



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

FIFTH SECTION

CASE OF BURYAGA v. UKRAINE

(Application no. 27672/03)

JUDGMENT

STRASBOURG

15 July 2010

FINAL

15/10/2010

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

In the case of Buryaga v. Ukraine,

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

Peer Lorenzen, *President*,

Karel, Jungwiert,

Rait Maruste,

Mark Villiger,

Isabelle Berro-Lefèvre,

Zdravka Kalaydjieva,

Ganna Yudkivska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 22 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 27672/03) 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 Andrey Andreyevich Buryaga (“the applicant”), on 18 August 2003.

2. 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 during the judicial proceedings was unlawful and excessively long (Article 5 §§ 1 and 3), that the courts failed to consider his complaints about the unlawfulness of his detention (Article 5 § 4), and the criminal proceedings against him were excessively long (Article 6 § 1).

4. On 7 July 2009 the Court declared the application partly inadmissible and decided to communicate the complaints under Article 5 §§ 1, 3 and 4 and Article 6 § 1 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 1965 and lives in Krasnoselka, Odessa region, Ukraine.

6. Between 1990 and 2001 the law enforcement authorities of the Odessa region instituted thirteen sets of criminal proceedings on different accounts of murder, rape and robberies committed by several individuals. On 8 May 2000, in particular, the Lyubashivskiy Police Department instituted criminal proceedings concerning the robbery of Mr Sh.

7. On 19 March 2001 the police arrested the applicant on suspicion of the aforementioned robbery of Mr Sh.

8. On 22 March 2001 the Lyubashivskiy District Prosecutor ordered the applicant's detention until 14 May 2001 – on the ground that he might abscond.

9. On 8 May 2001 the prosecutor, without indicating any grounds, extended the applicant's detention until 14 June 2001.

10. On 13 June 2001 the prosecutor further extended the applicant's detention until 19 June 2001.

11. On 20 June 2001 the applicant lodged a request for release with the prosecutor. He maintained that the authorised period of his pre-trial detention had expired on 19 June 2001 and that he was only given access to his case-file on 20 June 2001.

12. On 21 June 2001 the prosecutor rejected his request on the ground that the applicant had been informed that the investigation had been completed on 19 June 2001, after which he was given access to the case file.

13. On 13 July 2001 the Lyubashivskiy Local Court of Odessa region rejected the applicant's complaint about the unlawfulness of his detention after 19 June 2001—on the ground that the time given to an accused for studying his case-file was not to be taken into account. The applicant appealed to the Odessa Regional Court of Appeal but to no avail.

14. On 6 August 2001 the head of the Lyubashivskiy Police Department rejected the applicant's request for his immediate release on the ground that the time given to an accused for studying a case-file was not to be taken into account.

15. On 5 November 2001 the Ananiyvskiy Court held the committal hearing. The court joined the proceedings in the criminal case concerning the robbery of Mr Sh. with those of several other cases (given that the applicant's co-defendants were involved in other cases too (see paragraph 6 above)). The applicant and six others were committed for trial. The court rejected the applicant's complaint about the unlawfulness of his detention having found no irregularities therein. It also maintained his detention without giving any grounds or fixing any time limit.

16. On 15 November and 19 December 2001 the court held hearings in the case.

17. On 20 December 2001 the Ananiyvskiy Court rejected the applicant's request for release on the grounds that he had previous convictions, that he had committed a serious crime and that he might

abscond and interfere with the course of justice. The hearing was then adjourned owing to the non-appearance of one of the lawyers.

18. On 7 January 2002 the applicant submitted a complaint about the unlawfulness of his detention with the Ananiyvskiy Court.

19. On 21 January 2002 the Ananiyvskiy Court rejected the applicant's complaint referring to its previous findings during the committal hearings (see paragraph 15 above). The hearing was then adjourned owing to the non-appearance of the aggrieved parties and one of the accused.

20. On 18 February 2002 the applicant lodged an application for release with the court. It was rejected the same day. The hearing was then adjourned owing to the non-appearance of one of the aggrieved parties.

21. On 5 March 2002 the hearing was adjourned due to the failure to bring the accused to the court.

22. On 3 and 4 April 2002 the court held hearings in the case.

23. On 16 May 2002 the court remitted the case against the applicant and several other individuals for an additional investigation. It also maintained the applicant's detention without indicating any reasons or fixing any time-limit.

24. On 8 September 2002 the applicant complained of the unlawfulness of his detention to the prosecutor. By a decision of the same day, the Ananiyvskiy Prosecutor's Office rejected this complaint. The prosecutor noted that a two-month period for the applicant's detention had expired on 20 August 2002 and by that time the additional investigation had already been completed.

25. On 20 May 2003 the criminal case against the applicant and other persons was transferred to the Lyubashivskiy Court.

26. On 26 May 2003 the Lyubashivskiy Court held a committal hearing at which, among other things, the applicant's detention was maintained without an indication of any grounds or any time-limit fixed for its duration.

27. On 18 and 23 June 2003 the applicant lodged applications for release with the court. On these dates the hearings were adjourned owing to the non-appearance of the lawyer of one of the co-defendants.

28. On 26 June 2003 the court held a hearing and remitted the case for additional investigation. It also rejected the applicant's application for release and maintained his detention – noting that it had no grounds to replace it by another preventive measure.

29. On 18 July 2003 the applicant complained to the prosecutor of the unlawfulness of his detention.

30. On 25 July 2003 the prosecutor rejected his complaint with the same reasoning as provided in the decision of 8 September 2002 (see paragraph 24 above).

31. On 19 September 2003 the Lyubashivskiy Court held a committal hearing and decided, *inter alia*, to maintain the applicant's detention without indicating any reasons or fixing any time-limit.

32. On 21 October 2003 the court held a hearing in the case.

33. On 28 January 2004 the hearing was adjourned owing to the non-appearance of the prosecutor.

34. On 18 February 2004 the court held a hearing.

35. On 6 July 2004 the case was transferred to the Kotovsk Local Court of Odessa region.

36. On 17, 18 and 19 August 2004 the Kotovsk Court held hearings in the case. On the last-mentioned date, the applicant lodged an application for release with the Kotovsk Court stating that he had been detained for a long period of time, that he had been arrested on insufficient grounds and that he had no intention of absconding. The court rejected the application on the ground that the applicant was suspected of committing a serious crime and that he had previous criminal convictions.

37. On 28 October 2004 the hearing was adjourned owing to the non-appearance of two of the co-defendants.

38. On 25 November, 1, 6 and 8 December 2004 the court held hearings in the case.

39. On 13 December 2004 the Kotovsk Local Court of Odessa region found the applicant and six others guilty of several different crimes; in particular, the applicant was found guilty of robbery and sentenced to five years' imprisonment. The court also rejected the applicant's application for release.

40. On 23 March 2005 the applicant made a request for his release, which was rejected at the court's hearing on 29 June 2005 because the applicant had already been sentenced.

41. On 17 January 2006 the Odessa Court of Appeal, in the applicant's presence, upheld the decision of the first-instance court.

42. On 18 March 2006 the applicant finished serving his sentence.

43. On 10 July 2006 the applicant appealed in cassation.

44. On 21 August 2006 the judge of the Supreme Court returned the applicant's cassation appeal without consideration due to non-compliance with procedural requirements and gave him a month to correct the shortcomings.

45. On 27 September 2006 the applicant lodged his new cassation appeal.

46. On 2 November 2006 the Supreme Court rejected the applicant's cassation appeal as being submitted too late.

II. RELEVANT DOMESTIC LAW

47. Relevant domestic law is summarised in the cases of *Shalimov v. Ukraine* (no. 20808/02, § 39-41, 4 March 2010); *Solovey and Zozulya v. Ukraine* (nos. 40774/02 and 4048/03, § 43, 27 November 2008); and *Kozinets v. Ukraine* (no. 75520/01, §§ 39-42, 6 December 2007).

THE LAW

I. SCOPE OF THE CASE

48. In his reply to the Government's observations, the applicant submitted new complaints under Article 5 § 3 of the Convention, alleging that he had not been brought immediately before the prosecutor. He also complained that his detention was unlawful not only prior to his conviction but also after it, making, in substance, a new complaint under Article 5 § 1 (a) of the Convention as to the period from 13 December 2004 (the date of his conviction) to 18 March 2006 (the date of his release). He further referred to Article 7 of the Convention without any specification. The Court notes that these new, belated complaints are not an elaboration on the applicant's original complaints on which the parties have already commented. The Court considers, therefore, that it is not appropriate now to take these matters up separately (see, *mutatis mutandis*, *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005).

II. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

49. The applicant complained that his detention had been unlawful and unreasonably long and that he had had no effective remedy for reviewing the lawfulness of his detention. He relied on Article 5 §§ 1, 3 and 4 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 brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

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

A. Admissibility

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

B. Lawfulness of the detention under Article 5 § 1 (c)

1. Parties' submissions

51. The applicant maintained that he had been arrested in violation of domestic law. He considered that the whole period of his detention had been unlawful. He maintained that he had been given case-file materials to study one day after his authorised period of detention had expired but the domestic authorities had failed to recognise this. He further considered that the domestic courts were not allowed to maintain his detention, which had ceased to be lawful on 19 June 2001.

52. The Government maintained that the grounds of the applicant's pre-trial detention were clearly defined and the law itself was foreseeable in its application, so that it met the standard of "lawfulness" set by the Convention. They contended that the applicant had been detained on the ground of suspicion of committing a serious crime and also with the intention of ensuring his participation in the proceedings. Furthermore, the periods of the applicant's detention covered by the court decisions protected him from arbitrariness – which protection is implicit in the meaning of "lawfulness", as regards detention, as provided in Article 5 of the Convention.

2. Court's assessment

(a) General principles enshrined in the case-law

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

54. However, the "lawfulness" of detention under domestic law is the primary, but not always the decisive element. The Court must, in addition, be satisfied that the detention, during the period under consideration, was

compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary manner. Moreover, the Court must ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein (see *Winterwerp v. the Netherlands*, 24 October 1979, § 45, Series A no. 33).

(b) Application to the present case

55. The Court notes that the applicant's pre-trial detention falls into three categories: the period when the applicant's custody was covered by the detention orders issued by the prosecutors; the period when the applicant's detention was not covered by any decision; and the period when his detention was covered by the court decisions.

(i) Applicant's detention under prosecutors' orders

56. The Court notes that the applicant's detention was initially ordered by the Lyubashivskiy District Prosecutor on 22 March 2001. The relevant period covered by this decision of the prosecutor was between 19 March and 14 May 2001. Detention under this procedure was covered by a reservation to Article 5 § 1 (c) of the Convention that had been entered by Ukraine in accordance with Article 57 of the Convention with the intention of keeping in place the procedure governing arrest and detention in force at the material time until 29 June 2001. The Court refers to its findings in the *Nevmerzhitsky* case that under the terms of the above reservation, Ukraine was under no obligation, under the Convention, to guarantee that the initial arrest and detention of persons such as the applicants should be ordered by a judge. The Court also found in that case, however, that the issue of continued detention was not covered by the above reservation (see *Nevmerzhitsky v. Ukraine*, no. 54825/00, §§ 112-114, ECHR 2005-II).

57. The Court notes that a further period of the applicant's detention was also covered by the decisions of a prosecutor. This was the period between 14 May and 19 June 2001.

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

(ii) *Applicant's detention not covered by any decision*

59. The Court notes that no domestic decision was required to validate a period of detention during which a person had been given access to the case file, in accordance with Article 156 of the Code of Criminal Procedure as then in force. Furthermore, the periods of transmittal and transfer of the case from the prosecutor to the court and back again were often not covered by any decision either. In the present case, such period fell between 19 June 2001 and 5 November 2001.

60. The Court notes that relevant domestic law regulates procedural steps concerning the study of the case-file, the committal proceedings and transmittals of the case for further investigation, but it does not set clear rules as to by which authority, on which grounds and for which term the detention of the accused can be extended (see *Solovey and Zozulya v. Ukraine*, cited above, § 72). It has held, on many occasions, that the practice of keeping defendants in detention without a specific legal basis or clear rules governing their situation – with the result that they may be deprived of their liberty for an unlimited period without judicial authorisation – is incompatible with the principles of legal certainty and protection from arbitrariness, which are common threads throughout the Convention and the rule of law (see *Korchuganova v. Russia*, no. 75039/01, § 57, 8 June 2006; *Nakhmanovich v. Russia*, no. 55669/00, §§ 67-68, 2 March 2006; and *Khudoyorov v. Russia*, no. 6847/02, §§ 146-148, ECHR 2005-X).

61. Therefore, the periods of the applicant's detention without any decision ordering such detention were not in accordance with Article 5 § 1 of the Convention.

(iii) *Lawfulness of the applicant's detention under the court orders*

62. The Court observes that under Article 242 of the Code of Criminal Procedure, a domestic court, when committing a person for trial, must check whether the preventive measure that was selected at the investigation stage is appropriate. Reasons for the preventive measure are required from the court only when it decides to change the measure (Article 244 of the CCP). It does not appear that the court is required to give reasons for continuing the accused's detention or to fix any time-limit when maintaining the detention (see *Solovey and Zozulya v. Ukraine*, cited above, §§ 43, 74-76).

63. The Court considers that the absence of any precise provisions laying down whether – and if so, under what conditions – detention ordered for a limited period at the investigation stage could properly be extended at the stage of court proceedings does not satisfy the test of “foreseeability” of a “law” for the purposes of Article 5 § 1 of the Convention (see *Baranowski v. Poland*, no. 28358/95, § 55, ECHR 2000-III, and *Kawka v. Poland*, no. 25874/94, § 51, 9 January 2001).

64. The Court observes that, although the domestic courts upheld the pre-trial detention measure in respect of the applicant on 5 November 2001, 16 May 2002, and 26 May, 26 June and 19 September 2003, they did not set a time-limit for his continued detention and sometimes did not give any reasons for their decisions (see paragraphs 15, 20, 23, 26 and 28 above). This left the applicant in a state of uncertainty as to the grounds for his detention. In this connection, the Court reiterates that the absence of any grounds given by the judicial authorities for their decisions authorising detention for a prolonged period of time is incompatible with the principle of protection from arbitrariness enshrined in Article 5 § 1 (see *Nakhmanovich*, cited above, §§ 70-71, and *Stašaitis v. Lithuania*, no. 47679/99, § 67, 21 March 2002). In these circumstances, the Court considers that the decisions referred to above did not afford the applicant the adequate protection from arbitrariness which is an intrinsic element of the “lawfulness” of detention within the meaning of Article 5 § 1 of the Convention, and that, therefore, the applicant's detention on remand during the periods covered by the judicial decisions was likewise not in accordance with Article 5 § 1 of the Convention.

(c) Conclusion

65. The Court concludes that there has been a violation of Article 5 § 1 of the Convention in the above respects.

C. Article 5 § 3 of the Convention

66. The applicant maintained that his detention had been unreasonably long.

67. The Government maintained that the length of the applicant's pre-trial detention, which constituted three years, eight months and twenty-four days, was justified by the complexity of the case and the number of investigative actions that were necessary. They further maintained that there were relevant and sufficient grounds for holding the applicant in custody and that the authorities, in dealing with the applicant's case, had displayed the necessary diligence required under Article 5 § 3 of the Convention.

68. The Court recalls that the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. This must be assessed in each case according to its special features, the reasons given in the domestic decisions and the well-documented facts mentioned by the applicant in his applications for release. 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 (see, among others, *Labita v. Italy* [GC], no. 26772/95, § 153, ECHR 2000-IV).

69. The Court notes that the seriousness of the charges against the applicant and the risk of his absconding and interfering with the course of justice had been put forward in the initial order on the applicant's detention (see paragraph 8 above). Thereafter, the prosecutors and the courts put forward the same grounds or did not put forward any grounds whatsoever for maintaining the applicant's detention but simply stated that the previously chosen preventive measure was correct. However, Article 5 § 3 requires that after a certain lapse of time, the persistence of a reasonable suspicion does not in itself justify the 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, § 102, *Reports of Judgments and Decisions* 1998-VII). Those grounds, moreover, should be expressly mentioned by the domestic courts (see *Iłowiecki v. Poland*, no. 27504/95, § 61, 4 October 2001). No such reasons were given by the courts in the present case. Furthermore, at no stage did the domestic courts consider any alternative preventive measures to detention on remand, and by relying essentially on the gravity of the charges, the authorities extended the applicant's detention on grounds which cannot be regarded as "relevant and sufficient".

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

D. Article 5 § 4 of the Convention

71. The applicant considered that the domestic courts failed to recognise the unlawfulness of his detention.

72. In the Government's opinion, the applicant had, at his disposal, an effective procedure for reviewing the lawfulness of his pre-trial detention. They further noted that such lawfulness had been reviewed by the courts on many occasions, including at the applicant's applications for release on 13 July, 5 November and 20 December 2001, on 21 January, 18 February and 16 May 2002, on 26 May, 26 June and 19 September 2003, on 28 January 2004, 19 August and 13 December 2004 and on 29 June 2005 (see paragraphs 13, 15, 17, 19, 20, 23, 26, 28, 31, 33, 36, 39, 40 above).

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

74. The Court notes that in the circumstances of the present case the lawfulness of the applicant's detention was reviewed by the domestic courts

on many occasions. However, the respective court decisions do not fully satisfy the requirements of Article 5 § 4 – being confined in their reasoning to mere reiteration of the standard set of grounds for the applicant's detention without any examination of the plausibility of such grounds under the applicant's particular circumstances (see, *mutatis mutandis*, *Belevitskiy v. Russia*, no. 72967/01, §§ 111-112, 1 March 2007).

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

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

76. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

77. The Government maintained that the period to be taken into consideration began on 19 March 2001, when the applicant was arrested, and ended on 17 July 2006, when the statutory time-limit for lodging the cassation appeal had expired. In their opinion, the proceedings therefore lasted five years and almost four months for two levels of jurisdiction – a length of time which they considered reasonable.

78. The applicant made no comment on this issue.

79. The Court notes that the applicant did lodge a cassation appeal within the time-limit envisaged by the law - on 10 July 2006, but failed to meet the procedural formalities and then to re-lodge his appeal within the one-month time-limit fixed by the Supreme Court – by 21 September 2006. His appeal was ultimately rejected on 2 November 2006. The Court considers that the ultimate failure of the applicant to lodge a cassation appeal in compliance with the procedural formalities does not exclude this part of the proceedings for the purpose of calculation of its length. Therefore, the Court considers that the proceedings lasted for more than five years and seven months for three levels of jurisdiction.

A. Admissibility

80. 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

81. The applicant considered the length of the proceedings excessive. He noted that there were important periods of inactivity from August 2002 to March 2003 and from March 2004 to August 2004 when the case had been transferred from one court to another and no hearings had been held.

82. The Government considered that the proceedings had been conducted with due diligence and the delays were caused by the motions of the parties, including the applicant, the remittals of the case for a fresh consideration, which had been required to ensure fairness of the proceedings, and by the adjournments of the hearings due to the failure of parties to appear.

83. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II). 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*, cited above, § 89; and *Ivanov v. Ukraine*, no. 15007/02, § 71, 7 December 2006).

84. The Court appreciates that the criminal proceedings at issue, which concerned multiple defendants, did involve evidential and procedural aspects of a certain complexity.

85. On the other hand, the Court observes that the delays in resolving the matter have been primarily due to the several remittals of the case for reinvestigation and the rectification of procedural errors. Furthermore, the applicant was not responsible for any adjournment of the hearings.

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

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

87. 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

88. The applicant did not make any claims for damage. Accordingly, the Court considers that there is no call to award him any sum on that account.

B. Costs and expenses

89. The applicant claimed UAH 1 350 (EUR 125) for the translation of correspondence from the Court.

90. The Government noted that this claim was not supported by any documents and the expenses were not necessary. They propose to reject this claim.

91. 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 actually and necessarily been incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the claimed amount in full.

C. Default interest

92. 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 remainder of the application admissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
4. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
5. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
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 125 (one hundred and twenty-five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, 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;

Done in English, and notified in writing on 15 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President