

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

FIFTH SECTION

DECISION

Application no. 9450/06
Vladislav Osipovich SOSNOVSKIY
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 19 February 2013 as a Chamber composed of:
Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ganna Yudkivska,
André Potocki,
Paul Lemmens,
Aleš Pejchal
and Claudia Westerdiek, *Section Registrar,*
Having regard to the above application lodged on 24 February 2006,
Having deliberated, decides as follows:

## THE FACTS

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

### A. Criminal proceedings against the applicant

At the material time the applicant worked as an investigation officer in the prosecutor's office for the environmental protection (*природоохоронна прокуратура*).

On 4 October 2005 S. complained to the Prosecutor's Office of the Autonomous Republic of Crimea ("the ARC") (*прокуратура Автономної республіки Крим*) that the applicant and U., a prosecutor's assistant, extorted 5,000 United States dollars (USD) from him for carrying out fishing business. Later K. and R. lodged similar complaints.

On 7 October 2005 at around 3 p.m. the applicant was arrested at his working place after having received 2,000 USD from S., and 200 USD and 500 Ukrainian hryvnias (UAH) from R. The applicant's office was searched and 2,000 USD were found in one of the books on his table. The applicant's meetings with R. and S. were taped. On the same day criminal proceedings were instituted against the applicant and U. for bribe taking.

On 10 October 2005 the Tsentralnyy District Court of Simferopol ("Tsentralnyy Court") authorised the applicant's pre-trial detention. The court held that the applicant was accused of committing serious crime, could escape, hinder the investigation and continue criminal activity. The applicant appealed stating that the decision was unsubstantiated.

On 18 October 2005 the applicant complained to the Kerch Local Court that his arrest on 7 October 2005 had been unlawful since there had been no grounds to arrest him. The court forwarded this complaint to the Kerch Prosecutor's Office noting that while the case was under investigation the court was not competent to consider such complaints. The Kerch Prosecutor's Office transferred the applicant's complaint to the Prosecutor's Office of the ARC.

On 1 December 2005 the Prosecutor's Office of the ARC informed the applicant that his arrest was justified and lawful.

On the same day the Court of Appeal of the ARC upheld the decision of 10 October 2005.

On 5 December 2005 the Tsentralnyy Court prolonged the applicant's detention till 7 February 2006 on the same grounds as before. The applicant appealed.

On 20 December 2005 the Court of Appeal of the ARC upheld the decision of 5 December 2005. It held that there was enough evidence that the applicant had committed a serious crime. If at large, the applicant could continue a criminal activity, hinder investigation and abscond.

On 6 January 2006 the case was transferred to a court for consideration on the merits.

On 6 February 2006 the applicant again complained to the court that on 7 October 2005 the investigation officer had failed to indicate reasons for his arrest.

On 21 February 2006 the Feodosiyskiy Town Court ("Feodosiyskyy Court"), which was considering the case on the merits, rejected the applicant's request for release. The court noted that the applicant was accused of having committed a serious crime, could abscond and hinder the investigation.

On 23 May 2006 the Feodosiyskiy Court found the applicant and U. guilty of several counts of bribe taking and sentenced them to six and five years' imprisonment, respectively, with confiscation of half of their property. In a court hearing the applicant submitted that he had lent S. 5,000 USD, however, the latter had failed to return the debt. As for other accusations of bribes, the applicant submitted that he had had a conversation with R. about "protecting" him in case R. would be stopped with a catch of sturgeon but the applicant had planned to report it to the prosecutor. The court, however, found that the applicant's guilt was confirmed by testimonies of several witnesses, face-to-face interrogations between the applicant, U., S., K. and R, audio records of their meetings on 7 October 2005, text messages sent by the applicant to K. and other evidence. The court also noted that the taping had been authorised by the Court of Appeal of the ARC on 7 October 2005.

On 14 September 2006 the Court of Appeal of the ARC terminated proceedings in respect of one count of bribe in respect of the applicant and upheld the remainder of the judgment.

On 24 July 2007 the Supreme Court of Ukraine rejected the applicant's appeal on the points of law.

### B. Search in the applicant's apartment

On 7 October 2005 at 5 p.m. the Prosecutor's Office of the ARC authorised a search in the applicant's apartment. It was noted that there was information that in the applicant's apartment there were important pieces of evidence. The search had to be performed immediately since "important material evidence could be lost" and "it was impossible to request authorisation from the Tsentralnyy Court".

On the same day at 6 p.m. the applicant's apartment was searched and 4,800 USD were seized. The applicant stated that the money belonged to his wife.

On 31 October 2005 the Prosecutor's Office of the ARC refused to institute criminal proceedings following the applicant's complaints about the search in his apartment. The investigation officer, M., submitted that he had authorised the search in the applicant's apartment since after the search in the applicant's office the money given to the applicant by R. had not been found. As there was a threat that the applicant's family members would destroy or hide the evidence, the search in the applicant's apartment had to be conducted immediately.

On 9 December 2005 the Tsentralnyy Court quashed this decision since the applicant, his wife, R. and other persons had not been questioned.

On 26 January 2006 the Prosecutor's Office of the ARC again refused to institute criminal proceedings.

On 6 March 2006 the Tsentralnyy Court upheld this decision.

On 22 August 2006 the Court of Appeal of the ARC rejected the applicant's appeal.

On 24 October 2006 the Supreme Court of Ukraine rejected the applicant's appeal on the points of law as such decisions were not subject to appeal in cassation.

### C. Claim for damages allegedly inflicted by a newspaper publication

On 20 January 2006 a local newspaper published an interview with the Prosecutor of the ARC, in which the latter stated that in 2006 the applicant's case had been submitted to a court for consideration on the merits.

On 25 September 2006 the applicant claimed non-pecuniary damages from the Prosecutor's Office of the ARC inflicted on him by the above publication.

On 8 November 2006 the Tsentralnyy Court left this claim without consideration on account of the failure to pay court fees.

On 19 February 2007 the Court of Appeal of the ARC upheld the decision of 8 November 2006.

On 27 September 2007 the Supreme Court of Ukraine rejected the applicant's appeal on the points of law.

### D. Conditions of detention

Between 10 October 2005 and 4 February 2006 the applicant was detained in the Simferopol Pre-Trial Detention Centre no. 15 (*Ізолятор тимчасового тримання № 15 м. Сімферополя*) ("the SIZO"). Together with four other detainees the applicant shared cell no. 29, which measured 10 square meters. The applicant submitted that there were no chairs in the cell and that it was not renovated. There were cockroaches and other insects. The toilet space was very narrow – around 45-50 centimetres of width – which caused the applicant, who is 1.94 meters high and weighs 160 kilograms, considerable difficulties. The detainees were able to take a shower only once every 7-10 days.

Between 5 February and 5 September 2006 the applicant was detained in the Feodosiya Temporary Detention Centre (*ізолятор тимчасового тримання м. Феодосія*) ("Feodosiya ITT") in cell no. 27, which measured 4.7 square meters, together with four or more detainees. The cell had no windows and no furniture. The toilet space was very narrow – around 30 centimetres of width. The applicant stated that he had had no possibility to take a shower and detainees had to sleep in turns. 30-minutes' outside exercise was possible once every 10-15 days in a small yard which measured 4.5 square meters.

The applicant submitted undated photos of a cell, on which it is visible that the toilet (a hole in the floor plugged by a plastic bottle) is separated

from the living space by a wall approximately one meter high. Beside the toilet there is a sleeping place (allegedly a mattress on a wooden bank or on the floor).

According to the applicant, on 17 October 2006 he was transferred from the SIZO no. 15 to Menskaya Correctional Colony no. 91.

## E. Complaints about conditions of detention

### *1. First set of proceedings*

On 6 March 2006 the applicant complained to the Feodosiyskyy Court and to the Prosecutor's Office of the ARC about the conditions of his detention in the ITT (overcrowding, no windows in the cell, no possibility to take a shower). The court transferred this complaint to the Feodosiya Prosecutor's Office. On 20 March 2006 the Feodosiya Prosecutor's Office informed the applicant that the ITT administration had been instructed to remedy the situation.

On 26 June 2006 the applicant lodged an identical complaint before the Feodosiyskyy Court. On 30 June 2006 the court again forwarded the applicant's complaint to the Feodosiya Prosecutor's Office.

On 1 July 2006 the applicant complained to the Court of Appeal of the ARC about the failure of the Feodosiyskyy Court to consider his complaint.

On 31 August 2006 the Leninskyy District Court, to which the case was assigned, refused to consider the applicant's complaint. It held that in accordance with the Criminal Procedure Code and the Prosecutor's Act (*Закон України «Про прокуратуру»*) it was for the prosecutor's offices to supervise observance of the law in detention centres. In case of the prosecutor's inaction the applicant could complain about it to the court. Since the applicant did not complain about the prosecutor's inaction, his complaints were unsubstantiated.

On 12 December 2006 the Court of Appeal of the ARC upheld this decision.

On 21 April 2009 the Higher Administrative Court of Ukraine rejected the applicant's appeal on the points of law.

### *2. Second set of proceedings*

On 2 August 2006 the applicant complained to the Prosecutor's Office of the ARC about the failure of the Feodosiya Prosecutor's Office to consider his complaints about conditions of detention.

On 6 September 2006 the Prosecutor's Office of the ARC transferred his complaint to the Feodosiya Prosecutor's Office.

On 22 September 2006 the applicant instituted proceedings in the Zheleznodorozhnyy District Court against the Prosecutor's Office of the ARC for their failure to answer his complaints. He also claimed damages.

The proceedings apparently are still pending.

*3. Third set of proceedings*

On 17 September 2007 the applicant instituted proceedings in the Menskiy District Court of Chernigiv District against the administration of the Feodosiya ITT claiming damages for the harm inflicted by inhuman and degrading conditions of detention.

On 23 November 2007 the court returned the applicant's complaint as lodged outside the one-year time-limit since the applicant was transferred from the Feodosiya ITT on 5 September 2006. On 1 April 2008 and on 21 December 2010 the Court of Appeal of the ARC and the Higher Administrative Court rejected the applicant's appeals.

### F. Other events

The applicant requested the court to clarify how his verdict in the part related to property confiscation should be enforced, but apparently to no avail.

### G. Relevant domestic law

*Code of Criminal Procedure, 1960*

Article 177 of the Code provides:

> "... A search in a person's home and other possession may be conducted only on the basis of a reasoned court decision, except for urgent cases. ... A court decision authorising the search is not subject to appeal. A refusal by the court to allow a search may be appealed against by the prosecutor within three days.
>
> In urgent cases connected with the rescuing of human life and preservation of property or with the direct pursuit of criminal suspects, the search may be performed without a court decision. The search report shall state the reasons for its performance without a court decision. Within twenty-four hours the investigator shall refer a copy of the search report to the prosecutor. "

## COMPLAINTS

1. In his application form of 27 March 2006 the applicant complained about his unlawful arrest and detention. He invoked Articles 5 §§ 1 (c)

and 3 of the Convention. The applicant also complained that conditions of his detention had been inhuman and that he had not been able to properly prepare his defence in such conditions. The applicant invoked Articles 3 and 6 § 3 (b) of the Convention.

2. In his application form of 22 September 2006 the applicant complained about the search in his apartment and subsequent refusal to institute criminal proceedings against the investigation officer who had ordered the search. The applicant also complained that his wife's money had been seized. He invoked Articles 6 § 1 and 8 of the Convention.

3. In his application form of 3 October 2006 the applicant invoked Article 5 §§ 2 and 4 of the Convention in respect of his arrest.

4. In his application form of 7 January 2007 the applicant complained about his allegedly unlawful conviction. He invoked Article 6 §§ 1 and 3 (b) and Articles 13, 17 and 53 of the Convention.

5. In his application form of 7 April 2007 the applicant complained about the refusal of the court to consider his claim for non-pecuniary damages for the harm inflicted by a newspaper publication. He invoked Articles 6 § 1, 13 and 17 of the Convention and Article 1 of Protocol No. 12.

6. In his application form of 7 March 2008 the applicant complained about the refusal of the court to clarify how his verdict should be enforced. He invoked Articles 6 § 1, 13, 14 and 17 of the Convention.

7. In his application form of 28 December 2008 the applicant complained about the refusal of the court to consider his complaint against the judge who had not considered his claim against the ITT. The applicant invoked Articles 6 § 1, 13, 14 and 17 of the Convention, and Article 1 of Protocol No. 12.

# THE LAW

## A. Complaints under Article 3 (conditions of detention), Article 5 § 1 (lawfulness of the applicant's detention between 7 February and 23 May 2006), Article 6 § 1 (refusal to consider the applicant's complaints about conditions of detention) and Article 13 (availability of an effective remedy in respect of complaints about conditions of detention) of the Convention

The applicant complained that his conditions of detention were in breach of Article 3 of the Convention and that the court had refused to consider his complaints in breach of Articles 6 § 1 and 13 of the Convention (first set of proceedings).

He further complained of the unlawfulness of his detention between 7 February and 23 May 2006.

The invoked Articles provide as follows:

**Article 3**

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

**Article 5 § 1**

"1. Everyone has the right to liberty and security of person..."

**Article 6 § 1**

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

**Article 13**

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

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 the Court, to give notice of this part of the application to the respondent Government.

## B. Other complaints

Having considered the remainder of the applicant's submissions in the light of all the material in its possession, the Court finds that, 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.

It follows that this part of the application must be declared inadmissible as manifestly ill-founded, pursuant to 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, the unlawfulness of his detention between 7 February and 23 May 2006, lack of access to a court

(first set of proceedings) and the unavailability of an effective remedy in respect of his complaint about the conditions of detention;

*Declares* the remainder of the application inadmissible.

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| Claudia Westerdiek<br>Registrar | Mark Villiger<br>President |