



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

FIFTH SECTION

CASE OF KRASYUKOV AND OTHERS v. UKRAINE

*(Application no. 64181/09 and 9 others -
see appended list)*

JUDGMENT

STRASBOURG

3 May 2018

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

In the case of Krasnyukov and Others v. Ukraine,

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

André Potocki, *President*,

Síofra O’Leary,

Mārtiņš Mits, *judges*,

and Liv Tegerstedt, *Acting Deputy Section Registrar*,

Having deliberated in private on 12 April 2018,

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

PROCEDURE

1. The case originated in applications against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on the various dates indicated in the appended table.

2. The applications were communicated to the Ukrainian Government (“the Government”).

THE FACTS

3. The list of applicants and the relevant details of the applications are set out in the appended table.

4. The applicants complained of the excessive length of their pre-trial detention. Some applicants also raised other complaints under the provisions of the Convention.

THE LAW**I. JOINDER OF THE APPLICATIONS**

5. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. THE SCOPE OF APPLICATION NO. 71560/13

6. The Court notes that, after communication of the application, the applicant introduced new complaints concerning (i) unfairness of the appellate proceedings which resulted in the adoption of the appellate court’s

ruling of 7 May 2014, and (ii) the rejection of the applicant's appeal against the first-instance court ruling of 10 September 2014. In particular, the applicant complained under Article 6 § 1 of the Convention that he was not notified about the appellate court's hearing of 7 May 2014 and that it had taken place in his absence. He further invoked Articles 5 § 1 (c) and 18 of the Convention claiming that the appellate court, refusing to consider it on the merits, had rejected his appeal against the ruling of 10 September 2014 by which the first-instance court ordered the applicant to be apprehended and presented to the court for further choice of a preventive measure.

7. In the Court's view, these new complaints are not an elaboration of the applicant's original complaints that were communicated to the Government. The Court therefore considers that it is not appropriate now to take these matters up separately (see *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005). They will be dealt with in a separate application.

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

8. The applicants complained principally about the excessive length of their pre-trial detention. They relied on Article 5 § 3 of the Convention, which read as follows:

Article 5 § 3

“3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

9. The Court observes that the general principles regarding the right to trial within a reasonable time or to release pending trial, as guaranteed by Article 5 § 3 of the Convention, have been stated in a number of its previous judgments (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 110, ECHR 2000-XI, and *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-X, with further references).

10. In the leading cases of *Kharchenko v. Ukraine* (no. 40107/02, 10 February 2011) and *Ignatov v. Ukraine* (no. 40583/15, 15 December 2016), the Court already found a violation in respect of issues similar to those in the present case.

11. 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 length of the applicants' pre-trial detention was excessive.

12. These complaints are therefore admissible and disclose a breach of Article 5 § 3 of the Convention.

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

13. In applications nos. 60859/10, 66440/11, 75007/11, 58383/12, 80605/12, 60962/13, 71560/13 and 77369/16, the applicants submitted other complaints which also raised issues under the Convention, given the relevant well-established case-law of the Court (see appended table). These complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor are they inadmissible on any other ground. Accordingly, they must be declared admissible. Having examined all the material before it, the Court concludes that they also disclose violations of the Convention in the light of its findings in *Merit v. Ukraine* (no. 66561/01, 30 March 2004) and *Kharchenko v. Ukraine* (cited above).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

14. 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.”

15. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sums indicated in the appended table.

16. 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. *Decides* to join the applications;
2. *Declares* the complaints concerning the excessive length of pre-trial detention and the other complaints under well-established case-law of the Court, as set out in the appended table, admissible;
3. *Holds* that these complaints disclose a breach of Article 5 § 3 of the Convention concerning the excessive length of pre-trial detention;
4. *Holds* that there has been a violation of the Convention as regards the other complaints raised under well-established case-law of the Court (see appended table);

5. *Holds*

(a) that the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table, to be converted into the currency of the respondent State, except for application no. 71560/13, 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 amounts 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 3 May 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Acting Deputy Registrar

André Potocki
President

APPENDIX

List of applications raising complaints under Article 5 § 3 of the Convention
(excessive length of pre-trial detention)

No.	Application no. Date of introduction	Applicant name Date of birth	Representative name and location	Period of detention	Length of detention	Other complaints under well-established case-law	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros) ¹
1.	64181/09 07/09/2009	Aleksandr Andreyevich Krasnyukov 25/02/1970		18/10/2005 to 28/12/2006 17/07/2007 to 08/04/2009	1 year, 2 months and 11 days 1 year, 8 months and 23 days		1,800
2.	60859/10 28/09/2010	Andrey Vyacheslavovich Skobey 01/08/1971	Roman Yuryevich Martynovskyy Kyiv	12/12/2008 to 12/09/2011	2 years, 9 months and 1 day	Art. 6 (1) - excessive length of criminal proceedings – from 12/12/2008 to 27/11/2012 – almost 4 years, 2 levels of jurisdiction	2,300
3.	66440/11 15/10/2011	Maksym Viktorovych Drozdenko 13/01/1975		01/07/2010 to 26/11/2013	3 years, 4 months and 26 days	Art. 5 (1) - unlawful deprivation of liberty, including unrecorded detention and detention without a judicial order and any other legal basis - from 01/04/2011 to 14/04/2011: after the case was sent to the first instance court for consideration the applicant remained in detention without a court order from 01/04/2011 (when a previous court order expired) until 14/04/2011 (when a court held the first hearing in the applicant's case) - procedural gap.	5,900
4.	75007/11 29/11/2011	Vadym Mykolayovych Maksymchuk 05/01/1982	Oleksiy Volodymyrovych Tsybenko Kyiv	15/03/2006 to 19/05/2008 25/12/2008 to 21/10/2009 17/09/2010 to 28/12/2011	2 years, 2 months and 5 days 9 months and 27 days 1 year, 3 months and 12 days	Art. 6 (1) - excessive length of criminal proceedings – from 15/03/2006 to 29/02/2012 – almost 6 years, 2 levels of jurisdiction	3,400
5.	58383/12 27/08/2012	Viktor Aleksandrovich Zarichnyy 24/11/1973	Mariya Mokhamedovna Auishat Kharkiv	04/11/2009 to 29/06/2011 18/10/2011 to 14/12/2012 10/10/2013 to 20/02/2014	1 year, 7 months and 26 days 1 year, 1 month and 27 days 4 months and 11 days	Art. 5 (1) (c) - unlawful pre-trial detention - no end date of detention in courts' rulings of 06/11/2011 and 10/10/2013, lack of reasoning of prolongation of the applicant's detention Art. 6 (1) - excessive length of criminal proceedings – from 04/11/2009 – pending, more than 8 years, 1 level of jurisdiction	5,900

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6.	80605/12 15/11/2012	Sergey Vladimirovich Nagornyuk 01/01/1960		01/02/2008 to 31/08/2011 22/05/2012 to 09/07/2013	3 years and 7 months 1 year, 1 month and 18 days	Art. 5 (1) - unlawful deprivation of liberty, including unrecorded detention and detention without a judicial order and any other legal basis - lack of sufficient reasons in the courts' decisions ordering the applicant's arrest, extension of arrest and remittal of the case for fresh consideration by the court of appeal Art. 6 (1) - excessive length of criminal proceedings - from 01/02/2008 to 09/07/2013, more than 5 years and 5 months, 2 levels of jurisdiction	5,900
7.	60962/13 17/09/2013	Sergey Sergeyevich Syrovatka 26/05/1987		06/09/2012 to 20/01/2014 06/05/2014 to 21/08/2014	1 year, 4 months and 15 days 3 months and 16 days	Art. 5 (1) (c) - unlawful pre-trial detention : (i) the applicant was apprehended on 06/09/2012 on "exceptional grounds" (by an investigator without obtaining a preliminary arrest warrant from a court on the ground that "victims and witnesses identified the applicant as a possible perpetrator"). However the alleged crime had been committed on 12/04/2012; it could not therefore be claimed that the authorities faced an urgent situation such as, for example, a situation of "in flagrante delicto" (see <i>Strogan v. Ukraine</i> , no. 30198/11, § 88, 6 October 2016); (ii) the courts referred mostly to the gravity of the charges, "lack of grounds for change of the preventive measure", and necessity to conduct certain investigative actions; local courts also mention that the applicant might have influenced witnesses and victims, however, no details corroborating such conclusions were laid down by the courts in their rulings	5,900
8.	71560/13 04/11/2013	Yuriy Lvovych Tsybulya 04/11/1960		11/11/2010 to 14/04/2014	3 years, 5 months and 4 days	Art. 5 (1) (c) - unlawful pre-trial detention - period from 10/05/2011 to 10/06/2011 was not covered by any order, no end date of detention in the court's ruling of 10/06/2011, lack of reasoning for prolongation of the applicant's detention	5,900
9.	20119/14 25/02/2014	Gennadiy Fedorovich Gladkyy 04/02/1974	Oleksandr Oleksandrovych Bulgarov Odesa	09/12/2013 to 21/08/2015	1 year, 8 months and 13 days		1,100

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10.	77369/16 26/12/2016	Valeriy Grygorovych Manukov 25/05/1955		11/04/2009 to 29/11/2011 21/03/2012 to 04/03/2013 20/05/2014 to 01/04/2015 28/05/2015 to 15/05/2017	2 years, 7 months and 19 days 11 months and 12 days 10 months and 13 days 1 year, 11 months and 18 days	Art. 6 (1) - excessive length of criminal proceedings - from 11/04/2009 to 15/05/2017, more than 8 years, 3 levels of jurisdiction	5,100

¹ Plus any tax that may be chargeable to the applicants.