

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

FIFTH SECTION

CASE OF MALYEYEV v. UKRAINE

(Application no. 39488/15)

JUDGMENT

STRASBOURG

10 October 2024

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



In the case of Malyeyev v. Ukraine,

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

Kateřina Šimáčková*, President*,
Mykola Gnatovskyy,
Úna Ní Raifeartaigh*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 39488/15) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 4 August 2015 by a Ukrainian national, Mr Yevgen Sergiyovych Malyeyev ("the applicant"), who was born in 1985 and lives in Kyiv;

the decision to give notice of the complaints under Article 5 § 1 and Article 8 of the Convention and under Article 1 of Protocol No. 1 to the Convention to the Ukrainian Government ("the Government"), represented by their Agent, Ms M. Sokorenko, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 19 September 2024,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the allegation made by the applicant, a practising lawyer at the time, under Article 5 § 1 of the Convention, that he had been arrested in breach of the requirements of domestic law. It furthermore concerns his allegations under Article 8 and Article 1 of Protocol No. 1 to the Convention regarding the seizure and retention of his property and documents related to his professional activity.

2. On 5 March 2015 at 12.08 a.m. the applicant was arrested on the street in Kyiv by an investigator on suspicion of a corruption offence, as part of an investigation instituted in November 2014. The relevant arrest report indicated that the applicant had been arrested in accordance with two reasons stipulated in Article 208 § 1 of the Code of Criminal Procedure ("the CCP", see *Grubnyk v. Ukraine*, no. 58444/15, § 45, 17 September 2020), namely, (i) while committing an offence or attempting to commit one; and (ii) immediately after an offence had been committed, following the statements of an eyewitness, including the victim, or following an indication of clear signs that he or she had just committed an offence. The arrest report indicated that the applicant had given a bribe to an official in the interests of a third party. It did not explain the grounds for the applicant's arrest in further detail.

3. During the arrest, a personal search of the applicant was carried out and certain items (a laptop, mobile phones, car keys, identity documents and folders containing documents) were seized from him.

4. On the same day, at around 06.05 a.m., he was released without charge.

5. Later that same day the investigator asked the court to order the confiscation of the items that had been seized during the applicant's personal search. According to the investigator's request, on 4 March 2015, the applicant had instructed his accomplice, an unidentified person, to give 10,000 United States dollars (USD) to an employee of the Kyiv City Court of Appeal ("the Court of Appeal") in order to obtain a favourable decision for his client. For this purpose, he had drafted a text of a court decision to be transmitted to the Court of Appeal for adoption in his client's case. On 5 March 2015 the Dniprovskiy District Court of Kyiv granted the investigator's request and ordered the confiscation of the items that had been seized from him during arrest (see paragraph 3 above), holding that they might contain information demonstrating that the applicant or other persons had been involved in a corruption offence. The court additionally stated that the seized laptop might contain the draft of the court decision prepared by the applicant for his client's case.

6. On 24 March 2015 the Court of Appeal upheld that decision, finding that the confiscation of the above-mentioned items had been lawful and justified.

7. On 28 April 2015 the applicant lodged an application with a local court, claiming that his arrest and subsequent search had been unlawful. On 21 May 2015 the Court of Appeal refused that application without giving any explanation in its decision regarding the merits of the claims.

8. On an unspecified date an official notification of suspicion was served on the applicant. According to the document, the applicant had been suspected of giving a bribe, between January and March 2015, to an employee of the Court of Appeal in order to obtain a favourable court decision for his client.

9. On 10 June 2015, as part of the above-mentioned investigation, the Dniprovskiy District Court of Kyiv imposed a personal undertaking not to abscond on the applicant.

10. On 8 July 2015 the Dniprovskyi district prosecutor's office of Kyiv informed the applicant, among other things, that some of the confiscated items had been returned to him on 22 May 2015.

11. During the investigation the applicant brought several sets of proceedings seeking to have the confiscation of the seized items invalidated as being unlawful. In his applications he did not specify what documents had been seized from him. On 30 April 2015, 10 May and 9 June 2016 the domestic courts refused those applications finding that the applicant had failed to substantiate them; he had simply alleged that the confiscation order

had been unlawful, that there had been procedural shortcomings regarding his notification of suspicion and that there had been delays in the investigation.

12. On 6 October 2016 the prosecutor of the Kyiv Local Prosecutor's Office No. 9, which was in charge of the investigation against the applicant, terminated the above-mentioned investigation since no constituent elements of an offence had been established. The prosecutor further decided to return the confiscated items to the applicant.

13. On 10 January 2017 the Kyiv Local Prosecutor's Office No. 4, which was supposedly storing the attached items, responded to the applicant's requests to recover the confiscated items, informing him that more time was needed to verify that the criminal investigation in question had indeed been terminated.

14. As is apparent from the applicant's submissions concerning his just satisfaction claims, after the termination of the criminal investigation he brought civil proceedings against the authorities, claiming compensation for damage in connection with the allegedly unlawful procedural actions taken against him during the investigation pursuant to the Compensation Act of 1994 (see *Dubovtsev and Others v. Ukraine*, nos. 21429/14 and 9 others, § 48, 21 January 2021). On 27 October 2020 the Pecherskyi District Court of Kyiv awarded the applicant 70,737 Ukrainian hryvnias (UAH, approximately 2,100 euros (EUR)) for non-pecuniary damage. The above-mentioned court decision indicated, *inter alia*, that on 10 May 2017 the Kyiv Local Prosecutor's Office No. 4 had returned the confiscated items to the applicant. There is no information as to whether the above-mentioned court decision was appealed against.

THE COURT'S ASSESSMENT

15. The Government did not submit their observations on the admissibility and merits of the case within the time-limit set by the Court.

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

16. The applicant complained that his arrest on 5 March 2015 had been in breach of procedural law, since the arrest report had not indicated any relevant reasons.

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

18. The general principles concerning a suspect's arrest have been summarised in *Korban v. Ukraine* (no. 26744/16, §§ 145-46, 4 July 2019) and most recently in *Rytikov v. Ukraine* (no. 52855/19, §§ 24-25, 23 May 2024, not yet final).

19. The Court observes that the applicant was arrested on the basis of Article 208 § 1 of the CCP, which allows the authorities to arrest a suspect without a prior court order when they act in an urgent situation, for example, by arresting a person *in flagrante delicto*. This provision, however, must be interpreted narrowly. Furthermore, specific grounds justifying the application of one of the exceptions that it lists exhaustively has to be established unequivocally at the time such a measure is taken (see *Strogan v. Ukraine*, no. 30198/11, § 87, 6 October 2016).

20. The circumstances of the case as presented by the applicant demonstrate that the authorities arrested him on suspicion of having given a bribe to an official in the interests of a third party (see paragraph 2 above). The authorities presumably acted in an urgent situation and therefore treated the applicant as a suspect without an official notification of suspicion being served on him at that time.

21. The Court, however, notes that the arrest report contained only a reference to two reasons of the provision of the CCP (see paragraph 2 above).

22. In the Court's view, those reasons, if taken together, appear to create an ambiguity, whilst neither the arrest report nor any other documents available to the Court contained any specific information or relied on any concrete circumstances to explain whether the applicant had been committing an offence at the moment of his arrest or whether there were signs clearly indicating that he had just committed an offence. The absence of any specific information in the report, notably the grounds for his arrest as required by Article 208 § 5 of the CCP, does not convince the Court that the requirements of the domestic law were complied with during his arrest.

23. Having regard to the above considerations, the Court finds that the applicant's arrest on 5 March 2015, on the basis of the investigator's decision, was incompatible with the requirements of Article 5 § 1 of the Convention. There has therefore been a violation of that provision.

II. REMAINING COMPLAINTS

24. The applicant also complained that the seizure and confiscation of items related to his professional activity, as well as the authorities' failure to return items to him after the termination of the criminal investigation, had been in breach of Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

25. As regards the applicant's complaint under Article 8, the Court observes that the applicant formulated his grievances in general terms and did not specify what documents relating to his professional activity had been seized from him, nor did he provide any details in that respect in the course of the domestic proceedings (see paragraph 11 above). The Court furthermore observes that the applicant failed to provide the missing details in his further submissions after notice of the present case had been given to the

Government. The Court does not lose sight of the fact that some unspecified items were returned to him on 22 May 2015 (see paragraph 10 above). The above-mentioned elements, as they were presented to the Court, do not disclose any appearance of a violation of the Convention and the applicant's complaint must therefore be declared manifestly ill-founded.

26. In respect of the applicant's complaint under Article 1 of Protocol No. 1 to the Convention, the Court observes at the outset that the applicant failed to specify what items had been returned to him on 22 May 2015 (see paragraph 10 above) and which items had remained seized under the confiscation order. Furthermore, the applicant failed to inform the Court that the rest of the confiscated items had been returned to him on 10 May 2017 (see paragraph 14 above). It is also noted that the applicant failed to demonstrate that he had attempted to claim compensation for the authorities' alleged delay in returning the confiscated items. It appears that the applicant never raised the above-mentioned issue before the domestic courts, for example, in the context of the proceedings for compensation that he brought after the termination of the criminal investigation against him (see paragraph 14 above), thus failing to exhaust the domestic remedies available to him (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 72, 25 March 2014).

27. In the light of the foregoing, the Court considers that the applicant's complaints under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention must be rejected under Article 35 §§ 1 and 4 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. The applicant claimed 240,000 Ukrainian hryvnias (UAH, approximately EUR 6,000) in respect of non-pecuniary damage and UAH 10,000 (approximately EUR 250) in respect of costs and expenses, notably for the payment of a psychological examination that aimed to establish the level of mental suffering sustained by the applicant in connection with the allegedly unlawful actions taken against him during the investigation (see paragraph 14 above).

29. The Government contested the applicant's claims as unsubstantiated.

30. The Court awards the applicant EUR 1,800 in respect of non-pecuniary damage, plus any tax that may be chargeable.

31. As regards the applicant's claim for costs and expenses, he failed to explain the relevance of the above-mentioned psychological examination to the subject matter of the present case, therefore the Court dismisses that claim.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 5 § 1 of the Convention concerning the lawfulness of the applicant's arrest on 5 March 2015 admissible and the remainder of the application inadmissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 1,800 (one thousand eight hundred euros), plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, in respect of non-pecuniary damage;
   (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;

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

Done in English, and notified in writing on 10 October 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Kateřina Šimáčková President