

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

FIFTH SECTION

CASE OF DERKACH v. UKRAINE

(Applications nos. 23537/20 and 23615/20)

JUDGMENT

STRASBOURG

9 February 2023

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



In the case of Derkach v. Ukraine,

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

Mārtiņš Mits*, President*,
Mattias Guyomar,
Mykola Gnatovskyy*, judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 19 January 2023,

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

PROCEDURE

1. The case originated in two applications against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on the various dates indicated in the appended table.

2. The applicant was represented by Mr A.V. Pustyntsev, a lawyer practising in Dnipro, Ukraine.

3. The Ukrainian Government ("the Government") were given notice of the applications.

THE FACTS

4. The applicant's details and information relevant to the applications are set out in the appended table.

5. The applicant complained of the inadequate conditions of his detention and of the lack of any effective remedy in domestic law. He also raised other complaints under the provisions of the Convention.

THE LAW

I. JOINDER OF THE APPLICATIONS

6. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

7. The applicant complained principally of the inadequate conditions of his detention and that he had no effective remedy in this connection. He relied on Articles 3 and 13 of the Convention.

8. The Court notes that the applicant was kept in detention in poor conditions. The details of the applicant's detention are indicated in the

appended table. The Court refers to the principles established in its case-law regarding inadequate conditions of detention (see, for instance, *Muršić v. Croatia* [GC], no. 7334/13, §§ 96-101, ECHR 2016). It reiterates in particular that a serious lack of space in a prison cell weighs heavily as a factor to be taken into account for the purpose of establishing whether the detention conditions described are "degrading" from the point of view of Article 3 and may disclose a violation, both alone or taken together with other shortcomings (see *Muršić*, cited above, §§ 122-41, and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 149-59, 10 January 2012).

9. In the leading cases of *Melnik v. Ukraine* (no. 72286/01, 28 March 2006) and *Sukachov v. Ukraine* (no. 14057/17, 30 January 2020) the Court already found a violation in respect of issues similar to those in the present case.

10. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. Having regard to its case-law on the subject, the Court considers that in the instant case the applicant's conditions of detention were inadequate.

11. The Court further notes that the applicant did not have at his disposal an effective remedy in respect of these complaints.

12. These complaints are therefore admissible and disclose a breach of Articles 3 and 13 of the Convention.

III. OTHER ALLEGED VIOLATIONS UNDER WELL-ESTABLISHED CASE-LAW

13. The applicant submitted other complaints which also raised issues under the Convention, given the relevant well-established case-law of the Court (see appended table). These complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor are they inadmissible on any other ground (see, in particular, *Olekseychuk v. Ukraine* [Committee], 5765/20, § 19, 15 December 2022, related to the absence of an effective domestic remedy in Ukraine to challenge the pre-trial detention during the period between June 2019 and January 2021). Accordingly, they must be declared admissible. Having examined all the material before it, the Court concludes that they also disclose violations of the Convention in the light of its findings in *Kharchenko v. Ukraine* (no. 40107/02, § 80, 10 February 2011), *Tymoshenko v. Ukraine* (no. 49872/11, §§ 286-87, 30 April 2013) and *Kotiy v. Ukraine* (no. 28718/09, § 55, 5 March 2015).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

14. 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."

15. Regard being had to the documents in its possession and to its case-law (see, in particular, *Sukachov,* cited above, §§ 165 and 167), the Court considers it reasonable to award the sums indicated in the appended table.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that these applications disclose a breach of Articles 3 and 13 of the Convention concerning the inadequate conditions of detention and the lack of any effective remedy in domestic law;

4. *Holds* that there has been a violation of the Convention as regards the other complaints raised under well-established case-law of the Court (see appended table);

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the amounts indicated in the appended table, 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 9 February 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina	Mārtiņš Mits
Acting Deputy Registrar	President

APPENDIX

List of applications raising complaints under Articles 3 and 13 of the Convention (inadequate conditions of detention and lack of any effective remedy in domestic law)

Application no. Date of introduction	Applicant's name Year of birth	Facility Start and end date Duration	Sq. m per inmate	Specific grievances	Other complaints under well-established case-law	Amount awarded for pecuniary and non-pecuniary damage (in euros)[1]	Amount awarded for costs and expenses (in euros)[2]
23537/20 12/05/2020 23615/20 12/05/2020	**Kostyantyn Yuriyovych DERKACH** 1982	Cherkasy Pre-Trial Detention Facility 13/04/2018 to 14/08/2020 2 years and 4 months and 2 days	1.7 - 2.6 m²	Infestation of cell with insects/rodents, lack of fresh air, lack of or poor quality of bedding and bed linen, lack of privacy for toilet, mouldy or dirty cell, lack or insufficient quantity of food, no or restricted access to shower, overcrowding, passive smoking	Art. 5 (3) - excessive length of pre-trial detention - from 12/04/2018 to 23/01/2020 Art. 5 (5) - lack of, or inadequate, compensation for unlawful arrest or detention - no effective right to compensation in domestic legal system for the violations of Art 5 (3) (see *Tymoshenko v. Ukraine*, no. 49872/11, §§ 286-87, 30 April 2013, and *Kotiy v. Ukraine*, no. 28718/09, § 55, 5 March 2015).	7,300	250

[1] Plus any tax that may be chargeable to the applicant.
[2] Plus any tax that may be chargeable to the applicant.