

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

FIFTH SECTION

CASE OF BARILO v. UKRAINE

(Application no. 9607/06)

JUDGMENT

STRASBOURG

16 May 2013

FINAL

16/08/2013

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



In the case of Barilo v. Ukraine,

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

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ann Power-Forde,
André Potocki,
Paul Lemmens, *judges,*
Myroslava Antonovych, ad hoc *judge,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 9 April 2013,

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

PROCEDURE

1. The case originated in an application (no. 9607/06) 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, Mrs Valentina Stanislavovna Barilo ("the applicant"), on 23 February 2006.

2. The applicant was represented by Mr M.A. Manshin, a lawyer practising in Yevpatoriya, Ukraine. The Ukrainian Government ("the Government") were represented by their Agent, most recently, Mr N. Kulchytskyy, of the Ministry of Justice of Ukraine.

3. The applicant alleged, in particular, that she had been unlawfully deprived of her liberty, that the conditions of her detention had been inhuman, that she had not been provided with adequate medical assistance while in detention and that she had had no effective remedy in respect of her complaints about the conditions of detention and the lack of adequate medical assistance.

4. On 12 January 2011 the application was communicated to the Government. Mrs G. Yudkivska, the judge elected in respect of Ukraine, was unable to sit in the case (Rule 28 of the Rules of Court). The President of the Chamber decided to appoint Ms Myroslava Antonovych to sit as an ad hoc judge (Rule 29 § 1(b)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1970 and lives in the town of Yevpatoriya, Ukraine.

6. Since 1994 the applicant has had diabetes mellitus and other chronic illnesses. She has been hospitalised on several occasions.

7. At the material time the applicant was working in tax inspection and raising her nine-year-old daughter alone.

A. Criminal proceedings against the applicant, her arrest and detention

8. On 3 February 2006 the Saky Prosecutor's Office (Сакська міжрайонна прокуратура) instituted criminal proceedings against the applicant for abuse of a position of power, allegedly committed between June 2004 and July 2005.

9. On 6 February 2006 the investigating officer of the Saky Prosecutor's Office, referring to Articles 106 and 115 of the Code of Criminal Procedure of Ukraine, decided that the applicant should be arrested and placed in the Saky Temporary Detention Centre (*ізолятор тимчасового тримання*) (hereinafter "the ITT") because "witnesses in the criminal case had identified the applicant as a person who had committed a crime for which the penalty of imprisonment could be imposed".

10. On the same day the applicant was arrested – allegedly at her workplace – and taken to a hospital in order to check whether her state of health was compatible with detention (see paragraph 19 below). The applicant was then placed in the ITT.

11. On 7 February 2006 the investigating officer of the Saky Prosecutor's Office rejected a request by the applicant that S. and D. represent her in the criminal case, since they had failed to present any documents certifying their law degrees.

12. On 9 February 2006 the applicant was brought before a court. The investigating officer asked the court to authorise the applicant's pre-trial detention since she had committed a serious crime and could abscond and hinder the investigation. The applicant and her lawyer, M., requested the applicant's release in view of her state of health and the fact that she would not abscond because she was taking care of her daughter, who was a minor. The Saky Local Court extended the applicant's detention to ten days in order to collect additional information necessary for taking a decision on her pre-trial detention. This included information from her place of residence about her character, a certificate about the composition of her family and

information about any previous criminal record. The court noted that this decision was not subject to appeal.

13. Following complaints lodged by D., the Ukrainian Parliamentary Commissioner for Human Rights wrote to the Saky Prosecutor's Office on 14 February 2006 saying that the applicant's further detention could be considered as torture in view of her state of health. This letter was received by the prosecutor's office on 16 February 2006 and redirected to the investigating officer in charge of the applicant's case.

14. On 16 February 2006 the Saky Prosecutor's Office ordered the applicant's release. It was noted that the applicant had a disability of the third degree (the mildest) and was suffering from diabetes and other illnesses. She required insulin injections, a special diet and permanent medical supervision, which were impossible to provide in the Saky ITT. Moreover, the applicant had a child who was a minor. She also had a permanent place of residence and no possibility to hinder the investigation since, *inter alia*, she had already been dismissed from the office she had allegedly abused. The applicant wrote on the decision:

> "[I] have no complaints against the ITT personnel. [I] was not subjected to physical pressure in the ITT."

15. The criminal proceedings against the applicant were stayed "because of the applicant's serious illness".

16. On 7 April 2006 the Saky Local Court rejected a complaint lodged by S. against the decision of 7 February 2006 not to allow him to represent the applicant because the complaint had not been lodged within the criminal proceedings against the applicant. On 21 April 2006 the same court rejected appeals lodged by the applicant and S. against this decision, as it was not subject to appeal.

17. The criminal proceedings against the applicant were resumed and on 3 October 2006 the Saky Local Court sentenced the applicant to three years' imprisonment with one year's probation for embezzlement of property through abuse of a position of power. The applicant was represented by an advocate, M.

18. On 12 December 2006 the Court of Appeal of the Autonomous Republic of Crimea (hereinafter – "the ARC") rejected an appeal lodged by the applicant and upheld the sentence of 3 October 2006. On 4 December 2007 the Supreme Court of Ukraine rejected an appeal in cassation lodged by the applicant.

B. Medical assistance and conditions of the applicant's detention

1. Medical assistance

19. On 6 February 2006 at around 2 to 3 p.m. the applicant was taken by the police to the Saky Central District Hospital (*Сакська центральна районна лікарня*), where she was examined by doctors including I., an endocrinologist. It was concluded that the applicant "did not need hospitalisation". I. issued instructions for the applicant's treatment, which included four insulin injections per day. The applicant was diagnosed with a severe form of diabetes. She received an insulin injection.

20. Between 6 and 11 February 2006 an ambulance was called to the ITT twice or three times per day to give the applicant insulin injections. An ambulance was called on 6 February 2006 at 5.05 p.m. and 8.40 p.m.; on 7 February 2006 at 8 a.m., 12.58 p.m. and 5.50 p.m.; on 8 February 2006 at 0.48 a.m., 9.11 a.m. and 6.20 p.m.; on 9 February 2006 at 7.10 a.m., 12.52 p.m. and 9.20 p.m.; on 10 February 2006 at 8.07 a.m. and 515 p.m., and on 11 February 2006 at 855 a.m. On each ambulance visit between 6 and 9 February 2006 the applicant was diagnosed with a severe form of diabetes.

21. On 7 February 2006 D. and the applicant's mother complained to a number of State authorities, including the Saky Prosecutor's Office that the applicant had not been provided with adequate medical assistance and was being detained in the ITT without a bed, bed linen or personal hygiene products. In reply, the Ministry of Internal Affairs informed D. that the conditions of the applicant's detention were adequate and that she was being detained in a cell "equipped with individual sleeping places".

22. On the same day the investigating officer rejected a request by K. (one of the applicant's lawyers) to have the applicant admitted to a hospital. He referred to a letter of 7 February 2006 from the Saky Central District Hospital, which stated that the applicant could be detained if the diet and recommendations given by the doctor on 6 February 2006 were complied with. It was also noted that where necessary the applicant had been provided with medical assistance by ambulance doctors and by the ITT paramedic.

23. On 10 February 2006 the applicant was examined by an endocrinologist and diagnosed with diabetes of medium severity (*сахарный диабет средней тяжести*).

24. On 11 February 2006 the applicant was examined by a doctor from Saky Central District Hospital.

25. According to the applicant, between 12 and 16 February 2006 she had administered insulin injections herself because the ITT paramedic had been on holiday and the ambulance had refused to come to the detention centre.

26. On 16 February 2006, immediately after her release (see paragraph 14 above), the applicant was hospitalised in Yevpatoriya Town Hospital – and was diagnosed with severe type-one diabetes mellitus (*сахарный диабет*, *тяжелое течение*) and suspected diabetic precoma.

27. On 29 March 2006 the applicant's lawyer, M., was informed by the Head of the ITT that while the ITT paramedic had been on holiday the ITT had had to call an ambulance for the applicant.

2. Material conditions of detention

28. The applicant stated that between 6 and 16 February 2006 she had been detained in cell no. 12 measuring 10 to 12 square metres with five other detainees, namely, L., R., K., G. (who allegedly stayed in the cell only for one day) and B. (who allegedly stayed in the cell for only two days). This was partially confirmed by a letter of 15 November 2006 from the Saky Prosecutor's Office, which stated that the applicant had been detained with K., L. and R.

29. There had been no bed, table or chairs in the cell, so the applicant had had to sleep and eat on a mattress. There had been cotton padding around the window, which had been covered with packing cloth. There had been no daylight and the artificial light had been very poor. The applicant had been unable to go for walks and had not had the opportunity to take showers. She had not been provided with a pillow, sheets or a blanket. She had not received the special diet she needed for her illnesses. According to the applicant, between 6 and 16 February 2006 the detainees in the ITT had been fed pasta with fat and water. The applicant had eaten only food provided by her relatives.

30. On 3 May 2006 the Head of the ITT informed the applicant's lawyer that between 6 and 16 February 2006 the applicant had been detained in cell no. 12.

31. The Government submitted an inspection certificate of cells nos. 6 and 12 dated 15 March 2011. The inspection had been carried out by officials of the Ministry of Internal Affairs and by the ITT deputy head. The inspected cells measured 13.98 and 14.96 square metres respectively, and each cell had a window, a toilet, a sink, "individual sleeping places", a table, artificial lighting and ventilation.

32. In a letter of 18 March 2011 the Ministry of Internal Affairs informed the then Government's Agent, Mrs Lutkovska, that the applicant had been detained in cells nos. 6 and 12. It had been impossible to establish the number of persons detained together with the applicant because the relevant documents had been destroyed in December 2010. The applicant had received a special diet in accordance with the decision of the Cabinet of Ministers of Ukraine no. 336 of 16 June 1992 on food standards for detainees in temporary detention centres. She had also received food

packages from relatives and friends. Between 12 and 16 February 2006 she had been provided with medical assistance by the ITT paramedic.

C. Proceedings following the applicant's complaints about lack of adequate medical assistance while in detention

33. On 14 June 2006 the applicant's lawyer lodged a complaint with a prosecutor's office about the failure to provide his client with adequate medical assistance while she was detained in the ITT.

34. On 13 July 2006 the Saky Prosecutor's Office refused to institute criminal proceedings because there was no evidence of crime. It was concluded that the applicant had regularly received medical assistance and that an ambulance had been called for her three to four times a day. The applicant had been released in a satisfactory condition.

35. On 21 July 2006 the Prosecutor's Office of the ARC quashed that decision and remitted the case for additional investigation. It was concluded that the decision was premature since the applicant's allegations had not been fully verified. In particular, the ITT paramedic had not been questioned, nor had it been checked who had administered the applicant's insulin injections between 12 and 16 February 2006.

36. On 18 August 2006 the Saky Prosecutor's Office again refused to institute criminal proceedings because there was no evidence of crime. O., the head of the ambulance service, was questioned. She testified that an ambulance had been called for the applicant three to four times a day. Ya., an ambulance paramedic, stated that on 6 and 10 February 2006 an ambulance had been called for the applicant about eight times. She had given the applicant insulin injections and taken blood samples.

37. On 12 October 2006, following a request from the applicant's lawyer, an expert from the Kyiv City Bureau of Forensic Medical Examination (*Київське міське бюро судово-медичної експертизи*), Z., studied photocopies of the following documents:

- the applicant's hospital discharge summary of 21 May to 4 June 2003;
- the endocrinologist's diagnosis of 6 February 2006;
- the record of insulin injections between 8 and 10 February 2006;
- the endocrinologist's diagnosis of 10 February 2006;
- the endocrinologist's diagnosis of 12 February 2006 (the visit allegedly took place together with an ambulance doctor);
- the results of blood and urine analyses of 6 and 11 February 2006;
- the applicant's hospital discharge summary for 16 February to 7 March 2006.

38. The expert considered that the applicant had needed hospitalisation as early as 6 February 2006. The insulin injections had been prescribed correctly but had not been adjusted to take account of the caloric effect of meals and the dynamics had not undergone a laboratory check. The expert

concluded that the applicant had not received adequate treatment for her illness between 6 and 16 February 2006.

39. On 19 October 2006 the decision of 18 August 2006 was quashed by the Prosecutor's Office of the ARC, since the investigation had been perfunctory and the instructions of 21 July 2006 had not been complied with. It had not been checked whether ambulances had been called between 12 and 16 February 2006, the endocrinologist, I., and the applicant had not been questioned etc. Moreover, specialists should have checked the adequacy and completeness of the applicant's treatment between 6 and 16 February 2006. The case was transferred to the Saky Prosecutor's Office for further investigation.

40. On 17 November 2006 the Saky Prosecutor's Office again refused to institute criminal proceedings because there was no evidence of crime. For additional evidence, I., the endocrinologist, was questioned. She had known the applicant since 1994 when the latter had been diagnosed with diabetes. She had examined the applicant on 6 February 2006 and had concluded that her state of health was satisfactory but that she was under psychological stress. It had been decided that insulin injections should be administered to the applicant by ambulance doctors in accordance with the applicant's previous treatment instructions. I. had visited the applicant on 10 February 2006. The applicant's state of health had been satisfactory. She had been prescribed various medications.

41. On 27 March 2007 the decision of 17 November 2006 was quashed by the General Prosecutor's Office (hereinafter "the GPO") and the case was transferred to the Prosecutor's Office of the ARC for further investigation. It was noted that the applicant had not been questioned, and it had not been established whether she had needed medical assistance between 12 and 16 February 2006 and, if so, whether she had been provided with it. The instructions of 21 July 2006 issued by the Prosecutor's Office of the ARC had not been complied with, the expert conclusion of 12 October 2006 had not been taken into account etc.

42. In April 2008 experts of the Crimea Bureau of Forensic Medical Examination (*Кримська республіканська установа Бюро судово-медичної експертизи*) studied the documents in the applicant's medical file. They had before them the ambulance records of 6 to 11 February 2006, the applicant's hospital files from 2003 to 2006, photocopies of the endocrinologist's conclusions of 6 and 10 February 2006 and other documents. They concluded that since 1993 the applicant had been suffering from severe type-one diabetes mellitus and a chronic kidney infection. On 6 February 2006 the applicant had not needed hospitalisation. I. had correctly prescribed the applicant's treatment. According to the medical documents provided, between 6 and 16 February 2006 the applicant had received adequate medical treatment. It was further stated that "the psychological stress, together with other factors such as excessive physical

activity and a change in diet, could have led to a deterioration of the applicant's disease. However, there had been no indication of such a deterioration in the medical documents presented to the experts." It was concluded that there was no causal link between the applicant's medical assistance in detention and the deterioration of her state of health upon release.

43. On 18 April 2008 the Saky Prosecutor's Office again refused to institute criminal proceedings for alleged failure to provide the applicant with adequate medical assistance while in detention.

44. On 20 November 2008 the GPO again quashed this decision and the case was transferred back to the Prosecutor's Office of the ARC for further investigation. It was noted that the expert conclusions of 12 October 2006 and April 2008 were contradictory. Unless these opinions could be reconciled, a further forensic examination would have to take place.

45. On 12 December 2008 the Saky Prosecutor's Office again refused to institute criminal proceedings. For additional evidence, the experts of the Crimea Bureau of Forensic Medical Examination were questioned. They submitted that the conclusion of 12 October 2006 should be considered as an "evaluation" and "personal", since it had been given following a request by the applicant's lawyer. Moreover, it had been based on photocopies of medical documents which were not trustworthy. One of the experts submitted that she was not competent to evaluate the contradictions in expert conclusions.

D. Other proceedings

46. On 5 January 2010 the Saky Local Court rejected a claim for damages lodged by the applicant against the State of Ukraine. On 14 April 2010 the Court of Appeal of the ARC upheld this decision.

47. The applicant also submitted copies of numerous court decisions in cases that she had brought against her former employer, various courts, judges and other State authorities. The applicant also tried to institute criminal proceedings against various State authorities, but was unsuccessful.

II. RELEVANT DOMESTIC LAW

A. Constitution of Ukraine 1996

48. The relevant Constitution provisions read as follows:

Article 29

"Everyone has the right to freedom and personal inviolability.

No one shall be arrested or held in custody other than pursuant to a reasoned court decision and only on grounds of, and in accordance with, a procedure established by law.

In the event of an urgent necessity to prevent or stop a crime, bodies authorised by law may hold a person in custody as a temporary preventive measure, the reasonable grounds for which shall be verified by a court within seventy-two hours. The detained person shall be released immediately if he or she has not been provided, within seventy-two hours of the time at which he or she was detained, with a reasoned court decision in respect of the holding in custody.

Everyone who has been arrested or detained shall be informed without delay of the reasons for his or her arrest or detention, apprised of his or her rights, and from the time at which he or she was detained shall be given the opportunity to personally defend himself or herself, or to have the legal assistance of defence counsel.

Everyone who has been detained has the right to challenge his or her detention in court at any time.

Relatives of an arrested or detained person shall be informed immediately of his or her arrest or detention."

B. Code of Criminal Procedure, 1960 (with amendments)

49. Article 165-2 of the Code, in force at the material time, read as follows:

Article 165-2: Procedure for the selection of a preventive measure

"... In the event that the investigating body or investigator considers that there are grounds for selecting a custodial preventive measure, with the prosecutor's consent, he shall lodge an application with the court. The prosecutor is entitled to lodge an application to the same effect. In determining this issue, the prosecutor shall familiarise himself with all the material evidence in the case that would justify placing the person in custody, and verify that the evidence was obtained in a lawful manner and is sufficient to charge the person.

The application shall be considered within seventy-two hours of the time at which the suspect or accused was detained.

...

Upon receiving the application, the judge shall examine the material in the criminal case file submitted by the investigating bodies or investigator. A prosecutor shall question the suspect or accused and, if necessary, hear evidence from the person who is the subject of the proceedings, obtain the opinion of the previous prosecutor or defence counsel, if the latter appeared before the court, and issue an order

(1) refusing to select a custodial preventive measure if there are no grounds for doing so;

(2) selecting a custodial preventive measure.

The court shall be entitled to select a non-custodial preventive measure for the suspect or accused if the investigator or prosecutor refuses to apply a custodial preventive measure.

The judge's order may be appealed against to the court of appeal by the prosecutor, suspect, accused or his or her defence counsel or legal representative, within three days from the date on which it was made. The lodging of an appeal shall not suspend the execution of the judge's order.

If the selection of the preventive measure for the detained person requires further examination of information about that person or if other circumstances relevant to the decision on this matter must be established, the judge may issue a decision to extend the detention for up to ten days, and, at the request of the suspect or accused, for up to fifteen days. Where such a need arises in respect of a person who has not been apprehended, the judge may postpone the hearing for up to ten days and take measures which would ensure that person's cooperation or issue a decision to detain the suspect or accused for that period of time."

50. The remaining relevant provisions of the Code are summarised in the judgments *Korneykova v. Ukraine* (no. 39884/05, § 23, 19 January 2012) and *Osypenko v. Ukraine* (no. 4634/04, § 33, 9 November 2010).

C. Decision of the Cabinet of Ministers of Ukraine no. 336 of 16 June 1992 on food standards for detainees in temporary detention centres

51. The above decision established a daily ration for detainees in temporary detention centres. It provided that detainees with diabetes should receive food in accordance with ration 8C "Diet for detainees with diabetes", irrespective of their place of detention.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

52. The applicant complained that the conditions of her detention had amounted to torture and degrading treatment, in breach of Article 3 of the Convention. She had also not been provided with adequate medical assistance while in detention. The invoked Article reads as follows:

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

A. Admissibility

53. The Government maintained that the applicant had had effective domestic remedies in respect of her complaint about inappropriate conditions of detention. She could have lodged a complaint with the prosecutor's office and/or the court. The prosecutor could then have instructed the ITT administration to reduce the number of detainees in each cell, provide the applicant with bed linen and adequate lighting, put a table and chairs in the cell and provide the applicant with appropriate food. The applicant could also have requested that criminal proceedings be instituted against the ITT administration.

54. The Government further contended that the applicant had failed to substantiate her complaints about inappropriate conditions of detention and lack of adequate medical assistance.

55. The applicant maintained that on 7 and 9 February 2006 D. and the applicant's parents had complained about the inadequate conditions of the applicant's detention to the President of Ukraine, the GPO, the Saky Prosecutor's Office and other State officials.

56. The Court notes that it has on a number of occasions dismissed similar objections by Governments in respect of failure to exhaust effective domestic remedies, referring, amongst other things, to the structural nature of matters complained of (see *Melnik v. Ukraine*, no. 72286/01, §§ 69-71, 28 March 2006; *Koktysh v. Ukraine*, no. 43707/07, §§ 83-86, 10 December 2009; and *Belyaev and Digtyar v. Ukraine,* nos. 16984/04 and 9947/05, §§ 30-31, 16 February 2012). It can see no reason to hold otherwise in the present case. Moreover, it appears that the applicant's mother lodged a complaint in this connection with the prosecutor's office, but to no avail (see paragraph 21 above).

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

B. Merits

1. Lack of adequate medical assistance while in detention

(a) The parties' submissions

(i) The Government

58. The Government stated that the applicant had undergone a medical check-up before being sent to the ITT. She had been prescribed insulin

injections, which had been administered by ambulance doctors and, after 12 February 2006 when her condition had improved, by an ITT paramedic. On 8 February 2006 the applicant had refused to allow an ITT paramedic to do the insulin injections and had administered one injection herself. On 10 February 2006 the applicant had been examined by an endocrinologist who had not established that the applicant needed hospitalisation.

59. The Government underlined that on 16 February 2006 the applicant had herself noted on the decision on her release that she had no complaints about the conditions of her detention, the availability of medical assistance or the adequacy of the food.

60. The Government further noted that the expert conclusion of 12 October 2006 was inadequate and unreliable. During the investigation following the applicant's complaints about lack of medical assistance while in detention, it had been established that the expert conclusion should be considered as an evaluation. Moreover, the expert had examined only photocopies of the relevant documents, and such copies were not reliable. The Government submitted that the expert examination of April 2008 had been carried out by recognised specialists, while the expert opinion of 12 October 2006 had been given by a general practitioner.

61. Therefore, the applicant's allegations about lack of adequate medical assistance in the ITT were unsubstantiated.

(ii) The applicant

62. In reply the applicant submitted that the Government's statement that her condition had improved after 12 February 2006 and that she had been provided with medical assistance by an ITT paramedic was inaccurate because she had been hospitalised on 16 February 2006 with suspected diabetic precoma. Moreover, as the Head of the ITT had stated on 29 March 2006, the ITT paramedic had been on holiday.

63. Furthermore, the Government's statement that the applicant had had no complaints about the conditions of her detention, the availability of medical assistance or the adequacy of the food did not correspond to the reality since the applicant had simply written: "[I] have no complaints against the ITT personnel. [I] was not subjected to physical pressure in the ITT."

64. The applicant further submitted that the number of insulin injections administered to her – two on 6 and 10 February 2006, three between 7 and 9 February 2006 and one on 11 February 2006 – had not been sufficient, since on 6 February 2006 the doctor had recommended four injections a day. Moreover, no ambulances had been called for the applicant at all after 11 February 2006.

65. Therefore, between 6 and 16 February 2006 the applicant had not received adequate treatment for her diabetes.

(b) The Court's assessment

66. The Court reiterates that the State must ensure that the health and well-being of detainees are adequately secured by, among other things, providing them with the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI).

67. Where the authorities decide to place and maintain in detention a person who is seriously ill, they should demonstrate special care in guaranteeing such conditions as corresponding to his special needs resulting from his disability (see *Price v. the United Kingdom*, no. 33394/96, § 30, ECHR 2001-VII, and *Farbtuhs v. Latvia*, no. 4672/02, § 56, 2 December 2004).

68. The mere fact that a detainee was seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 116, 29 November 2007). The authorities must also ensure that, where required by the nature of a medical condition, supervision is regular and systematic, and that there is a comprehensive therapeutic strategy aimed at curing the detainee's diseases or preventing their aggravation, rather than treating them on a symptomatic basis (see *Hummatov*, cited above, §§ 109 and 114, and *Popov v. Russia*, no. 26853/04, § 211, 13 July 2006). The authorities must also show that the necessary conditions were created for the prescribed treatment to be actually followed through (see *Hummatov*, cited above, § 116).

69. In the present case the applicant had been suffering from diabetes for a significant period of time. At about 2 to 3 p.m. on the day of her arrest the applicant was examined by an endocrinologist and it was concluded that she did not need to be hospitalised. Instructions were compiled for the applicant's treatment. However, only two hours later the ITT called her an ambulance (see paragraph 20 above). Therefore, the question remains whether the applicant's condition was satisfactory when she was admitted to the ITT.

70. The Court further notes that, according to the instructions issued by the endocrinologist, I., on 6 February 2006, the applicant needed four insulin injections per day and it is unclear whether these instructions were complied with. According to the available materials, an ambulance was called for the applicant from one to three times per day between 6 and 11 February 2006. However, it remains unclear whether the remaining injections were administered and, if not, what impact that had on the applicant's health. The same applies to the period between 12 and 16 February 2006, when no ambulance was called for the applicant. Furthermore, although the applicant underwent blood and urine tests, it is not clear whether the insulin dose administered to the applicant was then adjusted as necessary.

71. Lastly, the Court notes that on 16 February 2006 the Saky Prosecutor's Office concluded that the insulin injections, special diet and permanent medical supervision needed by the applicant were impossible to provide in the Saky ITT, so the applicant was released. Immediately after her release the applicant was hospitalised with suspected diabetic precoma.

72. Although the conclusion of the forensic medical examination of April 2008 was that "there was no causal link between the applicant's medical assistance while in detention and the deterioration of her state of health upon release", the Court cannot rely on it since the contradictions between that conclusion and the one dated 12 October 2006 had not been reconciled as requested in the prosecutor's decision of 20 November 2008. In particular, there is no evidence that the expert, Z., was ever questioned, and his opinion was disregarded simply on the basis that it was "evaluatory" and "personal". The argument that the conclusion of 12 October 2006 was unreliable because the expert had studied only photocopies of the applicant's medical documents is rebutted by the fact that photocopies of some medical documents were also studied in the course of the expert examination of April 2008.

73. The above considerations are sufficient for the Court to conclude that the applicant was not provided with adequate medical assistance while in detention.

2. Material conditions of the applicant's detention

(a) The parties' submissions

(i) The Government

74. The Government submitted that the ITT was situated in a four-storey building and had twelve cells. It had a recreation yard, a room for warming up food and a shower room with cold and hot water. All cells had sanitary facilities, a table and individual beds. The detainees were provided with bed linen. The windows let in a sufficient amount of daylight and the cells had artificial lighting. It was impossible to establish the exact number of detainees in the applicant's cells since all the relevant documents had been destroyed. Even assuming that the applicant had been detained together with three or four others, the amount of space per person in the cells had been satisfactory (5 and 3.5 square metres per person). At the material time, the applicant had been unable to go for walks since the recreation yard was under reconstruction. The applicant had been provided with a special diet in accordance with Cabinet of Ministers' decision no. 336 (ration 3B) and had been able to receive food packages from relatives and friends. Therefore, the Government concluded that the applicant had been detained in adequate conditions.

(ii) The applicant

75. The applicant argued that the Government had failed to substantiate their statement that she had been detained in adequate conditions. In particular, the description of the ITT cells submitted by the Government was dated 15 March 2011 and there was no evidence about the conditions of the applicant's detention at the material time. Moreover, the applicant had never been detained in cell no. 6.

76. The applicant further stated that the Government could have questioned the ITT personnel or those who had been detained together with her in order to verify the conditions of detention at the material time.

77. The applicant also noted that the Government had produced no evidence, such as menus, quality control documents or hygiene certificates, to show that she had been provided with an appropriate diet while in detention. According to information provided by the ITT personnel, between 6 and 16 February 2006 a private company had provided the ITT catering. On 26 April 2006 the applicant's lawyer had asked the company to inform him about the quality of the food and the menus provided to the ITT during the above period. He had received no answer to his request. According to the applicant, she had been given pasta with fat and water, and bread. She had not eaten it. The applicant's relatives had brought her food and bed linen.

(b.) The Court's assessment

78. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. In accordance with this provision, the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him 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 health and well-being are adequately secured (see *Visloguzov v. Ukraine*, no. 32362/02, §§ 56 and 57, 20 May 2010, with further references).

79. The Court further notes that where the respondent Government alone have access to information capable of firmly corroborating or refuting allegations under Article 3 of the Convention, a failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-founded nature of the applicant's allegations (see *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004). In such cases the Court focuses its analysis on the facts presented to it which the respondent Government have

either admitted or failed to refute, without establishing the veracity of each and every allegation.

80. The Court notes that in the present case the applicant was detained in the ITT for ten days. The cell in which she was detained measured approximately 15 square metres. It is unclear from the parties' submissions how many inmates were in the cell at any particular time, although it appears from the applicant's submissions that for the majority of the time the cell was shared by four persons. Thus, each person had 3.5 square metres of floor space, which is below the minimum standard recommended by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment for multiple occupancy cells (4 square metres of living space for a single inmate in multi-occupancy cells) (see *Rodić and Others v. Bosnia and Herzegovina*, no. 22893/05, § 77, 27 May 2008).

81. As for the other material conditions of the applicant's detention, the Court notes that the report submitted by the Government outlining these conditions was prepared in 2011, whereas the period complained of dates back to 2006. The Court cannot therefore rule out the possibility that the applicant's contentions as to the inadequacy of lighting, inappropriate food, lack of bed linen, absence of a bed and the impossibility to take a shower for ten days were based on the real circumstances of her detention. Moreover, at the material time the applicant complained about the absence of a bed and bed linen to the national authorities, but they did not remedy the situation and her relatives had to supply her with bed linen.

82. Similarly, there is no evidence that the food provided was adequate at the material time, as the Government's submissions in this respect are limited to a reference to statutory provisions. However, an appropriate diet was crucial to the applicant in view of her state of health. In any event, she was supposed to be provided with a daily ration in accordance with ration 8C and not ration 3B as submitted by the Government (see paragraphs 51 and 74 above).

83. Lastly, the Court notes that although the applicant was detained in such conditions for only ten days, her suffering was significantly aggravated by her fragile health.

3. Conclusion

84. In sum, the Court, having regard to the above considerations, finds that the applicant was not provided with adequate medical assistance while in detention and the conditions of her detention in the Saky ITT amounted to inhuman and degrading treatment in breach of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

85. The applicant complained that there had been no reason for her arrest and detention. She invoked Article 5 § 1 of the Convention, which, in so far as relevant, 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 ..."

A. Admissibility

86. The Government did not submit any observations in respect of the admissibility of this complaint.

87. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

88. The Government maintained that the applicant had been arrested with the aim of bringing her before the competent court on reasonable suspicion of having committed a crime, and thus her arrest had complied with the requirements of Article 5 § 1 (c) of the Convention.

89. The applicant argued that there had been no reason for her arrest.

90. The Court emphasises that Article 5 of the Convention guarantees the fundamental right to liberty and security, which is of primary importance in a "democratic society" within the meaning of the Convention. All persons are entitled to the protection of that right, that is to say, not to be deprived, or to continue to be deprived, of their liberty, save in accordance with the conditions specified in Article 5 § 1. The list of exceptions set out in the aforementioned provision is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely, to ensure that no one is arbitrarily deprived of his or her liberty (see *Khayredinov v. Ukraine*, no. 38717/04, § 26, 14 October 2010, with further references). No detention which is arbitrary can be compatible with Article 5 § 1, the notion of "arbitrariness" in this context extending beyond a lack of conformity with national law. As a consequence, a deprivation of liberty which is lawful under domestic law can still be arbitrary and thus contrary to the Convention, in particular where there has

been an element of bad faith or deception on the part of the authorities (see *Mooren v. Germany* [GC], no. 11364/03, §§ 72, 77 and 78, 9 July 2009, with further references) or where such deprivation of liberty was not necessary in the circumstances (see *Nešťák v. Slovakia*, no. 65559/01, § 74, 27 February 2007).

91. In the present case the Court notes that the applicant was arrested three days after criminal proceedings had been instituted against her. The reasons for her arrest were that she had been identified by witnesses as a person who had committed a crime and that the sanction for that crime was imprisonment. Later, before the court, the investigating officer also noted that the applicant might abscond and hinder the investigation.

92. The applicant was brought before the court within seventy-two hours, as required by the law. However, the court was unable to take any decision on her pre-trial detention since it did not have all the necessary materials. It therefore authorised a further ten days' detention, pending additional information, in accordance with the law.

93. The Court notes that Article 165-2 of the Code of Criminal Procedure provides that a court might extend a person's detention for up to fifteen days in order to study all the information necessary to take a balanced decision on the person's detention. Such an extension may be justified in particular circumstances where the court requires time to establish the person's identity and collect other information crucial for taking a decision on his or her pre-trial detention. At the same time, the Court notes that the reasons not to release the person should be compelling.

94. In the present case, the national court concluded that it was unable to decide on the necessity of the applicant's pre-trial detention since it lacked information about her character, family situation and previous criminal records.

95. The Court notes in this respect that the applicant was arrested three days after the institution of criminal proceedings against her and brought before the court three days later. There is no evidence that, in the circumstances of the case, the investigating authorities did not have enough time to collect and present before the court all the necessary information in support of their request for the applicant's pre-trial detention. Moreover, seven days later the Saky Prosecutor's Office decided that the applicant's pre-trial detention was unnecessary because adequate medical assistance could not be provided to her in the ITT, she had a permanent place of residence, she was raising her daughter, who was a minor, and she had no criminal record.

96. The Court notes that the applicant was brought before the court three days after her arrest. It does not appear that the investigating authorities did not have the means and the time to collect the necessary information about her person or about other circumstances relevant for the examination by the court of their request to order the applicant's pre-trial detention.

97. The Court further notes that in such circumstances the investigating authorities' request for the applicant's detention does not appear to be well grounded. Therefore, it can be concluded that the court authorised the further ten days' detention only in order to provide the investigating authorities with more time to substantiate their request, when there was no evidence that any circumstances had prevented them from doing so before submitting a request for detention. Moreover, it does not appear from the documents submitted by the parties that there were any compelling reasons for the applicant's detention.

98. The Court thus considers that the applicant was detained in breach of Article 5 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

99. The applicant complained under Article 13 of the Convention that all her complaints to the domestic authorities and those of her relatives and friends about the inappropriate conditions of detention and the lack of adequate medical assistance had been to no avail. The invoked Article provides, in so far as relevant, as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

100. The Government did not submit any observations as to the admissibility of this complaint.

101. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

102. The Government reiterated their submission that the complaints lodged with a prosecutor and a court were effective domestic remedies in respect of the applicant's complaints under Article 3 of the Convention.

103. The applicant did not submit any observation in this connection.

104. The Court points out that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. With reference to its earlier case-law (see, among other authorities, *Melnik*, cited above, §§ 113-16, and *Dvoynykh v. Ukraine*, no. 72277/01, § 72, 12 October 2006), and its recent

findings (see *Petukhov v. Ukraine*, no. 43374/02, § 101, 21 October 2010, and *Tsygoniy v. Ukraine,* no. 19213/04, §§ 82-83, 24 November 2011), the circumstances of the present case and the Court's findings concerning lack of domestic remedies with respect to the applicant's complaint about the conditions of her detention (see paragraph 56 above), the Court finds that the Government have not shown that the applicant had in practice an opportunity to obtain effective remedies for her complaints, that is to say, remedies, which could have prevented the violations from occurring or continuing, or could have afforded the applicant appropriate redress.

105. The Court concludes, therefore, that there has been a violation of Article 13 of the Convention on account of the lack of an effective and accessible remedy under domestic law for the applicant's complaints in respect of the conditions of her detention and the lack of appropriate medical assistance.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

106. The applicant complained under Article 6 § 3 (c) of the Convention that D. and S. had not been allowed to defend her.

107. The applicant also complained under Article 6 § 1 of the Convention that the hearings in her case had been unfair. She also invoked Article 5 §§ 3 and 4 of the Convention without any further specification.

108. Having considered the applicant's submissions in the light of all the material in its possession, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

109. It follows that this part of the application must be declared inadmissible as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

110. 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

111. The applicant claimed 50,000 euros (EUR). She did not specify whether the claim covered pecuniary or non-pecuniary damage, or both.

112. The Government considered the applicant's claim excessive.

113. The Court, deciding on an equitable basis, awards the applicant EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

114. The applicant did not claim any costs and expenses.

115. The Court therefore makes no award under this head.

C. Default interest

116. 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 concerning lack of adequate medical assistance to the applicant in detention and material conditions of her detention, and under Articles 5 § 1 and 13 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention in respect of lack of adequate medical assistance to the applicant in detention and material conditions of her detention;

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 13 of the Convention;

5. *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 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State 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;

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

Done in English, and notified in writing on 16 May 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Mark Villiger
Registrar	President