



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

FIFTH SECTION

CASE OF VINOKUROV v. UKRAINE

(Application no. 2937/04)

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 Vinokurov 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,
Mirjana Lazarova Trajkovska,
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. 2937/04) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Konstantin Eduardovich Vinokurov (“the applicant”), on 24 November 2003.

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

3. On 16 October 2007 the Court declared the application partly inadmissible and decided to communicate the complaint under Article 5 § 3 concerning the length of the applicant's detention on remand 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

4. The applicant was born in 1962 and lives in the city of Lugansk, Ukraine.

5. On 30 March 1998 criminal proceedings were instituted against the applicant, being a director of a small private company, and Ms E., a chief accountant of the company, on suspicion of credit fraud.

6. According to the materials in the case-file, on 3 September 1998 the Prosecutor of the Leninsky District of Lugansk ordered the applicant's detention on remand. The parties did not provide a copy of that order.

7. On 4 September 1998 the proceedings were suspended since the applicant failed to appear before the investigator. On the same date he was put on the list of wanted persons.

8. On 27 September 2001 the applicant, who at that time resided in Russia, was arrested by the Russian police pursuant to an international warrant for his arrest issued by the Ukrainian authorities.

9. According to the Government's observations, on 2 October 2001 the preventive measure of detention on remand was upheld. The Government failed to provide a copy of that order.

10. On 22 October 2001 the Prosecutor General's Office of Ukraine made a request to the Prosecutor General's Office of the Russian Federation for the applicant's extradition under the 1993 Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases (the "Minsk Convention"). On 25 October 2010 the request was granted.

11. On 1 February 2002 the Prosecutor of the Leninsky District of Lugansk extended the applicant's detention on remand until 15 March 2002.

12. Once in Ukraine on 6 February 2002, the applicant was detained on remand.

13. On 5 March 2002 the applicant was charged with financial fraud and forgery.

14. Between 5 March 2002 and 21 May 2002 the applicant was acquainted himself with the case-file.

15. On 21 May 2002 the applicant asked the investigator to replace the detention with another preventive measure alleging that he had health problems. On the same date the request was dismissed since the applicant failed to provide any proves in support of his allegations.

16. On 2 July 2002 the Leninsky District Prosecutor's Office of Lugansk submitted the applicant's case to the court for examination on the merits.

17. On 15 August 2002 the Leninsky District Court of Lugansk (hereafter "the Leninsky Court") held a preparatory hearing. It found that the bill of indictment needed redrafting. The case-file was sent back to the Prosecutor's Office. The Leninsky Court also rejected the applicant's request for release, having found that the detention on remand had been ordered at the investigation stage in accordance with law and that there was no reason to replace it with another preventive measure.

18. On 20 September 2002 the applicant's criminal case was sent to the Leninsky Court. On 4 November 2002 the latter terminated the criminal proceedings against Ms E.

19. On 4 October 2002, 9 December 2002, 10 December 2002, 19 December 2002 and on an unspecified date in June 2003 the applicant asked the Leninsky Court to replace the detention on remand with another

preventive measure. On 4 November 2002, 9 December 2002, 16 December 2002, 10 January 2003 and 27 June 2003 the Leninsky Court respectively dismissed his requests, having found that the detention on remand had been ordered at the investigation stage in accordance with law and that there was no reason to replace it with another preventive measure.

20. On 21 July 2003 the Leninsky Court convicted the applicant of financial fraud and sentenced him to one year, nine months and twenty four days' imprisonment, less the time spent in detention pending extradition in Russia and in detention on remand in Ukraine. This sentence meant the applicant's immediate release since he had already served it.

II. RELEVANT DOMESTIC LAW

21. Provisions of the Code of Criminal Procedure of 28 December 1960 on preventive measures are set out in *Nevmerzhiysky v. Ukraine* (no. 54825/00, § 54, ECHR 2005-II (extracts)).

THE LAW

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

22. The applicant complained that the duration of his pre-trial detention was excessive. He invoked Article 5 § 3 of the Convention, which provides, in so far as relevant, as follows:

“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

23. 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

24. The Government maintained that the domestic authorities had grounds for holding the applicant in custody, given that he had absconded

from justice. They further considered that the domestic authorities conducted the investigation with due diligence given the complexity of the case.

25. The applicant made no observations.

26. The Court observes that in the present case, while the applicant had already been detained in Russia prior to his extradition, the period to be taken into consideration for the purposes of Article 5 § 3 of the Convention started on 6 February 2002, when the applicant was detained on remand in Ukraine, and ended on 21 July 2003. Therefore it lasted one year, five months, and thirteen days. The time of the applicant's detention is not short in absolute terms (see and compare, *Nedyalkov v. Bulgaria*, no. 44241/98, § 61, 3 November 2005, and *Rokhlina v. Russia*, no. 54071/00, § 60, 7 April 2005).

27. 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).

28. The Court observes that the risk of the applicant's absconding might have justified the initial orders on the applicant's detention. However, the Court notes that, thereafter, the Leninsky Court did not advance any grounds whatsoever for maintaining the applicant's detention, simply stating that the previously chosen preventive measure was correct. The Court reiterates that Article 5 § 3 of the Convention requires that after a certain lapse of time the persistence of a 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, § 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 authorities consider any alternative preventive measures instead of detention.

29. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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.”

31. The applicant did not submit a claim for just satisfaction within the time-limit allotted by the Court. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

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