



Student's conviction for frying eggs on a war memorial did not breach her freedom of expression, but her detention pending trial was unlawful

The case [Sinkova v. Ukraine](#) (application no. 39496/11) concerned the arrest, detention and conviction of a 19-year-old student for frying eggs on the flame of the Tomb of the Unknown Soldier in Kyiv in 2010. She later posted a video of the scene on the Internet, explaining that she had been protesting against the waste of precious natural gas. She was arrested in 2011 and detained for three months pending criminal proceedings on the charge of desecrating the tomb. She was eventually convicted as charged, and given a suspended sentence.

In today's **Chamber** judgment¹ in the case the European Court of Human Rights held,

unanimously, that there had been **no violation of Article 5 § 1 (right to liberty and security)** of the European Convention on Human Rights concerning Ms Sinkova's arrest, which had been based on a judicial order and had aimed to ensure her attendance at a hearing on her case as, despite the police's efforts, they had not been able to find her until March 2011;

unanimously, that there had been a **violation of Article 5 §§ 1, 3 and 5** of the European Convention because Ms Sinkova's detention from 29 May to 17 June 2011 had not been covered by any judicial decision; the entirety of her detention from 29 March to 30 June 2011 had not been justified; and Ukrainian law had not provided an enforceable right to compensation for that unlawfulness of her detention; and,

by four votes to three, that there had been **no violation of Article 10 (freedom of expression)**. The Court found in particular that Ms Sinkova's conviction for expressing contempt for the Tomb of the Unknown Soldier had interfered with her freedom of speech, but that it had been a proportionate restriction under domestic law.

Principal facts

The applicant, Anna Sinkova, is a Ukrainian national who was born in 1991 and lives in Kyiv.

The case concerned her arrest, detention and conviction for frying eggs on the flame of the Tomb of the Unknown Soldier in Kyiv in December 2010. Two of her friends joined her and fried sausages over the flame. Another filmed. At the time, she belonged to an artistic group known for its provocative public performances. She later posted a video of the scene on the Internet, with the explanation that she had been protesting against the waste of precious natural gas.

She was found guilty in 2012 of desecrating the Tomb of the Unknown Soldier and given a three-year suspended prison sentence. She did not serve any of this sentence, however, before her conviction, she had spent three months in pre-trial detention, notably from 29 March 2011 to 30 June 2011. Remanding her in custody had essentially been justified on the grounds of the seriousness of the charge against her and the hypothetical risk of her absconding as the police had not been able to find her at the initial stage of the proceedings. These reasons were used in refusals to release her,

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

despite letters by members of parliament and other prominent figures, pledging to be her personal guarantors.

Complaints, procedure and composition of the Court

Ms Sinkova made a number of complaints under Article 5 §§ 1, 3, and 5 about her arrest and subsequent detention (right to liberty and security). In particular she argued that there had been neither any legal basis nor practical need for her arrest, that her detention from 29 May to 17 June 2011 had not been covered by any judicial decision, that the entirety of her pre-trial detention had not been justified and that, under the existing domestic legislation, she could not claim compensation for unlawful detention. Lastly, she complained principally under Article 10 (freedom of expression) that her conviction had breached her right to express the view that the funds used to maintain flames on such memorials would be better spent on improving war veterans' living conditions.

The application was lodged with the European Court of Human Rights on 21 June 2011.

Judgment was given by a Chamber of seven judges, composed as follows:

Vincent A. **De Gaetano** (Malta), *President*,
Ganna **Yudkivska** (Ukraine),
Faris **Vehabović** (Bosnia and Herzegovina),
Egidijus **Kūris** (Lithuania),
Iulia **Motoc** (Romania),
Georges **Ravarani** (Luxembourg),
Péter **Paczolay** (Hungary),

and also Marialena **Tsirli**, *Section Registrar*.

Decision of the Court

[Article 5 \(right to liberty and security\)](#)

The Court found that Ms Sinkova's arrest had been based on a judicial order and aimed to ensure her attendance at a hearing on her case as, despite the police's efforts, they had not been able to find her until 29 March 2011. It was not convinced by her argument that the police had not tried hard enough to find her. On the contrary, they had contacted family living at the address of her registered residence, but the family had denied knowing where she was. Even less convincing was her suggestion that she could have been directly contacted as author of the video on the Internet, given that the police had only been able to identify her by showing a photo held on the passport office's database to one of the friends who had participated in the performance. The Court did not therefore consider that her arrest had been either arbitrary or unlawful and held that there had been no violation of Article 5 § 1.

However, the initial order for Ms Sinkova's detention had expired on 29 May 2011 and she had been held in custody solely on the basis of the bill of indictment submitted to the trial court. Her further detention as a preventive measure had only been ordered on 17 June 2011 when the trial court had held its preparatory hearing on her case. Her detention between those two dates had not therefore been covered by any judicial decision, in violation of Article 5 § 1. The Court pointed out a number of other similar cases where it had already found a violation of Article 5 § 1 because of such a practice of keeping defendants in detention without a specific legal basis or clear rules and concluded that that issue stemmed from a legislative lacuna in Ukraine.

Furthermore, the authorities had not sufficiently justified the entire period, from 29 March to 30 June 2011, of Ms Sinkova's detention. When extending her detention and rejecting her applications for release, the domestic courts had mainly referred to the initial grounds for her placement in detention, namely the seriousness of the charge and the risk of her absconding, without any updated details. At no stage had they considered any alternative measures against her. Nor had they taken into consideration any of the numerous letters of personal guarantee in support of her release. There had therefore been a violation of Article 5 § 3.

Lastly, the Court noted that, as long as Ms Sinkova's detention was in formal compliance with the domestic legislation, it was not possible for her to claim compensation at national level. Nor was there any legally envisaged procedure in Ukraine to bring compensation proceedings for deprivation of liberty found in breach of the European Convention. Ukrainian law had not therefore provided an enforceable right to compensation for the unlawfulness of her detention under Article 5 §§ 1 and 3. There had therefore been a violation of Article 5 § 5.

Article 10 (freedom of expression)

The Court found that Ms Sinkova had only been prosecuted on criminal charges and convicted for frying eggs on the Tomb of the Unknown Soldier; that charge had not concerned either her posting the video on the Internet or the accompanying explanation. She had therefore been convicted for a particular type of conduct in a particular place, based on a general prohibition of expressing contempt for the Tomb of the Unknown Soldier.

Indeed, she could have found more suitable ways to express her views or participate in protests about the State's use of natural gas or the needs of war veterans, without breaking the criminal law or insulting the memory of soldiers who had given their lives defending their country.

Moreover, she has never served a single day of her suspended prison sentence.

Ms Sinkova's conviction was therefore reconcilable with her freedom of expression and the Court concluded that there had been no violation of Article 10.

Just satisfaction (Article 41)

The Court held that Ukraine was to pay Ms Sinkova 4,000 euros in respect of non-pecuniary damage.

Separate opinion

Judges Yudkivska, Motoc and Paczolay expressed a joint partly dissenting opinion which is annexed to the judgment.

The judgment is available only in English.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

Press contacts

echrp@echr.coe.int | tel.: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Inci Ertekin (tel: + 33 3 90 21 55 30)

Patrick Lannin (tel: + 33 3 90 21 44 18)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.