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

FIFTH SECTION

DECISION

Application no. 9790/21
Valerian Otarovych OSIASHVILI
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 8 September 2022 as a Committee composed of:

Stéphanie Mourou-Vikström, *President,*
Ivana Jelić,
Kateřina Šimáčková, *judges,*
and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 31 December 2020,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant, Mr Valerian Otarovych Osiashvili, was born in 1982. He was represented by Mr S.M. Rybiy and Mr S. P. Bulkach, lawyers practising in Dnipro.

The applicant's complaints under Articles 3 and 13 of the Convention concerning the inadequate conditions of detention and the lack of any effective remedy in domestic law were communicated to the Ukrainian Government ("the Government").

THE LAW

The applicant complained that the material conditions of his detention in Poltava Penitentiary Facility no. 23 from 19 May 2016 to 1 July 2020 (when he was released) were contrary to the requirements of Article 3 of the Convention. In particular, the applicant submitted that he had suffered from the lack of personal space, lack of fresh air, insufficient natural and electric light, lack of toiletries, poor quality of bedding and bed linen, poor quality of food, restricted access to shower, lack of access to potable water,

passive smoking, mouldy and dirty cell, infestation of cell with insects/rodents, lack of privacy for toilet, lack of access to warm water, and lack of hygienic facilities. He further complained under Article 13 of the Convention that he did not have access to effective remedies in respect of those grievances.

The applicant complained about conditions in four cells where, according to him, he had been held during the entire period of his detention. At the same time, documents provided by the applicant in support of his complaints showed that he had also been held in other cells during the period indicated above.

The Government provided the Court with more complete information about the cells where the applicant had been held and informed the Court that between 19 May 2016 and 28 April 2020 the applicant had been detained in cells where each inmate had had between 2.6 and 4.8 sq. m. of personal space. The applicant had only spent 42 days in cells measuring less than 3 sq. m. per inmate. Between 28 April and 1 July 2020, the applicant had been detained in a cell where he had been afforded no less than 4.2 sq. m. of personal space. The Government further informed the Court that the repair works in the cells where the applicant had been held had been performed in 2020. They provided photos confirming their statement. The photos show that the toilet was separated from the living area in the cell by a wall and the door and that there was sufficient light in the cells (each cell having a large window). The Government noted that the facility was supplied with potable water and some of the cells, where the applicant had been held, were equipped with warm water supplement.

In reply, the applicant's representative indicated that the applicant did not wish to comment on the Government's submissions and that he wanted a decision in his case to be delivered as soon as possible. He also mentioned, without providing any further details, that the applicant was being pressured by the authorities.

As regards the complaint under Article 3 of the Convention, the Court refers to its well-established standard of proof in conditions-of-detention cases. In this context the Court is particularly mindful of the objective difficulties experienced by applicants in collecting evidence to substantiate their claims about conditions of their detention. Still, in such cases applicants may well be expected to submit at least a detailed account of the facts complained of and provide – to the greatest possible extent – some evidence in support of their complaints (see *Golubenko v. Ukraine* (dec.), no. 36327/06, 5 November 2013). Once a credible and reasonably detailed description of the allegedly degrading conditions of detention, constituting a *prima facie* case of ill-treatment, has been made, the burden of proof is shifted to the respondent Government who alone have access to information capable of corroborating or refuting these allegations (see *Muršić v. Croatia* [GC], no. 7334/13, §§ 127 and 128, ECHR 2016).

The Court notes that the applicant's description of allegedly inadequate conditions of his detention was appropriately detailed, sufficient to shift the burden of proof to the Government. The latter provided their counterarguments to the applicant's complaints about the overcrowding, lack of privacy for toilet and other aspects of the conditions of his detention. In these circumstances the burden of proof was again shifted to the applicant, but he failed to comment on the Government's observations. The applicant's statement about being pressured by the authorities is not supported by any evidence and does not call for a serious consideration from the Court, particularly so that the applicant was no longer detained, he was represented by professional lawyers and thus was able to provide comments and clarify the information, without any indication of being pressured.

In view of the aforementioned, the Court considers that the complaint under Article 3 of the Convention in respect of the period of the detention between 28 April and 1 July 2020 has not been properly substantiated and developed by the applicant. The evidence submitted by the Government refutes the applicant's initial description of his conditions during that period. Therefore, the complaint about that period of the applicant's detention should be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention. As to the period between 19 May 2016 and 28 April 2020, the Court considers that on 28 April 2020 the conditions of the applicant's detention had changed significantly, thus, the application in respect of this period should be considered as lodged outside the six-month time-limit.

The Court, having found the complaint under Article 3 of the Convention inadmissible, concludes that the applicant has no arguable claim for the purposes of Article 13 of the Convention (see *Rodić and Others v. Bosnia and Herzegovina,* no. 22893/05, § 82, 27 May 2008). The applicant's complaint under Article 13 of the Convention taken in conjunction with Article 3 of the Convention is thus likewise manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected under Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 29 September 2022.

Viktoriya Maradudina
Acting Deputy Registrar

Stéphanie Mourou-Vikström
President