



## Pre-trial detention of suspect in bomb attack did not breach the Convention

The case [Grubnyk v. Ukraine](#) (application no. 58444/15) concerned the applicant's arrest and detention in connection with various terrorism offences in Odessa in 2015.

In today's **Chamber** judgment<sup>1</sup> in the case the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 5 §§ 2 and 3 (right to liberty and security)** concerning the applicant's complaints about not being informed promptly of the reasons for his arrest and about bail not being available to him by law because he was accused of terrorism offences;

**two violations of Article 5 § 1** of the European Convention on Human Rights because the applicant's arrest had been carried out without a prior court decision and had not actually been recorded until the next day;

**a violation of Article 6 § 2 (presumption of innocence)** because the initial pre-trial detention order against him had stated that he was guilty of a particularly "grave offence" while, at the time, he had merely been suspected and not convicted of any terrorism offence.

The Court found in particular that, in the specific circumstances of the applicant's case, the domestic courts had provided sufficient reasons for his pre-trial detention given that he had been suspected of a bomb attack at a time of great tension in Odessa and in the context of defendants in other previous high-profile cases having fled once released.

However, it noted with satisfaction that the Constitutional Court of Ukraine had since decided to declare unconstitutional the law on bail, invoked in the applicant's case, which in some cases had limited the domestic courts' ability to issue properly reasoned detention orders.

### Principal facts

The applicant, Volodymyr Yuriyovych Grubnyk, is a Ukrainian national who was born in 1983 and was, until his reported release in a prisoner exchange, in detention in Odessa.

The applicant's arrest and detention took place against the background of a series of terrorist attacks in Odessa – in particular an explosion at the Security Service of Ukraine's ("the SBU") office on 27 September 2015 – and the violent events in the Crimea and eastern Ukraine in 2014 and 2015. The applicant had links to a Russian nationalist group.

On 19 October 2015, following the arrest of some alleged co-conspirators, the applicant was arrested in connection with the attack on the SBU office. The charges were subsequently amended to also include forming and leading a terrorist organisation.

The applicant alleges he was not informed of the reasons for his arrest. Searches of his home and a flat he rented were carried out in his presence, but he only had access to a lawyer from the following day, when a formal arrest report was drawn up. On that same day he was placed in pre-trial detention for 60 days.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

That period was extended multiple times and confirmed by higher courts on appeal. In particular, the courts reasoned that, by law, bail was not available for terrorism offences, and that the applicant was a flight risk and might reoffend. The courts did not address the applicant's complaint that there had been a delay of more than 23 hours between his actual arrest and the drawing up of the arrest report. Nor did they deal with his argument that the ground underlined in the report for allowing his arrest without a court order, namely that the offence had just been committed, was not applicable in his case.

According to media reports, on 29 December 2019 the applicant was released and sent to the so-called "Donetsk People's Republic" in a prisoner exchange with Russia.

## Complaints, procedure and composition of the Court

Relying on Article 5 (right to liberty and security), Mr Grubnyk complained of various rights infringements regarding his arrest and the extension of his remand. He also complained under Article 6 § 2 (presumption of innocence) that the wording of his initial pre-trial detention order had breached his right to be presumed innocent.

The application was lodged with the European Court of Human Rights on 13 November 2015.

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

Síofra O'Leary (Ireland), *President*,  
Gabriele Kucsko-Stadlmayer (Austria),  
Ganna Yudkivska (Ukraine),  
Mārtiņš Mits (Latvia),  
Latif Hüseyinov (Azerbaijan),  
Lado Chanturia (Georgia),  
Anja Seibert-Fohr (Germany),

and also Victor Soloveytchik, *Section Registrar*.

## Decision of the Court

### Article 5 § 1

The applicant complained that he had been arrested without a prior court decision and that the arrest report had only been drawn up the day after his arrest and had been worded in vague terms.

The Court noted that there was no dispute that there had been a delay of more than 23 hours between the applicant's actual arrest and the drawing up of the formal arrest report. The applicant had complained about that delay but no explanation had been provided in the domestic proceedings.

It had been the Court's constant view that unrecorded detention was a serious failing and a negation of the fundamentally important guarantees under Article 5 of the Convention. There had accordingly been a violation of Article 5 § 1.

The Court also found that the applicant's arrest without a prior court decision had not been "in accordance with a procedure prescribed by law", in further violation of Article 5 § 1. The domestic courts had not provided an explanation for why the grounds underlined in the arrest report, namely that the arrest had taken place "immediately after" an offence had been committed, could serve as a legal basis for the applicant's arrest without a warrant when he had actually been arrested three weeks after the terrorist attack.

Given those findings, the Court held that there was no need to examine the applicant's remaining complaint under Article 5 § 1 concerning the wording of the arrest report.

### Article 5 § 2

The applicant denied that SBU officers had informed him of the reasons for his arrest orally, as submitted by the Government.

The Court found, however, that the applicant's denial was vague and unsubstantiated. The Government's explanations on the other hand were corroborated by the context, namely a high-profile terrorist attack at a time of great tension in Odessa, and the sequence of events involving searches conducted by SBU officers, accompanied by a demining expert, and resulting in the discovery of explosive devices in the applicant's rented flat. Those factors, plus the fact that the security officers had questioned the applicant about explosives during the search, had to have largely communicated to him the reasons for his deprivation of liberty.

Moreover, the delay in the formal explanation of the reasons for the applicant's arrest had not in any way been prejudicial to him challenging the lawfulness of his detention. He had appeared before a judge the day after his arrest and at that time he had already been informed formally of the suspicion against him.

There had therefore been no violation of Article 5 § 2 of the Convention.

### Article 5 § 3

The Court noted that in 2019 the Constitutional Court had decided to declare unconstitutional the Bail Exclusion Clause, the 2014 law which had made it impossible for terrorism suspects to obtain bail. The Constitutional Court's decision underlined in particular that, in practice, that law had limited the domestic courts' ability to issue properly reasoned detention orders, even though the courts retained the power to release such suspects if they presented no risks.

The Court's task, however, was to review the relevant law and practice in the given circumstances of a particular case and not in the abstract.

In the specific circumstances of the applicant's case, the Court considered that it had been self-evident that release had not been an option. The applicant had been suspected of organising and leading a terrorist group which used sophisticated undercover operation techniques to engage in highly dangerous ongoing activities.

Furthermore, his case had been examined against a background of great tension in Odessa and the fleeing of defendants in other previous high-profile cases.

The domestic courts, which had had full jurisdiction to review the applicant's detention, had therefore had before them considerable evidence in support of the suspicion against him and of the risk of him absconding if released.

Moreover, the domestic courts' reasons for extending the applicant's detention had evolved over time; they had notably specified in April 2016 that his role in organising clandestine activities was a further ground for believing that he was a flight risk.

Stressing that the authorities had a duty under the Convention to protect the rights of victims, actual or potential, from violent attacks, the Court found that the domestic courts had given "relevant" and "sufficient" reasons for the applicant's detention. There had therefore been no violation of Article 5 § 3.

## Article 6 § 2

The applicant submitted that the District Court had stated in the initial detention order that he “had committed a particularly grave offence”, thus prejudging the outcome of the proceedings against him.

The Court found that it could only read that statement as an expression of the District Court’s opinion that the applicant had indeed been guilty of the particularly grave offence of which he had merely been suspected, and not convicted, at the time.

Such poor wording might have been a technical error by the District Court, but it had at no point subsequently been acknowledged or rectified by the courts or by any other domestic authority.

There had accordingly been a violation of the applicant’s right to be presumed innocent, in breach of Article 6 § 2.

## Just satisfaction (Article 41)

The Court considered that the finding of violations constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

*The judgment is available only in English.*

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