

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

FIFTH SECTION

CASE OF BABENKO v. UKRAINE

(Application no. 40453/16)

JUDGMENT

STRASBOURG

27 November 2025

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



In the case of Babenko v. Ukraine,

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

Andreas Zünd*, President*,
Mykola Gnatovskyy,
Vahe Grigoryan*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 40453/16) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 1 July 2016 by a Ukrainian national, Mr Yuriy Yuryevich Babenko ("the applicant"), who was born in 1977, lives in Kharkiv and was represented by Ms N.G. Okhotnikova, a lawyer practising in Kyiv;

the decision to give notice of the complaints concerning the applicant's alleged ill-treatment and the ineffectiveness of investigation into it, the length of the criminal proceedings against him and the lack of effective remedies for those complaints to the Ukrainian Government ("the Government"), represented by their Agent, Ms M. Sokorenko, from the Ministry of Justice, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 6 November 2025,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's complaint of ill-treatment in the context of criminal proceedings against him and the lack of effective investigation into those allegations, as well as the length of the criminal proceedings against him (Articles 3, 6 and 13 of the Convention).

I. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

2. On 8 May 2007 the applicant and Mr M. were arrested by police officers from the Kharkiv Novovodolazskyi District Police Department on suspicion of having committed a robbery.

3. On 11 May 2007 the Kharkiv Novovodolazskyi District Court ("the District Court"), having heard the applicant, ordered his pre-trial detention.

4. On 26 August 2008 the District Court varied the applicant's pre-trial detention to an obligation not to abscond.

5. On 10 December 2010 the District Court ordered the applicant's arrest for failure to appear before the court. The applicant was placed on a list of wanted persons.

6. On 31 July 2011 the applicant was rearrested for a failure to comply with his obligation not to abscond.

7. On 24 April 2013 the District Court sentenced the applicant to six years' imprisonment.

8. On 17 June 2014 the Kharkiv Court of Appeal quashed this judgment and remitted the case to the District Court for a fresh examination.

9. On 31 July 2015 the Kharkiv Valkivskyi District Court, to which the criminal case had been transferred, sentenced the applicant to six years' imprisonment.

10. On 25 February 2016 the Kharkiv Court of Appeal upheld this judgment and ordered the applicant's release given that he had served his sentence in full.

11. On 10 May and 30 August 2016 the Higher Specialised Civil and Criminal Court refused the applicant permission to appeal in cassation.

II. INVESTIGATIONS INTO THE APPLICANT'S ALLEGATIONS OF ILL-TREATMENT

12. According to the applicant, he had been assaulted by police officers after his arrest on 8 May 2007. The assault had caused bleeding and numerous bruises to his face and body.

13. On 11 May 2007 the applicant was examined by a doctor who noted that he had a large haematoma on the outer side of his left hip measuring 14 by 14 cm. The doctor found no other bodily injuries.

14. On 1 August 2011, following his rearrest on 31 July 2011 (see paragraph 6 above), the applicant was examined by a doctor who found no bodily injuries.

15. On 17 April 2013 during a court hearing, the applicant complained of having been ill-treated at the police station after his arrest in May 2007 in order to force him to incriminate himself. He claimed that he had left drops of blood on the case-file materials as evidence of the assault. His co-defendant Mr M. also complained of ill-treatment. The District Court ordered investigation in those allegations of ill-treatment and referred the case-file materials to the prosecutor's office for that purpose.

16. On the same day the applicant's complaint was recorded in the Unified Register of Pre-Trial Investigations.

17. On 19 April 2013 the Kharkiv Novolazskyy District Prosecutor's Office ("the District Prosecutor's Office") questioned the applicant as a witness. During the questioning the applicant lodged a motion to provide him with free legal aid, to order the medical expert examination of the sheets of his criminal case file with the drops of blood on them (see paragraph 15 above) and to hold his confrontation with all police officers who had conducted investigation actions in the criminal proceedings. The investigator refused his motion as the applicant was not entitled to free legal aid. The

investigator also noted that the applicant did not give any testimonies concerning the circumstances of his alleged ill-treatment and did not complain about it while having been held in the pre-trial detention centre as of 8 May 2007.

18. On 23 April 2013 the District Prosecutor's Office closed the criminal proceedings initiated following the applicant's above complaint. On 16 May 2013 the District Court rejected the applicant's complaint against this decision.

19. On 1 July 2013 the Kharkiv Court of Appeal quashed the decisions of the first-instance court of 16 May 2013 and of the prosecutor's office of 23 April 2013 and remitted the criminal case to the latter for further investigation. It established that the investigator had made a superficial check following the applicant's complaints, having failed to conduct all necessary investigative measures.

20. On 2 August 2013 the District Prosecutor's Office rejected the applicant's request to declare him a victim in the ongoing criminal investigation upon his complaints of ill-treatment on the ground that, apart from the applicant's complaint itself, no evidence had been obtained to establish that the applicant had been ill-treated.

21. On 10 October 2013 the District Prosecutor's Office decided to terminate the criminal proceedings. On 7 November 2013 the Deputy Prosecutor of Kharkiv Region quashed this decision.

22. On 14 November 2013 the District Court quashed the prosecutor's decision of 2 August 2013.

23. On 2 December 2013 the criminal proceedings were transferred for further investigation to the Kharkiv Regional Prosecutor's Office ("the Regional Prosecutor's Office").

24. On 10 December 2013 the Regional Prosecutor's Office rejected the applicant's request to declare him a victim in the criminal proceedings in absence of any evidence of the bodily harm to him in May-August 2007 or any complaints from him or Mr M. between 2007 and 2013.

25. On 23 December 2013 the Kharkiv Chervonozavodskyy District Court ("Chervonozavodskyy District Court") upheld the prosecutor's decision of 10 December 2013.

26. On 29 January 2014 the Regional Prosecutor's Office decided to terminate the criminal proceedings in respect of the applicant's allegations of ill-treatment. It questioned the applicant and his co-defendant, their relatives, police officers that had arrested and questioned them during the pre-trial investigation, other police officers, who had worked at the police station at the material time, the summoned witnesses who had participated in investigative actions in the criminal proceedings against the applicant and Mr M. The investigation concluded that there was no evidence that the applicant and Mr M. had been ill-treated or had sustained any bodily injuries at the time of the pre-trial investigation in May-August 2007. The want of

proof of injuries was further corroborated by photos taken at the early stage of the investigation, on which no apparent injuries could be seen.

27. On 17 April 2014 the Chervonozavodskyy District Court quashed this decision as being premature and unsubstantiated and remitted the case to the Regional Prosecutor's Office for further investigation.

28. On 29 July 2014 the Regional Prosecutor's Office issued a new decision on the termination of the criminal proceedings. This decision was also quashed by the Chervonozavodskyy District Court on 8 October 2014.

29. On 10 December 2014 the applicant was examined by a medical expert who established that the applicant had a scar on his lip and three scars on his temple. Those scars were more than a year old and were classified as minor bodily injuries. It was not possible to establish with more precision when those injuries had been inflicted.

30. On 24 December 2014, 25 February, 18 May, 28 July and 11 September 2015 the Regional Prosecutor's Office issued decisions on the termination of the criminal proceedings.

31. The decision of 18 May 2015 was quashed by the Deputy Prosecutor of Kharkiv Region. All the other decisions mentioned in the preceding paragraph were quashed by the Chervonozavodskyy District Court on 27 January, 6 April and 25 August 2015 and 29 March 2016 respectively, on the ground that investigation had been incomplete (in particular examination of the blood stains had never been conducted as their examination would result in a partial destruction of documents from the criminal case-file).

32. On 22 April 2016 the Regional Prosecutor's Office decided to terminate the criminal proceedings for lack of evidence of a crime. On 25 April 2016 the decision was notified to the applicant who did not challenge it on appeal.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

33. The applicant complained that he had been ill-treated by the police and that his complaints about that ill-treatment had not been properly investigated. He referred to Articles 3 and 13 of the Convention.

34. The Court, which is the master of the characterisation to be given in law to the facts of a case, finds that the complaints at issue fall to be examined under Article 3 of the Convention only. It further considers that the applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

35. The general principles with respect to the procedural obligation of the High Contracting Parties under Article 3 of the Convention to investigate acts of ill-treatment by State agents have been set out in detail in *Bouyid*

v. Belgium ([GC], no. 23380/09, §§ 114-23, ECHR 2015). The Court notes that those principles are equally pertinent to the present application.

36. Moreover, the Court has previously found that the reluctance of the authorities to ensure a prompt and thorough investigation of ill-treatment complaints lodged against police authorities constituted a systemic problem in Ukraine within the meaning of Article 46 of the Convention (see *Kaverzin v. Ukraine* (no. 23893/03, §§ 173-80, 15 May 2012).

37. Turning to the present application, the Court considers that despite the obvious difficulties in establishing the facts after a serious lapse of time, not attributed to the authorities, it appears from the documents before it that the domestic investigations did not reflect a serious effort of the authorities to determine the relevant facts in a speedy and convincing manner (see paragraphs 15 to 32 above). The Court admits that the applicant's complaint concerning his ill-treatment by the police was recorded in the Unified Register of Pre-Trial Investigations immediately after he had submitted it to the District Court and that the applicant was questioned in respect of his allegations by the District Prosecutor's Office shortly afterwards (see paragraphs 15-17 above). The Court observes, however, that the ensuing investigation into the applicant's allegations of ill-treatment, lasting three years, was characterized by the numerous closures and subsequent remittals of the case back to the investigator due to incompleteness.

38. In view of the circumstances of the present case and its earlier case-law, the Court considers that these circumstances constitute another example of such a failure to ensure a prompt and thorough investigation.

39. There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

40. As regards the substantive limb, the Court considers, in view of the material available in the case-file, that it is not in a position to conclude "beyond reasonable doubt" that the applicant suffered treatment at the hands of the police contrary to Article 3 of the Convention as alleged. The Court therefore concludes that there has been no violation of Article 3 of the Convention under its substantive limb.

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

41. The applicant also raised other complaints about the length of the criminal proceedings against him and a lack of effective remedies in this regard, which are covered by the well-established case-law of the Court. These complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor are they inadmissible on any other grounds. Accordingly, they must be declared admissible. The proceedings in question, excluding the time during which the applicant was on the run, lasted for almost nine years at three levels of jurisdiction. Having examined all the

material before it, the Court concludes that the applicant's complaints under this head disclose violations of Articles 6 § 1 and 13 of the Convention in the light of its findings in the judgment of *Nechay v. Ukraine* (no. 15360/10, §§ 67-79, 1 July 2021).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

43. The Government considered this claim unsubstantiated.

44. The Court, on the basis of equity, awards the applicant EUR 4,000 in respect of non-pecuniary damage.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb;

3. *Hold* that there has been no violation of Article 3 of the Convention under its substantive limb;

4. *Holds* that there has been a violation of Articles 6 § 1 and 13 of the Convention as regards the length of the criminal proceedings and the lack of effective remedies thereof;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 27 November 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Andreas Zünd President