

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

FIFTH SECTION

CASE OF KUZMENKO v. UKRAINE

(Application no. 23911/16)

JUDGMENT

STRASBOURG

11 April 2024

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



In the case of Kuzmenko v. Ukraine,

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

Mārtiņš Mits*, President*,
Kateřina Šimáčková,
Mykola Gnatovskyy*, judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 21 March 2024,

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 21 April 2016.

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.

THE LAW

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

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

5. The Government contended that the applicant's complaint had been lodged out of the six-month time-limit, to be calculated from 5 August 2015. The Court considers that the applicant complied with the relevant time-limit (see *Rudnichenko v. Ukraine*, no. 2775/07, §§ 61 and 72, 11 July 2013) (see appended table below). It, thus, dismisses this Government's objection.

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 deprivation 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 a violation in respect of issues similar to those in the present case in the leading case set out in the appended table.

9. 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 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 there been a violation of Article 5 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

11. 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.

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*
   (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.

Done in English, and notified in writing on 11 April 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina Acting Deputy Registrar	Mārtiņš Mits 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	Amount awarded for non-pecuniary damage per applicant (in euros)[1]
23911/16 21/04/2016	**Andrey Vladimirovich KUZMENKO** 1976	17/07/2015 to 05/08/2015	Decision on detention without a time-limit (*Kharchenko v. Ukraine*, no. 40107/02, §§ 74-76, 10 February 2011), absence of any grounds given by the court in the decision authorising detention (*Ignatov v. Ukraine*, no. 40583/15, §§ 36-37, 15 December 2016).	Kharkiv Moskovskyy District Court, 16/07/2015 – no reasons for extension of detention or time-limits set; the applicant's detention was further extended until 14/11/2015 during the preliminary hearing on 05/08/2015.	1,800

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