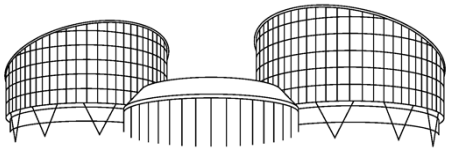

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF TURDIKHOJAEV v. UKRAINE

(Application no. 72510/12)

JUDGMENT

STRASBOURG

18 March 2021

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

In the case of Turdikhojaev v. Ukraine,

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

Arnfinn Bårdsen, *President,*
Ganna Yudkivska,
Mattias Guyomar, *judges,*
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 72510/12) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Uzbekistan national, Mr Zokir Turdikhojaev ("the applicant"), on 27 October 2012;

the decision to give notice to the Ukrainian Government ("the Government") of the complaints under Article 3 (in respect of the conditions of detention at the Kyiv pre-trial detention centre and the applicant's placement in a metal cage during court hearings) and Article 5 §§ 1 and 5, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 18 February 2021,

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

INTRODUCTION

1. The case concerns the applicant's complaints that his detention in Ukraine, while the authorities examined the question of his extradition to Uzbekistan, was in breach of Article 5 of the Convention, and that the conditions of his detention and his placement in a metal cage during court hearings was in breach of Article 3.

THE FACTS

2. The applicant was born in 1968 and lives in Trädet, Sweden. He was initially represented by Mr D. Dvornik and Ms H. Bocheva and then by Mr O. Lapin, lawyers practising in Kyiv.

3. The Government were represented by their Agent, Mr I. Lishchyna.

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

I. THE APPLICANT'S DETENTION AND RELEASE

5. On 19 June 2012 the applicant, a national of Uzbekistan, was arrested by Ukrainian authorities on arrival at the Kyiv Boryspil International

Airport, as he had been placed on an international "wanted" list at the request of the authorities of Uzbekistan.

6. On 22 June 2012 the Boryspil Court placed him in detention for thirty days, pending receipt of an extradition request.

7. On 12 July 2012 the Republic of Uzbekistan sent a request to the General Prosecutor's Office of Ukraine ("the GPO") seeking the applicant's extradition on charges of membership of an extremist or fundamentalist organisation, distribution of subversive literature and an attempt to overthrow the constitutional order of the Republic.

8. On 18 July 2012 the Kyiv Shevchenkivskyy District Court ordered the applicant's detention for the duration of the extradition proceedings but no longer than eighteen months.

9. On 14 September and 12 November 2012 and 10 January and 5 March 2013 the Shevchenkivskyy Court reviewed and upheld the applicant's detention pending extradition. The applicant's lawyers were present at all the hearings and he appeared in person at the latter two hearings.

10. On 24 January 2013 the Kyiv City Court of Appeal upheld the first-instance court's detention decision of 10 January 2013. According to the applicant, he was held in a metal cage during the hearing before the Court of Appeal.

11. On 25 January 2013 the GPO decided to extradite the applicant to Uzbekistan. On 20 February 2013 the Shevchenkivskyy Court upheld that decision. The applicant appealed to the Kyiv City Court of Appeal.

12. On 10 April 2013 the applicant was granted refugee status and authorised to resettle in Sweden.

13. According to the applicant, on 12 April 2013 the Regional Representation of the United Nations High Commissioner for Refugees (UNHCR) informed the GPO of the Swedish authorities' decision. The applicant provided a copy of the UNHCR's letter dated 12 April 2013 in which the UNHCR informed the GPO that the applicant had been granted refugee status in Sweden. The UNHCR pointed out that, in view of that fact, domestic law (see paragraph 25 below) prevented the applicant's extradition to Uzbekistan and urged the GPO to refuse to extradite him and to release him. A copy of the Swedish Migration Board's letter informing the UNHCR of its decision concerning the applicant was enclosed. There is no information in the case file as to when the UNHCR's letter was sent to and received by the GPO.

14. On 16 April 2013 the GPO requested information concerning the applicant from the Swedish embassy in Ukraine. On 26 April 2013 the embassy forwarded a letter from the Swedish Migration Board to the GPO. However, the GPO considered the information provided insufficient and asked to be provided with a copy of an actual decision concerning the applicant and extracts from the relevant Swedish laws. It appears that the

GPO considered that the information provided by the embassy was incomplete. The Court has not been provided with copies of the letters mentioned in this paragraph and their existence is known solely from references to them in subsequent correspondence.

15. On 16 April 2013 the Kyiv City Court of Appeal held a hearing on the applicant's appeal against the extradition decision. At the hearing, the applicant asked the court not to put him in the metal cage as he had not been accused of a violent offence and his previous conduct in court provided no grounds for such placement. The court refused the request. There is no information in the case file concerning the reasons for that decision.

16. On 15 May 2013 the GPO, considering the information previously provided insufficient (see paragraph 14 above), asked the Swedish embassy to send it a copy of the decision on the applicant's refugee status in Sweden.

17. On 16 May 2013 the Swedish embassy sent the relevant document to the GPO.

18. On 6 June 2013 the Kyiv City Court of Appeal quashed the GPO's extradition decision of 25 January 2013 and on the same day the GPO revoked it.

19. On 7 June 2013 the applicant was released.

II. ASYLUM PROCEEDINGS IN UKRAINE

20. On 26 December 2012 the Migration Service of Ukraine rejected the applicant's asylum application, which he had lodged on 22 June 2012.

21. On 20 March and 23 May 2013 respectively the Kyiv Circuit Administrative Court and the Kyiv Administrative Court of Appeal upheld that decision.

III. CONDITIONS OF DETENTION

22. From 26 June 2012 to 7 June 2013 the applicant was detained in the Kyiv pre-trial detention centre (SIZO).

23. According to the information provided by the Government, the applicant was kept in a number of cells. The Government submitted information on the cell numbers and their surface areas and the applicant described the number of inmates who had been held in those cells with him and the periods of time he had spent in each cell:

Cell no.	**Surface area (sq. m)**	**Number of inmates, including the applicant**	**Length of stay**
14	31.6	28	7 days
193	34	30	45 days
147	39.2	22	5 months
67	53.3	33	5 months

24. According to the applicant, the cells had been poorly ventilated and the conditions of detention in them had been unacceptable. The Government submitted that the cells had been equipped with both natural and working artificial ventilation and that the cleaning, catering and bathing arrangements had been appropriate and had complied with the relevant regulations.

RELEVANT LEGAL FRAMEWORK

25. Article 31 of the 2011 Refugees and Persons in Need of Subsidiary Protection Act transposes into Ukrainian law the provisions of Article 33 of the 1951 Refugee Convention. Article 31 provides that individuals recognised as refugees by any State Party to the Convention cannot be expelled or returned from Ukraine to the country where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion.

26. Article 589 § 1 (5) of the 2012 Code of Criminal Procedure provides that a person cannot be extradited where that would be contrary to Ukraine's international obligations. The other relevant provisions of the domestic law concerning extradition procedures and detention in that context can be found in *Baz v. Ukraine* [Committee], no. 40962/13, §§ 25-28, 5 November 2020.

27. The text of the regulations providing for the installation of metal cages in certain courtrooms, enacted by the joint order of 16 October 1996 of the Ministry of the Interior, the GPO, the Supreme Court and the Security Service, are set out in *Titarenko v. Ukraine*, no. 31720/02, § 41, 20 September 2012.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

28. The applicant complained under Article 3 of his conditions of detention in the Kyiv SIZO and of his placement in a metal cage during court hearings. That Article reads as follows:

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

A. The parties' submissions

29. Concerning the conditions of detention, the applicant and the Government made the submissions set out in paragraphs 23 and 24 above.

30. Concerning the applicant's placement in a cage, the Government submitted that domestic regulations provided for the installation of cages in

courtrooms (see paragraph 27 above) but that since 2016 work was under way to replace the metal bars in the courtrooms of the Kyiv City Court of Appeal with glass partitions.

31. In his application form the applicant submitted that he had been kept in a metal cage during the hearings at the Kyiv City Court of Appeal on 24 January and 16 April 2013 (see paragraphs 10 and 15 above), that this had been unjustified by any security considerations and that he had felt distress due to such treatment.

32. In his reply to the Government's observations on the admissibility and merits of the case, the applicant submitted that he had been held in a metal cage during the court hearings which took place from June 2012 to June 2013, not only at the Kyiv City Court of Appeal but also at the Shevchenkivskyy Court (the first-instance court).

B. The Court's assessment

1. Admissibility

33. As far as the applicant's allegations concerning his having been held in a metal cage at the hearings of the first-instance court are concerned, the applicant, in addition to having raised this allegation belatedly, did not identify specific dates on which this had allegedly occurred or provide any evidence that he had raised this complaint before the first-instance court. Accordingly, this part of the applicant's complaint under Article 3 of the Convention is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

34. The Court notes that the remainder of the applicant's complaints under Article 3 of the Convention is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

2. Merits

(a) Conditions of detention

35. The relevant principles of the Court's case-law are set out in *Muršić v. Croatia* ([GC], no. 7334/13, §§ 137-41, 20 October 2016). In particular, when the personal space available to a detainee falls below 3 sq. m of floor surface in multi-occupancy accommodation in prisons, the lack of personal space is considered so severe that a strong presumption of a violation of Article 3 arises (ibid., § 137).

36. According to the applicant's submissions, which the Government did not dispute (see paragraphs 23-24 above), for the entirely of his stay at the Kyiv SIZO he was held in cells where he was afforded less than 2 sq. m of personal space. A strong presumption of a violation of Article 3 thus arises and the Government have not rebutted that presumption by showing that

there were factors capable of adequately compensating for the scarce allocation of personal space.

37. There has accordingly been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention from 26 June 2012 to 7 June 2013.

38. The above finding makes it unnecessary for the Court to address separately the applicant's remaining allegations concerning the material conditions of his detention (see, for example, *Eze v. Romania*, no. 80529/13, § 61, 21 June 2016, and *Igbo and Others v. Greece*, no. 60042/13, § 46, 9 February 2017).

(b) Placement in a metal cage

39. The applicant made specific submissions in this respect: he alleged that he had been kept in a metal cage during the hearings before the Kyiv City Court of Appeal held on 24 January and 16 April 2013. He also alleged that he had raised a complaint in this respect on the latter date to no avail. The Government did not contest his allegations (see paragraph 30 above).

40. The Court reiterates that holding a person in a metal cage during a court hearing – having regard to its objectively degrading nature, which is incompatible with the standards of civilised behaviour that are the hallmark of a democratic society – constitutes in itself an affront to human dignity in breach of Article 3 (see *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, § 138, ECHR 2014 (extracts)).

41. The Court has already found violations of Article 3 of the Convention on account of similar practices in respect of criminal defendants in Ukraine (see, for example, *Korneykova and Korneykov v. Ukraine*, no. 56660/12, §§ 164-66, 24 March 2016; *Korban v. Ukraine*, no. 26744/16, §§ 132-36, 4 July 2019; and *Ivashchenko v. Ukraine* [Committee], no. 41303/11, §§ 62-66, 10 September 2020). It further notes that in the present case the Government did not dispute the fact that the applicant had been held in a metal cage during the Court of Appeal hearings and did not provide any evidence that there had been an actual and specific security risk in the courtroom which had necessitated the measure.

42. There has, accordingly, been a violation of Article 3 of the Convention on account of the applicant's placement in a metal cage during the hearings at the Kyiv City Court of Appeal.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

43. The applicant complained that his detention had been contrary to Article 5 § 1 and that he had had no enforceable right to compensation in that respect, contrary to Article 5 § 5 of the Convention. The relevant parts of Article 5 of the Convention read as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

...

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

A. Admissibility

44. The Court notes that this part of the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Article 5 § 1

(a) The parties' submissions

45. The applicant submitted that the proceedings for his extradition had not been conducted with the requisite diligence. The Ukrainian authorities had been informed of his refugee status in Sweden – which had constituted a bar to his extradition under domestic law – on 12 April 2013, but he had not been released until 7 June 2013.

46. The Government submitted that the extradition proceedings had been conducted with the requisite diligence: the applicant's request for asylum in Ukraine had had to be examined and only once a decision on that application had been made had the GPO ordered the applicant's extradition. The domestic courts had then examined the applicant's appeals against that decision and, once the applicant's asylum in Sweden had been confirmed, had set aside the extradition decision. The GPO had needed time to obtain an official confirmation of the grant of asylum by the Swedish authorities.

(b) The Court's assessment

47. It has not been contested that Sweden's recognition of the applicant as a refugee constituted a bar to his extradition to Uzbekistan under Ukrainian law (see paragraphs 25-26 above). Therefore, once the Ukrainian authorities had been duly informed of that recognition, his detention in Ukraine could no longer be justified under Article 5 § 1 (f) of the Convention. The only remaining issue before the Court is the relevant date.

48. The applicant was recognised as a refugee in Sweden on 10 April 2013. The applicant alleged that the Ukrainian authorities were informed of that fact by the UNHCR's letter of 12 April 2013. However, he has failed to indicate when and by what means the relevant UNHCR letter was sent to the GPO (see paragraph 13 above) or to provide any evidence in that respect.

49. The Court has not been provided with the correspondence between the GPO and the Swedish embassy in April 2013 (see paragraph 14 above) and therefore it is not in a position to draw any definitive conclusion concerning its content.

50. It is uncontested, however, that the GPO received a definitive confirmation of the applicant's refugee status in Sweden on 16 May 2013 at the latest (see paragraph 17 above). From that date on, the applicant's detention could no longer be justified under Article 5 § 1 (f) (see, *mutatis mutandis*, *Eminbeyli v. Russia*, no. 42443/02, §§ 48-50, 26 February 2009; *Dubovik v. Ukraine*, nos. 33210/07 and 41866/08, §§ 61-62, 15 October 2009; and *Nur Ahmed and Others v. Ukraine* [Committee], nos. 42779/12 and 5 others, §§ 115-18, 18 June 2020).

51. However, the applicant was not released until 7 June 2013 (see paragraph 19 above).

52. There has, accordingly, been a violation of Article 5 § 1 of the Convention in respect of the applicant's detention from 16 May to 7 June 2013.

53. In view of this conclusion, it is not necessary to examine separately the applicant's other complaints under Article 5 § 1.

2. Article 5 § 5

54. The applicant submitted that he had had no enforceable right to compensation under domestic law.

55. The Government submitted that the applicant could have claimed damages under the Civil Code and the Compensation Act (see *Korban*, cited above, §§ 99-100), which he had failed to do.

56. The Court has examined this issue in numerous other Ukrainian cases. It has found that a right to compensation under Article 5 § 5 of the Convention is not ensured in the domestic legal system where the Court establishes a violation of any of the preceding paragraphs of that Article and where there is no domestic judicial decision establishing the unlawfulness of the detention (ibid., § 201, with further references). The Court finds no reason to reach a different conclusion in the present case.

57. It follows that there has been a violation of Article 5 § 5 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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."

59. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

60. The Government considered that claim as unjustified and excessive.

61. The Court awards the applicant EUR 9,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

62. 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. *Declares* the complaints under Article 3 of the Convention in respect of the conditions of the applicant's detention and his placement in a metal cage during the hearings at the Kyiv City Court of Appeal and under Article 5 §§ 1 and 5 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention from 26 June 2012 to 7 June 2013;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's placement in a metal cage during the hearings at the Kyiv City Court of Appeal;

4. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention from 16 May to 7 June 2013;

5. *Holds* that there has been a violation of Article 5 § 5 of the Convention;

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 March 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Arnfinn Bårdsen President