

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

THIRD SECTION

CASE OF KARIMBAYEV v. RUSSIA

(Application no. 26627/05)

JUDGMENT

STRASBOURG

31 March 2022

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



In the case of Karimbayev v. Russia,

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

Peeter Roosma, *President,*
Andreas Zünd,
Mikhail Lobov, *judges,*

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 10 March 2022,

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

PROCEDURE

1. The case originated in an application against Russia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 12 July 2005.

2. The applicant was represented by Mr M. Ovchinnikov and Mr F. Bagryanskiy, lawyers practising in Vladimir.

3. The Russian Government ("the Government") were given notice of the application.

THE FACTS

4. The applicant's details and information relevant to the application are set out in the appended table.

5. The applicant complained of unlawful detention (deprivation of liberty). He also raised other complaints under the Convention.

THE LAW

I. THE GOVERNMENT'S REQUEST TO STRIKE PART OF THE APPLICATION OUT

6. The Government submitted a unilateral declaration whereby they acknowledged inadequate conditions of the applicant's detention in remand prison no. IZ-33/1 in the Vladimir Region from 12 November 2004 to 13 April 2005, from 1 to 8 February 2007, from 24 to 25 April 2007, and in remand prison no. T-2 in the Vladimir Region from 13 April 2005 to 7 November 2006, in contravention of Article 3 of the Convention. They further acknowledged that the applicant's detention in the absence of a judicial authorisation from 5 to 8 February 2005 had violated the requirements of Article 5 § 1 of the Convention. They offered to pay the applicant 10,237 euros (EUR) and invited the Court to strike the application out of the list of cases in accordance with Article 37 § 1 (c) of the Convention. The said amount would be converted into the currency of the respondent State

at the rate applicable on the date of payment and would be payable within three months from the date of notification of the Court's decision. In the event of failure to pay that amount within the above-mentioned three-month period, the Government undertook to pay simple interest on it, from the expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

7. The applicant rejected the Government's proposal.

8. The Court observes that Article 37 § 1 (c) enables it to strike a case out of its list if:

> "... for any other reason established by the Court, it is no longer justified to continue the examination of the application".

Thus, it may strike out applications under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicants wish the examination of the cases to be continued (see, in particular, *Tahsin Acar v. Turkey* (preliminary issue) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI).

9. The Court has established clear and extensive case-law concerning complaints relating to inadequate conditions and lawfulness of the detention (see, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 120-66, 10 January 2012, and *Sigarev v. Russia*, no. 53812/10, §§ 34-42, 30 October 2014).

10. Noting the admissions contained in the Government's declaration as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the relevant part of the application (Article 37 § 1 (c)).

11. In the light of the above considerations, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application in this part (Article 37 § 1 in fine).

12. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application may be restored to the list in accordance with Article 37 § 2 of the Convention (see *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

13. In view of the above, it is appropriate to strike out the application in the part covered by the unilateral declaration of the Government.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTOIN AS REGARDS CONDITIONS OF DETENTION IN CORRECTIONAL COLONY NO. IK-7

14. In his observations the applicant stated that he had not claimed that the conditions of his detention in correctional colony no. IK-7 had been incompatible with Article 3 of the Convention.

15. The Court accepts that, in these circumstances, the applicant does not wish to pursue this part of the application, within the meaning of Article 37 § 1 (a) of the Convention. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the part of application related to conditions of the applicant's detention in colony no. IK-7 under Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

A. Alleged unlawfulness of the applicant's detention from 8 to 17 February 2005

16. The applicant complained that from 8 to 17 February 2005 he had been detained in the absence of judicial authorisation. He relied on Article 5 of the Convention, which, in so far as relevant, reads as follows:

Article 5

"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 ...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so ..."

17. The Government submitted that the applicant had been lawfully detained pending the examination of his case by the trial court which had received his casefile on 8 February 2005 and had fixed the trial for 17 February 2005. According to the Government, at the relevant time the applicable rules of the criminal procedure permitted a defendant's detention in the absence of a relevant court order for up to six months.

18. The applicant maintained his complaint.

19. 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 a bill of 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, which are common threads throughout the Convention and the rule of law (see *Fursenko v. Russia*, no. 26386/02, §§ 77-79, 24 April 2008; *Lebedev v. Russia*, no. 4493/04, §§ 52-59, 25 October 2007; *Melnikova v. Russia*, no. 24552/02, §§ 53-56, 21 June 2007; *Belevitskiy v. Russia*, no. 72967/01, §§ 86-93,

1 March 2007; *Korchuganova v. Russia*, no. 75039/01, §§ 55-59, 8 June 2006; *Nakhmanovich v. Russia*, no. 55669/00, §§ 67-68, 2 March 2006; and *Khudoyorov v. Russia*, no. 6847/02, §§ 144-51, ECHR 2005 X).

20. 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 this complaint. Having regard to its case-law on the subject, the Court considers that in the instant case the applicant's detention from 8 to 17 February 2005 was contrary to Article 5 § 1 of the Convention.

21. This complaint is therefore admissible and discloses a breach of Article 5 § 1 of the Convention.

B. Alleged lack of review of detention

22. The applicant further complained under Article 5 § 4 of the Convention that he had been unable to obtain the review of his pre-trial detention between 5 and 17 February 2005.

23. Having regard to the facts of the case, the submissions of the parties, and its findings under Article 5 § 1 of the Convention, the Court considers that it has examined the main legal questions raised in the present application with regard to Article 5 of the Convention. It thus considers that the applicant's complaint is admissible but that there is no need to give a separate ruling on the complaint under Article 5 § 4 of the Convention (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014, and, most recently, *Shestun v. Russia* [Committee], nos. 9146/20 and 28758/20, § 14, 30 September 2021).

IV. REMAINING COMPLAINTS

24. The applicant also raised other complaints under the Convention.

25. The Court has examined the application 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, these complaints 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

26. 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."

27. Regard being had to the documents in its possession and to its case-law (see, in particular, *Biryuchenko and Others v. Russia [Committee],* no. 1253/04 and 2 others, § 96, 11 December 2014) and to the amount of the award offered by the Government under the unilateral declaration, the Court considers it reasonable to award the sums indicated in the appended table and dismisses the remainder of the applicant's claims for just satisfaction.

28. The Court further 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. *Takes note* of the terms of the respondent Government's declaration in respect of the applicant's complaints under Articles 3 and 5 § 1 of the Convention (conditions of detention in remand prisons nos. IZ-33/1 and T-2 and unlawfulness of detention from 5 to 8 February 2005) and decides to strike this part of the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention;

2. *Decides* to strike the part of the application related to the detention in correctional colony no. IK-7 out of its list of cases in accordance with Article 37 § 1 (a) of the Convention;

3. *Declares* the complaints under Article 5 §§ 1 and 4 of the Convention about the unlawful detention from 8 to 17 February 2005 and lack of review of detention admissible, and the remainder of the application inadmissible;

4. *Holds* that these complaints disclose a breach of Article 5 § 1 of the Convention concerning the unlawful detention from 8 to 17 February 2005;

5. *Holds* that there is no need to examine separately the complaint under Article 5 § 4 of the Convention;

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the amount 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 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 claims for just satisfaction.

Done in English, and notified in writing on 31 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina	Peeter Roosma
Acting Deputy Registrar	President

APPENDIX

Application raising complaints under Article 5 § 1 of the Convention (unlawful detention (deprivation of liberty))

Application no. Date of introduction	Applicant's name Year of birth	Start date of unauthorised detention	End date of unauthorised detention	Specific defects	Amount awarded for pecuniary and non-pecuniary damage per applicant (in euros) [1]	Amount awarded for costs and expenses per application (in euros)[2]
26627/05 12/07/2005	**Ravshan Salimovich KARIMBAYEV** 1960	08/02/2005	17/02/2005	Detention in the absence of a formal court order, on the basis of the fact that a bill of indictment was submitted to the trial court	10,237 under the Government's unilateral declaration and 460 in respect of the violation of Article 5 § 1	1,000

[1] Plus any tax that may be chargeable to the applicant.
[2] Plus any tax that may be chargeable to the applicant.