

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

THIRD SECTION

CASE OF KUROPYATNIK v. RUSSIA

(Application no. 64403/11)

JUDGMENT

STRASBOURG

28 September 2021

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



In the case of Kuropyatnik v. Russia,

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

Darian Pavli, *President,*
Dmitry Dedov,
Peeter Roosma, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 64403/11) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Vladimir Leonidovich Kuropyatnik ("the applicant"), on 8 October 2011;

the decision to give notice of the application to the Russian Government ("the Government");

the parties' observations;

the decision to reject the Government's objection to examination of the applications by the Committee;

Having deliberated in private on 7 September 2021,

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

INTRODUCTION

1. The case concerns the applicant's apprehension and his police listing and surveillance on account of his membership in the Church of Scientology.

THE FACTS

2. The applicant was born in 1963 and lives in Moscow. He was represented by Mr D. Holiner, a lawyer practising in London, and Ms G. Krylova, a lawyer practising in Moscow.

3. The Government were represented by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights, and lately by Mr M. Vinogradov, his successor in that office.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. BACKGROUND INFORMATION AND Mr KUROPYATNIK'S APPREHENSION

5. On 26 March 2010 the Surgut Town Court banned certain Scientology literature as extremist and the Ministry of Justice added those titles to the Federal List of Extremist Materials (*Федеральный список*

экстремистских материалов). Some time later, the Ministry of the Interior obtained information about Mr Kuropyatnik disseminating Scientology materials that had been pronounced extremist.

6. On 7 October 2010 Mr Kuropyatnik's name was added to the "Surveillance Database" (*"Сторожевой контроль"*), part of the police database used to track movement across Russia of individuals allegedly involved in extremist activities ("the Database"). Whenever a person included in the Database purchased a train or aeroplane ticket, the transport police were notified.

7. In October 2010 Mr Kuropyatnik bought a return air ticket from Moscow to Khanty-Mansiysk. On 13 October 2010, on his way back to Moscow, he was stopped at Vnukovo airport by a police officer who asked him to go to the local police station for questioning. The applicant did not object.

8. From 9.40 a.m. until 10.45 a.m. the police officer conducted an identity check and questioned Mr Kuropyatnik about the purpose of his being in Moscow and his involvement in the activities of the Church of Scientology. After that Mr Kuropyatnik left the police station.

II. JUDICIAL REVIEW OF THE APPREHENSION

9. Mr Kuropyatnik lodged a complaint with the Solntsevskiy District Court in Moscow, alleging that he had been unlawfully detained.

10. On 2 March 2011 the District Court dismissed the complaint. It held that the Police Act and the Operative Search Act gave the police powers to check documents and question citizens in certain cases. In the applicant's case the identity checks and the questioning had been justified by the fact that his name had been registered in the Database. Mr Kuropyatnik had not been arrested or subjected to any hardship and had voluntarily gone to the police station; hence his right to security and freedom of movement had not been violated.

11. On 8 April 2011 the Moscow City Court upheld the District Court's decision in a summary fashion.

III. JUDICIAL REVIEW OF THE DATABASE REGISTRATION

12. Mr Kuropyatnik challenged the decision to register his name in the Database, alleging a breach of his rights to respect for his private life, personal security and freedom of movement.

13. On 16 September 2011 the Moscow City Court dismissed his claim by holding that his name had been deleted from the Database in March 2011. It stated that the Interior Department had acted in accordance with the Operative Search Act and its objectives – in particular, the fight against extremism – and the registration of Mr Kuropyatnik in the Database had

been justified by the fact that he had been involved in the activities of the Church of Scientology and had distributed literature listed in the Federal List of Extremist Materials. As regards the legal grounds for the Database, the court established that at the material time there had been no legal norms or instructions regulating the collection, storage and use of the Ministry of the Interior's databases for investigation or other purposes pursued by the police, in particular, to prevent crimes and ensure a higher efficiency in line with the Police Act and the Operative Search Act.

14. On 7 December 2011 the Supreme Court of Russia upheld this decision on appeal.

RELEVANT LEGAL FRAMEWORK

15. For the legal provisions concerning the police apprehension powers and the Database and establishing the procedure for its operation, see *Shimovolos v. Russia* (no. 30194/09, §§ 31-43, 21 June 2011).

16. According to Article 19.3 of the Code of Administrative Offences, a refusal to obey a lawful order given by a police officer acting in the exercise of his or her duties to protect public order is punishable by an administrative fine or administrative detention.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

17. The applicant complained that his one-hour detention at the police station on 13 October 2010 had been unlawful and he could not have received compensation for his unlawful detention. He relied on Article 5 §§ 1 and 5 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; ...
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

A. Admissibility

18. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Existence of a deprivation of liberty

19. The applicant submitted that he had been "deprived of his liberty" because he had been apprehended at the request of police officer's superiors and could not have disobeyed. His detention had not been a part of a routine procedure that passengers were implicitly deemed to have consented to by choosing air travel.

20. The Government submitted that the applicant had not been deprived of his liberty because he had attended and left the police station voluntarily and without coercion and the questioning had not been too long.

21. In order to determine whether there has been a deprivation of liberty, the starting-point must be the concrete situation of the individual concerned and account must be taken of the type, duration, effects and manner of implementation of the measure in question. Article 5 may apply to deprivations of liberty of even a very short length (see *Shimovolos*, cited above, § 48, and *Krupko and Others v. Russia*, no. 26587/07, § 36, 26 June 2014). Moreover, detention may violate Article 5 even though the person concerned has agreed to it (see *Osypenko v. Ukraine*, no. 4634/04, § 49, 9 November 2010, and *Venskutė v. Lithuania*, no. 10645/08, § 72, 11 December 2012).

22. In the present case, it cannot be asserted that the applicant's consent to come to the police station was totally free as he was *de facto* escorted there by a policeman. The applicant's apprehension went beyond what was strictly necessary for the formalities normally associated with air travel. Taking into account that the applicant was put on the list of potential extremists in the Database, it was unlikely that he was free to leave the premises without the police officer's authorisation at any moment before the interrogation ended.

23. Therefore, there was an element of coercion which was indicative of deprivation of liberty within the meaning of Article 5 § 1. The applicant was thus deprived of his liberty within the meaning of Article 5 § 1.

2. Compliance with Article 5 § 1

24. The applicant submitted that his detention had not been necessary to prevent any crime and had been arbitrary and unlawful because he had not been suspected of any specific offence.

25. The Government submitted that the applicant's apprehension and detention had been lawful.

26. In the present case the Court will ascertain whether the applicant's detention was covered by Article 5 § 1, whether his detention was lawful under domestic law, whether it was not arbitrary and was "necessary" (see

S., V. and A. v. Denmark [GC], nos. 35553/12 and 2 others, §§ 138-73, 22 October 2018).

27. The Court notes that the applicant was apprehended by the police officer on suspicion of distributing literature put on the list of extremist materials (see paragraph 5 above). Therefore, the Court is prepared to accept that the deprivation of liberty could have been effected under the Police Act and the Operative Search Act for the purpose of bringing him before the competent legal authority on suspicion of having committed an offence or because it was necessary to prevent his committing an offence or fleeing after having done so within the meaning of Article 5 § 1 (c) of the Convention. However, the respondent Government have to furnish at least some facts or information capable of satisfying the Court that the arrested person was reasonably suspected of having committed the alleged offence (see *Kasparov v. Russia*, no. 53659/07, § 52, 11 October 2016).

28. Having regard to the facts of the case, the Court does not find that they support the assertion that the applicant's deprivation of liberty was necessary. The findings of fact reached by the domestic courts in the present case were not capable of satisfying an objective observer that, at the time when the applicant had been apprehended, the police had had a reason to believe that he was preparing a crime or was involved in any other disorderly conduct. In particular, neither the domestic authorities nor the Government mentioned any concrete and specific offences of which the applicant was suspected or had to be prevented from committing (see, by contrast, *S., V. and A. v. Denmark*, § 162). There is no evidence that there was any investigation pending in respect of the applicant or detailed information relating to any specific circumstances of the applicant's involvement in the distribution of Scientology literature. The Government did not provide any facts or information which could satisfy an objective observer that that suspicion was "reasonable".

29. The above findings are sufficient to conclude that the applicant's apprehension and detention did not have any legitimate purpose under Article 5 § 1 and were accordingly arbitrary. There has therefore been a violation of that Article.

3. Compliance with Article 5 § 5

30. The Court considers that it is not necessary to examine separately this complaint, in view of its above conclusions under Articles 5 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 8 AND 9 OF THE CONVENTION

31. The applicant complained under Articles 8 and 9 of the Convention about the registration of his name in the Database and the consequent

collection of personal data about him by the police. Articles 8 and 9 provide:

Article 8
Right to respect for private and family life

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 9
Freedom of thought, conscience and religion

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

32. The Government submitted that Article 9 was inapplicable because Scientology was not a "religion" within the meaning of that provision.

33. The applicant stated that prior to its liquidation in 2017, the Church of Scientology in Moscow had been officially registered as a religious organisation in Russia for over twenty-three years. The scope of Article 9 extended to the manifestation and dissemination of philosophical and other beliefs. The Russian authorities had repeatedly referred to Scientology as a religion to justify the imposition of restrictions on the Church of Scientology and its members.

34. Having regard to the position of the Russian authorities, which have consistently expressed the view that Scientology groups are religious in nature, Article 9 of the Convention is applicable in the present case (see *Kimlya and Others v. Russia*, nos. 76836/01 and 32782/03, §§ 79-81, ECHR 2009).

35. At the same time, the authorities registered personal information about the applicant and his trips in the Database on the ground that he belonged to the Scientology community. The storing of information relating to an individual's private life comes within the scope of Article 8 § 1 (see *Amann v. Switzerland* [GC], no. 27798/95, § 65, ECHR 2000-II, and *M.M. v. the United Kingdom*, no. 24029/07, § 187, 13 November 2012).

36. Therefore, the applicant's complaint must be examined from the standpoint of Article 8 of the Convention read in the light of Article 9.

37. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

38. The applicant submitted that the domestic law did not indicate with sufficient clarity the scope and manner of exercise of the discretion conferred on the domestic authorities to collect and store information in the Database.

39. The Government argued that the maintenance of confidential police databases pursed the legitimate aim of protecting national security and the applicant had been registered there on suspicion of a crime for only 180 days.

40. The Court has earlier found that the collection and storing of data on a particular individual in the Database by the police constituted an interference with this person's private life (see *Shimovolos*, cited above, § 66). Therefore, the storing of the applicant's personal data on the ground that he belonged to a particular religious community in the present case amounted to an interference with his private life as protected by Article 8 read in the light of Article 9 of the Convention.

41. The Court has already held that Russian law did not indicate with sufficient clarity the scope and manner of the discretion conferred on the domestic authorities to collect and store in the Database information on persons' private lives. In particular, it did not set out in a form accessible to the public any indication of the minimum safeguards against abuse (see *Shimovolos*, cited above, §§ 67-71). The domestic court in the present case confirmed that there had been no legal acts regulating the collection, storage and use of Ministry of Interior's databases (see paragraph 13 above).

42. The interference with the applicant's rights under Article 8 read in the light of Article 9 of the Convention was not, therefore, "in accordance with the law".

43. It follows that there has been a violation of Article 8 read in the light of Article 9 in this case.

III. ALLEGED VIOLATION OF ARTICLE 14 TAKEN IN CONJUNCTION WITH ARTICLE 8 AND 9 AND ARTICLE 2 OF PROTOCOL No. 4

44. The applicant also invoked Article 14 of the Convention taken in conjunction with Article 8 and 9 and Article 2 of the Protocol No. 4 in relation to the registration of his name in the Database.

45. The Court considers that it is not necessary to examine separately the admissibility or merits of these complaints, in view of its above conclusions under Articles 5 and 8 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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."

47. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage, EUR 3,494.12 in respect of costs and expenses incurred in domestic proceedings, and 65,540.25 British pounds in respect of costs and expenses incurred before the Court, representing a sum total of expenses incurred in six cases relating to the Church of Scientology pending before the Court.

48. The Government submitted that the applicant's claims were excessive and unsubstantiated.

49. The Court awards the applicant EUR 5,000 in respect of non-pecuniary damage, as claimed, and EUR 3,000 in respect of costs and expenses, plus any tax that may be chargeable on the applicant.

50. 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 Articles 5, 8 and 9 of the Convention admissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 8 of the Convention read in the light of Article 9;

4. *Holds* that there is no need to examine separately the complaints under Article 5 § 5 and Article 14 of the Convention taken in conjunction with Articles 8 and 9 or Article 2 of Protocol No. 4;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 28 September 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova	Darian Pavli
Deputy Registrar	President