

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

FIFTH SECTION

CASE OF OKSANICH v. UKRAINE

(Application no. 64627/13)

JUDGMENT

STRASBOURG

20 January 2022

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



In the case of Oksanich v. Ukraine,

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

Arnfinn Bårdsen, *President,*
Ganna Yudkivska,
Mattias Guyomar, *judges,*
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 64627/13) 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 Fedor Vasilyevich Oksanich ("the applicant"), on 7 October 2013;

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

the parties' observations;

Having deliberated in private on 9 December 2021,

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

INTRODUCTION

1. The case concerns the pre-trial detention of the applicant in excess of the maximum time-limit established by the domestic law, the absence of a thorough and speedy review of the lawfulness of his detention and the absence of an enforceable right to compensation for his unlawful detention, in breach of Article 5 §§ 1, 4 and 5 of the Convention.

THE FACTS

2. The applicant was born in 1956 and lives in Kyiv. The applicant, who was granted legal aid, was represented by Mr M. O. Tarakhkalo, 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.

5. On 12 November 2011 the police arrested the applicant on suspicion of murder.

6. On 15 November 2011 the Obukhiv District Court of the Kyiv Region ("the Obukhiv Court") ordered pre-trial detention in respect of the applicant, which was extended several times. The last decision, extending the applicant's pre-trial detention until 15 February 2013, was taken by the same court on 15 December 2012.

7. On 26 December 2012 the Kyiv Regional Court of Appeal ("the Court of Appeal") quashed the decision of the Obukhiv Court of 15 December 2012

and released the applicant from detention. The Court of Appeal substantiated its decision by the fact that the applicant had spent the maximum period allowed by the Code of Criminal Procedure ("the CCP") in pre-trial detention.

8. On 2 January 2013 an investigator lodged a request with the Obukhiv Court to place the applicant under house arrest. The examination of that request was adjourned on 4 January 2013 owing to the applicant's failure to appear at the hearing. On 10 January 2013 the Obukhiv Court allowed a request by the investigator to detain the applicant in order to bring him before the court to examine the question of placing him under house arrest.

9. On 13 March 2013 the police detained the applicant and the investigator lodged a request with the Obukhiv Court to order his pre-trial detention for a period of two months, that is until 13 May 2013. On the same day the investigative judge of the Obukhiv Court allowed that request on the grounds that the applicant might abscond.

10. The applicant's lawyer appealed against the decision of the Obukhiv Court of 13 March 2013 arguing, *inter alia*, that the applicant had already spent the maximum period allowed by the CCP in pre-trial detention.

11. On 8 April 2013 the Court of Appeal modified the above-mentioned decision and ruled that the applicant could be released on the condition of the payment of bail in the amount of 229,400 hryvnias (approximately 20,000 euros). The Court of Appeal did not address the applicant's argument relating to the expiry of the maximum period of his pre-trial detention. The applicant did not pay bail and remained in pre-trial detention.

12. On 26 April 2013 the pre-trial investigation was completed and the case file together with the bill of indictment was transferred to the Vasylkiv Court of the Kyiv Region ("the trial court") for examination.

13. On 8 May 2013 the trial court returned the bill of indictment to the prosecutor for corrections and extended the applicant's pre-trial detention until 6 July 2013, referring to the fact that the previously identified risk that he might abscond remained valid. By the same decision, the trial court dismissed a request for release submitted by the applicant.

14. On 20 June 2013 the trial court again returned the bill of indictment to the prosecutor for corrections.

15. On 5 July 2013 the Court of Appeal, which was at the time examining an appeal by the prosecutor against the trial court's decision of 20 June 2013, extended the applicant's pre-trial detention until 2 September 2013 for the same reasons as those indicated in the trial court's decision of 8 May 2013.

16. On 2 September 2013 the trial court adjourned a preparatory hearing owing to the absence of the applicant's lawyer and extended his detention until 1 November 2013, as the risk of his influencing the victim and the witnesses and the risk of his absconding persisted.

17. According to the material submitted to the Court, on 11 December 2014 the trial court found the applicant guilty of unintentional infliction of bodily injury and careless storage of a firearm causing death, and sentenced

him to two years, ten months and twelve days' imprisonment. The applicant was released from detention as having served the imprisonment term fixed by the trial court.

RELEVANT LEGAL FRAMEWORK

18. Article 197 of the CCP provides that the overall term of a suspect's detention during the pre-trial investigation in cases related to the commission of grave crimes is not to exceed twelve months.

19. Article 219 of the CCP provides that the pre-trial investigation begins at the moment that the criminal investigation is registered in the Unified Register of Pre-trial Investigations and ends with the submission of the bill of indictment to the trial court for examination.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

20. The applicant complained that his detention between 13 March and 2 September 2013 had been unlawful as it was in breach of the domestic law. He further complained that his detention during that period had been lengthy and that the decisions of the domestic courts authorising his detention had not been based on relevant and sufficient reasons. He also complained that the Kyiv Regional Court of Appeal ("the Court of Appeal") in its decision of 8 April 2013 had failed to assess his ability to comply with the bail condition. Lastly, the applicant complained that his right to a review of the lawfulness of his detention had been breached and that he had not had an enforceable right to compensation for his unlawful detention. The applicant relied on Article 5 §§ 1, 3, 4 and 5 of the Convention, the relevant parts of 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 brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

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

21. 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. As to the applicant's complaint under Article 5 § 1 of the Convention regarding his detention between 13 March and 2 September 2013

22. The applicant submitted that his pre-trial detention during the period under examination had been in breach of the domestic law as it had been in excess of the maximum period of detention at the pre-trial stage allowed by the CCP.

23. The Government submitted that the applicant's detention during the above-mentioned period had been in compliance with the domestic law and the Convention, in particular having regard to the risk of the applicant's absconding.

24. The expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and enshrine the obligation to conform to the substantive and procedural rules thereof. Although it is in the first place for the national authorities (notably the courts) to interpret and apply domestic law, under Article 5 § 1 a failure to comply with domestic law entails a breach of the Convention, and the Court can and should review whether such law has been complied with (see, among many other references, *Assanidze v. Georgia* [GC], no. 71503/01, § 171, ECHR 2004-II).

25. Although the CCP establishes that the pre-trial investigation period ends on the day that the bill of indictment is submitted to the trial court (see paragraph 19 above), in the present case the trial court returned the bill of indictment to the prosecutor for corrections on 8 May and 20 June 2013 (see paragraphs 13 and 14 above), which meant that the case was remitted back to the pre-trial investigation stage and the applicant's detention was to be again classified as "pre-trial". This situation in fact changed only on 2 September 2013, when the trial court began the examination of the criminal case against the applicant, having thus accepted the bill of indictment.

26. The Court notes that the Court of Appeal found in its decision of 26 December 2012 that the applicant had already spent the maximum period

allowed by the domestic law in pre-trial detention, and this fact was the sole reason in favour of his release.

27. Without speculating as to whether the risk of the applicant's absconding from the investigation in January 2013 was a valid reason for the courts to decide to detain him during the period under examination, the domestic courts did not explain in their decisions how the applicant's detention beyond the maximum one-year period could be considered to be compatible with the requirements of the CCP. Neither did the Government provide a relevant explanation in their observations in the course of the exchange of the parties' observations.

28. In the light of the foregoing, the Court considers that the applicant's pre-trial detention between 13 March and 2 September 2013 was not "in accordance with a procedure prescribed by law". There has accordingly been a violation of Article 5 § 1 of the Convention.

29. Having regard to its findings above, the Court considers that there is no need to examine separately the applicant's complaint under Article 5 § 3 of the Convention regarding the justification and reasonableness of his detention during the same period and regarding the failure of the Court of Appeal to assess in its decision of 8 April 2013 the applicant's ability to comply with the bail condition.

2. As to the applicant's complaint under Article 5 § 4 of the Convention

30. The applicant submitted that the Court of Appeal's examination of his appeal against the Obukhiv Court's decision of 13 March 2013 had not been "speedy". He further submitted that the domestic courts had failed to properly address his arguments, which he had raised in his submissions of 18 March, 7 May, 20 June, 4 July, and 8 August 2013, that the term of his detention had exceeded the maximum time-limit established by the CCP, and that there had been no relevant and sufficient reasons for his continued detention.

31. The Government submitted that the domestic courts had thoroughly examined the applicant's submissions regarding the lawfulness of his detention and had delivered reasoned decisions on time.

32. The applicable general principles emerging from the Court's case-law are set out in *Molodorych v. Ukraine* (no. 2161/02, §§ 97-101, 28 October 2010).

(a) As to the speediness of the proceedings upon the appeal against the decision of 13 March 2013

33. The Court observes that on 18 March 2013 the applicant lodged his appeal against the decision of the Obukhiv Court of 13 March 2013, and that it was examined by the Court of Appeal on 8 April 2013. The examination of the above-mentioned appeal therefore lasted twenty-two days.

34. Bearing in mind that the standard of "speediness" is less stringent when it comes to proceedings before a court of appeal (see, for example, *Lebedev v. Russia*, no. 4493/04, § 96, 25 October 2007), the Court observes that the Government did not plead before the Court that complex issues had been involved in the determination of the lawfulness of the applicant's detention. Neither did they submit that there had been any circumstances preventing the Court of Appeal from examining the applicant's appeal quickly or exempting it from the obligation to do so. In the absence of any such explanations from the Government, the Court therefore concludes that the appeal proceedings regarding the review of the decision of the Obukhiv Court of 13 March 2013 did not comply with the "speediness" requirement of Article 5 § 4.

(b) As to the thoroughness of the judicial review of the lawfulness of the applicant's detention.

35. The Court observes that in his submissions before the domestic courts of 18 March, 7 May, 20 June, 4 July, and 8 August 2013, the applicant repeatedly argued that the term of his pre-trial detention had exceeded the maximum period established by the CCP, and that there had been no relevant and sufficient reasons for his continued detention.

36. Whereas they gave responses to the applicant's arguments regarding the justification of his detention, although those were repetitive and stereotyped (see paragraphs 11, 13 and 16 above), the domestic courts have never addressed the applicant's argument that his pre-trial detention exceeded the statutory period established by the CCP.

37. In the Court's opinion, the domestic courts, by ignoring the above argument, despite the fact that it was specific, pertinent and important, fell short of their obligation under Article 5 § 4 of the Convention to review the lawfulness of the applicant's detention (see, for example, *Svershov v. Ukraine*, no. 35231/02, § 71, 27 November 2008).

3. As to the applicant's complaint under Article 5 § 5 of the Convention

38. The Court observes that the applicant's complaint under Article 5 § 5 is similar to those examined by the Court in a number of other cases against Ukraine (see, for example, *Sinkova v. Ukraine*, no. 39496/11, §§ 79-84, 27 February 2018). The Court concludes that the applicant did not have an enforceable right to compensation for his unjustified detention, as required by Article 5 § 5. There has therefore been a violation of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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."

40. The applicant claimed 550,000 euros (EUR) in respect of non-pecuniary damage. The Government considered that claim unsubstantiated and excessive.

41. Making its assessment on an equitable basis, the Court awards the applicant EUR 9,800 in respect of non-pecuniary damage, plus any tax that may be chargeable.

42. The applicant also claimed EUR 6,000 for the costs and expenses incurred before the Court. He asked that the award be paid directly into his representative's bank account.

43. 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.

44. Regard being had to the documents in its possession, the complexity of the case and the legal aid granted to the applicant in the amount of EUR 850, the Court awards the applicant EUR 650, plus any tax that may be chargeable to him, to be paid into the bank account of Mr M. O. Tarakhkalo, as indicated by the applicant (see, for example, *Belousov v. Ukraine*, no. 4494/07, §§ 116-17, 7 November 2013).

45. 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 application admissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention regarding the unlawfulness of the applicant's detention from 13 March to 2 September 2013;

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention regarding the lack of a thorough and speedy review of the lawfulness of the applicant's detention;

4. *Holds* that there has been a violation of Article 5 § 5 of the Convention regarding the lack of an enforceable right to compensation for his unlawful detention;

5. *Holds* that there is no need to examine the complaint under Article 5 § 3 of the Convention regarding the justification and reasonableness of the applicant's detention from 13 March to 2 September 2013 and regarding the failure of the Kyiv Regional Court of Appeal to assess in its decision of 8 April 2013 the applicant's ability to comply with the bail condition;

6. *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 9,800 (nine thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 650 (six hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the bank account of the applicant's representative, Mr M. O. Tarakhkalo;
   (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;

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

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

Martina Keller Deputy Registrar	Arnfinn Bårdsen President