

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

FIFTH SECTION

CASE OF PANKRATYEV v. UKRAINE

(Application no. 36459/19)

JUDGMENT

STRASBOURG

6 November 2025

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



In the case of Pankratyev 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. 36459/19) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 3 July 2019 by a Ukrainian national, Mr Sergiy Sergiyovych Pankratyev ("the applicant"), who was born in 1984, lives in Boryspil and was represented by Mr O. Zarutskyy, a lawyer practising in Kyiv;

the decision to give notice of the application to the Ukrainian Government ("the Government"), represented by their Agent, Ms M. Sokorenko;

the parties' observations;

Having deliberated in private on 9 October 2025,

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

SUBJECT MATTER OF THE CASE

1. The case mainly concerns the applicant's complaints, under Article 6 §§ 1 and 3 (c) of the Convention, that criminal proceedings against him on charges of robbery were excessively lengthy and that his right to a lawyer was breached at the beginning of those proceedings.

2. Criminal proceedings were instituted in connection with the violent robbery of a certain Mr Sh., resulting in his death, and the violent robbery of a certain Ms I.

3. On 13 October 2009 the applicant was *de facto* arrested by the police.

4. On 15 October 2009 he signed two "explanations" (*пояснення*), addressed to a police detective, in which he confessed to having intentionally participated, with a certain S., in both of the robberies. The applicant's explanations were contained in pre-printed forms which indicated that he was making his statement in response to questions asked. The explanations also indicated that the applicant had been informed of his right not to testify against himself.

5. On 15 October 2009 an arrest report was drawn up indicating that the applicant had been arrested on suspicion of robbery. The police investigator appointed G. as the applicant's legal aid lawyer. The applicant was interviewed in the presence of that lawyer and maintained his confession. S., who was subsequently arrested on the basis of the applicant's confession, made a similar confession.

6. The applicant changed lawyers and, at some point on or before 25 January 2010, he retracted his confession. Throughout the proceedings that followed the applicant maintained that he had been kept in undocumented detention and had been subjected to pressure until he had falsely confessed and that the appointed lawyer had not provided him with any help.

7. During the trial the applicant stated that he had merely driven S. to the area where the attack on Mr Sh. had taken place and had then left the car to do some shopping. S. also retracted his pre-trial confession and gave evidence similar to that of the applicant. He stated that the applicant had driven him to the area in question and had left to do some shopping. S. had stolen two phones from the victim (who was drunk) without using violence. He had later asked the applicant to help him sell one of the phones. Both defendants denied having had any involvement in the attack on Ms I.

8. The applicant and S. were convicted on 14 April 2011 but convictions were quashed on appeal and the case was sent back for further investigation.

9. On 24 December 2013 the Darnytskyy District Court of Kyiv convicted S. and the applicant, sentencing the latter to twelve years' imprisonment. The court acknowledged that the applicant had been *de facto* arrested on 13 October 2009.

10. On 11 April 2016 the Kyiv City Court of Appeal upheld the conviction.[1]

11. The courts referred, in particular, to the initial confessions made by the applicant and S. in the presence of their lawyers, including those made during an on-site reconstruction. The fact that those lawyers had not been appointed through a Bar association,[2] did not mean that the relevant evidence was inadmissible. The Court of Appeal considered the defendants' initial confessions to be reliable because they had confessed "in their explanations, during initial interviews in the presence of lawyers, [and] during [the] on-site reconstruction", and that in those confessions they had disclosed details previously unknown to the police. Prior to the applicant's confessions the police had not been aware of S.'s involvement in the attacks.

12. Concerning the attack on Ms Sh. the courts referred to: (i) the testimony of Mr R. who had identified the applicant as the person who had

[1] The Court of Appeal released the applicant since he was considered to have served his sentence based on the application of a law under which, when calculating the final time to be served, one day of pre-trial detention counted as two days' imprisonment (see *Khlebik v. Ukraine*, no. 2945/16, § 46, 25 July 2017).

[2] At the material time, Article 47 § 3 of the Code of Criminal Procedure of 1960 authorised an investigator to appoint defence counsel, according to the procedure provided by law, through a Bar association, the head of the Bar association thereafter having a duty to satisfy any such request. In accordance with Article 44 of the Code, the authority of a lawyer appointed as defence counsel had to be confirmed by the Bar association unless the lawyer appointed was not a member of a Bar association in which case his or her authority was to be confirmed by written agreement with the client.

sold him one of the stolen phones; (ii) the evidence of Ms N. who had testified that the applicant had gifted her one of the stolen phones.

13. Concerning the attack on Ms I., the courts referred to: (i) Ms I.'s testimony that the applicant and S., both of whom she had identified during the court hearing, had robbed her and stolen some jewellery; (ii) the results of a pre-trial identification parade during which the applicant and S, had also been identified by I.; (iii) the testimony of Mr K. who had identified the applicant, in court, as the person who had sold him the jewellery stolen from the victims.

14. On 29 November 2018 the Supreme Court upheld the conviction. The decision was served on the applicant on 8 January 2019.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (c) OF THE CONVENTION

15. The applicant complained of a violation of Article 6 §§ 1 and 3 (c) alleging that neither the domestic courts nor the Government before the Court had explained what had happened to him during his undocumented arrest or how it had impacted the fairness of proceedings. The courts had not properly addressed his complaint concerning the breach of procedure for the appointment of a legal aid lawyer, that lawyer having provided him with no assistance. The final decision had only been served on him on 8 January 2019 and he had, therefore, complied with the six-month rule.

16. The Government argued that the application had been submitted outside of the six-month period. The applicant's complaint was in essence an effort to contest the domestic courts' assessment of the evidence. The applicant had been informed of his rights prior to questioning and had signed the relevant report confirming that to be the case.

17. The Court observes that the final decision in the case was served on the applicant on 8 January 2019, while the application was lodged on 3 July 2019. Therefore, the application was lodged in time.

18. The Court also notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

19. The relevant general principles are set out in *Beuze v. Belgium* ([GC], no. 71409/10, §§ 119-50, 9 November 2018).

20. The Court observes that it is uncontested that the applicant was arrested on 13 October 2009 on suspicion of having committed the criminal offences of which he was ultimately convicted. Therefore, the applicant was entitled to have access to a lawyer.

21. The content of the applicant's explanations given on 15 October 2019 indicate that they were given in response to police questioning (see

paragraph 4 above). There is no indication that, before being questioned, the applicant was informed of his right to legal assistance and validly waived that right.

22. It follows that the applicant's right to a lawyer was restricted. The Court does not discern any compelling reasons for such a restriction. The Court, therefore, must examine, applying very strict scrutiny, whether the fairness of the proceedings as a whole was prejudiced. The Court's assessment is based on the criteria set out in *Beuze* (cited above, § 150), to the extent they are relevant to the present case.

23. Some of those criteria tend to argue in favour of considering the proceedings fair: (i) the applicant was not particularly vulnerable; (ii) the evidence was assessed by professional judges; (iii) there were no factors that would cast doubt on the reliability or accuracy of the statements; (iv) the public interest in the prosecution of the offences attributed to the applicant was very strong.

24. However, other factors militate in favour of the finding that the fairness of the proceedings was prejudiced.

25. First, it is relevant that the applicant was in unrecorded detention for days before he made his statements. While the question of a possible violation of the rights under Article 5 of the Convention is beyond the scope of the present case, such unrecorded detention may constitute a violation of that provision. That is a factor to be taken into account (see *Beuze*, cited above, § 150).

26. The statements in question were directly incriminating. They were made at the beginning of the investigation and framed the way the authorities approached it.

27. The applicant argued that the Court of Appeal had referred to his explanations given without a lawyer. The text of the Court of Appeal's decision is somewhat ambiguous (see paragraph 11 above). In any case, the Court has held that prejudice caused to the fairness of proceedings by a restriction on the right of a access to a lawyer cannot be undone merely by an applicant's confirmation of the statements given in the absence of a lawyer at a later stage and in the presence of a lawyer, unless that flaw is sufficiently addressed and remedied by the courts, notably by excluding statements taken without a lawyer present (see *Mehmet Zeki Çelebi v. Turkey*, no. 27582/07, § 66, 28 January 2020).

28. The courts did not exclude the explanations given by the applicant without a lawyer. Moreover, those statements allowed the authorities to obtain further evidence against the applicant and notably led to S.'s arrest. Having made those statements, the applicant might have found it prejudicial to change them later (compare *Bogdan v. Ukraine*, no. 3016/16, §§ 76 and 77, 8 February 2024).

29. While there was other evidence against the applicant, there is no indication that any of it was obtained other than through building on information obtained from the applicant's initial explanations.

30. There has, therefore, been a violation of Article 6 §§ 1 and 3 (c) of the Convention on account of the breach of the applicant's right to legal assistance.

31. In the light of these findings, it is not necessary to examine the applicant's remaining arguments concerning alleged breaches of his right to a fair trial (see, *mutatis mutandis*, *Aleksandr Vladimirovich Smirnov v. Ukraine*, no. 69250/11, § 74, 13 March 2014).

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

32. The applicant also complained that the length of the proceedings had been excessive, in breach of Article 6 § 1 of the Convention.

33. The Government contested that argument.

34. This part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

35. The Court notes that the proceedings lasted more than nine years and one month, before three levels of jurisdiction.

36. The Court, having examined all the material before it and having regard to the relevant principles set out in *Pélissier and Sassi v. France* ([GC], no. 25444/94, § 67, ECHR 1999-II) and its findings in the leading case of *Merit v. Ukraine* (no. 66561/01, §§ 70-76, 30 March 2004), finds that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage and EUR 5,044.30 in respect of costs and expenses. That amount included EUR 5,000 claimed in respect of legal fees incurred before the domestic courts and this Court and EUR 44.30 in postal costs incurred before the Court.

38. The Government contested those claims considering them unsubstantiated.

39. As to the claim for non-pecuniary damage, the Court notes that Ukrainian law provides for the right to request the reopening of domestic proceedings, which is, in principle, the most appropriate form of redress in such cases (see *Chernika v. Ukraine*, no. 53791/11, §§ 34 and 82, 12 March 2020, and *Suslov and Batikyan v. Ukraine*, nos. 56540/14 and 57252/14, § 207, 6 October 2022, with further references).

40. Ruling on an equitable basis, the Court awards the applicant EUR 1,800 in respect of non-pecuniary damage, plus any tax that may be chargeable.

41. The applicant did not produce any documents showing that he had paid or was under a legal obligation to pay the legal fees charged by his representatives (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 372, 28 November 2017). Accordingly, the Court dismisses the claim for costs in respect of those fees.

42. Having regard to the documents in its possession concerning the postal costs, the Court considers it reasonable to award 36 EUR covering those costs for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention on account of the breach of the applicant's right to legal assistance;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 1,800 (one thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 36 (thirty-six 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 November 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Andreas Zünd President