

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

FIFTH SECTION

DECISION

Application no. 24392/06
Maksim Vladislavich URZHANOV
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 22 January 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 2 June 2006,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Maksim Vladislavich Urzhanov, is a Ukrainian national, who was born in 1968 and is currently serving a sentence in Slavyanoserbskaya Correctional Colony No. 60 in Ukraine. The applicant is represented by his father, Mr. V. M. Urzhanov.

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

Between 1991 and 2000 numerous criminal proceedings were instituted following murders, robberies and other crimes allegedly committed by a criminal gang in the Odessa region.

On 19 February 2000 the applicant was arrested in Russia. On 15 April 2000 he was extradited to Ukraine. On 4 May 2000 the applicant confessed to having committed various crimes.

In 2000 one of the applicant's alleged accomplices, Ya., escaped from a pre-trial detention centre. In 2001 another accomplice, R., died.

On 22 September 2004 the Odessa Regional Court of Appeal convicted the applicant and sentenced him to life imprisonment for numerous counts of murder, robbery and other crimes committed as a member of a criminal gang. The court judgment concerned twenty different criminal episodes. Nine of the applicant's accomplices were also sentenced to various terms of imprisonment. During a court hearing the applicant pleaded guilty to some of the charges, including several charges of murder. In finding the applicant guilty, the court partially relied on Ya. and R.'s testimonies. The applicant was represented by a lawyer, G.

On 18 April 2006 the Supreme Court of Ukraine upheld this judgment.

2. Conditions of detention

Between September 2004 and 13 June 2007 the applicant was detained in Odessa Pre-Trial Detention Centre ("the SIZO"), together with two other people in a cell measuring 8 square metres. It appears that he was also later detained there for unidentified periods.

The applicant stated that the heating in the cell had been very poor, so it had been very cold and damp in the cell in winter. In summer it had been very hot and damp because there had been no air conditioning. The applicant had spent 23 hours per day in the cell. The artificial lighting had constantly been on. However, the applicant complained that it had been so dull that it had been impossible to read and write.

The applicant also complained that the food had been inedible. As an example, he submitted a list of the products the detainees had been given between 10 and 16 March 2008. It had included bread, sugar, pearl barley porridge, finely ground barley porridge or potatoes with or without meat, red beet salad and different soups without meat. The detainees had also been given fish and vegetables which had appeared rotten and had stunk.

3. Proceedings against the court

On 17 August 2007 the applicant instituted proceedings in the Odessa Regional Administrative Court against a judge of the Odessa Regional Court of Appeal who had refused to give him copies of case-file materials. The applicant had stated that in order to lodge an appeal against his sentence

under the extraordinary appeal procedure and to lodge an application before the European Court of Human Rights he needed the list of witnesses in his case, a copy of the "preliminary examination of his case by the court" as well as "other documents".

On 28 August 2007 the court refused to institute proceedings following the applicant's complaint, as it had concerned "the actions of a judge in the course of the administration of justice". The court also noted that these actions should have been complained of under a different procedure, namely under the Criminal Procedure Code of Ukraine. The court, however, did not indicate any particular provision of the Criminal Procedure Code.

On 27 May 2008 the Odessa Administrative Court of Appeal upheld this decision.

On 3 February 2010 the Higher Administrative Court of Ukraine rejected the applicant's appeal on points of law.

COMPLAINTS

1. The applicant complained under Articles 3 and 6 of the Convention that, in addition to his freely given confession of 4 May 2000, he had been forced to confess to all the crimes of which he had been accused. In return, he had been promised that he would receive a short term of imprisonment, the opportunity to escape and better conditions of detention (the ability to use a telephone, to have alcoholic drinks, and so forth). According to the applicant, he had thus given self-incriminating testimony which had later provided the basis for his conviction.
2. The applicant complained under Article 6 of the Convention that his conviction had been unfair. He stated that he had been forced to waive his right to have a lawyer and that later on he had not been able to have confidential meetings with his lawyer. The applicant also stated that numerous witnesses had not been called to a court hearing (in a letter of 2 June 2006 he stated that only nine out of 300 witnesses had been called; in his application form of 4 July 2006 the applicant stated that only five out of 180 witnesses had been called). In particular, the applicant complained that he had not been able to challenge the testimonies of Ya. and R. The applicant also complained of the superficial examination of his cassation appeal by the Supreme Court.
3. The applicant complained under Article 6 § 2 of the Convention that, before he had been found guilty by a court, he had been called "the most dangerous member of a criminal gang" by an officer of the Security Service of Ukraine.

4. The applicant complained under Article 7 of the Convention that his penalty had been heavier than that envisaged by law, as between 29 December 1999 and 22 February 2000 the maximum penalty provided by law had been fifteen years' imprisonment.
5. The applicant complained under Article 8 of the Convention that after conviction he had only been allowed one four-hour-long visit by three people once every six months.
6. The applicant complained that the courts had refused to consider his complaints about the failure of the Court of Appeal to provide him with copies of the documents from his case file that he had requested.
7. In a letter of 12 July 2007 the applicant complained that the conditions of his detention in Odessa Pre-Trial Centre had breached Article 3 of the Convention.
8. Finally, the applicant cited Articles 5, 13, 14, 17, 34 of the Convention and Articles 2 and 3 of Protocol No. 7 to the Convention.

THE LAW

A. Complaint under Article 3 (conditions of detention) of the Convention

The applicant complained that the conditions of his detention in Odessa Pre-Trial Detention Centre had been in breach of Article 3 of the Convention.

The Article cited provides as follows:

Article 3

"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.

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 complaint concerning the conditions of his detention;

Declares the remainder of the application inadmissible.

Claudia Westerdiek
Registrar

Mark Villiger
President