commission of the crime;

refusal to initiate criminal proceedings or termination of criminal proceedings on the grounds stipulated in sub-paragraph 2 of paragraph 1 of this Article..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

42. The applicant complained that his detention had been unreasonably long and unlawful. He relied on Article 5 §§ 1 (c) and 3 of the Convention, which reads as follows:

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

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

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

1. Non-exhaustion of domestic remedies

43. The Government maintained that the applicant did not exhaust the domestic remedies available to him under the Law "on the procedure for the compensation of damage caused to the citizen by the unlawful actions of bodies of inquiry, pre-trial investigation, prosecutors and courts" (see paragraph 41 above).

44. The applicant maintained that the domestic authorities did not consider his detention unlawful and that the remedy referred to by the Government was not effective for his complaints.

45. The Court notes that the substance of the applicant's complaints under Article 5 § 1 of the Convention is lack of clear legal basis governing certain periods of his pre-trial detention. It was not suggested by the

applicant that his detention contravened any domestic legislation, while the Government did not suggest any domestic remedy available to the applicant which would allow him to raise an issue of compliance of the domestic law with the provisions of Article 5 of the Convention (see *Solovey and Zozulya v. Ukraine*, nos. 40774/02 and 4048/03, § 77, 27 November 2008). Furthermore, as to the possibility to claim compensation for the whole period of his detention, it should be noted that the applicants complained about the unlawfulness and the length of his detention pending trial, whereas the Law “on the procedure for the compensation of damage caused to the citizen by the unlawful actions of bodies of inquiry, pre-trial investigation, prosecutors and courts” refers to an action for damages against the State in respect of detention undergone by persons whose involvement into the crime of which he or she was suspected have not been proved by the investigative authorities (see paragraph 41 above). Therefore, this part of the application cannot be rejected for non-exhaustion of domestic remedies.

2. Six-month rule

46. The Government further submitted that the original application was lodged by the applicant’s mother on her own behalf and that the applicant submitted the application form only on 26 September 2005.

47. The applicant maintained that he could not submit his application being in detention and that he constantly supported this application. He also noted that he had challenged the court’s decision of 21 April 2000 on his administrative detention under extraordinary review procedure to the Court of Appeal and to the Supreme Court, and the latter refused his complaint by letter of 25 September 2001.

48. The Court notes that the submissions to which the Government referred were made by the applicant’s mother on her own behalf on 14 January 2002. However, the applicant himself made his first submissions to the Court on 30 May 2002, that was twenty days after his release, complaining about the above violation of his rights. Therefore, the Court concludes that the applicant’s complaints about unlawfulness and length of his detention on remand were submitted on time.

49. As to a particular period of his arrest on 20 April 2000 and his administrative detention between 21 and 25 April 2000, the Court notes that the administrative offence proceedings which resulted in the applicant’s five-day administrative detention took place in April 2000 and the applicant lodged his application two years later. Therefore, any complaint about unfairness of these proceedings would be belated. The applicant’s unsuccessful requests for extraordinary review cannot be taken into account as such review proceedings are not a remedy within the meaning of Article 35 § 1 of the Convention (see *Kucherenko v. Ukraine* (dec.), no. 41974/98, 4 May 1999). The Court considers, however, that the applicant’s

administrative detention itself was closely linked to his apprehension as a criminal suspect and his detention in this quality, therefore the Court joins the Government's objection as to this period of the applicant's detention to the merits of the applicant's complaint under Article 5 § 1 of the Convention.

3. Conclusion

50. The Court therefore joins to the merits the Government's contentions about belated submission of the applicant's complaint under Article 5 § 1 in respect of the period of his detention between 20 and 25 April 2000. The Court further rejects the remainder of the Government's preliminary objections and notes that these complaints under Article 5 §§ 1 and 3 are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also 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

51. The parties did not submit any observations on the merits of the complaints.

52. The Court reiterates that, in proclaiming the right to liberty, paragraph 1 of Article 5 contemplates the physical liberty of the person and its aim is to ensure that no one should be dispossessed of this liberty in an arbitrary fashion (see, *mutatis mutandis*, *Amuur v. France*, 25 June 1996, § 42, *Reports of Judgments and Decisions* 1996-III). The list of exceptions to the right to liberty secured in Article 5 § 1 is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision (see *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, § 96, ECHR 2006-..., with further references).

53. The Court notes that in the present case the applicant's detention can be divided into several periods. The first period concerns the arrest and the administrative detention of the applicant between 20 and 25 April 2000. The second period, covered by the detention order issued by the prosecutor, lasted from 25 April until 25 June 2000, when his detention ordered by the prosecutor expired. The third period, which was not covered by any decisions, lasted from 25 June until 21 August 2000 and from 8 September to 3 October 2001. The fourth period, which was covered by the court decisions maintaining the applicant's detention at the trial stage, lasted from 21 August 2000 to 18 July 2001 and from 3 October 2001 to 10 May 2002. Finally, on two occasions the courts ordered the applicant's detention for a definite period of time, but in both cases the major part of such detention

was ordered retroactively: from 18 July to 8 August 2001 and from 31 August to 5 September 2001.

a. Applicant's arrest and administrative detention

54. The Court notes that on 19 April 2000 the investigator ordered the police to bring the applicant before him as a suspect in a criminal case. On 20 April 2000 the applicant was apprehended by the police as a criminal suspect and brought to another city for interrogation. In the Court's opinion from the moment of his apprehension under this order on 20 April 2000 the applicant was deprived of his liberty with a purpose of bringing him before the competent legal authority on suspicion of having committed a crime of murder, therefore his initial deprivation of liberty fell within the ambit of Article 5 § 1 (c) of the Convention. The applicant's forceful resistance to the police and his administrative detention for this offence took place after he had been already apprehended. In these circumstances, the applicant's detention for an administrative offence could not, in the Court's view, dispense the authorities from complying with the procedural guarantees associated with the applicant's status as a criminal suspect.

55. Furthermore, despite the fact that the administrative detention following the court's decision would generally fall under Article 5 § 1 (a) of the Convention, the Court's case-law indicates that it may be necessary to look beyond the appearances and the language used and concentrate on the realities of the situation (see *Kafkaris v. Cyprus* [GC], no. 21906/04, § 116, ECHR 2008-..., with further references). The facts of the case demonstrate that during his administrative detention the applicant was treated as a suspect in the criminal case and was interviewed by the investigator in respect of the case of murder. The Court notes that although the applicant's administrative detention had been ordered on different grounds in domestic terms, there had been no visible signs of a change of the applicant's status before, during and after his administrative detention. Therefore, the Court concludes that the applicant's administrative detention was in reality also a part of the longer uninterrupted period of the applicant's detention on remand under Article 5 § 1 (c) as a criminal suspect in a murder case. The Court, therefore, dismisses the Government's objection as to the application of the six-month rule to this period of applicant's detention.

56. The Court further notes that the facts of the case suggest that the applicant's administrative detention was used to ensure his availability as a criminal suspect without, however, safeguarding his procedural rights of a suspect, notably the right to defence. It was only after five days of his administrative detention expired, that the authorities decided the issue of holding the applicant in custody as a criminal suspect under the relevant provisions of the Code of Criminal Procedure. In the Court's view, the above conduct of the investigating authorities is incompatible with the principle of legal certainty and arbitrary, and runs counter to the principle of

the rule of law. The Court, therefore, concludes that there was a violation of Article 5 § 1 of the Convention during this period.

b. Applicant's detention under the prosecutor's order

57. It should be noted that between 25 April and 25 June 2000 the applicant was detained under the initial prosecutor's order on his two-month detention. Such a procedure was covered by the relevant reservation of Ukraine valid at that time (see *Nevmerzhitsky v. Ukraine*, no. 54825/00, § 112-114, ECHR 2005-II (extracts); *Yeloyev v. Ukraine*, cited above, § 45). In the Court's opinion, the applicant's detention during this period does not raise an issue of unlawfulness under Article 5 § 1 of the Convention.

c. Applicant's detention without any decision

58. The Court notes that the applicant's detention from 25 June until 21 August 2000 and from 8 September to 3 October 2001 was not covered by any decision and the applicant's detention was justified by the sole fact that he was studying the case-file, or that the file was transferred from the investigator to the court. The Court has previously found a violation in similar cases against Ukraine (see *Yeloyev v. Ukraine*, cited above, §§ 48-51). The Court does not see a reason to depart from its findings in the present case. Accordingly, there has also been a violation of Article 5 § 1 as regards these periods of the applicant's detention.

d. Applicant's detention under the court orders

59. As to the other periods of the applicant's detention they were covered by the judicial decision ordering his detention without fixing any time-limit (from 21 August 2000 to 18 July 2001 and from 3 October 2001 to 10 May 2002) or validating the applicant's detention retroactively (from 18 July to 8 August 2001 and from 31 August to 5 September 2001). The Court reiterates that it already found a violation of Article 5 § 1 of the Convention in circumstances when Ukrainian courts extended detention for an indefinite period of time (see *Yeloyev v. Ukraine*, cited above, §§ 52-55). It also found a violation of the above provision in respect of retroactive application of detention orders (see, *mutatis mutandis*, *Karalevičius v. Lithuania*, no. 53254/99, §§ 51-52, 7 April 2005). The Court does not see a reason to depart from its findings in the present case. Accordingly, there has also been a violation of Article 5 § 1 as regards these periods of the applicant's detention.

2. Article 5 § 3 of the Convention

60. The parties did not comment on the merits.

61. The Court notes that the applicant was apprehended on 20 April 2000 and released on 10 May 2002, thus the period of his detention

on remand lasted more than two years. The time of the applicant's detention is not short in absolute terms (see and compare *Iłowiecki v. Poland*, no. 27504/95, § 52, 4 October 2001).

62. The Court 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).

63. The Court notes that, although the applicant's attempt to escape appears to have given the authorities a 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 and obstructing the justice remained the only reasons for the court not to change the preventive measure imposed on him. 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*, cited above, § 61). From the materials available to the Court, it does not appear that the domestic courts gave any such reasons or considered any alternative preventive measures instead of detention on remand - 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".

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

65. The applicant complained under Article 3 about ill-treatment by the police. The applicant also complained that the judicial decision ordering his administrative arrest was arbitrary and in breach of Article 6 § 1 of the Convention. He finally complained under Article 6 §§ 1, 2 and 3 (b) and (c) about an unfair hearing in the course of criminal proceedings against him.

66. The Court has examined the remainder of the applicant's complaints as submitted by him. However, in the light of all the material in its possession, and in so far as the matters complained of were 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 Convention or its Protocols.

67. Accordingly, it rejects this part of the application in accordance with Article 35 §§ 3 and 4 of the Convention as being manifestly ill-founded.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. 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

69. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

70. The Government considered this claim unsubstantiated.

71. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

72. The applicant also claimed EUR 2,500 for the costs and expenses.

73. The Government noted that this claim was not supported by any documents.

74. 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 applicant’s claim under this head.

C. Default interest

75. 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. *Joins to the merits* the Government's contention concerning the application of the six-month rule to the complaint of the applicant under Article 5 § 1 of the Convention about unlawfulness of his detention between 20 and 25 April 2000; and rejects it after an examination on the merits;
2. *Dismisses* the remainder of the Government's preliminary objections;
3. *Declares* the complaint under Article 5 of the Convention admissible and the remainder of the application inadmissible;
4. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
5. *Holds* that there has been a violation of Article 5 § 3 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 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Ukrainian hryvnias 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 19 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President