



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

FIFTH SECTION

CASE OF CHAYKOVSKYY v. UKRAINE

(Application no. 48879/19)

JUDGMENT

Art 6 § 1 (criminal) • Fair hearing • Upholding of some of the applicant's convictions by the Supreme Court in extraordinary review proceedings on the basis of evidence given by his co-defendants found by the Court in their previous cases to be in violation of Art 6 §§ 1 and 3 • Review proceedings involved a fresh examination of the evidence on which the applicant was convicted, amounting to an extension of the original criminal proceedings against him • Lack of detailed reasons and strong justification for accepting evidence as admissible in respect of applicant whilst rejecting it as inadmissible in respect of co-defendants in criminal proceedings with the same underlying facts • Mere referral to principle of "individualisation of criminal responsibility" without further explanation • Fair trial guarantees not fulfilled

Art 6 § 1 (criminal) • Reasonable time • Delay in examining the applicant's request for review due to the case file being stored in occupied territory outside the Government's control • Given objective obstacles, the domestic authorities did all in their power in the circumstances to address the applicant's situation

Prepared by the Registry. Does not bind the Court.

STRASBOURG

9 October 2025

FINAL

09/01/2026

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Chaykovskyy v. Ukraine,

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

Kateřina řimáčková, *President*,

María Elósegui,

Gilberto Felici,

Diana Sârcu,

Mykola Gnatovskyy,

Vahe Grigoryan,

Sébastien Biancheri, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 48879/19) 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 Vitaliy Viktorovych Chaykovskyy (“the applicant”), on 7 September 2019;

the decision to give notice of the application to the Ukrainian Government (“the Government”);

the parties’ observations;

Having deliberated in private on 9 September 2025,

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

INTRODUCTION

1. The case concerns the alleged unfairness and excessive length of the proceedings before the Supreme Court for the review of the applicant’s conviction based on the Court’s findings in his previous case. The applicant complained under Articles 6 and 13 of the Convention.

THE FACTS

2. The applicant was born in 1967 and is serving a life sentence in Berdychiv. The applicant was represented by Mr M.M. Fedash, a lawyer practising in Kyiv.

3. The Government were represented by their Agent, Ms M. Sokorenko.

4. The facts of the case may be summarised as follows.

A. Background information

5. According to the findings of the domestic courts, in early 2000 Mr A.B. formed an armed gang which included the applicant, Mr Zakshevskiy, Mr Sitnevskiy (together – “the co-defendants”) and several other persons, and which committed a few attacks in four regions of Ukraine.

6. The attacks were initially investigated by the authorities as unrelated crimes committed by unidentified people. Eventually, the criminal proceedings instituted in the four regions were consolidated into a single case. A description of all the attacks is set out in seven episodes in the appended table.

7. The members of the gang, including the applicant, were tried and convicted in the same set of proceedings in the Donetsk Regional Court of Appeal, acting as a first-instance court. The evidence considered by that court in respect of each charge is described in the appended table.

8. All three co-defendants applied to the Court alleging various violations of their Convention rights. The Court examined those complaints and delivered judgments *Zakshevskiy v. Ukraine* (no. 7193/04, 17 March 2016)¹ and *Sitnevskiy and Chaykovskiy² v. Ukraine* (nos. 48016/06 and 7817/07, 10 November 2016)³ in which it found violations particularly of Article 6 §§ 1 and 3 of the Convention on account of the admission of incriminating statements made in the absence of the lawyer and of untested witness statements (for the short summary, see the appended table).

In *Sitnevskiy and Chaykovskiy* the Court rejected as manifestly ill-founded the applicants' complaints under Article 6 that the domestic courts had relied on pre-trial confessions that they and their co-defendants had made as a result of ill-treatment, in breach of their right not to incriminate themselves. The Court found that those allegations were not supported by any evidence (see paragraphs 129-31 of that judgment). Moreover, in *Zakshevskiy* (cited above, §§ 126 and 129) the Court also dismissed that applicant's complaint of ill-treatment.

9. Following the Court's judgments in their cases, all three co-defendants applied, on various dates, to the Supreme Court of Ukraine to have their cases reopened by way of a review under exceptional circumstances as provided by the domestic legislation (see paragraph 49 below). Their applications for review were eventually heard by the Grand Chamber of the Supreme Court in consolidated proceedings.

B. The Supreme Court decision of 17 April 2019

10. On 17 April 2019 the Grand Chamber of the Supreme Court delivered its decision in the review proceedings. It noted at the outset that

“according to the conclusions [reached by the Court in its judgments] the findings of violations were based on serious procedural mistakes in dealing with particular [charges against the co-defendants] in this case. Therefore (...), the violations found by [the

¹ <https://hudoc.echr.coe.int/eng?i=001-161407>

² The applicant's last name in that case used the transliteration appropriate to his application, which was made in Russian. The applicant's 2019 application was made in Ukrainian and his name was transliterated accordingly.

³ <https://hudoc.echr.coe.int/eng?i=001-168385>

Court] put the results of the court proceedings as to [each co-defendant] in relation to each separate charge into doubt, taking into consideration the principle of individualisation of criminal responsibility.”

11. The Supreme Court went looking at each count separately to establish whether any of the violations found by the Court in respect of the conviction of any of the co-defendants required the conviction to be reviewed.

1. Conclusions following the review of convictions

12. As to the applicant’s conviction on the first charge, the Supreme Court held that the Court had found no violations in that respect. It further observed that the evidence used to convict the applicant in the domestic courts had included Mr Sitnevskiy’s confession of 14 February 2002 and Mr Zakshevskiy’s testimony of 12 November 2001 (neither of them having participated in the offence but both of them knowing about it from conversations with other gang members) and that the Court had found those statements to have been obtained in breach of those defendants’ rights to defence.

13. The Supreme Court observed, however, that the Court’s findings only related to the self-incrimination of those two defendants on the charges of murder on which they had later been convicted and that they did not relate to any other charges. It further stated that the Court had given its judgment in *Sitnevskiy and Chaykovskiy* (cited above) after that in *Zakshevskiy* (cited above), and that, therefore, “during the examination of the second case [the Court] was taking into account its conclusions in *Zakshevskiy* and it did not find any violation [of the applicant’s] rights in the use made by the domestic courts of Mr Zakshevskiy’s testimony”. The Supreme Court therefore concluded that “the applicant’s conviction [on that charge and its criminal-law qualification] had to remain unchanged”.

14. As to the second episode (the “Luhansk murder”), in which the applicant and Mr Sitnevskiy had been convicted, among other, of aggravated murder, the Supreme Court observed that the evidence relied on by the trial court included

i) Mr Sitnevskiy’s denial of guilt throughout the proceedings but admission in court that A.B. had told him that he had committed the murder together with G. because the victim and the members of his gang had been threatening A.B. and his sister;

ii) Mr Zakshevskiy’s pre-trial testimony regarding his own crimes, in which he also said that he had learned about A.B. and Mr Sitnevskiy having committed the murder from conversations among the gang members; and

iii) an admission in court by the applicant that on the day and at the time of the murder the victims had been using his lorry.

15. The Supreme Court observed that two violations had been found by the Court as regards Mr Sitnevskiy: that his early admissions on other charges, even if they played a limited role in his conviction, had contributed

to the undermining of his overall defence in relation to the Luhansk murder and that the trial court had admitted the statements of absent witnesses and used them to corroborate pre-trial statements by other co-defendants which had been later retracted. In view of those violations, the Supreme Court considered that Mr Sitnevskiy's conviction of the offences that took place during that episode required "application of additional individual measures (*restitutio in integrum*) and sending of [the charges arising out of the second episode] for a fresh examination".

16. However, the Supreme Court found no reason to apply the same measures to the applicant's conviction, that is to send it for fresh examination, as neither of the violations found by the Court in relation to that episode concerned the applicant.

17. As to the attack described in Episode 4 in the appended table, for which the applicant and Mr Sitnevskiy had been convicted, the Supreme Court observed that the evidence admitted by the trial court included:

- i) statements made by the victims of that attack;
- ii) the applicant's pre-trial confession, that was later retracted; and
- iii) Mr Sitnevskiy's statements obtained in breach of his right to defence.

18. In the light of the Court's conclusions that the statements of the victims, the only eyewitnesses to the crime, had likely been decisive for the conviction (all the other evidence in the case being circumstantial) but they were not directly examined during the trial, the Supreme Court quashed the applicant's and Mr Sitnevskiy's convictions as to this attack and sent it for fresh examination.

19. The applicant and Mr Sitnevskiy had also been convicted in relation to the events described in Episode 5 below. The Supreme Court observed that the evidence admitted by the trial court included a confession made by the applicant in the presence of his lawyer and repeated at other times during the investigation. No violations of the applicant's rights had, however, been found by the Court in respect of his conviction on those charges. As to Mr Sitnevskiy, the Supreme Court referred to the Court's findings that, while he had mentioned his involvement in that attack (in a minor role) in his early statements and those statements had not been clearly relied on by the trial court, they had not been clearly rejected either. Taking that into account, the Supreme Court ruled that Mr Sitnevskiy's conviction had to be quashed and sent for fresh examination.

20. All three co-defendants were convicted on various counts in relation to the events described in Episode 7 below. The evidence admitted by the trial court included:

- i) Mr Zakshevskiy's pre-trial confession;
- ii) the applicant's and Mr Sitnevskiy's denial of guilt, but admission in court that they had been visiting Yevpatoria as tourists at A.B.'s invitation at the relevant time and had helped him to buy a motorcycle;

iii) Mr Sitnevskiy's testimony in court that while he was in Moscow with A.B., A.B. had told him that he had invited them to Yevpatoria to deflect attention from himself while he committed the crime;

iv) the applicant's pre-trial confession, which had been confirmed in the course of a videotaped reconstruction of events with Mr Zakshevskiy. The applicant had confessed to shooting at R.M. The trial court, having examined the video-recordings, was satisfied that the defendants had spoken and acted of their own free will, and had commented and responded to questions freely and without any prompting; and

v) untested statements of victim R.M.

21. The Court had found that Mr Zakshevskiy's confessions had been obtained in breach of his right to defence. The Supreme Court therefore quashed his conviction on the charges relating to the events of Episode 7 and sent it for re-trial. The Supreme Court reached the same conclusion about the applicant's conviction given the Court's finding that there had been no reason to admit the untested statement of the victim R.M. As to Mr Sitnevskiy, given that the Court did not find any violation of his rights in relation to the events of Episode 7, there was no reason to quash his conviction. The Supreme Court observed in that connection that the Court in its judgment in *Sitnevskiy and Chaykovskiy* (cited above) had found that the applicant had carried out the attack on R.M. and his bodyguard alone, Mr Sitnevskiy's role being limited to the preparations for that attack. There had therefore been nothing to suggest that R.M. had had any contact with Mr Sitnevskiy or that he had known he was involved. R.M.'s statement therefore could not be considered a decisive or weighty element in Mr Sitnevskiy's conviction.

22. The Supreme Court went on to examine the charges arising from the events of the third and sixth episodes. The trial court hearing the case against the co-defendants for those attacks had admitted the confession of Mr Zakshevskiy, which had been obtained in breach of his right to defence and in which he had not only provided information about his own participation in the crimes but also given the investigator general information about the preparation of various attacks and the roles played by other members of the gang and had provided the prosecution with other important information. The Supreme Court reiterated that the Court had found the obtaining of that confession, as well as the testimony of Mr Sitnevskiy, to have been in breach of Article 6 guarantees "only as regards those crimes which required the defendant to be represented by a lawyer [under the legislation in force at the material time] during the conduct of investigative actions." The Supreme Court further reiterated that in so far as the waivers of legal assistance on charges of armed robbery were concerned, the Court had found nothing to show that they had been invalid; they had therefore been the free choice of those defendants. The violations found by the Court, in the Supreme Court's view, related exclusively and solely to those statements which had been used to convict Mr Zakshevskiy and Mr Sitnevskiy of

murder. Once again, the Supreme Court emphasised that that had been in line with the principle of the individualisation of criminal responsibility and with the requirements of legal certainty (*res judicata*). In view of the above, the Supreme Court found that there were no grounds for a review of the defendants' convictions arising from the events of the third and sixth episodes.

23. The Supreme Court further observed that quashing the convictions in part and sending the respective charges for fresh examination would have been an appropriate way of restoring the co-defendants to the position they had been in before the violations later found by the Court had been committed. In a new trial, "the principle of the presumption of innocence will renew its operation and [the co-defendants] will be able to make use of their right to defence according to the procedure established by law".

24. The Supreme Court concluded that:

"the [trial] court must properly evaluate the admissibility, adequacy and sufficiency of all the evidence gathered in the case as a whole in order to reach a conclusion about [the co-defendants'] guilt or innocence of the crimes that they are charged with".

25. The Supreme Court recalculated the terms of imprisonment that each co-defendant had to serve so as to make them commensurate with the partial quashing of the convictions. It decided that Mr Sitnevskiy's and Mr Zakshevskiy's new sentences would be fifteen and ten years' imprisonment respectively, and as they had already served those terms, those defendants were released in the courtroom. The charges against the applicant, however, even as reduced following the partial quashing of his conviction, still entailed life imprisonment.

2. *Dissenting opinion to the Supreme Court's decision*

26. Five judges of the Grand Chamber of the Supreme Court out of fourteen gave a joint dissenting opinion. They observed at the outset that the Grand Chamber itself had explained that its conclusions were based on the principle of the individualisation of penalty and had been informed by the Court's findings of violations of the Convention in respect of certain of the charges brought against certain of the defendants, which essentially amounted to severing those charges from the case overall. In the judges' view that approach could not be justified. Firstly, they observed that the jurisdiction of the Court and that of the Supreme Court as a higher court in the domestic judicial system were different. The Supreme Court (or its Grand Chamber) had to deal with a wider array of issues when examining a case and should not "mimic" the Court's conclusions but make its own analysis of how those conclusions might affect the safety of the conviction.

27. Secondly, the judges observed that where a case was reviewed under exceptional circumstances following a judgment of the Court, the Supreme Court would be acting as a court of cassation subject to the specific rules in

Chapter 33 of the Code of Criminal Procedure (“the CCP”). That meant, in the judges’ view, that the Supreme Court could go beyond the limits of a cassation appeal if that was not to the detriment of the convicted person (Article 433). If a cassation appeal was allowed on grounds that would also affect other persons convicted but who had not brought their own cassation appeals, a court of cassation was obliged to adopt a relevant decision.

28. The judges cited in support two examples from the Grand Chamber’s case law on review under exceptional circumstances. Following *Yaremenko v. Ukraine* (no. 2) (no. 66338/09, 30 April 2015), the Grand Chamber had quashed not only Mr Yaremenko’s conviction but also that of another person who had taken part in the same offences. The same occurred following the Court’s judgment *Zyakun v. Ukraine* (no. 34006/06, 25 February 2016). The applicant in that case had been convicted together with an accomplice and the Supreme Court stated directly that quashing only the conviction of Mr Zyakun would be contrary to the CCP and might be grounds for further findings of violations of the guarantee of a fair trial.

29. The judges thus concluded that the Grand Chamber was not prevented from quashing the conviction of the other persons, and was actually obliged to do so.

30. The judges further stated that the Grand Chamber had to consider the use of any evidence obtained in breach of proper procedure (as established by the Court) to be a serious breach of criminal procedure against all co-defendants. They observed in that respect that, for example, when convicting the applicant on the charges related to the events of the first episode, the trial court had relied on, *inter alia*, Mr Zakhevskiy’s confession, which had been obtained in breach of his right to defence. That confession was inadmissible in evidence in its totality, whatever its contents, that is to say, whether or not it contained only self-incriminatory statements or if it also included incriminating information about other persons. The judges emphasised that one and the same piece of evidence could not be considered inadmissible as to one person and admissible as to another. The same considerations were true for other charges, even more so given that all the co-defendants were charged with banditry, which presupposed the participation of all the members of a gang in all the crimes committed by that gang.

31. Lastly, the judges said that despite its own conclusions the Grand Chamber had nevertheless stated that the trial court should evaluate *all* the evidence gathered in the case (see paragraph 24 above). In fact, however, the Grand Chamber, when sentencing the co-defendants, had already ruled on the evidence in the case and had found, in particular, Mr Zakhevskiy’s confession (obtained in breach of his right to defence) to be inadmissible.

32. The dissenting opinion concluded that the right way to deal with the case would have been to quash the convictions as to all the co-defendants and send the case for fresh examination in its entirety.

3. *Recapitulation of the Supreme Court's conclusions*

33. Given the Supreme Court's findings as described above, the applicant's convictions on the charges arising out of the events described in Episodes 4 and 7 were quashed and remitted for rehearing. The applicant's convictions on all other charges remained unchanged.

C. Timeline of examination of the applicant's request for review

34. The applicant lodged his request for review with the Supreme Court on 27 April 2017.

35. In their observations the Government informed the Court that the Supreme Court had opened the proceedings and requested the case file by its rulings of 25 October 2016 (as regards the request for review of Mr Zakshevskiy) and 9 June 2017 (as regards the requests of the applicant and Mr Sitnevskiy).

36. The proceedings had to be suspended, however, because the case file was held in storage at the former premises of the Donetsk Regional Court of Appeal, in territory which had been outside Ukrainian Government's control since 2014. The suspension was ordered by the Supreme Court on 16 November 2016 (as to Mr Zakshevskiy's request) and on 7 August 2017 (as to the applicant's and Mr Sitnevskiy's requests).

37. On 20 October 2017 the proceedings were resumed by the Supreme Court after one of the co-defendants informed the court that certain documents from the case file had been restored by a ruling of 20 September 2017 of the Donetsk Regional Court of Appeal (then relocated to the town of Bakhmut). From the text of that ruling it appears that the three co-defendants had asked for the restoration of the case file saying it was needed for the examination of their case by the Supreme Court. One of the co-defendants attached to his request for restoration documents on more than 1,900 pages. The Donetsk Regional Court of Appeal ruled to restore those documents which were "procedural documents" and the origin of which could be established, and if they were readable. It appears that among the documents restored were documents from both the pre-trial investigation stage, including the co-defendants' confessions, and the trial stage of the case.

38. On 26 January 2018 the restored part of the case file was transferred to the newly established Grand Chamber of the Supreme Court, which on 29 January 2018 opened proceedings and scheduled a hearing for 27 February 2018.

39. On 27 February 2018, during the hearing, the prosecutor contended that the majority of the documents from the case file were still unavailable and asked for a further suspension of the proceedings in order to allow the prosecution to try to obtain them under the procedure provided for in Chapter VII of the CCP (for the description of that procedure see, *Fasolko and Matych v. Ukraine* [Committee], nos. 30256/15 and 59524/15, §§ 57-58, 21 January

2021). The Supreme Court dismissed that request. It nevertheless adjourned the hearing to 25 April 2018 so that the defendants had to be given time to familiarise themselves with some additional submissions from other parties.

40. On 25 April 2018 the court hearing was adjourned for technical reasons, since the applicant had been unable to participate via video-conference.

41. The next hearing was held on 11 July 2018. The prosecutor requested a further adjournment, until the case file had been fully restored. In particular, out of forty-three volumes of the criminal case, the Donetsk Regional Court of Appeal had restored only eleven. Another four volumes were received by the Supreme Court from the Ministry of Justice of Ukraine. However, most of the evidence collected in the case and used by the trial court in reaching the verdict was still missing. The Supreme Court adjourned the case to 3 October 2018.

42. On 3 October 2018 the Supreme Court applied to the International Committee of the Red Cross for assistance in obtaining the case file located in the temporarily occupied territory of Ukraine, and suspended the proceedings until the issue of the restoration of the case file was resolved.

43. On 17 January 2019, the Grand Chamber of the Supreme Court resumed the proceedings. It recited in its relevant ruling that on 13 December 2018 the case file had been received by the Donetsk Regional Court of Appeal “in the context of the process of transferring convicts who had been serving their sentences in the territories temporarily outside the control of the Ukrainian Government”. On 15 January 2019 the documents were received by the Supreme Court. The next hearing was scheduled for 13 March 2019.

44. On 13 March 2019 the hearing was adjourned to 17 April 2019 because it had proved impossible to set up a video-conference of good quality between the court and the defendants, who were held in different penal institutions.

45. On 17 April 2019 the Supreme Court gave its decision.

D. Other relevant facts

46. It appears from the latest information available to the Court that the charges against the applicant arising from the events of Episodes 4 and 7 are pending in the domestic trial court.

47. The Committee of Ministers of the Council of Europe (“the Committee of Ministers”) examined the measures taken by Ukraine to execute the Court’s 2016 judgment in *Chaykovskiy*, cited above, under Article 46 § 2 of the Convention which gives it power to supervise the execution of judgments of the Court. In particular, in the applicant’s case the Ukrainian Government in their consolidated Action Report of 12 November

2019 (document DH-DD(2019)1371⁴) explained that the individual measures required were the full payment of the just satisfaction awarded by the Court and an opportunity for the applicant to lodge an application for the reopening of his case following the Court's judgment, an opportunity which he had taken up.

48. The Committee of Ministers took note of the individual measures taken by the respondent State; it also took note that the general measures in response to violations of Article 6 are still being examined in the *Balitskiy* group of cases. In view of that, in its Resolution CM/ResDH(2020)15⁵ of 22 January 2020 the Committee of Ministers declared that it had exercised its functions under Article 46 § 2 and decided to close the examination of the applicant's case.

RELEVANT LEGAL FRAMEWORK

49. The relevant provisions of the Code of Criminal Procedure (2012), as in force at the material time, provided as follows:

Article 433. Scope of a review by the court of cassation

"1. The court of cassation shall ascertain whether the courts of the first and appellate instances correctly applied the rules of substantive and procedural law and made an appropriate legal assessment of the circumstances of the case, and shall not have the right to examine evidence, find facts or recognise as proven anything that was not established in the contested court decision nor to resolve the question of the credibility of any particular piece of evidence.

2. The court of cassation shall review the judgments of the courts of the first and appellate instances within the scope of the cassation appeal. The court of cassation has the right to go beyond the scope of the cassation appeal, if that does not worsen the situation of the convicted person (...). If the [cassation appeal] is allowed and that would provide grounds to make a decision in favour of other convicted persons from whom no appeals have been received, the court of cassation is obliged to make such decisions."

Article 436. Powers of the court of cassation following examination of a cassation appeal

"1. The court of cassation has power to:

- 1) leave the court decision unchanged, and not to allow the cassation appeal;
- 2) quash the court decision and refer the case for rehearing in the court of first instance or an appeal court;
- 3) quash the court decision and terminate the criminal proceedings;
- 4) change the court decision."

⁴[https://search.coe.int/cm/#{%22CoEIdentifier%22:\[%22090000168098e23c%22\],%22sort%22:\[%22CoEValidationDate%20Descending%22\]}](https://search.coe.int/cm/#{%22CoEIdentifier%22:[%22090000168098e23c%22],%22sort%22:[%22CoEValidationDate%20Descending%22]})

⁵[https://hudoc.exec.coe.int/eng#{%22execidentifier%22:\[%22001-200885%22\]}](https://hudoc.exec.coe.int/eng#{%22execidentifier%22:[%22001-200885%22]})

Article 438. Grounds for the court of cassation to quash or change a court decision

“1. Grounds for quashing or changing court decisions following the examination of a case by the court of cassation are:

- 1) serious violation of the requirements of criminal procedure;
- 2) incorrect application of the law of Ukraine on criminal responsibility;
- 3) inconsistency of the sentence given with the severity of the criminal offence and the personality of the person convicted.

2. When deciding whether there are grounds as specified in the first section of this article, the court of cassation shall be guided by Articles 412-414 of this Code.”

Article 463. Procedure for submitting an application for review of a court decision based on newly discovered or exceptional circumstances

“...

3. An application for review of a court decision under exceptional circumstances based on the findings of an international court, the jurisdiction of which is recognised by Ukraine, of a violation of Ukraine’s international obligations in court proceedings shall be submitted to the Supreme Court for it to be considered by the Grand Chamber.”

Article 467. Court decisions following criminal proceedings based on newly discovered or exceptional circumstances

“1. The court shall have power to quash a judgment or ruling and to give a new judgment or ruling, or to dismiss a request for a court decision to be reviewed in the light of newly discovered or exceptional circumstances. When delivering a new judgment, the court will exercise the powers of a court of the relevant level of jurisdiction.

As a result of reviewing a court decision in the light of newly discovered or exceptional circumstances, the Supreme Court may also quash a court decision (or decisions) in whole or in part and remit the case to the first-instance court or to an appeal court for rehearing.”

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION AS REGARDS FAIRNESS OF THE PROCEEDINGS

50. The applicant complained under Article 6 § 1 that the Supreme Court was not a “tribunal established by law” because, instead of referring the case to a trial court for rehearing, it had reassessed the facts and evidence itself when it had no jurisdiction to do so. He also complained that the Supreme Court had erred in its assessment of the impact that the admission of improperly obtained evidence leading to the conviction of any co-defendant had on other defendants and the case generally. Relying on Article 6 § 3 (a) and (b) he also complained that, given that the Supreme Court had “unexpectedly” conducted the reassessment of evidence, he had had no

adequate knowledge of the charges against him and no opportunity to prepare his defence. The relevant provisions of Article 6 read as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal established by law...

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence; ...”

A. Admissibility

1. Complaints made in relation to the events of Episodes 4 and 7

51. The Court observes at the outset that a distinction should be made between any complaints the applicant may have raised in respect of his convictions on charges arising from the events of Episodes 4 and 7 (those convictions were quashed and sent for a fresh examination) and his complaints regarding his convictions on the remaining charges (which were upheld by the Supreme Court).

52. The Court observes that the proceedings for the determination of the charges arising from the events of Episodes 4 and 7 were reopened and the case was sent for rehearing after the Supreme Court had reviewed it and that, according to the latest information available to the Court, those proceedings are still pending in the trial court (see paragraph 46 above).

53. In accordance with the Court’s established case-law, the question of whether or not court proceedings satisfy the requirements of Article 6 § 1 of the Convention can only be determined by examining the proceedings as a whole, that is, once they have been concluded (see, for example, *Dimech v. Malta*, no. 34373/13, § 43, 2 April 2015). The applicant claims that the Supreme Court’s conclusions on the admissibility of certain pieces of evidence, as set out in its judgment of 17 April 2019 quashing his convictions on Episodes 4 and 7 and referring the case for rehearing, prejudiced the outcome of the reopened proceedings as they set a framework for the trial court’s assessment of the evidence. However, the fact remains that, if he is convicted by the trial court, the applicant will be free to raise any issues of unfairness on appeal. It has not been alleged by the applicant that the higher court would not have jurisdiction to deal with such issues.

54. It follows that the applicant’s complaints regarding the Supreme Court review are premature in so far as they concern the events of Episodes 4 and 7, in respect of which the determination of the criminal charges is pending in the trial court. This part of the application must therefore be declared inadmissible and rejected in accordance with Article 35 §§ 3(a) and 4 of the Convention.

2. *The parties' submissions on the remaining complaints*

55. The Government submitted that Article 6 did not apply to the review proceedings in the applicant's case. They emphasised that Article 6 does not normally apply to proceedings concerning extraordinary remedies, such as the reopening of a case. A person whose sentence has become final and who applies for his or her case to be reopened is not "charged with a criminal offence" within the meaning of that Article; only the new proceedings, after the request for reopening has been granted, can be regarded as concerning the determination of a criminal charge. In that connection they referred to *Moreira Ferreira v. Portugal* (no. 2) [GC], no. 19867/12, §§ 60-61, 11 July 2017); *Fischer v. Austria* ((dec.), no. 27569/02, 6 May 2003); *Löffler v. Austria* (no. 30546/96, §§ 18-19, 3 October 2000), and *Öcalan v. Turkey* ((dec.), no. 5980/07, 6 July 2010). The Government asserted that in the present case the proceedings before the Grand Chamber of the Supreme Court were not "new" in the meaning of the Court's case law, but were limited to the restoration of the applicant's rights to the state that existed before the violation of the Convention (*restitutio in integrum*). They maintained that there had been no rehearing in the applicant's case and that Article 6 of the Convention therefore did not apply.

56. The Government further submitted that the applicant's case was different from *Yaremenko* (no. 2) (cited above) and *Shabelnik v. Ukraine* (no. 2) (no. 15685/11, 1 June 2017) in that, firstly, in those cases the Court had found that the Convention violation had been repeated because the Supreme Court, while excluding the applicants' confessions, had re-admitted other inadmissible evidence thus perpetuating the violations previously found by the Court. Secondly, in *Yaremenko* (no. 2) the Supreme Court had not quashed the applicant's conviction (either in full or in part) but had excluded some tainted evidence and upheld his conviction overall. In the present case, however, the Supreme Court had quashed part of the applicant's conviction and sent that part for a fresh examination.

57. The Government also referred to *Shabelnik v. Ukraine* (no. 3) (no. 54806/18, 4 November 2021), in which the Grand Chamber of the Supreme Court had taken an approach similar to that in the present case, that is to say, it had partially quashed the conviction on certain charges and remitted the case for a rehearing of those charges. As to the remaining charges, it had allowed the conviction to stand but had adjusted the final sentence, which, in any case, was life imprisonment. Mr Shabelnik complained under Article 7 of the Convention that that approach constituted the imposition of a new punishment for a crime committed seventeen years earlier and which had become time-barred, but the Court found no violation of that provision. In the Government's view that conclusion meant that the Court "had no doubts as to the power of the Grand Chamber of the Supreme Court to partially quash a verdict against a person and remit that part to be reheard and to uphold the verdict and conviction in relation to the other part".

58. The applicant submitted no comments as to admissibility.

3. *The Court's assessment*

(a) **General principles**

59. The Court reiterates that under its well-established case-law, Article 6 § 1 does not guarantee a right to the reopening of proceedings (see, *inter alia*, *Zawadzki v. Poland* (dec.), no. 34158/96, 6 July 1999, and *Sablon v. Belgium*, no. 36445/97, § 86, 10 April 2001) and is not normally engaged by extraordinary appeals seeking the reopening of judicial proceedings that have already been determined. In particular, the Court has found that Article 6 does not apply to applications for the reopening of criminal proceedings, given that a person who has been convicted with final effect is not “charged with a criminal offence” within the meaning of that Article. Likewise, Article 6 does not apply to a plea of nullity for the preservation of the law, brought with the aim of quashing a final conviction following a finding by the Court of a violation, as the person concerned is likewise not “charged with a criminal offence” in such proceedings (see, for example, *Fischer v. Austria* (dec.), no. 27569/02, ECHR 2003-VI, and *Öcalan v. Turkey* (dec.), no. 5980/07, 6 July 2010).

60. Nevertheless, in criminal law, the requirements of legal certainty are not absolute (see *Moreira Ferreira* (no. 2), cited above, § 62). The Court has held that that a conviction ignoring key evidence constitutes a miscarriage of justice, and that leaving such errors uncorrected may seriously affect the fairness, integrity and public reputation of judicial proceedings (see *Lenskaya v. Russia*, no. 28730/03, §§ 39 and 40, 29 January 2009, and *Giuran v. Romania*, no. 24360/04, § 39, ECHR 2011 (extracts)). The Court has also considered other stages in criminal proceedings where the applicants were no longer “persons charged with a criminal offence” but had been convicted. Given that “criminal charge” is an autonomous notion and having regard to the impact which the procedure for examining an appeal on points of law may have upon the determination of a criminal charge, including the possibility of correcting errors of law, the Court has found that such a procedure is covered by the safeguards of Article 6 (see *Meftah and Others v. France* [GC], nos. 32911/96, 35237/97 and 34595/97, § 40, ECHR 2002-VII).

61. As the Court stated, in particular, in *Moreira Ferreira* (no. 2) (cited above, § 60), the nature, scope and specific features of proceedings on a given extraordinary appeal in a particular legal system may bring those proceedings within the ambit of Article 6 § 1 and engage the safeguards of a fair trial that it affords to litigants. The criminal limb of Article 6 of the Convention applies to criminal proceedings concerning remedies classified as extraordinary remedies in domestic law where the domestic court is called upon to determine the charge. The Court therefore examines whether Article 6 applies to extraordinary remedies by seeking to establish whether, during the

consideration of the remedy in question, the domestic court was required to determine the criminal charge (*ibid.*, § 65). In the specific context of the reopening of criminal proceedings following a judgment of the Court, the Court has already found Article 6 applicable in various scenarios such as: a refusal to reopen proceedings (see *Moreira Ferreira (no. 2)*, cited above, and *Repeşco and Repeşcu v. the Republic of Moldova*, no. 39272/15, 3 October 2023); the reopening of a case coupled with the reassessment of evidence without sending the case for rehearing (see *Yaremenko (no. 2)*, cited above, and *Alakhverdyan v. Ukraine*, no. 8838/20, 26 June 2025, not yet final); the partial reopening of a case leading to the quashing of convictions on some charges (sending them for fresh examination) and the upholding of convictions on others (see *Serrano Contreras v. Spain (no. 2)*, no. 2236/19, 26 October 2021); and a procedure combining the determination of the admissibility of the application for the case to be reopened and the “post-reopening” review itself, involving the reassessment of evidence (see *Mehmet Zeki Doğan v. Türkiye (no. 2)*, no. 3324/19, 13 February 2024).

(b) Application of the above principles in the present case

62. In the present case, the Supreme Court considered the applicant’s convictions in the context of the extraordinary review proceedings, which were provided for in domestic law and related to the question of whether the case should be reopened in the light of the Court’s conclusions in its 2016 judgment. It went further, however, than simply granting or refusing to order the reopening of the case. Having examined the admission of some pieces of evidence in respect of which the Court had found violations of the Convention, it decided that some of that evidence should be excluded. This in turn triggered the quashing of the applicant’s convictions on certain charges (see paragraph 33 above). The crux of the applicant’s ensuing complaints is that the Supreme Court excluded certain – tainted – pieces of evidence as to one defendant but essentially accepted them as to other defendants, including him (see paragraphs 13 and 16 above).

63. In the Court’s view, the Supreme Court’s approach described above involved a fresh examination of the body of evidence on the basis of which the applicant had been convicted. Given that, and having regard to the scope of the Supreme Court’s scrutiny in the specific proceedings in question (and the nature of the applicant’s complaints in that regard), the Court finds strong reasons to regard that scrutiny as an extension of the original criminal proceedings against the applicant (see, *Moreira Ferreira (no. 2)*, § 72; *Serrano Contreras (no. 2)*, §§ 27-28, and *Mehmet Zeki Doğan*, §§ 59-60 and 76, all cited above).

64. The Court also refers to its judgment in *Shabelnik v. Ukraine (no. 3)* (cited above), in which it found that Article 7 was engaged by the proceedings into the second request by that applicant for the reopening of his case following the Court’s judgment in *Shabelnik (no. 2)* (cited above). In that

case, as in the present one, the Supreme Court had quashed the applicant's conviction on certain charges and sent the case for rehearing on those points, but it had upheld the conviction on the remaining charges, as well as the sentence of life imprisonment. The Court found Article 7 to be engaged because following its decision to partially reopen the case the Supreme Court could be called to impose a more lenient penalty (see paragraph 36 of that judgment). The Court reiterates in that connection that there are obvious links between Articles 6 and 7 of the Convention and that where the Court has previously held that the proceedings did not involve the determination of a "criminal charge" within the meaning of Article 6 it has found, for reasons of consistency in the interpretation of the Convention taken as a whole, that the disputed measures could not be considered a "penalty" within the meaning of Article 7 of the Convention (see, for example, *Galan c. Italie* (dec.), no. 63772/16, § 71, 18 May 2021, with further references, and *Gestur Jónsson and Ragnar Halldór Hall v. Iceland* [GC], nos. 68273/14 and 68271/14, § 112, 22 December 2020). Similarly, where it had previously been concluded that Article 7 was not engaged, the Court ruled that Article 6 under its criminal limb was not engaged either (*Timofeyev and Postupkin v. Russia*, nos. 45431/14 and 22769/15, § 92, 19 January 2021). It could therefore be said that where Article 7 is engaged, as was the case in *Shabelnik v. Ukraine* (no. 3), so is Article 6. Considering the similarity between the facts and the domestic procedure used in the present case and in *Shabelnik v. Ukraine* (no. 3), the reasoning in that case must lead to the same conclusion in the present case as well.

65. Overall, the Court finds that the proceedings at issue in the present case concerned the "determination of a criminal charge" within the meaning of Article 6 of the Convention. Consequently, the safeguards of that provision apply to the proceedings in the Supreme Court. The Government's objection that the Court lacks jurisdiction *ratione materiae* must therefore be dismissed.

66. The Court further notes that the facts in those proceedings, and therefore the question of whether the proceedings were fair, arose after its 2016 judgment in the applicant's case and constitute new information in relation to that judgment. The question of whether they fulfilled the guarantees of a fair trial under Article 6 of the Convention is separate from the issue of the execution of the 2016 judgment, the more so since the supervision of the execution of that judgment has been completed (see, *Moreira Ferreira*, §§ 56-58; *Yaremenko* (no. 2), §§ 54-56; and *Serrano Contreras* (no. 2), §§ 25-26 all cited above).

67. In the light of the foregoing, the Court finds that it can deal with the above complaints under Article 6 of the Convention and that they are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

68. The applicant essentially repeated the dissenting opinion of the five Supreme Court judges described in paragraphs 26-32 above. In particular, he emphasised the difference between the scope of the jurisdiction of the Court as an international court and that of the Supreme Court as the highest domestic court. He also pointed out that the Supreme Court had severed the facts so that each reported episode constituted a separate crime, which was not a procedure available under domestic law, and that it had failed to recognise that the admission of improperly obtained evidence in trials leading to the conviction of any co-defendant had been a serious breach of criminal procedure affecting the case generally.

69. The Government submitted that the power of the Grand Chamber of the Supreme Court to review cases under exceptional circumstances was clearly provided for by the law. Furthermore, the CCP clearly gave the Supreme Court power to quash, in full or in part, the decisions of the lower courts.

70. They further observed that under Article 467 of the CCP, a court deciding on a review under exceptional circumstances has the powers of a court of the relevant level of jurisdiction. That is to say, when making the decision at issue, the Grand Chamber of the Supreme Court had the powers of a court of cassation. In that connection they contended that under Article 433 of the CCP the Supreme Court was only prohibited from examining the credibility of evidence. In the applicant's case, by separating the evidence the Court had found to have been obtained in violation of the Convention from the evidence not directly or indirectly related to such violations, the cassation court had reviewed the legal assessment of the circumstances of the case and admissibility of each separate piece of evidence. That did not require the examination of the credibility of evidence and did not lead the Supreme Court to find facts that were not found by the lower courts or to decide on the credibility of any particular piece of evidence. Rather, in the Government's words, the Supreme Court "assessed the totality of the evidence collected on each of the criminal episodes, in respect of which the Court did not find a violation, in terms of its sufficiency and interrelation to make an appropriate procedural decision, which in the applicant's case was to uphold the verdict in the convictions arising from five out of the seven episodes of criminal activity".

71. The Government also emphasised that the Supreme Court had had due regard to the Court's conclusions in *Zakshevskiy* and *Sitnevskiy and Chaykovskiy* and "acting in the manner prescribed by procedural law, distinguished each criminal episode of the applicant and his accomplices, and determined the consequences of the violations of the Convention for the safety of the convictions of all accomplices for each of these episodes". They

further commented that in separating the criminal episodes the way it did, the Supreme Court had been guided by, *inter alia*, the fundamental principle of *res judicata*. If it had ruled otherwise - that is, if it had quashed the conviction and remitted it for rehearing in those parts as to which the Court had not found a Convention violation as to any particular defendant - it would have been exceeding the powers of the Grand Chamber of the Supreme Court under the domestic criminal procedure, which the Government said would have been “unacceptable”.

72. Lastly, the Government observed that the applicant had been able to fully participate in the proceedings, that he had been advised by the lawyer of his choosing, and that he had had every opportunity to exercise his procedural rights.

73. They concluded therefore that there had been no violation of Article 6 § 1 or § 3 of the Convention.

2. The Court’s assessment

74. The Court notes at the outset that the applicant’s complaint that the Supreme Court was not a “tribunal established by law” was based on his assertion that it should not have reassessed the evidence in the case – an issue which is also at the heart of his complaint about alleged unfairness. Furthermore, the parties’ submissions were mostly focused on the question of the Supreme Court’s specific approach to the evidence in the case and whether the decision it reached in the review proceedings fulfilled the guarantees of a fair hearing under the Convention. The Court will therefore examine whether, overall, the Supreme Court proceedings ensured the fulfilment of the applicant’s right to a fair hearing as provided for by Article 6 of the Convention (see, for a similar approach, *Yaremenko (no. 2)*, § 64, and *Alakhverdyan*, §§ 68-71, both cited above).

75. The Court observes that the applicant and his accomplices were convicted on several counts of armed robbery and murder, as well as of banditry committed by an organised gang (see the appended table for the description of charges by episode). After the accomplices had been arrested, and while they did not have any legal assistance, they started to make statements that were not only self-incriminating but also contained information about the activities of the gang overall, its members, their roles and their participation in certain crimes. While later most of those statements were retracted or changed, the information they had given was clearly valuable and had allowed the prosecuting authorities to take their investigations forward into other episodes of the gang’s criminal activities. Those initial confessions were used to convict one or another defendant in relation to a particular charge but were also used in relation to other defendant(s) and charges, making those convictions closely interrelated (see the appended table).

76. That is particularly clear in relation to the confession given by Mr Zakshevskiy, which was relied on by the trial court as evidence supporting the co-defendants' convictions for the offences as described, in particular, in Episodes 1, 2, 3 and 6 of the gang's criminal activities (see the appended table). No copy of that confession has been provided to the Court by the parties to the present case, but in *Zakshevskiy* (cited above, § 10) the Court found that in that confession Mr Zakshevskiy had admitted being part of a criminal group that had committed a number of armed robberies near Kharkiv, as well as one in Yevpatoriya. He also provided more details about those offences and how he knew his accomplices and gave the police information about two other armed robberies which he and his accomplices had committed in the town of Toretsk (Dzerzhynsk), as well as about other crimes of which he was aware.

77. Mr Zakshevskiy gave that information after he had been charged with robbery, which was not a charge on which he was required to be legally represented. Before being questioned he had waived his right to a lawyer. However, once Mr Zakshevskiy had begun making statements from which it became clear that he was testifying to having committed not only the robbery but a number of other criminal offences, including aggravated murder, the investigator had had every reason to suspect him of having committed a premeditated murder for profit. Mr Zakshevskiy was therefore entitled to have access to a lawyer as from the first interview concerning murder. Furthermore, under domestic law, he was required to be legally represented as regards the murder for profit charges as he faced a possible sentence of life imprisonment. The Court therefore found a violation of Article 6 § 1 as to Mr Zakshevskiy. The Court also observed that although there had been other evidence against him, the significance of the likely impact of his initial confessions on the further development of the criminal proceedings against him and the fact that they had clearly played an important role in the judgments of the domestic courts could not be disregarded (see *Zakshevskiy*, cited above, §§ 115 and 122).

78. In the review proceedings following the 2016 judgment of the Court, the Supreme Court acknowledged that that confession constituted inadmissible evidence and could not be used to support a conviction, but only in relation to Mr Zakshevskiy. Relying on the concept of the "individualisation of criminal responsibility", it expressly rejected the idea of quashing the convictions of other persons, including the applicant, by excluding that confession. That meant, for example, that where the applicant was clearly implicated in the offences committed during the first and third episodes of the gang's criminal activity by information in Mr Zakshevskiy's confession (see the appended table), his conviction was nevertheless upheld.

79. A similar approach was followed by the Supreme Court in respect of the convictions of the applicant and Mr Sitnevskiy of the offences described under the second episode ("the Luhansk murder" – see

paragraphs 14-16 above). The Court found that the untested statements of G.S. and N.K. – the only independent witnesses who might have seen what they described as “a man in a camouflage uniform with a traffic police baton”, who was later identified as Mr Sitnevskiy – had likely been decisive of the outcome of the case. Moreover, G.S. and N.K. had also been mentioned in other co-defendants’ pre-trial statements (although those statements were later retracted) which were a key element of the evidence against Mr Sitnevskiy. In other words, the trial court had relied on the statements of absent witnesses to refuse to allow the co-defendants to retract their pre-trial confessions and at the same time it allowed those confessions to be used to corroborate the untested witness statements (see *Sitnevskiy and Chaykovskiy*, cited above, §§ 109-111). Based on the above Court’s findings, the Supreme Court quashed only the conviction of Mr Sitnevskiy for that crime despite indications that other co-defendants’ convictions, including that of the applicant, might also have been affected (see paragraph 16 above).

80. In that connection the Court reiterates its case-law regarding the admission of evidence obtained from third parties and in breach of Convention rights. In particular, the use of statements and physical evidence obtained as a direct result of ill-treatment is prohibited not only where the victim of treatment contrary to Article 3 is the defendant but also where third parties are concerned (*El Haski v. Belgium*, no. 649/08, § 85, 25 September 2012, with further references, and *Urazbayev v. Russia*, no. 13128/06, § 73, 8 October 2019). Furthermore, the Court has also held that the use of statements made by witnesses in exchange for immunity or other advantages or by an accomplice who has entered into a plea-bargain arrangement may bring into question the fairness of the hearing of a case. The use of such evidence does not, in of itself, make proceedings unfair, and in making its assessment the Court will look at the proceedings as a whole, having regard to the rights of the defence; and also to the interest the public and the victims of crime have in its being properly prosecuted; and, where necessary, to the rights of witnesses (see, for example, *Habran and Dalem v. Belgium*, nos. 43000/11 and 49380/11, § 96, 17 January 2017; *Adamčo v. Slovakia*, no. 45084/14, § 56-71, 12 November 2019, and contrast *Kadagishvili v. Georgia*, no. 12391/06, §§ 156-57, 14 May 2020).

As regards the use of evidence given by co-defendants in the absence of a lawyer, the Court’s task under Article 6 of the Convention primarily focuses on the domestic courts’ assessment of the impact that the absence of a lawyer may have had on the overall fairness of criminal proceedings. The Court ascertains whether the proceedings were so unfair as to make them incompatible with the guarantees of a fair trial. Ensuring that an applicant has been able to test the admissibility, reliability, authenticity and veracity of evidence given without a lawyer being present constitutes the central pillar of the Court’s examination (for a summary of the applicable principles see *Stephens v. Malta* (no. 3), no. [35989/14](#), §§ 64-67, 14 January 2020,

and *Erkapić v. Croatia*, no. [51198/08](#), §§ 72-73, 25 April 2013; see also *Mehmet Zeki Doğan (no. 2)*, cited above, §§ 90-103).

81. In the present case there is no issue about the use of evidence obtained as a result of ill-treatment: the complaints of the applicant, Mr Sitnevskiy and Mr Zakshevskiy on that issue were dismissed in the Court's 2016 judgments (see paragraph 8 above).

82. On the other hand, the present case is somewhat similar to *Mehmet Zeki Doğan (no. 2)*, cited above, in so far as the applicant's complaints relate to the use of evidence given by co-defendants. In that case the Court found a violation of Article 6 on account of the use by the domestic courts, when reviewing that applicant's conviction following the Court's judgment, of incriminating statements made by his co-defendants without a lawyer and while they were held in police custody, despite the subsequent retraction of those statements and the co-defendants' not having testified before the trial court. Those statements were found likely to have been decisive for the conviction in question (see paragraphs 100 and 102 of that judgment).

83. In the present case, the applicant's accomplices' complaints under Article 6 §§ 1 and 3 were examined by the Court and violations of those provisions were found (see paragraph 8 above and the appended table).

84. In those circumstances, the Court finds that accepting evidence as admissible in the case of one defendant whilst rejecting it as inadmissible in the case of another defendant in criminal proceedings with the same underlying facts would have required, in the Court's view, a domestic court to give detailed reasons and strong justification. In the present case, the Supreme Court merely referred to the principle of "individualisation of criminal responsibility" (see paragraph 10 above). This apparently concerned an established principle of criminal law according to which a court sentencing a person convicted of a crime must take into account the circumstances of each defendant (such as the severity of the crime and any aggravating and attenuating circumstances, and so on) as well as the individual circumstances of the person concerned. However, the Supreme Court failed to explain how that principle applied to the admission of evidence, why the tainted nature of the evidence at issue did not affect the fairness of the applicant's conviction or whether the domestic legislation permitted evidence to be treated as it had been in the present case.

85. As to the Supreme Court statement that the Court had not found any violations in *Sitnevskiy and Chaykovskiy* (cited above) that would have stemmed from the violations found in *Zakshevskiy* (cited above) adopted earlier (see paragraph 13 above), the Court notes that the Supreme Court did not have regard to the fact that the scope of the Court's scrutiny in *Sitnevskiy and Chaykovskiy* was limited by the complaints raised by those applicants.

86. While it is primarily for the domestic courts to interpret and apply domestic law and to assess evidence, the Court considers, in the

circumstances of the present case, that the Supreme Court failed to give even basic reasons for taking the approach that it did.

87. The above considerations are sufficient for the Court to find that the fair trial guarantees of Article 6 were not fulfilled by the Supreme Court in the review in the applicant's case. There has, therefore, been a violation of Article 6 § 1. In the light of the above conclusions, the Court considers it unnecessary to examine the applicant's other submissions concerning the fairness of the proceedings before the Supreme Court.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AS REGARDS THE LENGTH OF PROCEEDINGS

88. The applicant complained that the length of proceedings before the Supreme Court had been excessive. He relied on Articles 6 and 13 of the Convention. The Court considers that the applicant's complaints fall to be examined under Article 6 only, the relevant provisions of which read as follows:

"In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

A. Admissibility

89. The Government reiterated their argument that Article 6 was not engaged by the present case and that therefore the applicant's complaints as to the length of proceedings were not covered either.

90. The applicant provided no comments as to admissibility.

91. The Court notes that it has already found that Article 6 was engaged in the present case (see paragraph 65 above). It further notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

92. The Government argued that there were serious objective impediments to access to the case file, namely that it had been stored on territory outside the Government's control since 2014. In the present case it had been important for the Supreme Court to be able to study the original documents, particularly the sources of evidence. Given the extent of the efforts to obtain the case file, the Government considered that the domestic authorities had acted promptly and diligently in their attempts to ensure the file was restored and made available.

93. The applicant disagreed. He argued that the domestic courts never took the appropriate action to restore lost case files and that the explanations

provided by the Government were “standard”. He emphasised that Article 466 of the CCP required the Supreme Court to examine a request for review under exceptional circumstances within two months: in his case it had taken two years. The applicant also pointed out that after the Supreme Court had sent his case for rehearing, no actual examination took place because the case file was missing.

94. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case; the conduct of the applicant and the relevant authorities; and what was at stake for the applicant in the dispute (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II, and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). In determining the reasonableness of the length of proceedings in criminal cases, the question of whether the applicant is in detention is also a relevant factor (see *Abdoella v. the Netherlands*, 25 November 1992, § 24, Series A no. 248-A).

95. The Court notes at the outset that in his application the applicant complained specifically about the Supreme Court’s lengthy examination of his request for review. It is that period, that is between 27 April 2017 and 17 April 2019, that the Court is called to examine.

96. The Court further notes that the key issue that needs to be looked at in the present case is whether the authorities acted quickly enough in finding and restoring the case file when access to it was hindered by the military conflict. The Court has already considered similar issues in *Khlebik v. Ukraine* (no. 2945/16, 25 July 2017) and *Fasolko and Matych*, cited above. In those cases, the applicants complained that they could not have their appeals (including against one’s criminal conviction) heard because there was no access to their case files. The Court observed that those applicants’ complaints had to be examined in the light of the general context and that in assessing whether the respondent State had fulfilled its obligation to organise its judicial system so as to make the rights guaranteed by Article 6 effective in practice, it should consider whether the authorities have taken reasonable measures available to them to mitigate, to the extent possible, any negative consequences for the applicants resulting from a lack of access to the case file. That obligation, however, must be exercised in a manner consistent with the public interest in ensuring the proper administration of justice as well as the respondent State’s obligations under other provisions of the Convention (see, *Khlebik*, § 71 and *Fasolko and Matych*, §§ 75-76, both cited above). Having examined the avenues used by the authorities in those cases, and those potentially available, including as suggested by the applicants, the Court concluded that the domestic authorities did all in their power under the circumstances to address the applicants’ situations (*ibid.*, § 79 and §§ 93-94 respectively).

97. Turning to the present case the Court observes that the Supreme Court opened the review proceedings shortly after the three co-defendants applied for that in 2016 and 2017. It was also immediately understood that the case file was not available as it was stored in the former premises of the Donetsk Regional Court of Appeal in Donetsk, which had been outside the Government's control since 2014. The proceedings were therefore suspended while the authorities tried to find and/or restore the case file.

98. The Court notes that on 20 October 2017 the Donetsk Regional Court of Appeal, which had been moved to new a location, had restored a number of documents from the case file at the request of the co-defendants and using documents they had provided. It appears that the documents restored included both various court decisions made during the trial of the case and material from the pre-trial investigation, including the co-defendants' confessions and other evidence. The Supreme Court therefore resumed the proceedings and scheduled two hearings which took place on 27 February 2018 and 25 April 2018. However, the proceedings had to be suspended again as only fifteen out of the forty-three volumes of the criminal case had been restored and the material, as was apparently concluded, did not include most of the sources of the evidence collected in the case and used by the trial court in reaching its verdict.

99. The Court further notes that in order to ensure the examination of the case the Supreme Court applied to the International Committee of the Red Cross for assistance in obtaining the case file located in the temporarily occupied territory of Ukraine and on 13 December 2018 the case file was received by the Donetsk Regional Court of Appeal. That permitted the Supreme Court to resume the proceedings in January 2019 and to proceed to judgment in April 2019.

100. The Court acknowledges that it was due to the co-defendants' own attempts to restore the case file that several volumes of it had initially been made available. On the other hand, the authorities, namely the courts, had also considered how to restore the case file, which was voluminous given the number of co-defendants and the various offences committed. The Court welcomes, in particular, the transfer of several volumes of the case file from the Ministry of Justice and the initiative taken by the Supreme Court in soliciting the help of the International Committee of the Red Cross in recovering the files located in territory outside the Government's control (see also in *Khlebik*, cited above, § 79). Combined, all those efforts eventually allowed the examination of the co-defendants' requests for review. The applicant has not made any other suggestions as to what could have been done additionally or differently (contrast, *Fasolko and Matych*, cited above, §§ 70-71).

101. The Supreme Court also remained active throughout the period under examination, scheduling hearings as soon as new developments occurred. The Court has not overlooked the two hearings that were adjourned

because it proved impossible to set up a video-conferencing call with the prisons where the co-defendants were held, but it does not consider that those problems were the result of any ill will on the part of the authorities, but rather were objective impediments.

102. The Court finds that the domestic authorities, notably the courts, did all in their power under the circumstances to address the applicant's situation. The applicant has not been able to point to any specific further action which it would have been in the respondent Government's power to take. The Court is mindful that the applicant continued to serve his prison term during the two years of the proceedings and that he may have expected, not without reason, that those proceedings would lead to his release. That situation is regrettable but does not change the Court's overall conclusion as to the reasonableness of the length of proceedings.

103. Taking into account the objective obstacles that the Ukrainian authorities had to face, the Court finds that, in the circumstances of the present case, there has been no violation of Article 6 of the Convention on account of the length of proceedings.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

104. 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."

105. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

106. He also claimed EUR 1,500 for legal assistance, including the collection of documents, consultations and preparation of the application as well as of observations. As he is serving a prison term, he has no bank account, but he reported that EUR 1,000 had been transferred to his lawyer by his relatives. He attached a bank transfer receipt of 10 July 2019 in the name of the lawyer, Mr Fedash, in the amount of 26,000 Ukrainian hryvnias (UAH; approximately EUR 910 at the official exchange rate), paid by certain N. According to the applicant, the outstanding amount of EUR 500 had to be paid later.

107. The Government contested those claims. They repeated their argument that either Article 6 was not engaged or that there was no violation, and that the amounts claimed were in any event excessive. As to the costs and expenses claimed, they also argued that the applicant had failed to provide the necessary supporting documents such as a contract with his lawyer or a time sheet for the services provided.

108. Having regard to its finding of a violation of fair trial guarantees under Article 6 of the Convention in the present case, the Court awards the applicant EUR 3,600 in respect of non-pecuniary damage.

109. As to the costs and expenses, the Court notes that according to its case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. Regard being had to the lack of documents clearly confirming the amount and the actual payment (or contractual obligation to pay) of the lawyer's fees, but considering that the lawyer, Mr Fedash, had in fact represented the applicant before the Court, and also taking into account that the applicant is serving a life sentence, the Court awards the applicant EUR 500 in respect of costs and expenses, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints in respect of the applicant's convictions on the charges described in Episodes 4 and 7 to be inadmissible and the remainder of the application to be admissible;
2. *Holds* that there has been a violation of Article 6 of the Convention as regards the fairness of the proceedings;
3. *Holds* that there has been no violation of Article 6 of the Convention as regards the length of the proceedings;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 500 (five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 9 October 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytkhik
Registrar

Kateřina Šimáčková
President

APPENDIX

Number and short name of the episode.	Person convicted, on what charges and key evidence used for conviction by the trial court	The Court's findings in the 2016 judgment	Person whose conviction was quashed by the Supreme Court
Key facts. Pre-trial witness statements, if any			
Episode 1. Donetsk murder	The applicant, A.B. and G.G.: aggravated murder		
Facts: On 3 April 2000 Mr D.Z., who was allegedly a leader of a local racketeering gang, was murdered in sub-machine gun and handgun fire in the Donetsk region.	Evidence: (i) the applicant's admission in court that he had been a victim of racketeering by D.Z., but was not guilty of murder; (ii) Mr Sitnevskiy's pre-trial statement that A.B. had confessed to him that he had committed the murder together with the applicant. The court found that this corroborated the applicant's pre-trial confession; (iii) Mr Zakshevskiy's pre-trial confession to crimes and also his statement that he had heard that A.B. and the applicant had killed A.Z. from overhearing gang members' conversations; (iv) a cartridge from the crime scene which was traced to S.S.		None

Episode 2. Luhansk murder

The applicant, Mr Sitnevskiy, S.S. and I.K.: aggravated murder

Facts: On 4 August 2000 Mr R.Z., a businessman and alleged leader of a racketeering gang and the brother of D.Z. (the victim in the Donetsk murder), was murdered along with his four associates by sub-machine gun and handgun fire in the Luhansk region. The trial court found that, in order to facilitate the attack, Mr Sitnevskiy, wearing a traffic police uniform, had waved the victims' car down and then, once the car had stopped, he and A.B. had shot the victims. The court also found that it was the applicant who had been informing his co-accused of the location of the victims' car and who, after the murder, came in a car and took Mr Sitnevskiy away from the crime scene in it.

Evidence: (i) Mr Sitnevskiy's denial of guilt but admission in court that A.B. had told him that he had committed the murder together with G. because the victim and members of his gang had been threatening A.B. and his sister; (ii) S.S.'s pre-trial confession; (iii) I.K.'s pre-trial statement in which he described the circumstances of the crime, in particular that S.S.'s car had been used and that Mr Sitnevskiy had worn a police uniform; (iv) Mr Zakshevskiy's pre-trial confession to crimes and also his oral evidence he had got to know that A.B. and Mr Sitnevskiy had committed the murder from overhearing gang members' conversation; (v) evidence that the same handgun, which had been traced to S.S., was used in the Donetsk and Luhansk murders; (vi) an admission by the applicant in court that on the day and at the time of the murder the victims had been using his lorry, which the court found showed that the accused had been able to track the victims' movements.

Untested statements: Mr G.S. and Mr N.K. stated during the pre-trial investigation that they had seen a man in a camouflage uniform with a traffic police baton, identified by the trial court as Mr Sitnevskiy, on the night of the Luhansk murder in the vicinity of the place where it occurred, and that he had been standing by a red car of a foreign make, identified by the court as S.S.'s car.

Article 6:

Mr Sitnevskiy

Mr Sitnevskiy's pre-trial admissions, obtained without a lawyer, regarding this murder that likely framed the way the authorities approached the investigation and therefore likely formed a significant part of the evidence against him.

Article 6: use of the untested statements of G.S. and N.K. – the only independent witnesses whose statements were likely to have been decisive for the outcome of the case, particularly the **conviction of Mr Sitnevskiy**. They were also closely linked to other co-defendants' pre-trial statements (which they later retracted).

Episode 3. Two attacks in Toretsk (called at the time Dzerzhynsk) **The applicant, Mr Zakshevskiy and S.S.: armed robbery**

Facts: On 18 March and 3 September 2001 two armed robberies were committed in Toretsk in the Donetsk region.

Evidence as to 18 March 2011 attack: (i) Mr Zakshevskiy's pre-trial confession (he not only described his own role in the commission of the crime (hitting the victim on the head with a gun), but also that of the applicant (hitting the victim with a metal bar)); ii) the applicant's pre-trial statement in which he claimed that it was Mr Zakshevskiy who hit the victim with a metal bar, which the applicant had then taken from him; S.S.'s statement in his pre-trial confession that he had driven the applicant and Mr Zakshevskiy to the crime scene but had not known what was going on; (iv) the victims' statements in court describing an attack on them by three criminals, in which some money was stolen;

Evidence as to 3 September 2011 attack: i) the applicant's and Mr Zakshevskiy's pre-trial confessions during the investigation of the armed robberies; ii) victims' statements; iii) weapons traced to S.S. and found where he had indicated.

No violation of Article 6 as regards Mr Zakshevskiy's statement about the armed robberies – legal representation not required for this crime **None**

Episode 4. Attack on Mr and Mrs Va. near Kharkiv **The applicant, Mr Sitnevskiy, A.B., A.S and G.G.: banditry, armed robbery, carjacking and attempted aggravated murder**

Facts: On 24 May 2001 married couple Mr O.Va. and Mrs S.Va., the owners of a currency exchange business, were robbed near Kharkiv. O.Va. was shot in the hand. Their car was carjacked. The next day the police instituted criminal proceedings on charges of robbery. The trial court found that the attack had been committed by the applicant, Mr Sitnevskiy, A.B., A.S. and G.G. (driver). In the course of the attack A.S. had shot at Mr Va.

Evidence: i) the applicant's pre-trial confession in the presence of his lawyer, confirmed during a reconstruction and during his further questioning in the presence of a lawyer. In his confession the applicant also mentioned the participation of A.S. and Mr Sitnevskiy and the roles they had played; ii) a statement made by Mr Sitnevskiy during a reconstruction, which was coherent with that of the applicant; iii) the victims' pre-trial statements. The trial court found no contradiction between the victims' statements about three attackers and the fact that there had actually been four of them (including the driver, who had remained in the car) as the attackers had approached the victims at different times and from different directions rather than all at once; iii) a cartridge from the crime scene traced to S.S.; iv) G.G.'s statement made in the presence of his lawyer.

Untested statements: Mr O.Va. and Mrs S.Va. described being attacked by three individuals. There is no indication of the identity of the attackers in the parts of their statements cited in the trial court's judgment.

Article 6: the use of untested testimony of Mr O.Va. and Mrs S.Va (the only eyewitnesses; other evidence – merely circumstantial) for the conviction of the applicant and Mr Sitnevskiy

Article 6: use of Mr Sitnevskiy's pre-trial admissions, obtained without a lawyer, which likely framed the way the authorities approached the investigation and therefore likely formed a significant part of the evidence against him.

Episode 5. Attack and murder of Mr A.I. in Kharkiv

The applicant and Mr Sitnevskiy: banditry, armed robbery and aggravated murder

Facts: On 2 June 2001 Mr A.I., the owner of a currency exchange business, was robbed and shot in Kharkiv. Criminal proceedings were instituted against unidentified perpetrators of the attack. On 5 June 2001 the victim died and the crime was classified as aggravated murder.

Evidence: i) the applicant's confession made in the presence of his lawyer and repeated during other investigative actions; ii) a cartridge from the scene of the crime, traced to the same weapon that was used in the attack on Mr and Mrs Va. - see Episode 4 above) and traced to S.S.; iii) G.G.'s pre-trial statement, made in the presence of his lawyer.

Article 6: use of Mr Sitnevskiy's pre-trial admissions, obtained without a lawyer, regarding this murder that likely framed the way the authorities approached the investigation and therefore likely formed a significant part of the evidence against him. **Mr Sitnevskiy**

Episode 6. Two attacks on shoe sellers near Kharkiv

All co-defendants: banditry, armed robbery, carjacking

Facts: On 17 July 2001 two armed robberies were committed against two groups of shoe sellers: (i) Mr L.K. and Mr A.M., who were driving a Gazel minivan, and (ii) Mr V.K. and Mr R.K. who were driving a Mercedes car, on a road in the Kharkiv region. Men wearing traffic police uniforms stopped the cars and in quick succession

Evidence: (i) Mr Zakshevskiy's pre-trial confession; (ii) the results of a reconstruction conducted with the applicant and Mr Zakshevskiy; (iii) the applicant's confession when questioned as an accused in the presence of a lawyer; (iv) traffic police vests which the victims said the assailants had worn discovered where indicated by S.S.; (v) shoes of the type stolen discovered at S.S.'s residence and a statement by Mrs N., S.S.'s wife, that the shoes had been received from the applicant; (vi) statements made in court by the victims L.K. and A.M. (vii) the pre-trial statements

No violation of Article 6 on account of the use of the untested evidence of V.K. and R.K. **None**

they were carjacked, money and shoes were stolen, and the cars and the victims were left at the scene.

of V.K. and R.K. describing the attack on their Mercedes car in similar terms to those of L.K. and A.M.; (viii) G.G.'s confessions.

Untested statements: V.K. and R.K. stated that individuals dressed in traffic police uniforms and orange vests had stopped their car on the pretext of a police check and had then robbed them at gunpoint.

Episode 7. Crimea attack and murder

The applicant, Mr Zakshevskiy, Mr Sitnevskiy and S.S.: banditry; armed robbery, attempted aggravated murder and aggravated murder

Facts: On 9 August 2001 Mr R.M., the owner of a currency exchange business, and his bodyguard were attacked in Yevpatoria, in the Autonomous Republic of Crimea. The attackers arrived and fled on a motorcycle. R.M. was robbed and received gunshot wounds in the leg and chest while his bodyguard was killed. On the same day the city prosecutor's office instituted criminal proceedings against persons unknown for armed robbery and aggravated murder.

Evidence: (i) admissions in court by the applicant and Mr Sitnevskiy that they had visited Yevpatoria as tourists at A.B.'s invitation at the relevant time and had helped him to buy a motorcycle. They denied committing the crime; (ii) Mr Sitnevskiy's statement made in court that while he was with A.B. in Moscow, A.B. had told him that he had invited them to Yevpatoria to deflect attention from himself while he committed the crime; (iii) the applicant's pre-trial confession, confirmed in the course of a videotaped reconstruction of events with Mr Zakshevskiy. In that confession, the applicant stated that it was he who had shot at R.M. The court, having examined the video-recordings in question, was satisfied that the defendants had spoken and acted of their own free will, and had freely made comments and responded to questions without any prompting; (iv) Mr Zakshevskiy's pre-trial confessions; (v) the discovery of silencers used in the commission of the crime in the place indicated by the applicant; (vi) cartridges discovered at the crime

Article 6: use of Mr Zakshevskiy's pre-trial confession The applicant and Mr Zakshevskiy obtained in breach of right of access to a lawyer

Article 6: use of the untested evidence of R.M., the victim of the crime, for the applicant's conviction, as it was found, on the basis of that evidence, that it had been the applicant who had shot at R.M. The rest of the evidence was circumstantial.

CHAYKOVSKYY v. UKRAINE JUDGMENT

scene and fired from the same weapon as that used in the Kharkiv attacks and traced to S.S.; (vii) R.M.'s pre-trial statement; (viii) a statement by Mrs N., S.S.'s wife, that during her trip to the Crimea at the time of the murder she had seen her husband meet the applicant and Mr Sitnevskiy who had handed over two handguns to him.

Untested statements: during the pre-trial investigation, R.M. described the circumstances of the attack on him. He said that on the morning of the attack he had got out of his car while his bodyguard had remained inside with a bag containing the money. At that moment a motorcycle with "two men" had appeared; one had pulled out a gun. R.M. had ducked and had received two gunshot wounds. One of the attackers had then ordered the bodyguard to hand over the bag containing the money.