

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

FIFTH SECTION

CASE OF GORBUNENKO v. UKRAINE

(Applications nos. 23534/20 and 13110/21)

JUDGMENT

STRASBOURG

6 October 2022

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



In the case of Gorbunenko v. Ukraine,

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

Stéphanie Mourou-Vikström, *President,*
Ivana Jelić,
Kateřina Šimáčková, *judges,*
and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 7 April 2022,

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

PROCEDURE

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

2. The Ukrainian Government ("the Government") were given notice of the applications.

THE FACTS

3. The applicant's details and information relevant to the applications are set out in the appended table.

4. The applicant complained of the excessive length of his pre-trial detention. He also raised other complaints under the provisions of the Convention.

THE LAW

I. JOINDER OF THE APPLICATIONS

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

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

6. The applicant complained principally that his pre-trial detention had been unreasonably long. He relied on Article 5 § 3 of the Convention, which reads as follows:

Article 5 § 3

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

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

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

9. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the applicant's pre-trial detention was excessive.

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

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

11. The applicant submitted other complaints which also raised issues under the Convention, given the relevant well-established case-law of the Court (see appended table). These complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor are they inadmissible on any other ground. Accordingly, they must be declared admissible. Having examined all the material before it, the Court concludes that they also disclose violations of the Convention in the light of its findings in *Nechay v. Ukraine,* no. 15360/10, 1 July 2021.

IV. REMAINING COMPLAINTS

12. In application no. 23534/20 the applicant also complained under Article 3 of the Convention about the inadequate conditions of his detention.

13. The Court has examined these complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, they either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

14. It follows that this part of application no. 23534/20 must be rejected in accordance with Article 35 § 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

15. 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."

16. Regard being had to the documents in its possession and to its case-law (see, in particular, *Ignatov,* cited above, § 57), the Court considers it reasonable to award the sums indicated in the appended table.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the complaints concerning the excessive length of pre-trial detention and the other complaints under well-established case-law of the Court, as set out in the appended table, admissible and the remainder of application no. 23534/20 inadmissible;

3. *Holds* that these complaints disclose a breach of Article 5 § 3 of the Convention concerning the excessive length of pre-trial detention;

4. *Holds* that there has been a violation of the Convention as regards the other complaints raised under well-established case-law of the Court (see appended table);

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the amounts indicated in the appended table, 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 6 October 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina Acting Deputy Registrar	Stéphanie Mourou-Vikström President

APPENDIX

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

Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Period of detention	Length of detention	Specific defects	Other complaints under well-established case-law	Amount awarded for pecuniary and non-pecuniary damage (in euros)[1]	Amount awarded for costs and expenses (in euros)[2]
23534/20 12/05/2020	**Valeriy Igorovych GORBUNENKO** 1992	Pustyntsev Andriy Vitaliyovych Dnipro	18/12/2015 to 18/10/2016 28/03/2017 to 10/02/2020	10 months and 1 day 2 years and 10 months and 14 days	fragility of the reasons employed by the courts	Art. 6 (1) - excessive length of criminal proceedings – from 16/12/2015 - pending; 2 levels of jurisdiction; Art. 13 - lack of any effective remedy in domestic law in respect of excessive length of the criminal proceedings	3,000	250
13110/21 02/02/2021		Ignatov Oleksandr Anatoliyovych Dnipro						

[1] Plus any tax that may be chargeable to the applicant.
[2] Plus any tax that may be chargeable to the applicant.