

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

FIFTH SECTION

CASE OF KULYK v. UKRAINE

(Application no. 22194/18)

JUDGMENT

STRASBOURG

25 May 2023

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Kulyk v. Ukraine,

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

Carlo Ranzoni*, President*,
Lado Chanturia,
María Elósegui*, judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 4 May 2023,

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

PROCEDURE

1. The case originated in an application against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 23 April 2018.

2. The Ukrainian Government ("the Government") were given notice of the application.

THE FACTS

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

4. The applicant complained of the unlawful detention. He also raised other complaints under the provisions of the Convention.

THE LAW

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

5. The applicant complained principally of the unlawful detention. He relied on Article 5 § 1 of the Convention.

6. The Court reiterates that Article 5 of the Convention is, together with Articles 2, 3 and 4, in the first rank of the fundamental rights that protect the physical security of the individual, and as such its importance is paramount. Its key purpose is to prevent arbitrary or unjustified deprivations of liberty (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 84, ECHR 2016 (extracts), with further references).

7. 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 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual

from arbitrariness (see *S., V. and A. v. Denmark* [GC], nos. 35553/12, 36678/12 and 36711/12, § 74, 22 October 2018, with further references).

8. The Court found violations in respect of issues similar to those in the present case in the leading cases set out in the appended table.

9. Having examined all the material submitted to it, as well as the Government's arguments of non-exhaustion, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. Having regard to its case-law on the subject, the Court considers that in the instant case the applicant's detention was not in accordance with Article 5 § 1 of the Convention.

10. It follows that the applicant's complaints are admissible and disclose a violation of Article 5 § 1 of the Convention.

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

11. The applicant submitted a complaint under Article 5 § 4 of the Convention concerning the excessive length of judicial review of detention. This complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other ground. Accordingly, it must be declared admissible. Having examined all the material before it, the Court concludes that it also discloses a violation of the Convention in the light of its findings in *Kharchenko v. Ukraine*, no. 40107/02, §§ 86-87, 10 February 2011.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

12. 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."

13. Regard being had to the documents in its possession and to its case-law (see, in particular, *Malyk v. Ukraine*, no. 37198/10, 29 January 2015), the Court considers it reasonable to award the sum indicated in the appended table and rejects any additional claims for just satisfaction raised by the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that this application discloses a breach of Article 5 § 1 of the Convention concerning the unlawful detention;

3. *Holds* that there has been a violation of the Convention as regards the other complaints raised under the well-established case-law of the Court (see appended table);

4. *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.

5. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 25 May 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina	Carlo Ranzoni
Acting Deputy Registrar	President

APPENDIX

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

Application no. Date of introduction	Applicant's name Year of birth	Period of unlawful detention	Specific defects	Relevant domestic decision	Other complaints under well-established case-law	Amount awarded for non-pecuniary damage per applicant (in euros)[1]
22194/18 23/04/2018	**Sergiy Anatoliyovych KULYK** 1968	from 09/10/2017 to 23/03/2018	absence of any grounds given by the court in the decision authorising detention (Ignatov v. Ukraine, no. 40583/15, §§ 36-37, 15 December 2016), decision on detention without a time-limit (Kharchenko v. Ukraine, no. 40107/02, §§ 74-76, 10 February 2011)	Decision of the Supreme Court of 09/10/2017	Art. 5 (4) - excessive length of judicial review of detention - the requests for release lodged on 19/12/2017 and 24/01/2018, were examined on 23/03/2018 (Kharchenko v. Ukraine, no. 40107/02, §§ 86-87, 10 February 2011)	2,350
		from 23/03/2018 to 03/04/2018	unjustified delay in release (Ruslan Yakovenko v. Ukraine, no 5425/11, §§ 68-70, ECHR 2015)			

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