



Recurring pre-trial detention violations in Ukraine: Court asks the Government to submit a reform strategy

In its Chamber judgment in the case [Kharchenko v. Ukraine](#) (application no. 40107/02), which was delivered on 10 February 2011 and is not final¹, the European Court of Human Rights held, unanimously, that there had been:

Violations of Articles 3 (prohibition of inhuman or degrading treatment), 5 § 1, 5 § 3 and 5 § 4 (right to liberty and security) of the European Convention on Human Rights.

Article 46: In respect of the implementation of the judgment by the Ukrainian authorities, the Court emphasized that the recurrent violations of Article 5 in cases against Ukraine showed a continuing problem with Ukrainian detention law, as people were often detained without any court order, or the grounds for their detention were often formalistic and not regularly reviewed. Reform of the legislation and administrative practice was therefore urgently needed. While it was for Ukraine, under the supervision of the Committee of Ministers, to find the most appropriate solution, the Court requested the Government to submit a reform strategy within six months from the date on which the judgement become final.

The case concerned the detention for over three years of the applicant on suspicion of embezzlement of a company's funds.

Principal facts

The applicant, Leonid Kharchenko, is an Ukrainian national who was born in 1958 and lives in Kyiv (Ukraine).

The prosecutor ordered Mr Kharchenko's detention on 7 April 2001, as he was suspected of being involved in embezzlement of a company's funds. His detention was extended several times and his repeated requests for release were rejected. The case was on numerous occasions remitted by the courts to the prosecution service for additional investigation. Mr Kharchenko was released on 4 August 2003 after he signed an undertaking that he would not abscond. In September 2004, the criminal proceedings against him were terminated for lack of evidence of his involvement in the crime.

According to Mr Kharchenko, between 20 April 2001 and 4 August 2003, he was held in Kyiv SIZO (pre-trial detention centre) no. 13, in overcrowded cells which were damp and very cold in winter. The Government submitted that the number of detainees had not

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

exceeded the number of places in each cell and that the cells were well-ventilated and lit, and cold water was constantly supplied.

Mr Kharchenko sought medical assistance on 27 January 2003 as he was complaining of chest pain and dizziness. He was treated in the SIZO's medical wing between 28 January and 11 March 2003, when he left in a satisfactory state of health and did not seek further doctor's assistance until his release. After he left the detention centre, he was treated for heart problems in Kyiv hospital no. 15 during a period of 20 days in August 2003.

Complaints, procedure and composition of the Court

Relying on Articles 3, 5 § 1 (c), 3 and 4, Mr Kharchenko complained that he had been detained, unlawfully and for too long awaiting trial, in poor conditions, despite suffering from a number of chronic illnesses.

The application was lodged with the European Court of Human Rights on 23 October 2002.

Judgment was given by a Chamber of seven, composed as follows:

Peer **Lorenzen** (Denmark), *President*,
Karel **Jungwiert** (the Czech Republic),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco),
Mirjana **Lazarova Trajkovska** ("the former Yugoslav Republic of Macedonia"),
Ganna **Yudkivska** (Ukraine),
Julia **Laffranque** (Estonia), *Judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 3

The Court noted that Mr Kharchenko and the Ukrainian Government disagreed about how much cell space had been available to him in detention. According to the Government, in the cell in which Mr Kharchenko had been kept, the average amount of living space per detainee had been between 2.55 and 4.67 square metres. While no evidence had been presented to the Court confirming that submission, in the light of the Court's established case law and the standards of the European Committee for the Prevention of Torture, the Court concluded that Mr Kharchenko had been detained in over-crowded conditions for over two years and three months. There had, therefore, been a violation of Article 3.

In respect of the medical treatment provided to Mr Kharchenko in detention, the Court observed that he had been accepted in the medical wing on the day after he had complained of chest pain and that he had been given medication, and had been regularly examined by a doctor. On 11 March 2003, he had been discharged in a satisfactory state of health. Consequently, the Court rejected his related complaint.

Article 5 § 1

The Court examined three different periods of Mr Kharchenko's pre-trial detention. In respect of the first period, between 4 April and 4 July 2001, the decision to extend his detention had been taken by a prosecutor. Given that a prosecutor could not be

regarded as an independent officer authorised by law to exercise judicial power, Mr Kharchenko's detention during that period had been unlawful, in violation of Article 5 § 1 c.

As regards the second period of detention, between 4 July and 15 October 2001, Mr Kharchenko had remained in custody without any judicial decision, while the investigating authorities had been working on the bill of indictment. The Court had already found violations of Article 5 in cases in which people were held in detention without a specific legal basis. As that was incompatible with the principles of legal certainty and protection from arbitrariness, the Court found that there had been a violation of Article 5 § 1.

As to the last period of detention, between 15 October 2001 and 4 August 2003, the district court had rejected Mr Kharchenko's request for release in order to prevent him from absconding from the investigation and not appearing in court. The Court noted that the Ukrainian code of criminal procedure allowed domestic courts to decide on suspects' detention without giving any reasons or fixing any time-limit for it. That had left Mr Kharchenko in a state of uncertainty, which was incompatible with the Convention. There had therefore been a violation of Article 5 § 1.

Article 5 § 3

The Court noted that Mr Kharchenko's pre-trial detention had lasted for two years , three months and 15 days, and that no other grounds than the risk of his absconding had been advanced at any time for keeping him in detention, in violation of Article 5 § 3.

Article 5 § 4

Although several requests for release had been examined by the Ukrainian courts, their decisions had been based on a standard set of grounds, without any examination of whether those grounds had been relevant for Mr Kharchenko's situation.

The Court noted also that the lawfulness of Mr Kharchenko's detention had only been reviewed by the court 19 days after he had submitted his review request, which was at odds with the Convention requirements. That appeared to be a recurring problem in cases against Ukraine, due to the lack of clear and foreseeable provisions in the law. There had therefore been a violation of Article 5 § 4.

Article 41 (just satisfaction)

Under Article 41, the Court held that Ukraine was to pay Mr Kharchenko 20 000 euros (EUR) in respect of non-pecuniary damage.

The judgment is available only in English.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on its [Internet site](#). To receive the Court's press releases, please subscribe to the [Court's RSS feeds](#).

Press contacts

echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

Emma Hellyer (tel: + 33 3 90 21 42 15)
Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Céline Menu-Lange (tel: + 33 3 90 21 58 77)
Frédéric Dolt (tel: + 33 3 90 21 53 39)
Nina Salomon (tel: + 33 3 90 21 49 79)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.