

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

FIFTH SECTION

CASE OF DYACHENKO v. UKRAINE

(Application no. 42813/05)

JUDGMENT

STRASBOURG

18 April 2013

This judgment is final. It may be subject to editorial revision.



In the case of Dyachenko v. Ukraine,

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

Angelika Nußberger, *President,*
Ganna Yudkivska,
André Potocki, *judges,*

and Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 26 March 2013,

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

PROCEDURE

1. The case originated in an application (no. 42813/05) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Dmitriy Vitislavovich Dyachenko ("the applicant"), on 10 November 2005.

2. The Ukrainian Government ("the Government") were represented by their Agent, most recently Mr N. Kulchytskyy, from the Ministry of Justice.

3. On 9 May 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant is a Ukrainian national who was born in 1977 and lives in the city of Kharkiv, Ukraine.

A. First set of criminal proceedings and related events

5. On 1 January 1996 the applicant was wounded by a police officer when the police officers were pursuing the applicant's car. The applicant states that he was brought to hospital where he stayed until 4 January 1996. According to the applicant, in the hospital he was handcuffed to the bed and guarded. On 4 January 1996 the applicant was brought to the police station and later released. On 29 February 1996 the applicant was again arrested. On 27 May 1996 the Leninskiy District Court of Kharkiv sentenced the applicant to five and a half years' imprisonment for robbery and

hooliganism. The applicant's imprisonment was to be calculated from 29 February 1996. On 13 August 1996 the Kharkiv Regional Court upheld the applicant's sentence.

6. In 2006 the applicant instituted proceedings in the Pecherskiy District Court against the State of Ukraine claiming compensation for damage inflicted to him by the above events. His claims were rejected on 1 February 2006 for the failure to comply with procedural requirements. The applicant's appeal against this decision was rejected on 16 October 2006 by the Kyiv City Court of Appeal. On 14 November 2006 the Supreme Court of Ukraine upheld this decision.

B. Second set of criminal proceedings and related events

7. According to the applicant, at 7:00 a.m. on 24 May 2002 he was apprehended in his apartment and brought to the police station. There he was allegedly beaten by the police and forced to confess to having committed a crime.

8. It is mentioned in the applicant's custody record (*протокол затримання*) that the applicant was apprehended at 1:40 p.m. on 24 May 2002 after having committed a robbery of A. on the previous day. The applicant's arrest was aimed to prevent his escape. It appears from the case-file materials that the applicant worked in the company allegedly owned or directed by A. and A.'s wife had heard that three persons who attacked and robbed her had called the applicant and said that they "had already arrived to the spot".

9. On 24 and 27 May 2002 the applicant refused to testify and requested a lawyer.

10. On 27 May 2002 the applicant was charged with robbery. On the same day the Oktyabrsky District Prosecutor requested the court to place the applicant in pre-trial detention since the applicant had been previously convicted, had again committed a serious crime and could escape. The Oktyabrsky District Court, reiterating the grounds mentioned by the prosecutor, ordered the applicant's detention until 2 June 2002.

11. The applicant states that during one week after his arrest he was beaten and tortured. In particular, some police officers came to the SIZO on 29 May 2002 and again ill-treated the applicant.

12. On 30 May 2002 lawyer B. was allowed to participate in the proceedings as the applicant's representative.

13. On 31 May 2002 the Oktyabrsky District Court extended the applicant's detention to 7 June 2002 in order to collect information about the applicant and to decide on his further detention.

14. On 5 June 2002 the same court authorised the applicant's pre-trial detention. The court held that the applicant had been previously convicted in 1996 and he could obstruct justice and continue his criminal activity if

released. On 12 June 2002 the Kharkiv Regional Court of Appeal upheld this decision. On 8 July 2002 the Kharkiv Regional Court of Appeal re-considered the applicant's appeal and again upheld the decision of 5 June 2002.

15. On 17 July 2002 the Oktyabrsky District Court extended the applicant's pre-trial detention to 24 September 2002. On 23 July 2002 the Kharkiv Regional Court of Appeal upheld this decision. The court referred to the seriousness of charges and "the scale of necessary investigation", and noted that there were no grounds to release the applicant.

16. On 13 September 2002 the Oktyabrsky District Court started consideration of the applicant's criminal case. The court authorised the applicant's further detention on remand.

On 26 June, 8 August and 6 November 2003, on 20 January, 26 March, 8 July and 2 December 2004, and on 2 February 2005, the Oktyabrsky District Court examined the applicant's applications for release and rejected them on the grounds that the applicant had been previously convicted, was accused of a serious crime and there were no counter-indications to his detention in the conditions of the pre-trial detention centre (SIZO).

17. On 10 March 2005 the Oktyabrsky District Court of Kharkiv sentenced the applicant to six years' imprisonment on two counts of robbery.

18. On 24 October 2006 the Kharkiv Regional Court of Appeal quashed this decision and remitted the case to a first instance court for fresh consideration. It further decided to leave the previously selected measure of restraint without changes.

19. On 29 November 2006 the Supreme Court of Ukraine rejected the applicant's request for leave to appeal against the above decisions.

20. On 31 January, 7 and 15 February 2007 the Oktyabrsky District Court of Kharkiv rejected the applicant's request for release referring to the seriousness of charges against him.

21. On 26 February 2007 the Oktyabrsky District Court of Kharkiv sentenced the applicant together with his four accomplices to four years and ten months' imprisonment on one count of robbery. The court also examined the applicant's complaints about being ill-treated and found them to be unsubstantiated. The applicant did not appeal against this decision under the ordinary appeal procedure.

22. On 24 March 2007 the applicant was released.

23. On 21 May 2007 a judge of the Supreme Court of Ukraine rejected as unsubstantiated the applicant's request for leave to appeal in cassation.

C. Proceedings following the applicant's complaints about ill-treatment

24. On 14 August 2002 the Kharkiv Regional Prosecutor's Office refused to institute criminal proceedings against the policemen following the applicant's complaints. The police officers denied that they had ill-treated the applicant. The prosecutor further noted that the applicant had not requested any medical assistance at that time.

25. In 2004 the applicant again complained to the prosecutor about ill-treatment by the police officers. On 22 July 2004 the Kharkiv Regional Prosecutor's Office refused to institute criminal proceedings in connection with the applicant's complaint. The prosecutor questioned police officers who denied the applicant's allegations. There was also no medical evidence in support of the applicant's complaints and it was not possible to examine the applicant since the events in question had happened two years ago. It was further mentioned that the applicant's co-accused did not make any similar allegations. On 18 March 2005 the Chervonozavodskiy District Court rejected the applicant's appeal against this decision. On 4 August 2005 the Kharkiv Regional Court of Appeal upheld the decision of 18 March 2005. On 24 February 2006 the Supreme Court of Ukraine rejected the applicant's request for leave to appeal in cassation.

II. RELEVANT DOMESTIC LAW

26. The relevant legal provisions can be found in the *Shalimov v. Ukraine* judgment, no. 20808/02, §§ 40-41, 4 March 2010).

THE LAW

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

27. The applicant complained that the period of his pre-trial detention had been unreasonably long contrary to Article 5 § 3 of the Convention, which reads as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

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

B. Merits

29. The Government maintained that the applicant's pre-trial detention consisted of two periods: between 24 May 2002 and 10 March 2005 and between 26 October 2006 and 26 February 2007. The total length was three years, one month and eighteen days. In their view, the length of the applicant's pre-trial detention had been reasonable given the complexity of the case and the large number of investigative measures that had had to be taken. They concluded that the proceedings had been conducted with due diligence and the domestic authorities had had sufficient grounds to hold the applicant in custody during the investigation.

30. The applicant maintained his complaint.

31. The Court considers that the applicant's pre-trial detention lasted from 24 May 2002 to 10 March 2005 and from 26 October 2006 to 26 February 2007 and totalled three years, one month and eighteen days.

32. The Court reiterates that the issue of whether a period of detention is reasonable cannot be assessed in the abstract. This must be assessed in each case according to its special features, the reasons given in the domestic decisions and the well-documented matters referred to by the applicant in his applications for release. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see, among others, *Labita v. Italy* [GC], no. 26772/95, § 153, ECHR 2000-IV).

33. The Court notes that the applicant's pre-trial detention lasted for three years and almost two months. It observes that the seriousness of the charges against the applicant, his previous conviction and the risk of his absconding had been advanced in the initial order on the applicant's detention. Thereafter, the courts either did not give any grounds or did not advance any new grounds for maintaining the applicant's detention, except the one that there was no counter-indication to the applicant's detention in the SIZO. However, Article 5 § 3 requires that after a certain lapse of time the persistence of a reasonable suspicion does not in itself justify deprivation of liberty, and the judicial authorities should give other grounds for continued detention. Those grounds, moreover, should be expressly mentioned by the domestic courts (see *Yeloyev v. Ukraine*, cited above, § 60). No such reasons were given by the courts in the present case.

Furthermore, at no stage did the domestic authorities consider any other preventive measures as an alternative to detention.

34. The foregoing considerations are sufficient for the Court to conclude that there has been a violation of Article 5 § 3 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

35. The applicant also complained under Article 3 of the Convention about being ill-treated by the police and under Article 5 of the Convention about his unlawful arrest. Referring to Article 6 of the Convention the applicant further complained about unfair trial, in particular, that he did not have a lawyer between 24 and 30 May 2002. The applicant further complained under Article 13 of the Convention about an ineffective investigation following his complaints about ill-treatment. The applicant finally invoked Articles 3, 5 and 6 of the Convention in respect to the first set of criminal proceedings.

36. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

37. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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."

39. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the length of the applicant's pre-trial detention admissible and the remainder of the application inadmissible;

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

Done in English, and notified in writing on 18 April 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Angelika Nußberger
Deputy Registrar	President