



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF ISAYEV v. UKRAINE

(Application no. 28827/02)

JUDGMENT

STRASBOURG

28 May 2009

FINAL

28/08/2009

This judgment may be subject to editorial revision.

In the case of Isayev v. Ukraine,

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

Peer Lorenzen, *President*,
Karel Jungwiert,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska, *judges*,
Stanislav Shevchuk, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 5 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 28827/02) 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 Yuriy Vladimirovich Isayev (“the applicant”), on 10 July 2001.

2. The applicant was represented by Mrs A. Suleymanova, a lawyer practising in Ukraine. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev.

3. By a decision of 13 February 2007 the Court declared the application partly inadmissible and decided to communicate the complaints concerning Articles 3 (the alleged ill-treatment of the applicant in November 1997 and the absence of appropriate medical treatment), 5 § 3 (the length of the detention on remand) and 6 § 1 (the length of the proceedings) of the Convention to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1972 and lives in the city of Kharkiv, Ukraine.

A. Criminal proceedings against the applicant

5. On 18 October 1995 the applicant was arrested and detained on remand. He was subsequently charged with illegal possession of arms.

6. On 21 October 1995 the applicant was charged with theft.

7. On 30 May 1997 the Leninsky District Court separated the two sets of criminal proceedings against the applicant and remitted the case of theft for further investigation.

8. On 2 June 1997 the court sentenced the applicant to three and a half years' imprisonment for illegal possession of arms. On 6 August 1997 the Balakleysky District Court amnestied the applicant and he was subsequently released. According to the applicant, the release was subject to an undertaking not to abscond.

9. On 6 November 1997 the applicant was arrested again, apparently in the context of the criminal proceedings in the case of theft mentioned above, and charged with embezzlement; subsequently this charge was reclassified to theft and robbery. The gravity of the crimes with which he was charged and the danger of his absconding were mentioned in the investigator's arrest order as reasons for the applicant's detention on remand.

10. Alongside the applicant, other persons were charged within these proceedings (by the end of the trial there were fourteen persons), although on different dates and with different crimes.

11. On 25 December 1997 the Prosecutor of the Kharkiv Region extended the applicant's pre-trial detention until 14 April 1998. In doing so he referred to the gravity of the crimes with which the accused were charged and the danger of their absconding.

12. Between 1998 and 2001 the applicant's criminal case was transferred several times for examination to the Kharkiv Regional Court. However, the latter remitted it for additional investigation. The last time this happened was on 8 February 2001. In doing so the court, *inter alia*, ordered the applicant's further detention on remand; it did not specify any reasons for this detention. On 15 May 2001 the Supreme Court of Ukraine quashed this decision and remitted the case back to the court.

13. On 6 September 2001 the Kharkiv Regional Court of Appeal (formerly Kharkiv Regional Court) remitted the case to the Kharkivsky District Court of the Kharkiv Region for examination because of the

changes introduced in the Criminal Procedure Code on 12 July 2001, which provided that such cases had to be considered by the district courts.

14. The applicant and his lawyer asked the court to release the applicant on several occasions referring, *inter alia*, to the applicant's state of health, but to no avail. In particular, on 27 March, 8 July and 18 August 2003 the Kharkivskyy District Court refused the applicant's and his lawyer's requests to replace the applicant's detention on remand with an undertaking not to abscond. On the latter date the court rejected the applicant's reference to his poor state of health, arguing that he was taking an active part in the criminal proceedings against him and, therefore, his argument of poor health was ill-founded. Apparently, the remainder of the applicant's and his lawyer's requests for release were either not taken into account by the court or the copies of relevant court decisions were not provided to the Court.

The applicant was finally released on 1 October 2003 for health reasons, on an undertaking not to abscond.

15. The other accused and their lawyers also made several requests to the court for their detention to be replaced with an undertaking not to abscond.

16. In the course of the criminal proceedings the court also considered numerous motions filed by the accused and their lawyers, among which there were motions to order forensic examinations (in total, more than twenty different forensic examinations, for example, medical, fingerprints, and so on, were held at the pre-trial and trial stages), to extend the time-limit for familiarisation with the case-file, to replace one lawyer with another (at least three lawyers were replaced at the applicant's request). The accused also challenged the judge who was dealing with their case on a number of occasions.

17. By the end of the trial, sixteen persons had lodged civil claims against the accused.

18. On 29 July 2004 the Kharkivskyy District Court sentenced the applicant to five years, eleven months and 25 days' imprisonment for numerous robberies and burglaries. The court also found all the other accused guilty and imposed on them various sentences. The court further examined the civil claims and allowed them in part.

19. The applicant and prosecutor appealed against this judgment.

20. On 20 December 2006 the Kharkiv Regional Court of Appeal upheld the impugned judgment in regard to the applicant and changed it in regard to other accused.

21. The applicant appealed in cassation and, according to him, on 12 March 2007 the Supreme Court of Ukraine rejected his appeal.

B. Proceedings concerning ill-treatment by the police

22. According to the applicant, in November 1997 he was beaten by the police. By a letter of 27 January 1998 the prosecutor informed the applicant that on 3 December 1997 a medical expert had established that he had minor bodily injuries. The parties did not provide the Court with a copy of this medical report.

23. On 10 April 1998, apparently having examined the applicant's complaints, the prosecutor found no *prima facie* case of ill-treatment. Accordingly, he refused to institute criminal proceedings against the policemen concerned.

24. The applicant further raised his complaints of ill-treatment before the Kharkivskyy District Court during the trial against him. However, the court dismissed these complaints as ill-founded, referring to the prosecutor's decision.

C. State of the applicant's health and the applicant's medical treatment

25. According to the applicant, between October and November 1995 he was beaten by the police and that caused him, *inter alia*, a spinal trauma.

26. The Government produced a collection of documents which appear to be extracts from the applicant's medical records, a substantial part of which is illegible. The legible pages list the applicant's diagnoses but contain no information about the nature of treatment administered to the applicant in the Pre-Trial Detention Centre No. 27 (*слідчий ізолятор № 27* - hereinafter "the SIZO No. 27"), where he was detained at the material time. They can be summarised as follows.

27. In the period between 24 December 1996 and 10 January 1997 a medical expert report, prepared in the course of the applicant's detention, established that the applicant was suffering from a peroneal nerve neuropathy and partial paralysis of the right foot (*нейропатія маломілкового нерва з парезом правої стопи*). The experts further concluded that these disorders could have been caused by an osteochondrosis, and that the applicant could be treated in the pre-trial detention centre, where he was detained at the time. He warned that "in the absence of appropriate medical treatment the disease [would] progress".

28. Following his arrest in November 1997 (see paragraph 9 above), the applicant was examined by the doctors of the SIZO No. 27, where the applicant was placed. He was also examined by a psychoneurologist on 10 December 1997. The doctors' report does not contain any information about his alleged neurological problems.

29. On 14 July 1998 the head of the medical department of the SIZO No. 27 reported to the prosecutor that, having examined the applicant on the

same date, it had been concluded that his state of health was satisfactory and he did not need medical treatment. He further stated that the applicant could be detained in the SIZO No. 27.

30. On 12 October 1999 the applicant was examined by a neurologist and diagnosed with partial paralysis of the right peroneal nerve (*парез правого малогомілкового нерва*). In this regard the doctor ordered an X-ray examination, which revealed sacral assimilation (*сакралізація п'ятого поперекового хребця*).

31. Later, on 6 November 1999, the head of the medical department of the SIZO No. 27 reported that the applicant had applied for medical aid on account, *inter alia*, of partial paralysis of the right peroneal nerve and left peroneal nerve disorder syndrome (*синдром порушення лівого малогомілкового нерва*). He had received out-patient treatment. Finally, the head of the department stated that the applicant needed additional examinations.

32. On 31 May 2000 the applicant was examined by a neurologist and diagnosed with partial paralysis of both feet.

33. Following the applicant's medical check-up on 17 October 2000, it was reported, *inter alia*, that his above-mentioned neurological problems were a result of the spinal trauma suffered in 1995. It was further stated that the applicant needed routine surgical treatment. No further information as to whether the applicant underwent this treatment is available.

34. On an unknown date in October 2001 and on 25 January 2002 the doctors came to the conclusion that the applicant, given his state of health, could be detained in the SIZO No. 27. Furthermore, on 15 March 2003 they concluded that the applicant could be placed in a disciplinary cell (*карцер*).

35. On 19 December 2002 the doctors of the SIZO No. 27, following the applicant's complaints of pain and weakness in the right hand and foot, examined the applicant and concluded that he was suffering from partial paralysis of the right hand and foot. They noted that the disease was progressing and that there was a suspicion of syringomyelia (*сирингомієлія*)¹. In their view, to make a diagnosis and to plan a therapeutic approach the applicant needed to undergo additional medical examinations and treatment at a specialised hospital.

36. According to the Government, on 10 June 2003, following the applicant's complaints of, *inter alia*, pain in his right hand, he was examined by a neurologist who reaffirmed his above-mentioned neurological problems. He noted, among other matters, the progressive nature of the disease and the suspected syringomyelia.

37. On 11 June 2003 the doctors of the SIZO No. 27, having examined the applicant, again diagnosed him as suffering from the progressive

¹ Syringomyelia is a generic term referring to a disorder in which a cyst or cavity forms within the spinal cord which can expand and elongate over time, destroying the spinal cord.

neurological problems mentioned in the preceding paragraph. They further noted that in the SIZO No. 27 there was no neurologist, no neurosurgeon, no appropriate medication (in particular, painkillers) and no possibility to provide specialised treatment for the applicant.

38. On 8 July 2003 the Kharkivskyy District Court of Kharkiv Region, rejecting one of the applicant's lawyer's requests to release the applicant, held that the applicant's detention was lawful and that the court was not competent to consider the issues of detainees' medical treatment. However, the court noted that it "took into account" the information mentioned in the preceding paragraph.

39. The applicant again requested his release, referring to his aggravated state of health and lack of necessary medicine; these in his view made it difficult for him to participate effectively in the court proceedings. On 18 August 2003 the Kharkivskyy District Court noted that the SIZO doctors had not requested it to release the applicant in order to participate in the proceedings, and held that the applicant himself and with the assistance of his counsel actively participated in the court proceedings. Accordingly, it rejected the applicant's request.

40. On 1 October 2003 the Kharkivskyy District Court noted, referring to the medical data, that "[the applicant] was suffering from the after-effects of a spinal injury and a fracture of the right foot, median and radial nerve neuritis [невроит серединного та радіального нерва] and partial paralysis of the right hand" and released him.

41. The next day the applicant applied to a local hospital for medical assistance and was sent to City Hospital No. 7 where he underwent specialised diagnostic procedures and treatment (including as an in-patient).

II. RELEVANT DOMESTIC LAW AND PRACTICE

42. The relevant provisions of the Constitution of Ukraine and the Pre-Trial Detention Act can be found in the judgment of 12 October 2006 in the case of *Dvoynych v. Ukraine* (no. 72277/01, §§ 28-31, 33-35 and 37).

43. The relevant extracts from the 3rd General Report [CPT/Inf (93) 12] by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment can be found in the judgment of 26 October 2006 in the case of *Khudobin v. Russia* (no. 59696/00, § 56, ECHR 2006-XII (extracts)).

44. The relevant extracts from Committee of Ministers Recommendation No. R (87) 3 on European Prison Rules (adopted by the Committee of Ministers on 12 February 1987 at the 404th meeting of the Ministers' Deputies) can be found in the judgment of 6 September 2007 in the case of *Kucheruk v. Ukraine* (no. 2570/04, § 102, ECHR 2007-...).

THE LAW

I. SCOPE OF THE CASE

45. Following the Court's admissibility decision, the applicant made further submissions, in which he reiterated the entirety of his original complaints. After his conviction became final, the applicant complained again about its lawfulness.

46. In its partial decision on admissibility of 13 February 2007, the Court adjourned its examination of the applicant's complaints concerning Articles 3 (the alleged ill-treatment of the applicant in November 1997 and the absence of appropriate medical treatment), 5 § 3 (the length of the detention on remand) and 6 § 1 (the length of the proceedings) of the Convention. The remainder of the complaints was declared inadmissible. To the extent that the applicant now repeats those complaints which have already been declared inadmissible, the complaints are "substantially the same" as those already declared inadmissible, and they must now be rejected pursuant to Article 35 §§ 2 (b) and 4 of the Convention. The new complaint, about the lawfulness of the applicant's conviction, will be dealt in a separate application, no. 22594/09.

The scope of the case now before the Court is limited to those complaints which were adjourned on 13 February 2007.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

47. The applicant complained that he had been subjected to ill-treatment by the police in November 1997. He also complained about the lack of medical assistance in the SIZO No. 27. He invoked Article 3 of the Convention, which reads as follows:

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

A. Admissibility

1. Alleged ill-treatment

48. The Government submitted that the applicant had failed to exhaust domestic remedies as he had not challenged the prosecutor's decision of 10 April 1998 not to institute criminal proceedings in respect of his alleged ill-treatment either to a superior prosecutor or before the competent court.

49. The applicant disagreed, asserting that he had appealed against this decision to both authorities but to no avail. He did not, however, provide any document in support of this assertion.

50. The Court notes that in the present case the applicant failed to avail himself of the court procedure specifically designed for challenging the outcome of the investigation into complaints about ill-treatment and to attribute responsibility for alleged beatings or afford redress for an alleged breach of Article 3 of the Convention. Instead he raised these complaints in the course of the criminal proceedings against him which were designed to find him innocent or guilty of the criminal charges levelled against him (*Belevitskiy v. Russia*, no. 72967/01, §§ 61 and 63, 1 March 2007; *Yakovenko v. Ukraine*, no. 15825/06, § 72, 25 October 2007). By failing to establish that he challenged the prosecutor's decision of 10 April 1998, the applicant therefore failed to pursue an effective avenue of appeal which was open to him.

51. The Court finds, therefore, that the applicant's complaints concerning the alleged ill-treatment by the police in November 1997 must be rejected for non-exhaustion of domestic remedies pursuant to Article 35 § 1 of the Convention.

2. Alleged absence of appropriate medical treatment

52. The Court finds that the applicant's complaint under Article 3 of the Convention about the lack of appropriate medical treatment is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. The Court further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

53. The Government maintained that the applicant was provided with adequate medical care and received appropriate treatment routinely or on request. Referring to the medical documentation they produced in support of this claim, they were of the opinion that there was no violation of Article 3 of the Convention in the applicant's case.

54. The applicant disagreed. Referring to medical report of 11 June 2003 (see paragraph 37 above), he pleaded that his detention in the absence of appropriate medical treatment – given the progressive nature of his disease, the pain in his back and limbs, and the lack of painkillers – caused him suffering contrary to Article 3. In his view, while considering his requests for release the district court did not take into account the irreversible processes in his body and protracted his detention up to 1 October 2003.

55. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment,

irrespective of the circumstances and the victim's behaviour (see *Labita v. Italy*, judgment of 6 April 2000, *Reports of Judgments and Decisions* 2000-IV, § 119).

56. The Court further points out that, according to its case-law, 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 (see, among other authorities, *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162). Although the purpose of such treatment is a factor to be taken into account, in particular the question of whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3 (*Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III).

57. In exceptional cases, where the state of a detainee's health is absolutely incompatible with detention, Article 3 may require the release of such a person under certain conditions (see *Papon v. France (no. 1)* (dec.), no. 64666/01, CEDH 2001-VI; *Priebke v. Italy* (dec.), no. 48799/99, 5 April 2001). There are three particular elements to be considered in relation to the compatibility of the applicant's health with his stay in detention: (a) the medical condition of the prisoner, (b) the adequacy of the medical assistance and care provided in detention; and (c) the advisability of maintaining the detention measure in view of the applicant's state of health (see *Mouisel v. France*, no. 67263/01, §§ 40-42, ECHR 2002-IX).

58. However, Article 3 cannot be construed as laying down a general obligation to release detainees on health grounds. It rather imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty. The Court accepts that the medical assistance available in prison hospitals may not always be of the same standard as that in the best medical institutions for the general public. Nevertheless, the State must ensure that the health and well-being of detainees are adequately secured by, among other things, providing them with the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI; see also *Hurtado v. Switzerland*, judgment of 28 January 1994, Series A no. 280-A, opinion of the Commission, pp. 15-16, § 79; and *Kalashnikov v. Russia*, no. 47095/99, §§ 95 and 100, ECHR 2002-VI). In *Farbtuhs v. Latvia* (no. 4672/02, § 56, 2 December 2004) the Court noted that if the authorities decided to place and maintain a seriously ill person in detention, they should demonstrate special care in guaranteeing such conditions of detention that correspond to his special needs resulting from his disability. The authorities must also ensure that, where necessitated by the nature of a medical condition, supervision is regular, systematic and involving a comprehensive therapeutic strategy aimed at curing the detainee's diseases

or preventing their aggravation, rather than addressing them on a symptomatic basis (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, §§ 109 and 114, 29 November 2007; *Sarban v. Moldova*, no. 3456/05, § 79, 4 October 2005; and *Popov v. Russia*, no. 26853/04, § 211, 13 July 2006).

59 The Court applies the standard of proof “beyond reasonable doubt” in its assessment of evidence at its disposal (the *Ireland v. the United Kingdom* judgment, cited above, p. 65, § 161). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in a large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. In such cases it is up to the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII). In the absence of such explanation the Court can draw inferences which may be unfavourable for the respondent Government (see *Orhan v. Turkey*, no. 25656/94, § 274, 18 June 2002).

60. Turning to the facts of the present case, the Court would emphasise the limited nature (in particular, lack of details on treatment proposed by relevant doctors) and poor quality (in particular, illegible copies) of the medical documentation provided by the Government. The first question for the Court is whether it is established that the applicant’s medical conditions were serious enough to need treatment, and whether his alleged suffering attained the minimum level of severity to make Article 3 of the Convention applicable. The Court observes that the applicant’s neurological problems were revealed in January 1997 at the latest. Subsequently, in the period to 19 December 2002, the medical diagnoses, so far as they are legible, alternated between those confirming the applicant’s neurological problems (paragraphs 30-33 above), diagnoses where no neurological problem was established (paragraph 28 above), and those stating that the applicant’s state of health was satisfactory and that he did not need any specific medical treatment (paragraphs 29 and 34 above). In these circumstances, it is difficult for the Court to come to any factual conclusions as to the applicant’s state of health and his alleged suffering over the whole of the period at issue.

61. However, as from 19 December 2002 it was plain, and was acknowledged by the SIZO authorities themselves (see paragraph 35 above), that the applicant’s right hand and foot were partly paralysed, that there was a suspicion of syringomyelia, and that the needed specialist examinations and treatment were not available in the SIZO. Although it is not for the Court to speculate, from the medical point of view, on whether the applicant’s ailment *per se* caused him suffering going beyond that inevitable element of suffering or humiliation connected with a given form

of legitimate treatment or punishment (see *Kudła v. Poland*, cited above, § 94), the Court is of the view that the minimal level of severity was attained in the instant case. In particular, the knowledge that he had been diagnosed by the prison authorities as having ailments calling for specialist treatment but that such treatment was not available must have caused the applicant a degree of anguish over and above the mere discomfort and pain of his complaints. Accordingly, Article 3, in the Court's view, applies to the present case.

62. In the circumstances of the case, the Court considers that the applicant's retention in the SIZO no. 27 from 19 December 2002 to 1 October 2003 could only be compatible with Article 3 of the Convention if the Government provided some form of evidence to establish that the applicant did in fact receive adequate treatment. However, the Government have done no more than state generally that the applicant received "relevant treatment", without giving any details of the kind of treatment administered, when it was given and by whom (see, *mutatis mutandis*, *Ostrovar v. Moldova*, no. 35207/03, § 86, 13 September 2005). Accordingly, the Court considers that the Government have not provided a plausible account of whether they have complied with their obligation to provide the applicant with adequate medical treatment while in detention (see, *mutatis mutandis*, *Khudobin v. Russia*, cited above, § 88).

63. When, on 1 October 2003, the Kharkivskyy District Court finally took a stance on the applicant's state of health and released him, he had been in unsuitable detention since at least 19 December 2002, that is, for over ten months. On his release, he was immediately admitted to a specialised hospital and underwent medical treatment (see paragraph 41 above). Hence, the Court takes the view that the applicant's detention in the SIZO No. 27 from 19 December 2002 onwards subjected him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention (see, *mutatis mutandis*, *Kudła v. Poland*, cited above, §§ 94 et seq.).

64. In these circumstances, the Court considers that there has been a violation of Article 3 of the Convention as regards the lack of adequate medical treatment and assistance provided to the applicant while he was detained, amounting to degrading treatment.

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

65. The applicant further complained that the overall length of his detention had not been "justified" or "reasonable". He referred to Article 5 § 3 of the Convention, which provides in so far as relevant:

"Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by

law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

A. Admissibility

66. The Court notes that the applicant’s complaint about the length of his pre-trial detention 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

67. The Government submitted that the applicant’s continued detention had been justified, given the gravity of the crimes with which he was charged and the danger of his absconding. They went on to maintain that there was also a danger of pressure on witnesses, repetition of crimes and destruction of evidence, should the applicant have been released.

68. The applicant disagreed, asserting that he had not been detained from August to November 1997 (see paragraph 8 above) and had not availed himself of the opportunity to abscond from the investigation pending against him.

69. The Court observes that in the present case the period to be taken into consideration for the purposes of Article 5 § 3 of the Convention started on 6 November 1997, when the applicant was arrested, and ended on 1 October 2003, when he was released upon an undertaking not to abscond (see paragraphs 9 and 14, respectively). Therefore the period lasted five years, ten months and 24 days.

70. The Court reiterates that the question of whether or not a period of detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, the *Kudła v. Poland* judgment, cited above, §§ 110 et seq.).

It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must, paying due regard to the principle of the presumption of innocence, examine all the facts arguing for or against the existence of the above-mentioned demand of public interest justifying a departure from the rule in Article 5 and must set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions and of the well-documented facts stated by the

applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see also the *Muller v. France* judgment of 17 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 388, § 35).

71. The Court notes that the initial detention order of 6 November 1997 was based on the gravity of charges against the applicant and the alleged risk of absconding.

72. In this respect the Court reiterates that, although the persistence of a reasonable suspicion is a condition *sine qua non* for the initial detention, after a certain lapse of time it no longer suffices (see, as a classic authority, *Labita v. Italy* [GC], no. 26772/95, § 153, ECHR 2000-IV). The Court accepts that a reasonable suspicion against the applicant could have warranted the initial detention. It points out, however, that the gravity of the charge cannot by itself serve to justify long periods of detention pending trial. Nor can it be used to anticipate a custodial sentence (see *Rokhlina v. Russia*, no. 54071/00, § 66, 7 April 2005; *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005). The Court notes in this respect that, after 6 November 1997, the applicant's detention was extended several times (on 25 December 1997 and 8 February 2001, at least) and lasted almost six years. Moreover, on 15 May 2001, at the latest, the investigation was declared to be completed and the case was transferred to the trial court. In the Court's view, in these circumstances the domestic authorities should have adduced new reasons to justify the applicant's continued detention.

73. As to the alleged risk of the applicant's absconding, the Court observes that neither the Government in their observations, nor the domestic authorities in their decisions to arrest and detain the applicant, explained the grounds for this suspicion (for instance, that the applicant had ever made any specific attempt to abscond). Their reference to the applicant's previous criminal convictions may be significant; however, in the context of the present case this argument is diminished, having regard to the applicant's compliance with his previous undertaking not to abscond (see paragraph 8 above).

74. As to the reasons mentioned by the Government in their observations, namely the danger of pressure on witnesses, repetition of crimes and destruction of evidence, the Court repeats that it is essentially on the basis of the reasons given in the domestic courts' decisions and of the facts stated by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see *Jablonski v. Poland*, no. 33492/96, § 79, 21 December 2000). In the *Ilijkov v. Bulgaria* case (no. 33977/96, § 86, 26 July 2001) the Court found:

"Even though facts that could have warranted [the applicant's] deprivation of liberty may have existed, they were not mentioned in the courts' decisions ... and it is not the Court's task to establish such facts and take the place of the national authorities who ruled on the applicant's detention."

75. The reasons for the applicant's detention referred to by the Government were not mentioned in the domestic court decisions produced by the Government (in fact no reason at all was specified after December 1997 – see paragraphs 12 and 14 above), and the Court does not find that those reasons transpire from the circumstances of the case. On the other hand, such factors as the applicant's health problems called for careful scrutiny of his applications for release and for their analysis in the judicial decisions. The Court concludes that the length of the applicant's detention pending investigation and trial was not justified by "relevant and sufficient" reasons.

76. There has therefore been a violation of Article 5 § 3 of the Convention.

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

77. The applicant complained that the length of proceedings in his case was excessive. In this respect he relied on Article 6 § 1 of the Convention which provides in so far as relevant as follows:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

A. Admissibility

78. The Court notes that the applicant's complaint about the length of the proceedings 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. Period to be taken into consideration

79. The Government maintained that 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. Therefore, the applicant's complaints related to the events prior to that date should be rejected as incompatible *ratione temporis*.

80. The Court notes that the proceedings complained of began on 21 October 1995 when the applicant was charged with theft and ended on 12 March 2007. The Court points out that the Convention entered into force in respect of Ukraine on 11 September 1997, thus the period falling within

the Court's competence *ratione temporis* lasted nine years and a half. However, in assessing the reasonableness of the time that elapsed after 11 September 1997, account must be taken of the state of proceedings on that date (see, *mutatis mutandis*, *Milošević v. "the former Yugoslav Republic of Macedonia"*, no. 15056/02, § 21, 20 April 2006; *Styrkowski v. Poland*, no. 28616/95, § 46, ECHR 1998-VIII; *Foti and Others v. Italy*, judgment of 10 December 1982, Series A no. 56, p. 18, § 53).

2. Reasonableness of the length of the proceedings

81. The Government submitted that the length of the proceedings in the applicant's case was reasonable. In particular, they stated that the applicant's case was complicated on points of fact, given the number of accused (15 persons), civil claimants (16 persons), witnesses (according to them, more than 70 persons). This case, in their view, was also complicated on points of law as it concerned a number of multi-count crimes committed by a group of persons. In this respect, they maintained that the domestic authorities had had to carry out more than 20 different forensic expert examinations. Furthermore the Government pointed out that delays in the proceedings at issue had been caused by the accused and their lawyers, who had taken long periods of time to familiarise themselves with the case-files. Furthermore, their manifold complaints and requests likewise contributed to the length of the proceedings. In sum, they took the stance that the domestic authorities had acted with due diligence and that the length of the impugned proceedings was reasonable.

82. The applicant disagreed.

83. The Court will assess the reasonableness of the length of the proceedings in the light of the particular circumstances of the case and having regard to the criteria laid down in its case law, in particular the complexity of the case, the conduct of the applicant and the conduct of the relevant authorities. On the latter point, what is at stake for the applicant has also to be taken into account (see, among many other authorities, the *Kudła v. Poland* judgment, cited above, § 124).

84. The Court has also stressed on many occasions, in the context of Article 5 § 3, that persons kept in detention pending trial are entitled to "special diligence" on the part of the authorities. Consequently, in cases where a person is detained pending the determination of a criminal charge against him, the fact of his detention is itself a factor to be considered in assessing whether the requirement of a decision on the merits within a reasonable time has been met (see the *Jablonski v. Poland* judgment, cited above, § 102).

85. The Court accedes to the Government's contention that the number of persons involved in the proceedings increased the complexity of the case to a certain extent. Likewise it accepts their contention that the charges in the case might be considered complicated.

86. The Court further agrees that that the conduct of the accused, the applicant himself, and their lawyers (see paragraphs 14-16 above) might have caused some delays in the proceedings under consideration. However, this cannot justify the overall length of the proceedings.

87. The Court takes into account the fact that the period of the criminal proceedings against the applicant falling within the Court's competence *ratione temporis* lasted more than nine years during which period the applicant had been detained on remand for almost six years, a state of affairs which required, as already mentioned, special diligence by the domestic authorities in handling his case. The Court also takes into account the fact that, prior to the period under consideration, the proceedings had already been pending for nearly two years. The Government did not, however, put forward any plausible argument outweighing the above considerations. In these circumstances, and assessing all the relevant facts as a whole, the Court considers that the authorities have failed to respect the applicant's right to have his case heard within a "reasonable time".

88. There has accordingly been a violation of Article 6 § 1 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

89. 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."

90. The applicant did not advance any claim under this provision. The Court, accordingly, makes no award under this head.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Articles 3 (adequacy of medical treatment while in detention), 5 § 3 (the length of the detention on remand) and 6 § 1 (the length of the proceedings) of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 28 May 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President