



## Melnik v. Ukraine

App. No. 72286/01, Eur. Ct. H.R. (2006).

**Country:** Ukraine

**Region:** Europe

**Year:** 2006

**Court:** European Court of Human Rights European Court of Human Rights

**Health Topics:** Controlled substances, Health care and health services, HIV/AIDS, Infectious diseases, Medicines, Mental health, Prisons, Water, sanitation and hygiene

**Human Rights:** Freedom from torture and cruel, inhuman or degrading treatment, Right to due process/fair trial

### Facts

The applicant, a private citizen of Ukraine, was convicted in the Vinnytsia District Court for the unlawful possession of a quantity of opium with the premeditated intent to sell along with a group of persons. The District Court sentenced the applicant to five years imprisonment. During the trial, the applicant had refused the representation of an attorney and pled guilty to the charge of storing the opium. The applicant later accepted representation from a public defender, but the District Court refused the public defender's appeal.

The applicant alleged that during his subsequent incarceration authorities held him with 60 other prisoners in a cell built to detain 24 people. Some of the prisoners, according to the applicant, had tuberculosis and AIDS. The applicant alleged that the inmates had to take turns sleeping on metal bunks, that the cell was dirty, that it was infested with pests and bedbugs, that it lacked ventilation, and that he had a lack of access to outside walks and natural light. After one year and six months in prison, the applicant sought medical attention because he had began experiencing shortness of breath and was coughing up phlegm. Subsequently, a radiologist at an affiliated district hospital incorrectly concluded that the applicant had been suffering from lung cancer. In fact, further examinations at the penitentiary hospital revealed that the applicant had been suffering the early stages of a tuberculosis infection.

According to the applicant, he did not receive necessary medical treatment and assistance during his time in prison, including the provision of required prescription drugs and medical attention necessary to treat his tuberculosis. The applicant alleged that such conditions and the lack of medical attention amounted to a violation of his right to be free from torture or inhuman or degrading treatment or punishment under Article 3 of the Convention for Protection of Human Rights and Fundamental Freedoms (Convention). The applicant also claimed that he did not have access to a domestic remedy that could have effectively addressed his Article 3 complaints, in contradiction to the requirements of Article 13 of the Convention. In addition, the applicant claimed that he had not had access to legal assistance for his trial before the District Court in violation of Article 6, sections 1 and 3(c) of the Convention and that Ukraine had interfered with the effective exercise of his right to apply to the European Court of Human Rights (ECHR) for a remedy. The ECHR found only the complaints lodged under Articles 3 and 13 admissible, and therefore considered only those complaints.

### Decision and Reasoning

The ECHR found that Ukraine had violated the applicant's rights under both Article 3 and Article 13 of the Convention. In particular, the ECHR considered that the applicant's complaints under Article 3 contained three issues that required consideration on their merits, namely, the overcrowding of his prison cell, the domestic authorities' failure to prevent, diagnose and treat his tuberculosis, and the lack of hygienic and sanitary conditions in his prison cell.

Regarding the alleged overcrowding of his cell, the ECHR considered international guidelines that suggested detention facilities provide a minimum of 7 square meters of cell space to detained individuals and that Ukraine did not claim to provide more than 2.98 square meters to the applicant at any of the facilities in which he had been detained during his prison sentence.

Regarding the applicant's claim to the insufficient prevention and treatment of his tuberculosis, the ECHR considered that the original incorrect diagnosis meant that the facility could not have provided a timely

detection and treatment of the disease. The ECHR also considered that the patient had not undergone the required medical check for possible tuberculosis during one of his prison transfers, and furthermore, that the applicant's lengthy treatment eventually led to lasting side effects, including impaired eye sight and dizziness.

Finally, regarding the conditions of his detention, the ECHR considered that the applicant only had access to a shower and a change of clothes once per week, and it concluded that such conditions in an overcrowded cell would have aggravated the effects of the applicant's already poor health. Taken all together, the ECHR concluded that the conditions of the applicant's overcrowded detention, as well as the inadequate medical care afforded to him and the unacceptable sanitation conditions, caused him significant mental and physical suffering that diminished his human dignity. Accordingly, the ECHR found a violation of his right to freedom from torture or inhuman or degrading treatment or punishment under Article 3 of the Convention. Insofar as Ukraine also failed to demonstrate how the applicant could have complained of his detention conditions under Ukrainian law, the ECHR also found a violation of the applicant's right to effective remedy under Article 13 of the Convention.

### **Decision Excerpts**

"93. A deprivation of liberty may often involve degrading elements. Yet it cannot be said that detention after conviction in itself raises an issue under Article 3 of the Convention. Nor can that Article be interpreted as laying down a general obligation to release a person on health grounds or to place him in a civil hospital to enable him to obtain specific medical treatment. Nevertheless, under this provision the State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured... When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as the specific allegations made by the applicant..."

"94. There are three particular elements to be considered in relation to the compatibility of the applicant's health with his stay in detention: (a) the medical condition of the prisoner, (b) the adequacy of the medical assistance and care provided in detention and (c) the advisability of maintaining the detention measure in view of the state of health of the applicant..."

"110. The Court finds in the present case that there is no indication that there was a positive intention of humiliating or debasing the applicant, or an intention to subject him to treatment contrary to Article 3 of the Convention. However, the absence of any such purpose cannot exclude a finding of violation of Article 3... It considers that the applicant's conditions of detention from 28 September 2000 until the present day (more than 5 years) must have caused him considerable mental and physical suffering, diminishing his human dignity and arousing in him such feelings as to cause humiliation and debasement..."

"111. In light of the above conclusions... the applicant's detention in such conditions amounted to degrading treatment."