

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

FIFTH SECTION

CASE OF PODLESNAYA v. UKRAINE

(Application no. 23002/13)

JUDGMENT

STRASBOURG

20 September 2022

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



In the case of Podlesnaya v. Ukraine,

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

Lado Chanturia, *President,*
Ganna Yudkivska,
Mattias Guyomar, *judges,*
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 23002/13) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 16 March 2013 by a Ukrainian national, Ms Margarita Anatolyevna Podlesnaya, who was born in 1959 and lives in Moscow ("the applicant");

the decision to give notice of the complaints under Article 5 §§ 1, 3 and 4 of the Convention to the Ukrainian Government ("the Government"), represented by their Agent, Mr I. Lishchyna, of the Ministry of Justice, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 12 May 2022,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the allegedly unlawful pre-trial detention of the applicant under Article 5 § 1 of the Convention and the alleged absence of relevant guarantees afforded to her under Article 5 §§ 3 and 4 of the Convention in connection with her detention.

2. In February 2000 a police investigator instituted criminal proceedings against the applicant for theft of State property, embezzlement and forgery. The applicant absconded and, in February 2001, she was consequently put on a wanted list. On 20 October 2011 the applicant was arrested in Russia. Before the applicant's arrest, the criminal proceedings against her were suspended and resumed a number of times, mostly for the purpose of performing procedural formalities.

3. On 22 October 2011, in the course of the procedure for the applicant's extradition to Ukraine, the Artemovsk Local Court of the Donetsk Region ("the Artemovsk Court") ordered her detention, without specifying its time-limit. The seriousness of the offence committed by the applicant and the risks of her continuing her criminal activity, evading the investigation and hindering the establishment of the truth were given as grounds for her detention.

4. On 11 July 2012 the applicant was extradited to Ukraine and placed in the Artemovsk Pre-Trial Detention Centre. She stated that she had been

unaware of the grounds for her detention until 20 August 2012, when she had been served with a copy of the court's decision of 22 October 2011.

5. On 17 September 2012 the Donetsk Regional Court of Appeal ("the Court of Appeal") held a hearing in the absence of the applicant, who did not have a defence lawyer, but in the presence of the prosecutor, and dismissed the applicant's appeal against the Artemovsk Court's decision of 22 October 2011. The decision reiterated the grounds for the applicant's detention indicated by the Artemovsk Court and referred to the fact that she had been on the wanted list since 2001.

6. On 20 September 2012 the applicant was released subject to an undertaking not to abscond.

THE COURT'S ASSESSMENT

I. SCOPE OF THE CASE

7. In her comments in reply to the Government's observations, the applicant submitted that the conditions of her detention had been in breach of Article 3 of the Convention. The Court will not deal with that complaint since it was declared inadmissible when the Government were given notice of the present application.

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

8. The applicant complained that she had been deprived of her liberty from 11 July to 20 September 2012 without judicial authorisation. The Government did not submit their observations within the time-limit set by the Court.

9. 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.

10. The general principles concerning the guarantees against arbitrary detention have been summarised in *Medvedyev and Others v. France* ([GC], no. 3394/03, §§ 76-80 and 117-26, ECHR 2010).

11. The applicant's placement in detention after her extradition to Ukraine was carried out on the basis of the Artemovsk Court's decision of 22 October 2011. There is no indication in the documents available to the Court that after her extradition the applicant was detained for any purpose other than ensuring that her criminal liability could be established in the context of the criminal proceedings against her (see paragraph 2 above).

12. Although the Artemovsk Court did not set a time-limit for the applicant's detention, Article 156 of the 1960 Code of Criminal Procedure (as in force at the relevant time) provided that the detention of a defendant during a pre-trial investigation was not to exceed two months, with a

possibility for its extension by a court. The applicant's detention based on the Artemovsk Court's decision of 22 October 2011 should not therefore have lasted beyond 11 September 2012.

13. When the maximum period of detention is absolute, laid down by the law, and thus known in advance, the authorities responsible for the detention are under a duty to take all necessary precautions to ensure that the permitted duration is not exceeded (see *Gal v. Ukraine*, no. 6759/11, § 26, 16 April 2015). It appears, therefore, that in the absence of a court decision to extend the applicant's detention beyond that date, that is, from 11 September 2012, the detention did not have a legal basis.

14. There has therefore been a violation of Article 5 § 1 of the Convention as regards the applicant's detention from 11 to 20 September 2012.

III. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

15. The applicant submitted that after her extradition to Ukraine she had not been brought before a judge until her release.

16. 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.

17. As the Court underlined in *Medvedyev and Others*, the purpose of the guarantees afforded by Article 5 § 3 is to ensure that arrested persons are physically brought before a judicial officer promptly. Such automatic expedited judicial scrutiny provides an important measure of protection against arbitrary behaviour, incommunicado detention and ill-treatment (see *Medvedyev and Others*, cited above, § 118).

18. The court decision ordering the applicant's detention was given while she was on a wanted list (see paragraph 2 above). After being extradited to Ukraine, the applicant was not brought before a court, but was kept in detention on the basis of the Artemovsk Court's decision of 22 October 2011. The above-mentioned decision was given nearly nine months before the applicant's extradition and more than twelve years after the institution of criminal proceedings against her.

19. Noting that the applicant had been on the wanted list since February 2001 and that the criminal proceedings against her had been suspended a number of times, the Court has doubts as to whether the reasons given for the applicant's detention on the basis of those proceedings remained equally valid. In those circumstances, a judicial review of the lawfulness of the applicant's detention became even more relevant and necessary. However, the applicant was not brought before the court until 20 September 2012, that is, two months and nine days after her extradition to Ukraine.

20. In the light of the foregoing, the Court considers that the authorities did not fulfil their obligation to bring the applicant promptly before the court

after her arrest. There has therefore been a violation of Article 5 § 3 of the Convention.

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

21. The applicant also raised a complaint under Article 5 § 4 of the Convention that the hearing in the Court of Appeal on 17 September 2012, which was aimed at examining her appeal against the detention order of 22 October 2011, had been held in her absence, but in the presence of the prosecutor (see paragraph 5 above).

22. Being covered by the well-established case-law of the Court, 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 grounds. Accordingly, it must be declared admissible.

23. Having examined all the material before it, the seriousness of the proceedings in the Court of Appeal and, in particular, the Court's above finding that the applicant was not brought promptly before a court after her extradition to Ukraine, the Court concludes that the above-mentioned circumstances disclose a violation of Article 5 § 4 of the Convention in the light of its findings in *Korneykova v. Ukraine* (no. 39884/05, §§ 68-69, 19 January 2012), *Samoylenko v. Ukraine* ((dec.) [Committee], no. 45050/10, § 35, 24 October 2019) and *Pikhun v. Ukraine* ((dec.) [Committee], no. 63754/09, § 82, 12 December 2019).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

25. The Government contested that claim.

26. The Court awards the applicant EUR 2,300 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

27. The Court further 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 11 to 20 September 2012;

3. *Holds* that there has been a violation of Article 5 § 3 of the Convention regarding the failure of the authorities to bring the applicant promptly before a court;

4. *Holds* that there has been a violation of Article 5 § 4 of the Convention regarding the hearing in the Court of Appeal on 17 September 2012, which was held in the absence of the applicant;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 2,300 (two thousand three 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;
   (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;

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

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

Martina Keller Deputy Registrar	Lado Chanturia President