

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

FIFTH SECTION

CASE OF URZHANOV v. UKRAINE

(Application no. 24392/06)

JUDGMENT

STRASBOURG

14 December 2017

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



In the case of Urzhanov v. Ukraine,

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

André Potocki, *President,*
Síofra O'Leary,
Mārtiņš Mits, *judges,*

and Liv Tigerstedt, *Acting Deputy Section Registrar,*

Having deliberated in private on 23 November 2017,

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

PROCEDURE

1. The case originated in an application against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 2 June 2006.

2. The applicant was represented by Mr A.A. Kristenko, a lawyer practising in Kharkiv.

3. The application was communicated to the Ukrainian Government ("the Government").

THE FACTS

4. The relevant details of the application are set out in the appended table.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

5. The applicant complained of inadequate conditions of his detention. He relied on Article 3 of the Convention, which reads as follows:

Article 3

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

6. The Government considered that the applicant had failed to exhaust the domestic remedies available to him under Ukrainian law before lodging his application with the Court, in that he had not raised the issue of conditions of detention before the prosecutor competent to supervise

penitentiary establishments. They next maintained that the applicant had not applied to the domestic courts in order to challenge the conditions of his detention.

7. The Court considers that, in the light of its findings in similar cases, the applicant's complaint under Article 3 of the Convention about the conditions of his detention cannot be rejected for failure to exhaust domestic remedies (see, *Yakovenko v. Ukraine*, no. 15825/06, §§ 75-76, 25 October 2007).

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 -141, and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 149-159, 10 January 2012).

9. In the leading case of *Melnik v. Ukraine,* (no. 72286/01, 28 March 2006), 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 this complaint. 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. This complaint is therefore admissible and discloses a breach of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

12. 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."

13. Regard being had to the documents in its possession and to its case-law (see, in particular, *Melnik v. Ukraine,* no. 72286/01, 28 March 2006), the Court considers it reasonable to award the sum indicated in the appended table.

14. 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 application admissible;

2. *Holds* that this application discloses a breach of Article 3 of the Convention concerning the inadequate conditions of detention;

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

4. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 14 December 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt	André Potocki
Acting Deputy Registrar	President

APPENDIX

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

Application no. Date of introduction	Applicant name Date of birth	Facility Start and end date Duration	Sq. m. per inmate	Specific grievances	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros)[1]
24392/06 02/06/2006	**Maksim Vladislavovich Urzhanov** 18/09/1968	Odesa Pre-Trial Detention Centre ("the SIZO") 29/04/2002 to 13/06/2008 6 years, 1 month and 16 days	3 inmates 2.5 m²	inadequate temperature, mouldy or dirty cell, lack of or insufficient natural light, lack of fresh air, constant electric light, lack or insufficient quantity of food, sharing cells with inmates infected with contagious disease, poor quality of food, lack of or inadequate hygienic facilities, lack of or poor quality of bedding and bed linen, no or restricted access to shower	11,450

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