

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

FIFTH SECTION

CASE OF KALUGIN v. UKRAINE

(Application no. 25688/12)

JUDGMENT

STRASBOURG

6 April 2023

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



In the case of Kalugin v. Ukraine,

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

Carlo Ranzoni*, President*,
Mattias Guyomar,
Mykola Gnatovskyy*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 25688/12) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 11 April 2012 by a Ukrainian national, Mr Aleksandr Aleksandrovich Kalugin ("the applicant"), who was born in 1971 and lives in Kryvyi Rih and who was represented by Mr V.P. Romanov, a lawyer practising in Kryvyi Rih, and Ms D.P. Kovalenko, a lawyer practising in Dnipro;

the decision to give notice of the complaints under Article 5 §§ 1, 3 and 4 of the Convention to the Ukrainian Government ("the Government"), represented by their Agent, most recently Ms M. Sokorenko, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 16 March 2023,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the alleged unlawfulness and the length of the applicant's pre-trial detention and the trial court's failure to properly examine his requests for release, in breach of Article 5 §§ 1, 3 and 4 of the Convention.

2. On 11 January 2011 the applicant was arrested in the context of a criminal investigation into abuse of power, breach of home security and forgery of documents. On the same day the Tsentralno-Miskyi District Court in Kryvyi Rih ordered his detention because of his repeated failures to appear before the investigator. Although the court did not set a time-limit for his detention, under the domestic legislation in force at the time it could not have lasted longer than two months, that is, beyond 11 March 2011. On 14 January 2011 the court's detention order was upheld on appeal.

3. According to the applicant, on 10 March 2011 the investigation was completed and the indictment and case file were transferred to the trial court for examination. By 11 March 2011, when the detention order of 11 January 2011 expired, no fresh court decision regarding further detention of the applicant had been taken but he continued to be kept in custody. On 27 April 2011 the trial court ordered the applicant's detention pending trial without specifying a time-limit.

4. On 13 December 2011 the trial court convicted the applicant as charged and sentenced him to a suspended term of imprisonment. The applicant was released on the same day. Following appeals by the applicant, the sentence was reviewed by the higher courts, resulting in the sentence of 13 December 2011 being quashed and the indictment then being returned to the investigator for corrections. On 26 August 2014 the criminal investigation against the applicant was eventually terminated owing to a lack of sufficient evidence of the applicant's guilt.

5. In the course of his detention the applicant lodged applications for release, arguing that there had been no justifiable reason for his detention and that his state of health had deteriorated. On 27 April, 1 and 22 June and 31 October 2011 the trial court rejected those applications without addressing the applicant's specific arguments.

6. After being notified of the application in the present case, the Government informed the Court that on 14 March 2017 the Dnipropetrovsk Regional Court of Appeal had awarded the applicant 150,000 Ukrainian hryvnias (UAH – approximately 5,000 euros (EUR)) pursuant to the Compensation Act of 1994 (see *Dubovtsev and Others v. Ukraine*, nos. 21429/14 and 9 others, § 48, 21 January 2021). That sum was paid on 23 August 2019. However, on 19 May 2021, following an appeal on points of law by the applicant, the Supreme Court increased the amount of compensation to UAH 750,000 (approximately EUR 25,000). In all of these decisions, the courts at various levels awarded the applicant compensation under the Compensation Act and declared that as a result of the termination of the criminal case against the applicant, his prosecution, the time he had spent in detention on remand and under an obligation not to abscond and his loss of salary as a result of suspension from work were all unlawful. According to both parties, as of December 2021, the sum awarded by the Supreme Court remained unpaid because of a lack of funds.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

7. The applicant complained that his detention between 11 March and 27 April 2011 had been arbitrary as it had not been authorised by a judicial decision, and that the decision of the trial court of 27 April 2011 ordering his detention pending trial had been unjustified and had not specified a time-limit, in breach of Article 5 § 1 of the Convention.

8. The Government submitted that in view of the enforcement of the decision of the Dnipropetrovsk Regional Court of Appeal of 14 March 2017 awarding the applicant UAH 150,000, the applicant had lost his victim status in respect of the alleged violations. The applicant disagreed, stating that the

award made by the Court of Appeal had been insufficient to remove his victim status, and that the award made by the Supreme Court had not been paid.

9. As the Court has previously held, a decision or measure favourable to the applicant is not in principle sufficient to deprive him or her of his or her status as a "victim" unless the national authorities have acknowledged the breach of the Convention, either expressly or in substance, and then afforded redress for it (see *Vadym Melnyk v. Ukraine*, nos. 62209/17 and 50933/18, § 91, 16 September 2022 and further references therein).

10. In the present case, the Court notes that following the termination of the criminal investigation against the applicant, the domestic courts presumed his prosecution and detention to have been unlawful and awarded him compensation. The courts did not, however, make an assessment of the specific circumstances of the applicant's case which had led to the alleged breach of his Convention rights. It appears that the only ground for awarding the applicant compensation was the termination of the criminal proceedings against him rather than any alleged procedural irregularity in the pre-trial detention. In *Dubovtsev and Others* (cited above, § 68) the Court found that an award of compensation on account of the termination of criminal proceedings against the applicants was not capable of providing redress for breaches of Article 5, where such an action could not or did not entail an assessment and/or sufficient acknowledgment of the applicants' specific complaints under that provision.

11. Since the grounds for compensation did not correspond to the basis of the applicant's complaint under Article 5 §§ 1, 3 and 4, the alleged violation could not therefore be redressed in the proceedings in question (see, *mutatis mutandis*, *Hađi v. Croatia*, no. 42998/08, § 20, 1 July 2010).

12. The Court observes that the amount of compensation awarded to the applicant by the Supreme Court could have provided appropriate and sufficient redress to him. It did not do so, however, in view of the Court's previous considerations and the fact that the above-mentioned award was not paid (see paragraph 6 above).

13. In the light of the foregoing, the Court rejects the Government's objection and concludes that the applicant can still claim to be a "victim" within the meaning of Article 34 of the Convention.

14. The Court notes that the remainder of the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

15. As to the merits of the applicant's complaints under Article 5 § 1, the Court notes that the Government failed to provide a court order or any other explanation that could justify the applicant's detention between 11 March 2011, when the initial court order for the applicant's detention expired, and 27 April 2011, when the trial court returned to the question of his detention. The Court has already examined and found a violation of Article 5 § 1 of the

Convention in a number of cases concerning the practice of holding defendants in custody solely on the basis of the fact that an indictment has been submitted to the trial court. It has held that the practice of keeping defendants in detention without a specific legal basis or clear rules governing their situation – with the result that they may be deprived of their liberty for an unlimited period without judicial authorisation – is incompatible with the principles of legal certainty and protection from arbitrariness. The Court has further identified this problem as a recurrent one in Ukraine (see *Kharchenko v. Ukraine*, no. 40107/02, §§ 71 and 98, 10 February 2011).

16. The Court further observes that, although on 27 April 2011 the trial court upheld the measure of pre-trial detention in respect of the applicant, it did not set a time-limit for his continued detention, nor did it give any reasonable justification for its decision. This left the applicant in a state of uncertainty as to the grounds for his detention after that date, until his conviction on 13 December 2011. In this connection the Court reiterates that the absence of grounds in judicial decisions authorising detention for a prolonged period of time is incompatible with the principle of protection from arbitrariness enshrined in Article 5 § 1 (see *Kharchenko*, cited above, §§ 73-76 and 98). In these circumstances the Court considers that the trial court's decision of 27 April 2011 did not afford the applicant adequate protection from arbitrariness, which is an essential element of the "lawfulness" of detention within the meaning of Article 5 § 1 of the Convention, and that therefore his detention from 27 April to 13 December 2011 was likewise not in accordance with that provision.

17. There has accordingly been a violation of Article 5 § 1 of the Convention regarding the applicant's detention from 11 March to 13 December 2011.

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

18. The applicant also raised other complaints which are covered by the well-established case-law of the Court, namely that the length of his pre-trial detention from 11 January to 13 December 2011 had been unreasonable and unjustified, in breach of Article 5 § 3 of the Convention, and that the trial court had failed to properly examine his requests for release, in breach of Article 5 § 4 of the Convention. 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 grounds. Accordingly, they must be declared admissible. Having examined all the material before it, the Court concludes that they disclose a violation of Article 5 §§ 3 and 4 of the Convention in the light of its findings in previous judgments (see *Kharchenko*, cited above, §§ 79-81, and *Molodorych v. Ukraine*, no. 2161/02, §§ 97-101, 28 October 2010).

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19. The applicant claimed 125,000 euros (EUR) in respect of non-pecuniary damage.

20. The Government contested that claim.

21. Having regard to the circumstances of the present case, and in particular the fact that the applicant has been awarded compensation at the domestic level in connection with his prosecution, the Court considers that the finding of violations constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention regarding the unlawfulness and arbitrariness of the applicant's pre-trial detention from 11 March to 13 December 2011;

3. *Holds* that there has been a violation of Article 5 § 3 of the Convention regarding the lack of justification and reasonableness of the applicant's pre-trial detention from 11 January to 13 December 2011;

4. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

5. *Holds* that the finding of violations constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;

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

Done in English, and notified in writing on 6 April 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Carlo Ranzoni President