

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

FIFTH SECTION

DECISION

Application no. 36327/06
Vladimir Pavlovich GOLUBENKO
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 18 September 2012 as a Chamber composed of:

Dean Spielmann, *President,*
Mark Villiger,
Karel Jungwiert,
Boštjan M. Zupančič,
Ann Power-Forde,
Angelika Nußberger,
André Potocki, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having regard to the above application lodged on 14 August 2006,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Vladimir Pavlovich Golubenko, is a Ukrainian national, who was born in 1952 and lives in Volnyansk.

The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

1. Criminal proceedings against the applicant

On 6 April 2004 the applicant was apprehended in *flagrante delicto* while attempting to steal some mobile phones from a shop.

Following his arrest the applicant was offered a choice of three lawyers to be appointed for his representation. He refused insisting that he wished to be represented by his wife, Ms R. According to him, she had a legal background. As submitted by the investigator, the applicant's wife had been contacted but refused to represent him. According to the applicant, his wife was not timely informed about his arrest.

At a certain point during the pre-trial investigation Ms R. signed a contract with a lawyer for the applicant's representation.

The applicant confessed to the attempted theft.

On 8 April 2004 the Kakhovka City Court ("the Kakhovka Court") remanded him in custody.

On 26 April 2004 the Kharkiv Regional Court of Appeal ("the Court of Appeal"), sitting as a three-judge panel presided by Judge G., rejected the applicant's appeal against the aforementioned ruling.

On 2 August 2004 the trial court admitted the applicant's wife in the proceedings as his close relative with a defender's status.

On 3 August 2004 the Kakhovka Court found the applicant guilty of attempted theft of twenty-six mobile phones and some other equipment and sentenced him to five years' imprisonment. The trial court did not consider it necessary to examine the evidence at the hearing, as the facts of the case were not in dispute and the parties did not object to such a simplified procedure. The applicant maintained his confession. According to him, he did so having bribed the judge in charge of the case and hoping that she would release him on probation.

The applicant appealed against the aforementioned judgment submitting that he had in fact intended to steal only one mobile phone.

On 28 September 2004 the Court of Appeal, sitting as a three-judge panel presided by Judge G., upheld the judgment of 3 August 2004.

The applicant did not appeal in cassation according to the established procedure. According to Ms R., she did send the cassation appeal, but for unknown reasons it did not reach the Supreme Court.

On 26 January 2007 the Supreme Court reviewed the ruling of the Court of Appeal of 28 September 2004 under the extraordinary procedure and quashed it on the ground that the presiding judge had earlier presided in the panel which had upheld the applicant's pre-trial detention. The case was therefore remitted to the appellate court for fresh examination.

On 13 March 2007 the Court of Appeal, sitting in a different composition, upheld once again the applicant's conviction. It noted that his wife had been duly notified about the hearing but failed to appear.

On 13 June and 5 October 2007 the Supreme Court rejected the applicant's requests for leave to appeal in cassation.

2. Conditions of the applicant's detention in Orikhivska Prison no. 88

On 14 November 2004 the applicant was transferred from the Kyiv Pre-Trial Detention Centre to Orikhivska Prison no. 88 to serve his sentence. He was detained there till his transfer to Sofiyivska Prison no. 55 on an unspecified date in late December 2006.

The applicant's description of the conditions of his detention in Orikhivska Prison no. 88 is as follows.

He was held in a cell of forty-two square metres shared by thirty-four inmates, all (including himself) suffering from tuberculosis. There was no heating in the cell, and the temperature inside did not exceed nine degrees in winter time. The walls were damp, the lighting was poor and the electricity supply was limited to short periods. About 200 prisoners had to share seven water taps for washing. Mere pits served for toilets, and their number was insufficient. The prison was infested with rats. The quality of food was poor, and the prisoners suffering from tuberculosis did not receive sufficient nutrition. The foodstuffs in the prison shop were expensive and often beyond the expiry date.

According to the applicant, his health deteriorated in detention and he did not receive adequate medical care. In particular, his sight worsened and was never examined by an ophthalmologist in spite of his numerous requests in that regard. The prison's medical unit was not staffed with an ophthalmologist, and seeking external consultation was not deemed feasible. The applicant also contracted onychomycosis of both feet and the left hand which remained untreated.

3. Other facts concerning the applicant's detention in Orikhivska Prison no. 88

For the period from 7 February to 19 November 2005 the applicant received five hryvnias and twenty-eight kopiykas (0.81 euros) as salary for his work in the prison's sewing workshop.

There were allegedly some interruptions in the correspondence between the applicant and his wife before February 2005.

In December 2005 the prison's medical unit indicated to the applicant that he should not wear hard-sole shoes. As a result, the applicant went to work in slippers. The administration searched the cells in the meantime and seized his shoes. The applicant could not get them back and had to wear slippers till 12 September 2006.

According to the applicant, the administration provided prisoners with shoes. Given their shortage (about twenty per cent of the prison population had to wear slippers at all times), the applicant's shoes were apparently redistributed to somebody else. It is not clear whether those were his own personal shoes he had entered the prison wearing.

On 12 September 2006 the applicant's wife was not admitted to him on the ground that some suspicious plant-origin powder was found in her bag. According to the applicant, it had been planted on her.

COMPLAINTS

The applicant complains, without referring to any provision of the Convention, about the allegedly poor material conditions of his detention and health care in Orikhivska Prison no. 88. He also complains under Article 4 of the Convention that he was not adequately remunerated for his work in prison.

The applicant further complains, relying on Article 5 § 1 (a), that his case was examined on appeal on 28 September 2004 by a court not meeting the requirements of "a tribunal established by law" given that the presiding judge was the judge who had earlier remanded him in custody.

He also complains under Article 6 that the volume of the goods he had attempted to steal was exaggerated, that his wife was admitted in the proceedings as his representative with a delay and was not notified of the hearings at the Court of Appeal and the Supreme Court, and that not all the witnesses were heard by the courts.

The applicant additionally complains under Article 7 of the Convention that he was wrongly convicted for an attempted crime whereas in fact he had voluntarily decided not to accomplish the criminal offence in question.

He also complains under Article 8 about: the allegedly delayed notification of his wife about his arrest; some problems in his correspondence with her experienced before February 2005; and the alleged drug-planting on her by the prison administration on 12 September 2006.

The applicant next complains that the prison administration deprived him of his possessions on account of the alleged seizure of his shoes in December 2005.

Lastly, he raises a general complaint under Article 17 of the Convention.

THE LAW

1. The applicant complains under Article 3 of the Convention that he was detained in poor conditions and did not receive adequate medical care in Orikhivska Prison no. 88.

Article 3 of the Convention reads as follows:

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

The Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

2. The Court examined the remainder of the applicant's complaints. However, 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.

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.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints concerning the conditions of his detention and medical care in Orikhivska Prison no. 88;

Declares the remainder of the application inadmissible.

Claudia Westerdiek
Registrar

Dean Spielmann
President