

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

FIFTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 17873/06
by Valentina Viktorovna KOVALENKO
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 15 February 2011 as a Chamber composed of:

Dean Spielmann, *President,*
Elisabet Fura,
Karel Jungwiert,
Boštjan M. Zupančič,
Angelika Nußberger,
Isabelle Berro-Lefèvre,
Ann Power, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having regard to the above application lodged on 10 April 2006,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Valentina Viktorovna Kovalenko, is a Ukrainian national who was born in 1965 and lives in Mykolayiv. She is represented before the Court by Mr S. Monets, a lawyer practising in Mykolayiv.

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

A. The circumstances of the case

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

On 9 March 2005 the applicant was arrested on suspicion of financial fraud, committed against a number of financial institutions.

On 11 March 2005 the court ordered the applicant's pre-trial detention. She was placed in Mykolayiv Pre-Trial Detention Centre ("the SIZO").

In June 2005 the applicant was diagnosed with right-side cochlear neuritis, right-side tubo-otitis, and neurocirculatory dystonia.

On 30 June 2005 the SIZO informed the applicant's lawyer that, given the deterioration of the applicant's health, the SIZO could not provide the applicant with appropriate medical assistance; the applicant needed to be transferred to a specialised hospital.

On 1 November 2005 the Ministry of Internal Affairs considered the complaint of the applicant's mother concerning the lack of medical assistance in the SIZO. It replied that the administration of the SIZO had been instructed that the relevant treatment be provided to the applicant.

On 3 March 2006 the Supreme Court considered the investigator's request for extending the applicant's pre-trial detention to fifteen months. The applicant's lawyer submitted a request for changing the preventive measure for a non-custodial one. The lawyer asserted that the applicant needed to undergo important medical treatment which was not available in detention facility. The lawyer emphasised that in accordance with Article 150 of the Code of Criminal Procedure the state of health was a fundamental criterion when choosing the preventive measure. The Supreme Court endorsed the investigator's request and dismissed the request of the applicant's lawyer. In its decision the Supreme Court allegedly did not address the issues raised by the applicant's lawyer. A copy of the decision was not given to the applicant's lawyer.

On 24 March 2006 the SIZO informed the applicant's lawyer that the diagnostic examination recommended to the applicant by the neuropathologist could not be held within the SIZO.

On 24 July 2006 the court held a preliminary hearing in the case. In the course of that hearing the applicant's lawyer applied for the case to be remitted for additional investigation as the applicant had not had an opportunity to study the case file in full. The court refused the request, noting that the applicant had been offered sufficient time to study the case file; moreover, she could examine the case file after the trial had commenced.

On 15 August 2006 the applicant's lawyer requested that the court change the preventive measure in respect of the applicant. He submitted that the applicant's health was poor and she had not been provided with appropriate medical assistance in the SIZO.

On the same day the court rejected the request as unfounded. It noted that the medical evidence furnished by the applicant's lawyer had been recommendatory and did not suggest that the applicant must not be kept in detention. The court concluded that it could not make a positive decision on the issue of changing the preventive measure at that stage of proceedings until judgment had been passed in the case.

On 15 January 2008 the applicant was examined by a neuropathologist, who concluded that the applicant needed specialised inpatient treatment.

On 22 January 2008 the SIZO confirmed to the applicant's lawyer that the applicant needed inpatient treatment at the specialised neurology hospital.

On 3 and 5 March 2008 hearings in the case were adjourned due to the applicant's poor health. The applicant was provided with urgent medical aid by ambulance.

On 6 March 2008 a hearing was adjourned due to the medical examination of the applicant.

During a hearing on 11 March 2008 the applicant's condition became worse and an ambulance was called for her.

On 14 March 2008 the neuropathologist repeated his conclusion that the applicant needed specialist inpatient treatment.

During hearings on 17 and 18 March and 10 April 2008 ambulances were called to provide the applicant with urgent medical assistance.

On 10 and 14 April 2008 the applicant requested that the judge change the preventive measure in her respect for health reasons. The judge allegedly refused to entertain the requests.

The applicant refused to participate in a hearing on 14 April 2008 for health reasons. The same day the court decided that subsequent hearings in the case be held in the absence of the applicant. At the hearings the applicant was represented by a lawyer.

21 April and 17 August 2008 the applicant submitted requests for release from custody. Allegedly, the requests were rejected.

B. Relevant international material

The relevant international material can be found in the judgment of *Ukhan v. Ukraine* (no. 30628/02, § 50, 18 December 2008).

C. Relevant domestic legislation

1. Constitution of 26 June 1996

Article 29 of the Constitution read as follows:

> "... Everyone who has been detained has the right to challenge his or her detention in court at any time. ..."

2. Code of Criminal Procedure of 28 December 1960 (in the wording relevant at the material time)

Article 148: Purpose and grounds for the application of preventive measures

"Preventive measures shall be imposed on a suspect, accused, defendant, or convicted person in order to prevent him from attempting to abscond from an inquiry, investigation or the court, to obstruct the establishment of the truth in a criminal case or to pursue criminal activities, and in order to ensure the execution of procedural decisions.

Preventive measures shall be imposed where there are sufficient grounds to believe that the suspect, accused, defendant or convicted person will attempt to abscond from investigation and the court, or if he fails to comply with procedural decisions, or obstructs the establishment of the truth in the case or pursues criminal activities. ... "

Article 150: Circumstances that shall be taken into account in choosing a preventive measure

"In resolving the issue of imposing a preventive measure, in addition to the circumstances specified in Article 148 of this Code, such circumstances as the gravity of the alleged crime, the person's age, state of health, family and financial status, type of activity, place of residence and other circumstances relating to the person, shall be taken into consideration."

Article 156: Term of pre-trial detention

"Detention during a pre-trial investigation shall not last more than two months.

When it is impossible to complete the investigation within the period provided for in part 1 of this Article and there are no grounds for discontinuing the preventive measure or replacing it with a less restrictive measure, the term of pre-trial detention may be extended:

(1) for up to four months – upon a request approved by the prosecutor supervising the compliance with the laws of the bodies of inquiry and investigation, or at the same prosecutor's request, by a judge of the court which ordered the application of the preventive measure;

(2) for up to nine months – upon a request approved by the Deputy Prosecutor General of Ukraine, the Prosecutor of the Autonomous Republic of the Crimea, regional prosecutors, Kyiv and Sevastopol prosecutors, and prosecutors of equal rank, or on the same prosecutor's request in cases concerning serious and particularly serious crimes, by a judge of the court of appeal;

(3) for up to eighteen months - upon a request approved by the Prosecutor General of Ukraine and his Deputy, or at the same prosecutor's request in particularly complex cases concerning particularly serious crimes, by a judge of the Supreme Court of Ukraine. ..."

Article 165-3: Procedure for extending the term of pre-trial detention

"When there are no grounds for changing the preventive measure or if it is impossible to complete the investigation of the case in the part relating to proven charges, an investigator, upon the relevant prosecutor's approval, or the same prosecutor, shall apply to the court with a request for an extension of the term of pre-trial detention. The request shall contain reasons, in connection with which it is

necessary to extend the term, circumstances which must be examined, evidence that the detainee committed the crime [of which he or she is accused], and grounds for the necessity to maintain the preventive measure. ...

Having received the request, the judge shall examine the materials of the criminal case; if necessary, the judge shall question the accused, the investigator, hear the prosecutor, the defence counsel if the latter has appeared before the judge, following which the judge shall issue a resolution extending the term of pre-trial detention, if there are grounds for this, safe in the case envisaged in paragraph 7 of Article 156 of the Code, or shall refuse its extension.

The prosecutor, suspected, accused or his defence or legal representative may lodge an appeal against the resolution of the judge within three days of its delivery. Such an appeal shall not suspend the execution of the judge's resolution. The resolutions issued by judges of a court of appeal and of the Supreme Court shall not be subject to an appeal."

COMPLAINTS

1. The applicant complains under Article 3 of the Convention that she was not provided with appropriate medical treatment during her detention.

2. The applicant complains that her pre-trial detention has been excessive. The authorities failed to take her state of health into account when maintaining the custodial preventive measure in her respect.

3. The applicant complains that on 3 March 2006 the Supreme Court extended the applicant's pre-trial detention without giving any reasons for rejecting the arguments of the defence. The applicant further contends that her subsequent requests for release from custody were not considered properly during the trial.

4. The applicant complains under Article 6 §§ 1 and 3 (b) and (c) of the Convention that she was not given sufficient time to prepare for the trial; that she could not participate in some of the hearings before the first-instance court; and that one of her lawyers failed to provide her with appropriate legal representation.

5. The applicant complains under Article 1 of Protocol No. 4 that she was prosecuted merely in respect of her contractual obligations to the financial institutions.

THE LAW

1. The applicant complains that she was not provided with appropriate medical treatment during her detention. She relies on Article 3 of the Convention, which 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 this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of the Court, to give notice of this part of the application to the respondent Government.

2. The applicant complains that her pre-trial detention has been excessive. The authorities failed to take state of health into account her when keeping her in preventive custody.

The applicant does not invoke any Convention provision.

The Court finds it appropriate to examine these issues under Article 5 § 3 of the Convention which reads, in so far as relevant, 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."

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

3. The applicant complains that on 3 March 2006 the Supreme Court extended the applicant's pre-trial detention without giving any reasons for rejecting the arguments of the defence. The applicant further contends that her subsequent requests for release from custody were not considered properly during the trial.

The applicant does not invoke any Convention provision.

The Court finds it appropriate to examine these issues under Article 5 § 4 of the Convention which reads as follows:

> "4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

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

4. The Court has examined the remainder of the applicant's complaints under Articles 6 §§ 1 and 3 (b) and (c) of the Convention, Article 1 of Protocol No. 4 and considers that, in the light of all the materials in its possession and in so far as the matters complained of are within its competence, 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 applications must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints under Article 3 of the Convention (alleged lack of medical assistance during detention), Article 5 § 3 of the Convention (length of pre-trial detention), and Article 5 § 4 of the Convention (alleged lack of procedures for challenging the detention during investigation and trial);

Declares the remainder of the application inadmissible.

Claudia Westerdiek	Dean Spielmann
Registrar	President