

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

FIFTH SECTION

CASE OF KAYUN v. UKRAINE

(Applications nos. 48930/20 and 55051/20)

JUDGMENT

STRASBOURG

29 September 2022

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



In the case of Kayun 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 8 September 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 applicant was represented by Mr O. A. Ignatov.

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

THE FACTS

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

5. The applicant complained of the inadequate conditions of his detention and of the lack of any effective remedy in domestic law. He also raised other complaints under the provisions of the Convention.

THE LAW

I. JOINDER OF THE APPLICATIONS

6. 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 ARTICLES 3 AND 13 OF THE CONVENTION

7. The applicant complained principally of the inadequate conditions of his detention and absence of an effective remedy in this connection. He relied on Articles 3 and 13 of the Convention, which read as follows:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 13

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority ..."

8. The Court notes that the applicant was kept in detention in poor conditions. The details of the applicant's detention are indicated in the appended table. The Court refers to the principles established in its case law regarding inadequate conditions of detention (see, for instance, *Muršić v. Croatia* [GC], no. 7334/13, §§ 96-101, ECHR 2016). It reiterates in particular that a serious lack of space in a prison cell weighs heavily as a factor to be taken into account for the purpose of establishing whether the detention conditions described are "degrading" from the point of view of Article 3 and may disclose a violation, both alone or taken together with other shortcomings (see *Muršić*, cited above, §§ 122-41, and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 149-59, 10 January 2012).

9. In the leading cases of *Melnik v. Ukraine* (no. 72286/01, 28 March 2006) and *Sukachov v. Ukraine* (no. 14057/17, 30 January 2020) the Court already found a violation in respect of issues similar to those in the present case.

10. 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 applicant's conditions of detention were inadequate.

11. The Court further notes that the applicant did not have at his disposal an effective remedy in respect of these complaints.

12. These complaints are therefore admissible and disclose a breach of Articles 3 and 13 of the Convention.

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

13. 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 *Kharchenko v. Ukraine* (no. 40107/02, § 80, 10 February 2011), *Tymoshenko v. Ukraine* (no. 49872/11, §§ 286-87, 30 April 2013), *Kotiy*

v. Ukraine (no. 28718/09, § 55, 5 March 2015), *Ignatov v. Ukraine* (no. 40583/15, §§ 38-42, 15 December 2016) and *Nechay v. Ukraine* (no. 15360/10, 1 July 2021).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

14. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

15. Regard being had to the documents in its possession and to its case-law (see, in particular, *Sukachov,* cited above, §§ 165 and 167), the Court considers it reasonable to award the sum indicated in the appended table.

16. The Court further considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a breach of Articles 3 and 13 of the Convention concerning the inadequate conditions of the applicant's detention and the lack of any effective remedy in domestic law;

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 amount 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 amount 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 29 September 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 Articles 3 and 13 of the Convention (inadequate conditions of detention and lack of any effective remedy in domestic law)

Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Facility Start and end date Duration	Sq. m per inmate	Specific grievances	Other complaints under well-established case-law	Amount awarded for pecuniary and non-pecuniary damage per applicant (in euros)[1]
48930/20 05/10/2020 55051/20 18/11/2020	**Artem Pavlovych KAYUN** 1992	Ignatov Oleksandr Anatoliyovych Dnipro	Dnipro Penitentiary Facility 20/01/2016 to 23/04/2020 4 years and 3 months and 4 days	2.6-3 m²	lack of fresh air, lack of or inadequate hygienic facilities, lack of or insufficient electric light, no or restricted access to warm water, poor quality of food, no or restricted access to shower, lack of or poor quality of bedding and bed linen, overcrowding	Art. 5 (3) - excessive length of pre-trial detention - from 18/01/2016 (arrest) to 23/05/2017 (first conviction) and from 28/09/2018 (quashing by the appellate court) to 23/04/2020 (change to house arrest); repeated similar reasons for the extension of detention; Art. 5 (5) - lack of, or inadequate compensation, for the violation of Article 5 § 3 of the Convention - the right to compensation for breaches of the Convention is not provided for in the domestic legal system (see, *Tymoshenko v. Ukraine*, no. 49872/11, §§ 286-87, 30 April 2013 and *Kotiy v. Ukraine*, no. 28718/09, § 55, 5 March 2015), Art. 6 (1) - excessive length of criminal proceedings – from 06/05/2015 to 18/05/2020, 2 levels of jurisdiction Art. 13 - lack of any effective remedy in domestic law in respect of excessive length of criminal proceedings.	9,800

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