

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

FIFTH SECTION

CASE OF MATYUSHONOK v. UKRAINE

(Application no. 34590/06)

JUDGMENT

STRASBOURG

11 July 2024

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



In the case of Matyushonok v. Ukraine,

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

Lado Chanturia*, President*,
Stéphanie Mourou-Vikström,
Mykola Gnatovskyy*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 34590/06) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 1 August 2006 by a Ukrainian national, Mr Vladimir Aleksandrovich Matyushonok ("the applicant"), who was born in 1985 and is currently in detention in Gubnik, had been granted legal aid and was represented by Ms O. Ashchenko and Ms N. Okhotnikova, lawyers practising in Kharkiv, and subsequently by Mr O. Ovchynnykov, a lawyer practising in Strasbourg;

the decision to give notice of the complaints under Articles 3, 6, 8, 13 and 34 to the Ukrainian Government ("the Government"), represented by their Agent, most recently Ms M. Sokorenko, of the Ministry of Justice, and to declare the remainder of the application inadmissible;

the Court's decision to adjourn the proceedings *sine die* after 2014 based on the Government's statement that they did not have access to the applicant's criminal case file, which had remained in Crimea after its unlawful occupation by the Russian Federation in 2014;

the Court's decision, taken on 7 June 2023 in view of the age of the case, to resume the proceedings and to invite the parties to submit their amended observations, if any;

the parties' observations;

Having deliberated in private on 20 June 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's allegations of his systematic ill-treatment in detention and the lack of an effective investigation in that respect (the relevant factual details are outlined in the appended table). It also concerns the alleged unfairness of the applicant's trial on account of the excessively severe sentence imposed by the Supreme Court in the absence of the applicant's lawyer. It raises issues under Articles 3 and 6 of the Convention.

2. By a judgment of 31 May 2005, the Court of Appeal of the Autonomous Republic of Crimea ("the Court of Appeal"), sitting as a court of first instance, found the applicant and three other persons guilty of two counts of premeditated murder committed as part of a group, and of a

related offence. They were sentenced to life imprisonment, all their property was confiscated and they were ordered jointly to pay compensation to the victims.

3. The applicant, his lawyer and the applicant's mother, who had acted as her son's representative, lodged an appeal, challenging the severity of the sentence and requesting that the applicant's sincere remorse, his age and other circumstances be taken into account and that his life sentence be replaced by a fixed term of imprisonment. The applicant's co-defendants, M., G. and M.-M., also appealed against the judgment of 31 May 2005. M. and M.-M. acknowledged their guilt and requested that life imprisonment be replaced with a fixed-term sentence, whereas G. denied his guilt and requested that the case be remitted to the first-instance court for a new trial. The prosecutor also requested that the Supreme Court commute the life sentences of all the defendants to fixed-term sentences. The prosecutor referred to their age and character references, and also noted that the defendants had no previous criminal record; that G. had a dependent child and that he and M. had not fully participated in the crimes as planned but rather had stepped back; and that the applicant, M. and M.-M. had pleaded guilty and had expressed sincere remorse.

4. On 9 February 2006 the Supreme Court examined the case in the presence of the prosecutor, the applicant, his co-defendants and G.'s lawyer. In a judgment of the same day, the Supreme Court upheld the substance of the Court of Appeal's judgment of 31 May 2005. With regard to the question of sentencing, the Supreme Court, after listing the relevant factors mentioned in paragraph 3 above, found it justified in the circumstances of the case to reduce the sentences of G. and M. to fifteen years' imprisonment. This judgment became final.

THE COURT'S ASSESSMENT

I. ALLEGED ILL-TREATMENT AND LACK OF AN EFFECTIVE INVESTIGATION

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

6. The general principles concerning the prohibition of ill-treatment and the obligation to carry out an effective investigation of such allegations have been summarised in *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 81-90 and 100-01, ECHR 2015).

7. Reviewing the present complaint in the light of the above-mentioned principles, the Court considers that the domestic investigation did not reflect a serious effort to verify the applicant's allegations of ill-treatment. It notes that the applicant's allegations were examined exclusively by way of

pre-investigation inquiries. The Court has held that such investigative procedures do not comply with the principles of an effective remedy, because an inquiring officer can only take a limited number of steps and a victim has no formal status, meaning that his or her effective participation in the procedure is excluded (see *Strogan v. Ukraine*, no. 30198/11, § 53, 6 October 2016, with further references). The inquiries in the applicant's case were essentially limited to questioning the staff of the detention facilities, whose statements were taken at face value, and studying the prisons' logbooks. Neither the applicant nor the witnesses identified by him were questioned. The Court further notes that while the medical units' refusals to register his injuries constituted a part of the applicant's complaints, the absence of such registered injuries was repeatedly referred to by the authorities as grounds to reject the applicant's allegations of ill-treatment owing to a lack of evidence.

8. Furthermore, it appears that no forensic medical examination of the applicant was ordered by the authorities until 2010, despite the applicant's repeated complaints of beatings. The forensic medical examination carried out in 2010, which was ordered at the applicant's request and appears to have been the only medical evidence available, revealed signs of several healed wounds of different types on the applicant's body (see details in the appended table). The Government provided no explanation as to the origin of those injuries. Nor did they provide any evidence that the applicant, who had been in continuous detention since his arrest in October 2003, had sustained the injuries prior to being placed under the control of the authorities. Accordingly, the failure of the respondent State to discharge its burden of proof leads the Court to accept the applicant's allegations, presented in a coherent and detailed manner, that the injuries were sustained in detention. On the basis of the evidence before it, the Court is not in a position, and does not consider it necessary, to determine which particular detention facility was responsible for the injuries sustained.

9. The Court considers the above findings sufficient to conclude that the investigation into the applicant's complaints of ill-treatment fell short of the Article 3 requirements and that the State's responsibility is engaged for the treatment sustained by the applicant, which can be characterised as inhuman and degrading.

10. The present complaints are therefore admissible and disclose breaches of Article 3 of the Convention under its substantive and procedural limbs.

II. ALLEGED UNFAIRNESS OF THE PROCEEDINGS

11. The applicant complained under Article 6 §§ 1 and 3 of the Convention that his conviction had been unfair. He contended that the Supreme Court had failed to duly consider arguments in favour of a more

lenient punishment and that having professional legal representation during the hearing would have better safeguarded his interests. The applicant noted, in particular, that two of his co-defendants, including the instigator of the crime, had had their sentences reduced to fifteen years' imprisonment, while the sentence imposed on him, the youngest of the group, had remained unchanged despite the existence of mitigating circumstances. He added that the sentence had been more severe than that requested by the prosecutor.

12. In their initial observations filed with the Court in December 2014, the Government cited their inability to comment on this complaint owing to the lack of access to the applicant's criminal case file, which had remained in Crimea after its unlawful occupation by the Russian Federation in 2014. In their subsequent submissions dated 2 November 2023, based on documents provided by the applicant, the Government contended that Article 6 of the Convention had not been breached. They argued that the absence of the lawyer had not affected the fairness of the trial, as both the applicant's lawyer, the applicant himself and his mother had presented arguments – limited to requesting a more lenient sentence – in their written appeals, which had been duly considered by the Supreme Court.

13. The Court notes at the outset that the present case does not concern the determination of guilt – in his application to the Court the applicant did not dispute that he had committed the criminal offences of which he had been convicted – but merely the matter of sentencing. The Court reiterates that determining the appropriate term of imprisonment for a particular offence falls within the discretion of the authorities, and its jurisdiction is limited to examining whether the applicant was afforded the guarantee of fair proceedings as a whole (see, for instance, *Cani v. Albania*, no. 11006/06, § 55, 6 March 2012).

14. The Court notes that the applicant was sentenced to life imprisonment for a double murder committed as part of a group. Such a sentence was within the range of penalties prescribed for the crime committed. He had legal representation during the investigation and the trial before the Court of Appeal, and in his appeal to the Supreme Court he did not raise any complaints about those stages of the proceedings other than the excessive severity of the sentence imposed by the Court of Appeal.

15. As regards the proceedings before the Supreme Court complained of by the applicant, the available material suggests that his lawyer was absent from the hearing at the Supreme Court while the applicant was present. In the absence of relevant information and documents from the case file, such as the applicant's alleged requests for legal representation or the record of the hearing, the Court is unable to determine the reason for the lawyer's absence. It is apparent, however, that the lawyer argued on behalf of the applicant in his written appeal lodged with the Supreme Court against the Court of Appeal's judgment. His submissions mirrored the arguments presented by the applicant and his mother in their own appeals, being aimed

at obtaining a reduced sentence based on an admission of guilt, genuine remorse and other circumstances (see paragraph 3 above).

16. Consequently, it cannot be said in the present case that the applicant's interests were not represented in the proceedings before the Supreme Court (see and compare *Maksimenko v. Ukraine*, no. 39488/07, §§ 26-32, 20 December 2011, and *Dovzhenko* v. Ukraine, no. 36650/03, §§ 62-65, 12 January 2012) or that the absence of the lawyer from the hearing irreversibly prejudiced the applicant's defence rights or the fairness of the trial. Thus, as suggested by the available material, the issue of the severity of the sentence was the only issue raised by the applicant before the Supreme Court, and the Supreme Court dealt with the issue in the light of the appeals lodged by all parties to the case and the material in the case file. The Court does not discern any sign of arbitrariness or manifest unreasonableness in the manner in which the Supreme Court dealt with the matter and reached its conclusion that there were grounds for reducing the sentences of only two of the accused (see paragraph 4 above).

17. In view of the foregoing, the Court finds that the proceedings in the present case, taken as a whole, cannot be considered to have been unfair. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

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

18. The applicant submitted other complaints which also raised issues under Articles 3, 8, 13 and 34 of the Convention, covered by the relevant well-established case-law of the Court (see the 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 grounds. Accordingly, they must be declared admissible. Having examined all the material before it, the Court concludes that these complaints also disclose violations of the Convention in the light of its findings in the cases set out in the appended table.

IV. REMAINING COMPLAINTS

19. The applicant also complained, under Article 3 of the Convention, that he had been detained in inadequate conditions while being transported between the detention facilities and that the medical assistance he had received in detention had been inadequate and, under Article 8 of the Convention, that the authorities had failed to send some of his correspondence out. Regard being had to its findings above, the Court considers that it has examined the main legal questions raised in the case and that there is no need to give a separate ruling on the admissibility and

merits of this part of the application (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage and EUR 850 in respect of costs and expenses incurred before the Court.

21. The Government invited the Court to reject all the claims as exorbitant and unsubstantiated.

22. Ruling on an equitable basis and having regard to the documents in its possession, the Court considers it reasonable to award the applicant EUR 15,600 in respect of non-pecuniary damage, plus any tax that may be chargeable.

23. The Court further observes that the applicant failed to present an agreement on legal fees with his lawyer or an approved timesheet of the legal work performed before the Court. In the light of this and regard being had to the fact that the applicant has already been given legal aid, the Court makes no award under this head (see *Saviny v. Ukraine*, no. 39948/06, § 77, 18 December 2008).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the applicant's alleged ill-treatment, the lack of an effective investigation in that respect and the other complaints under the well-established case-law of the Court (as set out in the appended table) admissible and the complaint of an unfair trial inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention under both its substantive and procedural limbs in respect of the complaints lodged by the applicant concerning alleged ill-treatment in detention;

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

4. *Holds* that there is no need to examine the admissibility and merits of the remaining complaints under Articles 3 and 8 of the Convention;

5. *Holds*

(a) that the respondent State is to pay, within three months, EUR 15,600 (fifteen thousand six hundred euros) to the applicant, 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 11 July 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Lado Chanturia President

APPENDIX

Factual information concerning ill-treatment/ applicant's account	Medical evidence	Complaints of ill-treatment Decisions issued in response	Other complaints under well-established case-law
The applicant has been in detention since 15 October 2003. **(i) Kyiv Pre-Trial Detention Facility (SIZO):** - On four occasions between 27/10/2005 and 14/02/2006 he was beaten by officers wearing balaclavas after he had made a request to be taken for a walk without his cellmates, who had not wanted to go outside. **(ii) Dnipropetrovsk SIZO:** - On 17/10/2005, upon his arrival, he was placed in a reception cell ("the box") measuring 1.2 x1.5 m and left there for the whole day. He was beaten up with truncheons. Officers wearing balaclavas hit him on his feet, shoulders and groin for relieving himself in the cell after they had refused to take him out to the toilet. - In 2006 he was placed in the "torture room" for the whole night, where he was beaten up, strangled with a plastic bag and his joints were twisted until he lost consciousness. - On 14/02/2006, while he was being transported, his hands were held handcuffed behind his back for many hours, which caused him severe pain. - On 19/02/06, he was again beaten by the staff. **(iii) Ladyzhyn Prison no. 39**	Forensic medical examination record no. 254 of 10/06/2010 by an expert from the Ladyzhyn District Forensic Bureau. Multiple scars on the upper and lower limbs as well as on the abdomen, formed at the site of healed injuries (contusions, cuts and stab wounds). As the scars were old and well-formed, it was impossible to identify precisely the date of the injuries.	**(i) Kyiv and Dnipropetrovsk SIZOs** 1. On 3/05/2006 complaint to the Ombudsman about ill-treatment in the Kyiv and Dnipropetrovsk SIZOs. On 7/06/2006 the same complaint was made to the Crimea prosecutor's office. On 14/06/06 the Kyiv prosecutor's office and on 7/08/2006 the Dnipropetrovsk regional prosecutor's office ("the DRPO") informed the applicant in writing that no evidence of his ill-treatment had been established following an inquiry. 2. On 12/01/2007 complaint to the Prosecutor General about ill-treatment in the Kyiv and Dnipropetrovsk SIZOs. On 30/03/2007 the DRPO issued a ruling refusing to institute criminal proceedings against the Dnipropetrovsk SIZO officers, mainly based on statements by the staff and the absence of any record in medical logbooks. 3. On 13/05/2007 further complaint to the Prosecutor General. On 11/06/2007 the DRPO informed the applicant in writing that no evidence of his ill-treatment had been established following an inquiry. 4. On 8 and 29/10/2007 further complaints to	Art. 3. – inadequate conditions of detention in the Kyiv SIZO (from 27/10/2005 to 14/02/2006), the Dnipropetrovsk SIZO (from 17 to 26/10/2005 and from 15 to 19/02/2006), the Vinnytsia SIZO (from 24/02 to 16/03/2007) and Ladyzhyn Prison no. 39 (from 16/03/2007 to present). Poor hygiene and sanitation conditions: lack of privacy when using toilets; lack of access to fresh air and natural light; inadequate heating and lighting; lack of regular outdoor exercise; passive smoking; lack of access to drinking water; excessive humidity; poor nutrition (see *Iglin v. Ukraine*, no. 39908/05, §§ 49-56, 12 January 2012; *Gorbatenko v. Ukraine*, no. 25206/06, §§ 138-43, 28 November 2013; and *Muršić v. Croatia*, [GC], no. 7334/13, § 101, 20 October 2016, with further references). Art. 13 – lack of any effective remedy in respect of inadequate conditions of detention (*Rodzevillo v. Ukraine*, no. 38771/05, §§ 74-77, 14 January 2016). Art. 8 – monitoring of correspondence, including to and from the Court, in pre-trial and post-conviction detention facilities (see *Vintman v. Ukraine*, no. 28403/05, §§ 126, 129-33, 23 October 2014, and *Sergey Volosyuk v. Ukraine*, no. 1291/03, §§ 84-86, 12 March 2009). Art.34 – failure to grant the applicant access to the case file and to provide him with copies of certain documents which he needed in order to substantiate his complaint before the Court, including those requested by the Court (see *Yakuba v. Ukraine*, no. 1452/09, §§ 54-57, 12 February 2019, with further references therein).

Factual information concerning ill-treatment/ applicant's account	Medical evidence	Complaints of ill-treatment Decisions issued in response	Other complaints under well-established case-law
- On 16/03/2007, upon his arrival, he was severely beaten on his back, shoulder blades, hands, ribs, neck, chest, stomach and legs. - In 2007 (on 21/03, 25/05, 28/06 and 8/08) and on a number of occasions in 2008, as well as on 24/04 and 27/05/2010, he was beaten by prison officers. According to the applicant, his complaints to the heads of the facilities and his requests for medical assistance following the ill-treatment were ignored.		the Prosecutor General demanding an effective investigation into his complaints. On 6/11/2007 ruling of the DRPO refusing to open criminal proceedings identical to that of 30/03/2007. 5. On 21/10/2008 complaint to the DRPO. On 2/07/2008, 10/09/2008, 17/11/2008 and 23/02/2009 complaint to the Prosecutor General. On 18/06/2009 reply from the DRPO that no breaches of his rights had been found. 6. On 14/09/2009 complaint to the Prosecutor General. On 3/11/2009 letter in reply from DRPO similar to that of 18/06/2009. 7. On 23/11 and 9/12/2009 complaints to the General Prosecutor's Office ("the GPO") and DRPO about the failure to investigate his complaints. On 11/01 and 29/03/2010 letters in reply from the DRPO referring to the decision of 6/11/2007 and informing the applicant that there were no grounds to conduct a new investigation. 8. On 26/04 and 2/08/2010, as well as on 27/12/11, complaints to the GPO and the DRPO. On 21/05/2012 the decision of 30/03/2007 was	

Factual information concerning ill-treatment/ applicant's account	Medical evidence	Complaints of ill-treatment Decisions issued in response	Other complaints under well-established case-law
		quashed by a higher prosecutor and a new inquiry ordered. On 4/07/2012 decision on refusal to open criminal proceedings against the Dnipropetrovsk SIZO staff owing to the lack of evidence of a crime: the officers denied the beatings and the applicant's cellmates were no longer in SIZO. On 18/12/2012 and 21/01/2013 the domestic courts rejected the applicant's appeal against the decision of 4/07/2012 as time-barred. (ii) **Ladyzhyn Prison no. 39** On 15/03/2010 complaint to the Ombudsman, which was forwarded to the prosecutor. On 4/05/2010 complaint to the prosecutor in which he complained, *inter alia*, that his earlier oral complaints raised during the prosecutor's visits had remained unanswered. On 7/07/2010 a letter from the Penitentiary Department reporting that no evidence of ill-treatment had been established following an investigation.	