



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

FIFTH SECTION

CASE OF ATENTYEV AND OTHERS v. UKRAINE

*(Applications nos. 38264/20 and 11 others –
see appended list)*

JUDGMENT

STRASBOURG

29 September 2022

This judgment is final but it may be subject to editorial revision.

In the case of Atentyev and Others v. Ukraine,

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

Stéphanie Mourou-Vikström, *President*,

Ivana Jelić,

Kateřina Šimáčková, *judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar*,

Having deliberated in private on 8 September 2022,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in applications against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on the various dates indicated in the appended table.

2. The Ukrainian Government (“the Government”) were given notice of the applications.

THE FACTS

3. The list of applicants and the relevant details of the applications are set out in the appended table.

4. The applicants complained of the inadequate conditions of their detention and of the lack of any effective remedy in domestic law. In applications nos. 38264/20 and 38269/20, the applicants also raised other complaints under the provisions of the Convention.

THE LAW

I. JOINDER OF THE APPLICATIONS

5. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

6. The applicants complained principally of the inadequate conditions of their detention and that they had no effective remedy in this connection. They relied on Articles 3 and 13 of the Convention, which read as follows:

Article 3

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

Article 13

“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority ...”

7. The Court notes that the applicants were kept in detention in poor conditions. The details of the applicants’ detention are indicated in the appended table. The Court refers to the principles established in its case-law regarding inadequate conditions of detention (see, for instance, *Muršić v. Croatia* [GC], no. 7334/13, §§ 96-101, ECHR 2016). It reiterates in particular that a serious lack of space in a prison cell weighs heavily as a factor to be taken into account for the purpose of establishing whether the detention conditions described are “degrading” from the point of view of Article 3 and may disclose a violation, both alone or taken together with other shortcomings (see *Muršić*, cited above, §§ 122-41, and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 149-59, 10 January 2012).

8. In the leading cases of *Melnik v. Ukraine* (no. 72286/01, 28 March 2006) and *Sukachov v. Ukraine* (no. 14057/17, 30 January 2020), the Court already found a violation in respect of issues similar to those in the present case.

9. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. Having regard to its case-law on the subject, the Court considers that in the instant case the applicants’ conditions of detention during the periods indicated in the appended table were inadequate.

10. The Court further notes that the applicants did not have at their disposal an effective remedy in respect of these complaints.

11. These complaints are therefore admissible and disclose a breach of Articles 3 and 13 of the Convention.

III. OTHER ALLEGED VIOLATIONS UNDER WELL-ESTABLISHED CASE-LAW

12. In applications nos. 38264/20 and 38269/20, the applicants submitted complaints under Article 6 § 1 of the Convention concerning the excessive length of criminal proceedings. These complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor are they inadmissible on any other ground. Accordingly, they must be declared admissible. Having examined all the material before it, the Court concludes that they also disclose violations of the Convention in the light of its findings in *Nechay v. Ukraine* (no. 15360/10, 1 July 2021).

IV. REMAINING COMPLAINTS

13. In application no. 20911/21 the applicant also raised other complaints under Article 3 of the Convention as to the inadequate conditions of his detention prior to 7 April 2017.

14. The Court has examined these complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, they either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

15. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

16. Regard being had to the documents in its possession and to its case-law (see, in particular, *Sukachov*, cited above, §§ 165 and 167), the Court considers it reasonable to award the sums indicated in the appended table.

17. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the complaints concerning the inadequate conditions of detention during the periods indicated in the appended table, the lack of any effective remedy in domestic law to complain about poor conditions of detention and the other complaints under well-established case-law of the Court, as set out in the appended table, admissible, and the remainder of application no. 20911/21 inadmissible;
3. *Holds* that these complaints disclose a breach of Articles 3 and 13 of the Convention concerning the inadequate conditions of detention during the periods indication in the appended table and the lack of any effective remedy in domestic law;

4. *Holds* that there has been a violation of the Convention as regards the other complaints raised under well-established case-law of the Court (see appended table);
5. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 29 September 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina
Acting Deputy Registrar

Stéphanie Mourou-Vikström
President

ATENTYEV AND OTHERS v. UKRAINE JUDGMENT

APPENDIX

List of applications raising complaints under Articles 3 and 13 of the Convention
(inadequate conditions of detention and lack of any effective remedy in domestic law)

No.	Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Facility Start and end date Duration	Sq. m per inmate	Specific grievances	Other complaints under well-established case-law	Amount awarded for pecuniary and non- pecuniary damage per applicant (in euros) ¹
1.	38264/20 25/07/2020	Denys Sergiyovych ATENTYEV 1987	Andriy Vitaliyovych Pustyntsev Dnipro	Dnipro Detention Facility no. 4 14/12/2015 to 09/11/2020 4 years and 10 months and 27 days	2.5 - 2.6 m ²	lack of fresh air, lack of or poor quality of bedding and bed linen, poor quality of food, lack of or insufficient natural light, lack of or insufficient electric light, lack of or insufficient quantity of food, overcrowding	Art. 6 (1) - excessive length of criminal proceedings - 09/12/2015 – 09/11/2020, one level of jurisdiction	9,800
2.	38269/20 25/07/2020	Tetyana Volodymyrivna SHKERED 1982	Andriy Vitaliyovych Pustyntsev Dnipro	Dnipro Detention Facility no. 4 14/12/2015 to 09/11/2020 4 years and 10 months and 27 days	4.2-4.5 m ²	lack of fresh air, infestation of cell with insects/rodents, passive smoking, lack of toiletries, lack of or poor quality of bedding and bed linen, poor quality of food, lack or insufficient quantity of food, no or restricted access to warm water, lack of privacy for toilet, lack of or inadequate hygienic facilities, overcrowding	Art. 6 (1) - excessive length of criminal proceedings - 09/12/2015 - 9/11/2020, one level of jurisdiction.	9,800

ATENTYEV AND OTHERS v. UKRAINE JUDGMENT

No.	Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Facility Start and end date Duration	Sq. m per inmate	Specific grievances	Other complaints under well-established case-law	Amount awarded for pecuniary and non-pecuniary damage per applicant (in euros) ¹
3.	1173/21 20/11/2020	Vadym Ivanovych VERKHODANOV 1980	Oleksandr Volodymyrovych Vavrenyuk Pyatykhatky	Cherkasy Pre-Trial Detention Facility 11/05/2019 pending More than 3 years and 3 months and 8 days	2.5 m ²	overcrowding, lack of or poor quality of bedding and bed linen, lack of toiletries, lack of fresh air		7,300
4.	1678/21 22/12/2020	Oleg Gennadiyovych NOVOSYOLOV 1999	Oxana Culbaci Limoges	Dnipro Penitentiary Facility no. 4 19/05/2020 pending More than 2 years and 3 months	2.7 m ²	overcrowding, no or restricted access to shower, lack of fresh air, lack of or poor quality of bedding and bed linen, lack of toiletries		5,300
5.	6447/21 20/01/2021	Yuriy Volodymyrovych MARTYNOV 1958	Andriy Vitaliyovych Pustyntsev Dnipro	Mykolayiv Pre-Trial Detention Facility 02/03/2018 to 11/01/2021 2 years and 10 months and 10 days	2,4 m ²	overcrowding, lack of fresh air, lack of or inadequate hygienic facilities, lack of or poor quality of bedding and bed linen, no or restricted access to shower, lack of toiletries		6,500
6.	6545/21 20/01/2021	Andriy Mykhaylovych YUZVENKO 1999	Vavrenyuk Oleksandr Volodymyrovych Pyatykhatky	Mykolaiv Pre-Trial Detention Facility 02/09/2017 to 20/01/2021 3 years and 4 months and 19 days	2.6 - 2.8 m ²	lack of fresh air, passive smoking, mouldy or dirty cell, overcrowding, infestation of cell with insects/rodents, lack of or inadequate hygienic facilities, lack of privacy for toilet, no or restricted access to warm water, lack of or poor quality of bedding and bed linen, poor quality of food, no or restricted access to shower		7,400

ATENTYEV AND OTHERS v. UKRAINE JUDGMENT

No.	Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Facility Start and end date Duration	Sq. m per inmate	Specific grievances	Other complaints under well-established case-law	Amount awarded for pecuniary and non-pecuniary damage per applicant (in euros) ¹
7.	10307/21 02/02/2021	Volodymyr Yuriyovych KRAYILO 1976	Sergiy Mykolayovych Rybiy Dnipro	Ivano-Frankivsk Detention Facility 27/07/2017 pending More than 5 years and 23 days	3.85 m ²	overcrowding, lack of fresh air, lack of or insufficient electric light, lack of or poor quality of bedding and bed linen, lack or insufficient quantity of food, lack of toiletries, no or restricted access to shower, poor quality of food, lack of privacy for toilet		7,500
8.	10391/21 02/02/2021	Oleksandr Viktorovych KRUGLIK 1982	Andriy Valeriyovych Yolkin Kryvyy Rig	Lutsk Pre-Trial Detention Facility 17/03/2020 to 12/10/2021 1 year and 6 months and 26 days	2.8-3.8 m ²	overcrowding, mouldy or dirty cell, passive smoking, inadequate temperature, lack of or insufficient natural light, no or restricted access to potable water, no or restricted access to warm water, poor quality of potable water, no or restricted access to running water, no or restricted access to shower, lack of or poor quality of bedding and bed linen, lack of or insufficient electric light, lack of toiletries, lack of requisite medical assistance, lack of or inadequate hygienic facilities, lack of fresh air, lack of privacy for toilet, infestation of cell with insects/rodents, lack of or insufficient physical exercise in fresh air, poor quality of food		4,100

ATENTYEV AND OTHERS v. UKRAINE JUDGMENT

No.	Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Facility Start and end date Duration	Sq. m per inmate	Specific grievances	Other complaints under well-established case-law	Amount awarded for pecuniary and non-pecuniary damage per applicant (in euros) ¹
9.	20911/21 06/04/2021	Valeriy Viktorovich VASILENKO 1980	Sergiy Mykolayovych Rybiy Dnipro	Vinnitsya Penitentiary Facility no. 1 07/04/2017 pending More than 5 years and 4 months and 12 days	3.8 m ²	overcrowding, lack of fresh air, passive smoking, infestation of cell with insects/rodents, mouldy or dirty cell, lack of or poor quality of bedding and bed linen, stench from the toilet, lack of privacy for toilet, lack of toiletries, poor quality of food, no or restricted access to shower, poor quality of potable water		7,500
10.	27247/21 21/05/2021	Ivan Ivanovych MILYAN 1986	Andriy Vitaliyovych Pustyntsev Dnipro	Zhytomyr Detention Facility no. 8 29/01/2019 pending More than 3 years and 6 months and 21 days	3.2 m ²	overcrowding, lack of privacy for toilet, lack of fresh air, lack of or poor quality of bedding and bed linen, poor quality of food, lack or insufficient quantity of food, no or restricted access to shower, constant electric light, infestation of cell with insects/rodents, passive smoking, mouldy or dirty cell, lack of toiletries, no or restricted access to warm water		7,500
11.	27345/21 21/05/2021	Viktoriya Viktorivna KVASHA 1996	Andriy Vitaliyovych Pustyntsev Dnipro	Zhytomyr Detention Facility 18/05/2016 pending More than 6 years and 3 months and 1 day	2.5 m ²	lack of or poor quality of bedding and bed linen, lack of or inadequate hygienic facilities, no or restricted access to shower, overcrowding		7,500

ATENTYEV AND OTHERS v. UKRAINE JUDGMENT

No.	Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Facility Start and end date Duration	Sq. m per inmate	Specific grievances	Other complaints under well-established case-law	Amount awarded for pecuniary and non- pecuniary damage per applicant (in euros) ¹
12.	46043/21 02/08/2021	Dmytro Viktorovych GOLUB 1979		Kyiv Pre-Trial Detention Facility 20/05/2019 to 24/03/2021 1 year and 10 months and 5 days	3-4.3 m ²	lack of fresh air, lack of or insufficient electric light, lack of or insufficient natural light, lack of or insufficient physical exercise in fresh air, lack of or poor quality of bedding and bed linen, lack of toiletries, lack or insufficient quantity of food, mouldy or dirty cell, no or restricted access to potable water, no or restricted access to shower, poor quality of food		4,700

¹ Plus any tax that may be chargeable to the applicants.