

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

FIFTH SECTION

CASE OF AVRAAMOVA v. UKRAINE

(Application no. 2718/12)

JUDGMENT

STRASBOURG

20 September 2022

This judgment is final but it may be subject to editorial revision.



In the case of Avraamova v. Ukraine,

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

Lado Chanturia, *President,*
Ganna Yudkivska,
Mattias Guyomar, *judges,*
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 2718/12) 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, Ms Tetyana Viktorivna Avraamova ("the applicant"), on 24 December 2011;

the interim measure indicated to the Ukrainian Government ("the Government") under Rule 39 of the Rules of Court and the subsequent decision to lift that measure;

the decision to give notice of the application to the Government;

the parties' observations;

Having deliberated in private on 10 March 2022,

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

INTRODUCTION

The present case concerns the applicant's complaints under Article 3 of the Convention relating to the conditions of her detention, the alleged inadequacy of her medical treatment and her handcuffing in hospital, as well as her complaints under Article 5 of the Convention relating to the alleged arbitrariness of her arrest, the justification for her pre-trial detention and the lack of any enforceable right to compensation in that regard.

THE FACTS

1. The applicant was born in 1970 and lives in Krynychne. She was represented by Mr S.S. Ponomaryov, a lawyer practising in Bilohirsk.

2. The Government were represented by their Agent, Mr I. Lishchyna, of the Ministry of Justice.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

I. THE APPLICANT'S ARREST AND PRE-TRIAL DETENTION

4. About two weeks before the events to which the present case relates, the applicant had been promoted from the post of deputy head of division in the State Bailiffs Service of the Bilohirsk City Department of Justice to deputy head of that department.

5. On 25 August 2011 she was arrested in her office following allegations of bribe-taking.

6. On 26 August 2011 the Bilohirsk Court extended the applicant's arrest to eight days, noting that more information was required to decide on the investigator's application for her detention as a preventive measure pending trial. The court noted that, in addition to the seriousness of the charge, the applicant's age, state of health, family and financial situation, professional activities, place of residence and other pertinent circumstances had to be taken into account.

7. On 2 September 2011 the Bilohirsk Court remanded the applicant in custody for two months. The court's decision stated that as the applicant was suspected of a serious offence, she might put pressure on witnesses by using her official position, and, if at liberty, she could evade the investigation and trial or hinder the establishment of the truth. No further details were provided.

8. On 20 September 2011 the Court of Appeal of the Autonomous Republic of Crimea ("the Court of Appeal") upheld the above-mentioned ruling. The Court of Appeal further noted that there was no indication that the state of her health prevented her from being detained.

9. On 21 October 2011 the Bilohirsk Court dismissed a request by the applicant for release subject to an undertaking not to abscond, and extended the term of her detention to three months. It noted, *inter alia*, that the applicant was suspected of a serious offence, that she had not admitted her guilt and, indeed, that she had not made any statements at all. Accordingly, there was a risk that she might try to influence witnesses while at liberty. Furthermore, the applicant's participation was required in the investigative measures yet to be taken.

10. On 10 November 2011 the Crimea Court of Appeal upheld the ruling of 21 October 2011. It noted that there were no grounds to alter the previously chosen preventive measure, and the extension of the applicant's pre-trial detention was justified given, in particular, the large volume of investigative activities which remained to be conducted.

11. On 8 December 2011 the Bilohirsk Court committed the applicant for trial and extended her detention, having noted, without any further explanation, that there were no grounds to alter the preventive measure or to release the applicant.

12. On 19 December 2011 the trial court found the applicant guilty of bribe-taking and sentenced her to three years and three months' imprisonment, combined with deprivation of the right to hold positions in the bodies of the State Bailiffs Service for three years. In the course of the trial the applicant fully admitted her guilt. That judgment was upheld by the appellate court on 15 March 2012. The applicant did not inform the Court whether she had appealed on points of law.

13. On 31 July 2012 the applicant was transferred to prison to serve her sentence there.

14. On 13 May 2013 the local court ordered the applicant's release on parole. On 21 May 2013 the applicant was released from prison.

II. MATERIAL CONDITIONS OF THE APPLICANT'S DETENTION

A. In the ITT

15. The applicant was held in the Bilohirsk Temporary Detention Facility ("the ITT") on various dates (26 to 29 August, 20 to 26 October, 2 to 21 November and 16 to 23 December 2011).

16. According to her, the conditions of her detention in the ITT were inadequate, particularly as there were no separate ITTs for women in Ukraine.

17. According to the Government, the applicant was detained in cells with not less than 4 sq. m of personal space per inmate. They added that the ITT cells had been equipped with individual beds, tables for eating, lockers for storing personal belongings, washbasins, toilets, natural and artificial lighting and heating, and had met sanitary standards. All inmates had access to daily walks. They were regularly provided with food and they also had access to a shower.

18. The Government further stated that the domestic regulations did not provide for the separate holding of male and female detainees in the ITT cells. The case file, however, contains a copy of a letter signed by the ITT authorities on 3 June 2013, by which the applicant's lawyer was informed of the conditions of detention in the ITT in 2011. The letter stated, *inter alia*, that the ITT was equipped with a separate cell for female detainees.

B. In the SIZO

19. The applicant was held in the Simferopol pre-trial detention centre ("the SIZO") on various dates (12 September to 20 October, 26 October to 2 November, 21 November to 16 December and 23 December 2011 to 5 July 2012).

20. On 17 October 2011 the applicant's lawyer requested the SIZO administration to provide detailed information about the conditions of her detention.

21. In a letter dated 28 October 2011 the SIZO governor replied to the applicant's lawyer, providing information about the conditions of the applicant's detention in the SIZO as follows. Every cell was equipped with a metal bed for each inmate, a table and a bench, a shelf for keeping food, a tap and a separate toilet. Furthermore, each cell had natural light (by day) and artificial light (by night), as well as natural and artificial ventilation. A change of bed linen was provided and inmates took a shower once a week.

22. The applicant's lawyer complained both to the prosecutor's office and to the local court about the allegedly inadequate conditions of the applicant's

detention in the SIZO. He submitted that the SIZO administration had failed to respond to his enquiry satisfactorily. In particular, he complained that no information had been provided to him about the total surface area of the cell and the number of inmates it held, the size of the window in the cell, the exact time that lights were switched on and off, the size of the shower area, or the time and duration of outdoor exercise.

23. In the course of the exchange of the parties' observations, the Government provided the following information about the conditions of the applicant's detention in the SIZO. The applicant was detained in cell no. 167 from 12 September to 23 December 2011 and in cell no. 173 from 23 December 2011 to 5 July 2012. Cell no. 167 measured 16 sq. m and was shared by three people. Cell no. 173 measured 18 sq. m and was shared by six people. The applicant was detained with other female inmates. The cells were equipped with furniture and other standard items. As well as a supply of water, there was ventilation, and natural and artificial lighting. The applicant had access to washing facilities once a week along with a change of bedding. She was entitled to a daily walk lasting one hour.

III. THE APPLICANT'S STATE OF HEALTH AND THE MEDICAL CARE PROVIDED TO HER IN DETENTION

24. Before her detention the applicant had been booked in for monitoring in the Bilohirsk City Hospital ("the hospital") on account of various medical problems (ischaemic heart disease, cardiac insufficiency, hypertension, cerebral atherosclerosis, dyscirculatory encephalopathy, chronic obstructive pulmonary disease and respiratory distress).

25. On 28 August 2011, while the applicant was in the ITT, her lawyer requested her immediate hospitalisation following complaints of pain in her kidneys.

26. In the evening of 29 August 2011, the applicant was transferred to the hospital, where she received treatment as an inpatient for kidney stones until 12 September 2011.

27. After being discharged from the hospital on 12 September 2011, the applicant was transferred to the SIZO, where she continued to receive outpatient treatment.

28. On 28 September and 6 and 11 October 2011 the applicant was examined by the SIZO's doctor, who recommended that she continue the course of treatment that she had been prescribed.

29. On 7 October 2011 the investigator dealing with the applicant's case allowed her request for a general medical examination.

30. On 20 and 21 October 2011, while at the ITT, an ambulance was called for the applicant. She was diagnosed with biliary dyskinesia, chronic cholecystitis and chronic pancreatitis. An ambulance team administered

appropriate treatment and recommended that she undergo further examinations.

31. On 22 October 2011 the applicant was examined by a surgeon, a doctor and an infection specialist from the hospital. Given that her chronic medical conditions were at an aggravated stage, the medical team recommended that the applicant undergo an additional extensive medical examination in a hospital environment. The medical team prescribed medicines and a special diet for the applicant and concluded that her state of health was compatible with detention in the SIZO.

32. On 24 October 2011 the SIZO governor responded in writing to an enquiry made by the applicant's lawyer, stating that there was no modern equipment in the SIZO for testing heart, liver or kidney function.

33. On 25 October 2011 the Healthcare Department of the Bilohirsk City State Administration confirmed in its reply to another enquiry from the applicant's lawyer concerning his client's state of health that an examination in a hospital environment, as well as a special diet, had been recommended for her. According to the applicant, during her time in the SIZO she had not been provided with the diet that had been recommended.

34. On 28 October 2011 the applicant's lawyer requested that the SIZO administration arrange for his client to be hospitalised.

35. On 2 November 2011, on account of pain the applicant was experiencing in her kidneys, she was examined by the SIZO doctor, who diagnosed her with urolithiasis, microlithiasis of the left ureter and chronic acute pyelonephritis. She was therefore advised to follow the diet prescribed by the hospital doctor, and to take her prescribed medication.

36. On 4 November 2011 the applicant underwent an electrocardiogram, which did not reveal any signs of cardiac malfunction.

37. On 7 November 2011 the applicant was examined by the SIZO doctor on account of pain in the kidneys. Further to the results of the examination, she was advised to continue the treatment that she had been prescribed, albeit with a change to the dosage of her medicines.

38. On 8 November 2011 the SIZO replied, stating that the permission of the prosecution authorities was required for the applicant to be hospitalised. On the same date the SIZO applied to the Bilohirsk City Prosecutor's Office for permission, referring to the medical recommendations of 22 October 2011. However, no reply was received.

39. On 20 December 2011 the applicant completed the full course of her treatment, which had entailed taking her prescribed medicines.

40. According to the Government, the applicant did not complain of any health problems until May 2012.

41. On 7 May 2012 the applicant was examined by the SIZO doctor in connection with occasional heart pain. She was diagnosed with urolithiasis, microlithiasis of the left ureter, and chronic pyelonephritis which was in

remission. The applicant was advised to consult a cardiologist for further testing.

42. On 3 July 2012 the applicant's abdominal cavity was X-rayed. The results of the examination did not reveal any visible pathological changes in the heart and lungs.

43. On the same day the Court decided, in the interests of the parties and the proper conduct of the proceedings before it, to indicate to the Government, under Rule 39 of the Rules of Court, that they should bring about the medical examination which had been asked for by the SIZO on 8 November 2011 (which in turn referred to the report of 22 October 2011) and then ensure that the applicant received treatment on the basis of the results.

44. On 11 July 2012 the applicant was admitted to a regional hospital for a comprehensive medical examination in accordance with the recommendations of 22 October 2011.

45. Following the results of her examination, which was completed on 13 July 2012, the applicant was diagnosed with arterial hypertension triggered by urolithiasis (kidney stones), chronic pyelonephritis and supraventricular extrasystole. The doctors prescribed the applicant various medicines and recommended that she be supervised by a doctor and a urologist, and also have her blood pressure monitored. It was also pointed out that she should avoid being in the cold. Lastly, it was recommended that the applicant undergo an ultrasound scan and a urine analysis every six months. On the same date the applicant was discharged from hospital.

46. On 31 July 2012, on her arrival in prison, the applicant was examined by the prison doctor. She was diagnosed with urolithiasis, chronic secondary pyelonephritis and symptomatic arterial hypertension.

47. Thereafter the applicant did not complain of any health problems.

48. On 8 November 2012 the Court decided to lift the interim measure previously indicated under Rule 39.

IV. HANDCUFFING IN HOSPITAL

49. According to the applicant, during her inpatient treatment in the hospital from 29 August to 6 September 2011, she was handcuffed to her bed at all times and guarded by several armed police officers in her ward.

50. According to the Government, during the applicant's treatment at the hospital from 29 August to 12 September 2011, she was held in a ward which was specially equipped for individuals under arrest. The ward was guarded by a police convoy consisting of male and female staff. While inside the ward, the applicant was never handcuffed. Handcuffs were used on her only when she left the ward for medical treatment or to visit the toilet, in accordance with the provisions of the domestic regulations.

RELEVANT INTERNATIONAL MATERIAL

51. The relevant part of the Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 9 to 21 December 2013 [CPT/Inf (2014) 15] reads as follows:

> "120. ... The situation was no better at Simferopol SIZO. The conditions in the cells were as miserable as some thirteen years previously when the Committee had first visited this establishment. The semi-basement cells located in the establishment's block I clearly offered unacceptable conditions in terms of state of repair, humidity, in-cell lighting and ventilation."

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION OF LACK OF INTEREST ON THE PART OF THE APPLICANT AND REQUEST TO HAVE THE CASE STRUCK OUT

52. The Government maintained that the applicant's involvement in the proceedings before the Court had been limited to signing the authority form by which she had entrusted Mr Ponomaryov to represent her in the proceedings before the Court. Otherwise, all submissions had been made by Mr Ponomaryov, and the Government doubted whether the applicant herself had been aware of the proceedings pending before the Court and whether she maintained any interest in these proceedings. While not disputing the authenticity of the applicant's signature on the authority form, they nevertheless argued that the applicant had terminated an agreement with Mr Ponomaryov to defend her in the domestic proceedings in October 2011, that is, two months before the submission of the present application to the Court. Accordingly, they invited the Court to strike the case out of its list of cases, on the ground that the applicant herself had shown no interest in pursuing her present application.

53. The applicant's representative maintained that the applicant had expressed her intention to apply to the Court by signing the power of attorney for her lawyer to act on her behalf before the Court and that he had never been informed of any revocation of the power of attorney.

54. The Court observes that it has not received any information from the applicant regarding any revocation of the power of attorney issued in the name of Mr Ponomaryov. It finds no circumstances warranting the conclusion that the applicant has lost interest in her case or that her lawyer is no longer authorised to act on her behalf. The Court accordingly dismisses this objection by the Government (see, *mutatis mutandis*, *Soldatenko v. Ukraine*, no. 2440/07, § 40, 23 October 2008).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

55. The applicant complained that the conditions of her detention in the ITT and the SIZO, as well as the medical care available to her in detention, had been inadequate. She furthermore complained that she had been handcuffed while in hospital. She relied on Article 3 of the Convention, which reads as follows:

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

56. The Government submitted that the applicant's submissions about the conditions of her detention in the ITT and the SIZO had been formulated in a general way and had been insufficient to warrant a finding that the applicant had raised an arguable complaint.

57. They furthermore contended that all the applicant's complaints under Article 3 of the Convention were inadmissible for non-exhaustion of domestic remedies. In their view, she should have lodged her complaints concerning her conditions of detention with the prosecutor's office and the domestic courts.

58. The Government provided information about the conditions of the applicant's detention (see paragraphs 17 and 23 above), the medical care provided to her (see paragraphs 24-47 above) and her handcuffing while in hospital (see paragraph 50 above). On the basis of that information they invited the Court to declare the above-mentioned complaints inadmissible as being manifestly ill-founded.

59. The applicant disagreed.

A. Admissibility

1. As to non-exhaustion of domestic remedies

60. The Court notes that similar arguments by the Government regarding non-exhaustion of domestic remedies have previously been dismissed (see, for instance, *Buglov v. Ukraine*, no. 28825/02, § 74, 10 July 2014, and *Sokil v. Ukraine*, no. 9414/13, § 38, 22 October 2015). With reference to the above-mentioned case-law and the circumstances of the present case, the Court finds that the Government have not shown that the applicant had in practice an opportunity to obtain an effective remedy for her complaint – that is, a remedy which could have prevented the violations from occurring or continuing, or which could have afforded her appropriate redress. The Court therefore considers that the applicant's complaints under Article 3 of the Convention cannot be rejected for failure to exhaust domestic remedies, and, consequently, dismisses the Government's objection in this regard.

2. As to the conditions of the applicant's detention in the ITT

61. As follows from the submissions of the Government (see paragraphs 17 and 23 above) – which were not rebutted by the applicant – while she was in the ITT (from 26 to 29 August, from 20 to 26 October, from 2 to 21 November and from 16 to 23 December 2011), the applicant had at her disposal not less than 4 sq. m of personal space.

62. On the contrary, the applicant's submissions have been presented in a general way. Moreover, the applicant failed to elaborate on her complaints in response to the Government's observations.

63. As regards the applicant's contention that there were no separate cells to hold male and female detainees in the ITT, the Court notes that the applicant submitted in her comments on the Government's observations that she had been held alone in the ITT cell. The Court further takes note of the copy of the letter contained in the case file stating that the ITT had been equipped with a separate cell for female detainees (see paragraph 18 above).

64. In the current circumstances, on the basis of the available material and, in particular, in the absence of any submissions by the applicant regarding the other aspects characterising the conditions of her detention, the Court cannot conclude that the conditions of her detention in the ITT on the dates indicated in paragraph 61 above were incompatible with the requirements of Article 3 of the Convention.

65. It follows that this complaint is manifestly ill-founded and must be rejected in compliance with Article 35 §§ 3 (a) and 4 of the Convention.

3. As to the applicant's handcuffing

66. The Court observes that the applicant specifically complained of being permanently handcuffed to her bed while in the hospital from 29 August to 6 September 2011. It furthermore notes that the applicant's complaint was formulated in broad terms, without any particular details or explanation as to what suffering she had endured as a result of the alleged treatment. The case file contains no evidence in support of the above complaint. Furthermore, it does not appear from the content of numerous complaints submitted by her defence lawyer at the domestic level and the relevant replies that the applicant has raised complaints with the authorities about her handcuffing.

67. In the light of the applicant's submissions, the Government's observations (see paragraph 50 above) and its case-law on the matter (see, for example, *Yuriy Koval* v. Ukraine ([Committee], no. 35121/09, §§ 116-20, 23 January 2020, with further references therein), the Court does not find it sufficiently established that the applicant was handcuffed to her bed while in the hospital, as she alleged.

68. The Court furthermore notes, in the light of the substance of the applicant's complaint (see paragraph 66 above), that it is not in a position to

analyse whether the applicant was handcuffed while outside the medical ward.

69. Accordingly, this part of the application is manifestly ill-founded too and should be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

4. Otherwise as to admissibility

70. The Court further notes that the remainder of the applicant's complaints under Article 3 of the Convention, notably that the conditions of her detention in the SIZO from 23 December 2011 to 5 July 2012 and the medical treatment provided to her in detention were inadequate, are neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. As to the conditions of the applicant's detention in the SIZO

71. As follows from the submissions of the Government (see paragraph 23 above), while the applicant was in the SIZO from 23 December 2011 to 5 July 2012, she had 3 sq. m of personal space.

72. The Court reiterates in this context that, in cases where a prison cell measuring in the range of 3 sq. m to 4 sq. m of personal space per inmate is at issue, the space factor remains a weighty one in the Court's assessment of the adequacy of conditions of detention. In such instances, a violation of Article 3 of the Convention will be found if the space factor is coupled with other aspects of inappropriate physical conditions of detention related to, in particular, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of room temperature, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements (see *Muršić v. Croatia* [GC], no. 7334/13, § 139, 20 October 2016).

73. In this connection, the Court observes that while the parties' submissions regarding the conditions of the applicant's detention during the above-mentioned period appear to be lacking specification, the Government, who would have been in possession of all the details regarding the conditions of detention of individuals under their control, would be expected to provide such details.

74. The Court cannot lose sight of the findings it has previously made regarding the conditions of applicants' detention in the Simferopol SIZO (see, for example, *Pokhlebin v. Ukraine*, no. 35581/06, §§ 46-52, 20 May 2010; *Znaykin v. Ukraine*, no. 37538/05, §§ 49-53, 7 October 2010; *Izzetov v. Ukraine*, no. 23136/04, §§ 42 and 43, 15 September 2011; and *Samoylovich v. Ukraine*, no. 28969/04, §§ 64-66, 16 May 2013).

75. In addition the Court refers to the findings of the CPT in 2013 to the effect that conditions in the cells of the Simferopol SIZO were as miserable as they had been some thirteen years previously when the CPT had first visited that facility (see paragraph 51 above).

76. The combination of the above-mentioned factors is sufficient to enable the Court to conclude that the conditions of the applicant's detention in the Simferopol SIZO from 23 December 2011 to 5 July 2012 could not have differed significantly from those analysed in the above-mentioned cases. It therefore finds that the conditions of the applicant's detention as described above amounted to inhuman and degrading treatment contrary to the requirements of Article 3 of the Convention. There has accordingly been a violation of that provision.

2. As to the medical treatment of the applicant

77. The Court reiterates that, in accordance with Article 3 of the Convention, the State must ensure that a person is detained in conditions which are compatible with respect for his or her human dignity, that the manner and method of the execution of the measure do not subject him or her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his or her health and well-being are adequately secured (see, for instance, *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI).

78. However, the Court has held that Article 3 of the Convention cannot be interpreted as ensuring that every detainee should receive medical care at the same level as "in the best civilian clinics" (see *Mirilashvili v. Russia* (dec.), no. 6293/04, 10 July 2007). It has further held that it is prepared to accept that, in principle, the resources of medical facilities within the prison system are limited compared with those of civilian clinics (see *Grishin v. Russia*, no. 30983/02, § 76, 15 November 2007). On the whole, the Court takes a flexible approach in defining the required standard of healthcare, deciding on a case-by-case basis. That standard should be "compatible with the human dignity" of a detainee, but should also take into account "the practical demands of imprisonment" (see *Aleksanyan v. Russia*, no. 46468/06, § 140, 22 December 2008).

79. The thrust of the applicant's complaint in the present case concerns the delayed medical examination of the applicant in connection with her long-lasting medical conditions (see paragraph 24 above).

80. Indeed, on 22 October 2011 the doctors recommended that the applicant undergo an additional extensive medical examination in a hospital environment, and that examination was performed much later, on 13 July 2012, following an indication made by the Court in this respect under Rule 39 (see paragraphs 43-45 above).

81. The Court observes that the applicant was not entirely left without medical care while in detention. She received certain medication and

underwent a number of examinations. However, the Court considers that the medical care provided to the applicant before the application of Rule 39 by the Court was not sufficient for the reasons indicated below.

82. The Court notes that the authorities have acknowledged that the SIZO medical unit was not sufficiently equipped to address the applicant's health problems (see paragraph 32 above). This element proves that the applicant received merely symptomatic treatment in response to a continued deterioration of her health (see paragraphs 35 and 41 above).

83. The Court is mindful of the fact that in November 2011 the SIZO had applied to the Bilohirsk City Prosecutor's Office for permission for the applicant to be hospitalised, referring to the medical recommendations of 22 October 2011, and that no reply was received (see paragraph 38 above). It appears from the Government's submissions that no further attempts to arrange the applicant's hospitalisation have been taken.

84. In the light of the foregoing, the Court considers that the authorities' unjustified and prolonged delay in arranging the applicant's hospitalisation for an extensive medical examination and providing her with symptomatic treatment in response to a continued deterioration in her health are sufficient indications of a serious failing on the part of the respondent State to provide the applicant with the appropriate medical care while in detention, which amounted to inhuman and degrading treatment in breach of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

85. The applicant complained that her detention had been arbitrary, unjustified and lengthy. She relied on Article 5 §§ 1, 3 and 5 of the Convention, the relevant parts of which read 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.
>
> ...
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

A. Admissibility

86. The Court notes that the above complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. Article 5 § 1 of the Convention

87. The applicant submitted that her detention from 26 August to 2 September 2011, which was based on the Bilohirsk Court's decision of 26 August 2011 extending her detention in police custody, had not been lawful or in compliance with Article 5 § 1 of the Convention.

88. The Government contested that complaint.

89. The Court notes that when the applicant was brought before a court on 26 August 2011, she was not remanded in custody but her detention was extended to eight days with reference to Article 165-2 of the Code of Criminal Procedure, which provides that a court may extend a person's detention for up to ten days (fifteen days at the request of the suspect or accused) in order to examine all the information necessary to take a balanced decision on the person's detention. The Court has previously held that an extension of detention under Article 165 § 2 may be justified in certain circumstances where the court requires time to establish the person's identity and to collect other information crucial for taking a decision on his or her pre-trial detention. At the same time, the Court has noted that the reasons not to release the person should be compelling (see *Barilo v. Ukraine*, no. 9607/06, § 93, 16 May 2013). In the present case, the reasons for extending the applicant's detention were the need to establish her identity and place of residence and other pertinent circumstances (see paragraph 6 above). The Court notes that the reasons given do not substantiate the existence of any risks or circumstances justifying the need to keep the applicant in detention. In fact, the Bilohirsk Court's decision did not contain any assessment of her individual circumstances or the risks justifying her detention.

90. The Court thus considers that the applicant was detained between 26 August and 2 September 2011 in breach of Article 5 § 1 of the Convention.

2. Article 5 § 3 of the Convention

91. The applicant submitted that her pre-trial detention had been unreasoned and lengthy.

92. The Government contested that submission, stating that the applicant's detention had been justified and reasonable.

93. The applicable general principles are set out in *Buzadji v. the Republic of Moldova* ([GC], no. 23755/07, §§ 84-91 and 102, 5 July 2016).

94. Turning to the circumstances of the present case, the Court observes that, for the purposes of Article 5 § 3 of the Convention, the applicant was detained from 25 August until 19 December 2011. Her pre-trial detention therefore lasted for about four months.

95. The Court further observes that the seriousness of the charges against the applicant and the risk of her absconding or interfering with the investigation were mentioned in the initial order for her detention (see paragraph 7 above). Those reasons remained the main grounds for the applicant's detention until her conviction, with the exception of the decision of 8 December 2011, which contained no grounds whatsoever (see paragraph 11 above). The Court notes that the decisions on the applicant's detention were couched in general terms and contained repetitive phrases. They did not suggest that the court had made an appropriate assessment of facts relevant to the question of whether such a preventive measure was necessary in the circumstances at the respective stages of the proceedings.

96. The Court also points out that when extending the applicant's detention on 21 October 2011, the court referred to her failure to admit her guilt. That part of the reasoning appears to be irrelevant as it runs counter to important elements of the concept of a fair trial, such as freedom from self-incrimination and the presumption of innocence (see *Lutsenko v. Ukraine*, no. 6492/11, § 72, 3 July 2012).

97. The Court has often found a violation of Article 5 § 3 of the Convention in cases against Ukraine on the basis that even in respect of lengthy periods of detention, the domestic courts had referred to the same set of grounds (if indeed any were given) throughout the period of the applicant's detention (see, for example, *Kharchenko v. Ukraine,* no. 40107/02, §§ 80-81 and 99, 10 February 2011, and *Ignatov v. Ukraine*, no. 40583/15, §§ 41-42, 15 December 2016).

98. Having regard to the above, the Court considers that by failing to address specific facts or consider other measures as an alternative to pre-trial detention, and by relying essentially and routinely on the seriousness of the charges, the authorities extended the applicant's detention pending trial on grounds that cannot be regarded as "sufficient" and "relevant" to justify it.

99. There has accordingly been a violation of Article 5 § 3 of the Convention.

3. Article 5 § 5 of the Convention

100. The Court observes that the applicant's complaint under Article 5 § 5 is similar to complaints examined by the Court in a number of other cases against Ukraine (see, as the most recent example, *Sinkova v. Ukraine*, no. 39496/11, §§ 79-84, 27 February 2018). The Court concludes that the applicant did not have an enforceable right to compensation for her

unjustified detention, as required by Article 5 § 5. There has therefore been a violation of that provision.

IV. ALLEGED VIOLATION OF ARTICLE 18 IN CONJUNCTION WITH ARTICLE 5 OF THE CONVENTION

101. The applicant complained that the real purpose of her detention had differed from those envisaged by Article 5, and in particular, that in justifying her detention the domestic court had referred to her denial of her guilt and her refraining from making any statements. The applicant relied on Article 18 of the Convention, which reads as follows:

> "The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

102. The Government submitted that the applicant had not raised such a complaint under Article 18 of the Convention before the Court as it had not been mentioned in her application. They furthermore submitted that the applicant had not raised any complaints at the domestic level that her arrest and detention had been in breach of Article 18. They also argued that the applicant had not substantiated her complaint before the Court.

103. The Court observes that in her application to the Court, the applicant raised a number of complaints under Article 5 of the Convention alleging that her arrest and subsequent pre-trial detention had been unlawful. As regards the applicant's complaint under Article 18 in conjunction with Article 5 of the Convention, it was first mentioned in the applicant's letter of 14 July 2012. In particular, she indicated that her arrest on 25 August 2011 had been effected in order to remove her from her post in the State Bailiffs Service, and that the court had extended her detention on 21 October 2011 owing to her refusal to admit her guilt.

104. The Court notes in this connection that since the alleged events are not of a continuous nature, the applicant is expected to exhaust the available domestic remedies or, in their absence, to lodge the relevant complaints with the Court within six months from the date of the acts or measures complained of (see *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 157, ECHR 2009).

105. Having regard to its consistent approach to the effect that Article 18 of the Convention has no independent existence and can only be applied in conjunction with other Articles of the Convention (see *Navalnyy v. Russia (no. 2)*, no. 43734/14, § 84, 9 April 2019), the Court finds that the complaint under Article 18 should have been lodged within the same time-limits as those concerning the submission of the complaint under the principal provision of the Convention, namely Article 5 in the present case.

106. In the light of the foregoing, the Court considers that the applicant's complaint under Article 18 in conjunction with Article 5 of the Convention

was lodged outside the six-month time-limit and must therefore be rejected as inadmissible pursuant to Article 35 §§ 1 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

107. 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."

108. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage. The Government argued that that claim was unsubstantiated.

109. Making its assessment on an equitable basis, the Court awards the applicant EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

110. The applicant also claimed EUR 1,000 for the costs and expenses incurred before the domestic courts and before the Court, and EUR 50 for postal expenses. The Government contested the claim for costs and expenses as not being supported by relevant documentary evidence. As to the claim for postal expenses, they left this issue for the Court to decide.

111. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum.

112. The Court observes that the applicant failed to present any documentary evidence in support of her claims for costs and expenses. It therefore dismisses this claim as unsubstantiated. As regards the claim for postal expenses, the Court finds it justified and awards the applicant the amount sought, namely EUR 50.

113. The Court considers it appropriate that the default interest rate 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 complaints under Article 3 of the Convention (regarding the conditions of the applicant's detention in the Simferopol SIZO from 23 December 2011 to 5 July 2012) and regarding the alleged lack of access to an adequate medical treatment in detention, and under Article 5 §§ 1, 3 and 5 (regarding the arbitrariness of her detention from 25 August to 2 September 2011, the lack of relevant and sufficient reasons for her pre-trial detention, and the lack of an enforceable right to compensation

in that regard) 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 § 1 of the Convention;

4. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

5. *Holds* that there has been a violation of Article 5 § 5 of the Convention;

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 50 (fifty euros), plus any tax that may be chargeable to the applicant, in respect of postal expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 September 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Lado Chanturia President