

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

FIFTH SECTION

CASE OF KOLESNIKOV v. UKRAINE

(Application no. 988/13)

JUDGMENT

STRASBOURG

20 September 2022

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



In the case of Kolesnikov v. Ukraine,

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

Ivana Jelić, *President,*
Ganna Yudkivska,
Arnfinn Bårdsen, *judges,*
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 988/13) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Igor Vasilyevich Kolesnikov ("the applicant"), on 19 December 2012;

the decision to give notice to the Ukrainian Government ("the Government") of the complaints under Article 5 §§ 1, 3 and 4 of the Convention and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 16 June 2022,

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

INTRODUCTION

1. The case concerns the alleged arbitrariness of and lack of justification for the applicant's pre-trial detention and the alleged absence of a meaningful review of the lawfulness of his detention, in breach of Article 5 §§ 1, 3 and 4 of the Convention.

THE FACTS

2. The applicant was born in 1964 and lives in Kyiv. He was represented by Ms L. M. Kichuzhinets, a lawyer 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. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

5. On 7 November 2008 a police investigator initiated criminal proceedings ("the first investigation") on suspicion of fraud on a particularly large scale ("aggravated fraud") in the form of a "pyramid scheme", the victims of which had been the clients of Kings Capital TOV, Kings Capital PP and certain other companies ("the Kings Capital companies"). In view of the large number of victims, the nature of the suspects' criminal activity and the fact that the alleged offences had taken place across the country, the authorities set up a group of investigators from various regions of Ukraine.

6. On 15 December 2008 and 25 February 2009 another set of criminal proceedings was initiated against the applicant, as new instances of fraud had been identified. These new instances were subsequently joined to the first investigation.

7. On 20 January 2009 Sh., an investigator from the Investigative Department of the Ministry of the Interior, decided to charge the applicant with aggravated fraud and to place him on a list of wanted persons. The charges were that the applicant, in conspiracy with G., B., S., L. and Ye., had in 2007 created a scheme to defraud the clients of the Kings Capital companies, and that through that scheme the applicant and his associates had defrauded thirteen individuals, listed in the investigator's decision, from August to November 2008.

8. On 28 January 2009 the Pecherskyi District Court of Kyiv ("the Pecherskyi Court") granted the investigator's request and authorised the arrest of the applicant who was presumed to be in hiding.

9. On 9 April 2009 the Investigative Section of the Department of the Ministry of the Interior in the Cherkasy Region initiated another set of criminal proceedings against the applicant and the individuals listed in Sh.'s decision of 20 January 2009 on suspicion of aggravated fraud in respect of the clients of the Kings Capital companies ("the second investigation").

10. According to the applicant, he had never been in hiding and on 28 May 2009 he turned himself in to the police.

11. On 28 May 2009 he was interviewed as an accused within the first investigation and released under an undertaking not to leave the city.

II. THE APPLICANT'S ARREST AND DETENTION FROM 5 JUNE TO 4 AUGUST 2009

12. On 4 June 2009 Sh., the investigator, lodged a request with the Pecherskyi Court, asking that the applicant be remanded in custody on the grounds that the applicant had breached the undertaking not to leave Kyiv without authorisation and had been interfering with the first investigation.

13. On 5 June 2009 the Pecherskyi Court granted the investigator's request and ordered that the applicant be placed in pre-trial detention. The court stated, without providing any details, that the charges against the applicant were serious and that there were grounds to believe that, if at liberty, he would be able to influence witnesses and so interfere with the establishment of the truth and the enforcement of procedural decisions in the case. The court did not set a time-limit for the applicant's detention. On the same day the applicant was arrested and subsequently placed in the Kyiv Pre-Trial Detention Centre ("the Kyiv SIZO").

14. On 27 July 2009 the Pecherskyi Court rejected a request from the investigator in which he sought to extend the applicant's pre-trial detention to four months. The court stated that there was no evidence that the applicant

intended to evade justice and that the gravity of the charges alone could not justify his continued detention. The court also decided to change the preventive measure imposed on the applicant from detention to an undertaking not to leave the city. On 3 August 2009 the Kyiv City Court of Appeal quashed this ruling of the Pecherskyi Court and remitted the investigator's request for fresh examination.

15. On 28 July 2009 Sh., the investigator, initiated another set of criminal proceedings on suspicion of aggravated fraud committed against the clients of the Kings Capital companies ("the third investigation").

16. On 29 July 2009 Ch., an investigator from the Investigative Department of the Ministry of the Interior who was acting within the framework of the third investigation, drew up an arrest report stating that he had arrested the applicant at 12.55 p.m. on that day in the Kyiv SIZO on suspicion of aggravated fraud, in order to prevent him from absconding.

17. On 3 August 2009 Sh., as part of the third investigation, charged the applicant with aggravated fraud. The charges were that the applicant, in conspiracy with the individuals listed in the charges of 20 January 2009 and a certain Mr A., had organised a "pyramid scheme" to defraud the clients of the Kings Capital companies in 2007 and that from October 2006 to October 2008 he had defrauded seventeen other individuals, listed in the investigator's decision.

18. On the same day Sh., acting within the framework of the first investigation, drew up an arrest report which stated that he had arrested the applicant at 3.40 p.m. on that day in the Kyiv SIZO on suspicion of aggravated fraud, in order to prevent him from absconding.

19. Again on the same day Sh., within the framework of the third investigation, lodged a request with the Shevchenkivskyi District Court of Kyiv ("the Shevchenkivskyi Court"), asking that the applicant be placed in pre-trial detention.

III. THE APPLICANT'S DETENTION FROM 5 AUGUST TO 25 SEPTEMBER 2009

20. On 5 August 2009 the Shevchenkivskyi Court rejected Sh.'s request to have the applicant placed in pre-trial detention. The court stated that the investigator's request was unsubstantiated as the case-file material did not contain sufficient evidence that the applicant would interfere with the course of justice, or that he might abscond and continue his criminal activities.

21. On 6 August 2009 Sh., acting within the framework of the third investigation, decided to release the applicant, who was held in the Kyiv temporary detention facility ("the Kyiv ITT") at the time, on an undertaking not to leave the city. The applicant signed a document to that effect. This was done because the applicant's initial detention of seventy-two hours without a court order had expired.

22. According to the applicant, he was not in fact released but was transported on the same day, under guard, from Kyiv to Cherkasy.

23. On the same day (6 August 2009) N., an investigator from the Main Department of the Ministry of the Interior in the Cherkasy Region who was acting within the framework of the second investigation initiated on 9 April2009, drew up an arrest report stating that he had arrested the applicant at 3.50 p.m. on the street where the Kyiv ITT was located on suspicion of aggravated fraud, in order to prevent him from absconding. The following line of the standard arrest report form was underlined as the ground for arrest: "eyewitnesses, including victims, have directly identified the individual in question as the person who committed the crime".

24. On the same day he charged the applicant with aggravated fraud. The charges were that the applicant, in conspiracy with the individuals listed in the charges of 3 August 2009, had organised a "pyramid scheme" in 2007 and had defrauded a large number of the Kings Capital companies' clients.

25. On 7 and 14 August 2009 the Sosnivskyi District Court of Cherkasy ("the Sosnivskyi Court") decided to extend the applicant's detention to ten and fifteen days respectively. The need to prepare background reports, in particular on the applicant's state of health and likelihood that he would abscond, was indicated as the reason for those decisions.

26. On 21 August 2009 the Sosnivskyi Court decided to place the applicant in pre-trial detention for two months within the framework of the second investigation. The court stated that the applicant had been charged with a serious offence, in that he had caused considerable damage to the victims, which had not been compensated. The court observed that the applicant had been charged with committing an offence on a large scale and over a long period of time, which supported the general conclusion that he posed a certain danger and, if released, could abscond or interfere with the investigation. No further reasons for that decision were provided by the court. According to the applicant, on 8 September 2009 the Cherkasy Regional Court of Appeal upheld that decision.

27. On 26 August 2009 the Pecherskyi Court again rejected the investigator's request, lodged within the framework of the first investigation, to have the applicant's detention extended to four months. On 1September 2009 the Kyiv Court of Appeal quashed that ruling and remitted the investigator's request to the Pecherskyi Court for fresh examination.

28. On 22 September 2009 Sh. decided to join the first, second and third investigations and to proceed with the investigation of the merged case file.

29. On 25 September 2009 the Pecherskyi Court allowed the investigator's request, lodged within the framework of the joint investigation, and extended the applicant's pre-trial detention to four months, to be calculated from 5 June 2009. By way of reasoning, the court stated that the applicant had been charged with a serious offence and, if at liberty, he might abscond, interfere with the investigation or continue his criminal activity.

IV. THE APPLICANT'S DETENTION FROM 29 SEPTEMBER 2009 TO 5 DECEMBER 2010

30. On 29 September 2009 the Kyiv City Court of Appeal ("the Kyiv Court of Appeal") allowed the investigator's request and extended the applicant's detention to five months. The court stated that there were no grounds to release the applicant and the investigating authorities needed more time to complete the investigation. The court also noted that in reaching its decision, it had taken into account information about the applicant's background, the gravity of the charges against him, and the need to prevent him from absconding or interfering with the investigation.

31. On 12 October 2009 the Shevchenkivskyi Court ordered the applicant's detention within the framework of the third investigation, which had been initiated on 28 July 2009 (see paragraph 15 above). By way of reasoning, the court stated that the applicant was charged with a serious offence and, if at liberty, might abscond, interfere with the investigation or continue his criminal activity. The court did not indicate the starting date from which the applicant's detention was to be calculated, and it did not place a time-limit on that detention. There is no information in the case file as to whether the applicant appealed against the decision.

32. In the course of the investigation, the courts extended the applicant's detention on 28 October 2009, 5 February, 4 March, 23 April, 25 June, 27 September and 29 November 2010, and on 28 March 2011. On that last date it was last extended until 5 August 2011. The reasons for extending the applicant's detention were the seriousness of the charges against him, the possibility of his absconding or interfering with the investigation, the authorities' need for more time to complete the investigation, and the fact that there were no grounds for changing the preventive measure chosen earlier.

V. THE APPLICANT'S DETENTION DURING THE TRIAL

33. On 27 July 2011 the case file, together with the bill of indictment, was filed with the trial court for consideration.

34. On 25 August 2011 a preparatory hearing was held before a judge of the Dniprovsky District Court of Kyiv ("the trial court"). The judge ruled that the case was ready for trial. The judge also maintained the applicant's detention and rejected his request for release without giving any reasons for that decision or setting a time-limit on the applicant's detention.

35. On 18 February, 18 March, 21 May and 8 October 2013 the trial court rejected the applicant's requests for release, stating in similar terms that the applicant had been placed in pre-trial detention to prevent him from continuing his criminal activity, absconding or interfering with the investigation and that there was no indication that the circumstances had changed.

36. On 27 April 2015 the trial court changed the preventive measure to an undertaking not to abscond and released the applicant.

37. At the time that the parties' observations were exchanged (October 2015), the case was pending before the trial court.

RELEVANT LEGAL FRAMEWORK

38. Article 156 of the 1960 Code of Criminal Procedure (in force at the relevant time) provided that detention during the pre-trial investigation was not to exceed two months. A judge was, however, empowered to extend pre-trial detention following a request to that effect.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

39. The applicant complained that his pre-trial detention was unlawful, unjustified and lengthy. The applicant relied on Article 5 §§ 1 and 3 of the Convention, which 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:
>
> ...
>
> (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;
>
> ...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

40. The Court notes that these complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. Article 5 § 1 of the Convention

41. The applicant submitted that his detention from 5 August to 25 September 2009 and from 5 December 2010 onwards had been arbitrary and unlawful. He further submitted that the institution of numerous criminal

proceedings which were based on the same provision of the Code of Criminal Procedure, and his subsequent re-arrests on 29 July, 3 and 6 August 2009, had merely served as a pretext for not releasing him from detention.

42. The Government submitted that the applicant's re-arrests and further detention had been in compliance with the applicable legal rules and based on a reasonable suspicion that he had committed criminal offences. They further argued that the applicant's re-arrests and subsequent additional detention had been imposed within the framework of different proceedings, which had been conducted separately at the material time in view of the complexity of the case in issue.

43. Having regard to the applicant's complaints about the unlawfulness of his detention at certain periods of time, the Court will examine those periods separately.

(a) As to the applicant's detention from 5 August to 25 September 2009

44. Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof. Compliance with national law is not, however, sufficient: Article 5 § 1 of the Convention requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness. One general principle established in the case-law is that detention will be "arbitrary" where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities or where the domestic authorities neglected to attempt to apply the relevant legislation correctly (see *S., V. and A. v. Denmark* [GC], nos. 35553/12 and 2 others, §§ 74 and 76, 22 October 2018, with further references).

45. The Court observes that between November 2008 and July 2009 three criminal investigations on accusations of fraud were launched against the applicant.

46. The accusations against him were initially joined within the first investigation (see paragraph 5 above). Within that investigation the applicant was placed in pre-trial detention pursuant to the decision of the Pecherskyi Court of 5 June 2009 (see paragraph 13 above). Although the Pecherskyi Court did not set a time-limit for the applicant's detention, under the domestic legislation it could not last longer than two months (see paragraph 38 above), that is, until 5 August 2009.

47. After the Pecherskyi Court had refused to extend the applicant's detention on 27 July 2009, another criminal investigation on suspicion of aggravated fraud was initiated against the applicant on the following day (the third investigation see paragraph 15 above). As part of that investigation, the applicant was re-arrested on 29 July 2009, while still in the Kyiv SIZO. On

3 August 2009 he was again re-arrested in the Kyiv SIZO, again as part of the first investigation.

48. The investigator's request to have the applicant placed in pre-trial detention as part of the third investigation was rejected by the Shevchenkivskyi Court on 5 August 2009, and the applicant was formally released on an undertaking not to abscond on 6 August 2009 (see paragraph 21 above).

49. The Court notes that the applicant was not in fact released but again arrested by the investigator on the same date. It is noteworthy that the applicant's arrest on 6 August 2009 was carried out as part of the second investigation, which had been opened on 9 April 2009 (see paragraph 9 above). Neither the available material nor the Government's submissions contain any explanation as to the objective reasons for arresting the applicant within the framework of that latter investigation, which had been opened four months previously. In addition, while the second investigation was apparently carried out in the Cherkasy Region, the applicant was arrested on the street in Kyiv near the ITT.

50. Lastly, the Court cannot but note that on 22 September 2009 all three investigations were ultimately merged in a single set of proceedings, which was conducted by investigators from the Investigative Department of the Ministry of the Interior located in Kyiv, in particular by investigator Sh. who was acting within the framework of the first and third investigations; further extensions of the applicant's detention were ordered by the Pecherskyi Court and higher courts located in Kyiv.

51. The Court notes that the applicant's re-arrests on 29 July 2009 and on 3 and 6 August 2009 appeared to be formally compatible with the domestic procedural regulations applicable at the material time, since they were carried out within the framework of different investigations.

52. It is true that formally different charges from those that had served as a basis for the initial detention were relied upon, although these charges all formed part of the same group of investigations into several counts of aggravated fraud. Moreover, the charges that served as a basis for re-arresting him had been joined to the original criminal case in September 2009.

53. The Court observes, however, that the reasons for the institution of new sets of investigations were similar (see paragraphs 5, 7, 9 and 17 above) and the Government did not demonstrate that the applicant's arrest and further re-arrests were necessary and justified. It does not appear from the domestic case-file material or from the submissions of the Government that these re-arrests were effected in good faith as part of investigations conducted by a group of investigators from various regions of Ukraine (see paragraph 5 above). Neither the relevant arrest reports nor the courts' decisions ordering the applicant's detention within the particular sets of investigation contain specific reasons justifying that detention. It is not the task of this Court to assess the strategy chosen by the prosecuting authorities in the criminal

proceedings, but the sequence of events (in particular the institution of new sets of investigations resulting in the rearresting of the applicant immediately after the previous reasons for keeping him in detention expired) gives the impression that the investigating authorities had coordinated their efforts in order to keep the applicant detained.

54. In the Court's view, in the light of all these elements taken together, the conduct of the prosecuting authorities in securing the applicant's continued detention after the decisions of the Pecherskyi Court ordering his release was arbitrary and incompatible with the principle of legal certainty, and ran counter to the principle of the rule of law.

55. The Court finds, therefore, that the applicant's detention from 5 August to 25 September 2009 following a series of re-arrests on 29 July 2009, and on 3 and 6 August 2009, was in breach of Article 5 § 1 of the Convention.

(b) As to the applicant's detention from 5 December 2010 to 25 August 2011

56. The Court notes that in his application form, the applicant complained that, as noted in a court decision of 27 September 2010, his pre-trial detention had been authorised until 5 December 2010 and that after that date he had been detained without a court order.

57. The Court observes that in the course of communication of the present case, the parties submitted copies of the domestic courts' decisions concerning the extension of the applicant's detention until 5 August 2011 (see paragraph 32 above). It finds therefore that his detention until that date was lawful as it was authorised by a court order. The Court furthermore notes that the bill of indictment was submitted to the trial court on 27 July 2011 (see paragraph 33 above), and it seems that the trial court did not return to the question of the applicant's detention until 25 August 2011 (see paragraph 34 above).

58. It appears therefore that the reason for the applicant's pre-trial detention between 5 and 25 August 2011 was that a bill of indictment had been pending before the trial court. In that connection, the Court notes that it has previously examined similar situations in other cases against Ukraine and found them to be incompatible with the principles of legal certainty and protection from arbitrariness guaranteed by Article 5 § 1 of the Convention (see *Kharchenko v. Ukraine*, no. 40107/02, § 71, 10 February 2011). The Court sees no reason to depart from its earlier findings in the present case.

59. There has accordingly been a violation of Article 5 § 1 of the Convention as regards the lawfulness of the applicant's detention from 5 to 25 August 2011.

(c) As to the applicant's detention from 25 August 2011 onwards

60. The Court observes that although on 25 August 2011 the trial court upheld the pre-trial detention measure in respect of the applicant, it did not set a time-limit for his continued detention and did not give any reasons for its decision. This left the applicant in a state of uncertainty as to the grounds for his detention after that date until his release on 27 April 2015. In this connection the Court reiterates that the absence of any grounds given by the judicial authorities in their 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 decision of the trial court of 25 August 2011 did not afford the applicant the 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 the applicant's detention from 25 August 2011 to 27 April 2015 was likewise not in accordance with Article 5 § 1 of the Convention.

61. There has accordingly been a violation of that provision.

2. Article 5 § 3 of the Convention

62. The applicant submitted that his pre-trial detention had been unjustified and excessively long.

63. The Government contested that complaint, stating that the applicant's detention had been justified and reasonable.

64. The applicable general principles are set out in *Buzadji v. the Republic of Moldova* ([GC], no. 23755/07, §§ 84-91 and 102, 5 July 2016).

65. Turning to the circumstances of the present case, the Court observes that for the purposes of Article 5 § 3 of the Convention, the applicant was detained from 5 June 2009 until 27 April 2015. His pre-trial detention therefore lasted more than five years and ten months.

66. The Court further observes that the seriousness of the charges against the applicant and the risk of his absconding or interfering with the investigation were mentioned in the initial order for his detention (see paragraph 13 above). Those reasons remained the main grounds for the applicant's detention until his release, with the exception of the decision of 25 August 2011, which contained no grounds whatsoever and which remained the only judicial order justifying the applicant's detention pending trial (see paragraph 34 above). The Court notes that the decisions on the applicant's detention were couched in general terms and contained repetitive phrases. They did not suggest that the court had made an appropriate assessment of the facts relevant to the question of whether such a preventive measure was necessary in the circumstances at the relevant stages of the proceedings.

67. The Court has frequently found a violation of Article 5 § 3 of the Convention in cases against Ukraine on the basis that even in respect of lengthy periods of detention, the domestic courts had referred to the same set of grounds (if there were any) throughout the period of the respective applicant's detention (see, for example, *Kharchenko*, cited above, §§ 80-81 and 99, and *Ignatov v. Ukraine*, no. 40583/15, §§ 41-42, 15 December 2016).

68. The Court is mindful of the gravity of the charges brought against the applicant and the difficulties the domestic authorities must have faced in investigating his case, involving, as it did, charges against multiple defendants allegedly engaged in a complex criminal enterprise. However, assessing the domestic courts' decisions in the light of the principles developed in its case-law, the Court sees no reason to depart from its previous approach. The authorities did not show, in relevant decisions of domestic courts, that in addition to the overall complexity of the case, there existed specific circumstances relevant to the applicant's particular situation which would justify his detention for such a substantial period of time (see, conversely, *Ereren v. Germany*, no. 67522/09, §§ 64 and 65, 6 November 2014).

69. Having regard to the above, the Court considers that by failing to address specific facts or envisage other measures as an alternative to pre-trial detention, and by relying essentially and routinely on the seriousness of the charges, the authorities extended the applicant's detention pending trial on grounds that cannot be regarded as "sufficient" and "relevant" to justify it.

70. There has accordingly been a violation of Article 5 § 3 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

71. Lastly, the applicant complained under Article 5 § 4 of the Convention that his right to a review of the lawfulness of his detention during trial had been breached.

72. Having regard to the facts of the case, the submissions of the parties, and its findings under Article 5 §§ 1 and 3 of the Convention (see paragraphs 55, 59, 61 and 70 above), the Court considers that it has examined the main legal questions raised in the present case, and that there is no need to give a separate ruling on the admissibility and merits of the other complaint mentioned above (see, for example, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. 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."

74. The applicant claimed 4,957.33 Ukrainian hryvnias (275 euros) in respect of postal and translation expenses.

75. The Government contested that claim.

76. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and to the above criteria, the Court considers that the applicant's claims should be allowed in full, plus any tax that may be chargeable.

77. The applicant did not request any sum in respect of pecuniary and non-pecuniary damage, or for legal expenses. Therefore, the Court is not called upon to make an award under these heads.

78. 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 5 §§ 1 and 3 of the Convention, concerning the arbitrariness of the applicant's pre-trial detention and the lack of relevant and sufficient reasons for that detention, admissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention regarding the applicant's re-arrests on 29 July and 3 and 6 August 2009, and his detention from 5 to 25 August 2011 and from 25 August 2011 to 27 April 2015;

3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

4. *Holds* that it is not necessary to examine the admissibility and merits of the applicant's complaint under Article 5 § 4 of the Convention regarding the courts' failure to carry out a proper examination of his applications for release;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 275 (two hundred and seventy-five euros), plus any tax that may be chargeable, in respect of postal and translation expenses;
   (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.

Done in English, and notified in writing on 20 September 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller	Ivana Jelić
Deputy Registrar	President