

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

FIFTH SECTION

CASE OF PUSHKARYOV v. UKRAINE

(Application no. 55770/19)

JUDGMENT

STRASBOURG

6 October 2022

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Pushkaryov 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 19 May 2022,

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

PROCEDURE

1. The case originated in an application against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 14 October 2019.

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

THE FACTS

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

4. The applicant complained of the lack of impartiality of the tribunal in view of the absence of the prosecuting party in administrative-offence proceedings.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

5. The applicant complained of the lack of impartiality of the tribunal in view of the absence of the prosecuting party in administrative-offence proceedings. He relied on Article 6 § 1 of the Convention, which reads as follows:

Article 6 § 1

"In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

6. The relevant principles of the Court's case-law concerning the requirement of impartiality under Article 6 § 1 of the Convention can be found in *Karelin v. Russia* (no. 926/08, §§ 51-57, 20 September 2016, with further references).

7. In the leading case of *Mikhaylova v. Ukraine* (no. 10644/08, 6 March 2018), the Court already found a violation in respect of issues similar to those in the present case.

8. 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 the complaint in the instant case.

9. This complaint is therefore admissible and discloses a breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

10. 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."

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

12. 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. *Declares* the application admissible;

2. *Holds* that this application discloses a breach of Article 6 § 1 of the Convention concerning the lack of impartiality of the tribunal in view of the absence of the prosecuting party in administrative-offence proceedings;

3. *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 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

Application raising complaints under Article 6 § 1 of the Convention
(lack of impartiality of the tribunal in view of the absence of the prosecuting party in administrative-offence proceedings)

Application no. Date of introduction	Applicant's name Year of birth	Penalty	Date of final domestic decision Name of court	Specific defects	Amount awarded for non-pecuniary damage and costs and expenses per applicant (in euros)[1]
55770/19 14/10/2019	**Denys Valeriyovych PUSHKARYOV** 1982	suspension of the driving licence for a year, administrative fine of UAH 10,200	15/04/2019, Kyiv Court of Appeal	absence of prosecuting party in administrative-offence proceedings (*Karelin v. Russia*, no. 926/08, §§ 51-57, 20 September 2016 and *Mikhaylova v. Ukraine*, §§ 61-67, no. 10644/08, 6 March 2018)	900

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