

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

FIFTH SECTION

CASE OF RYCHKA v. UKRAINE

(Application no. 56119/14)

JUDGMENT

STRASBOURG

9 April 2026

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



In the case of Rychka v. Ukraine,

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

Gilberto Felici*, President*,
Mykola Gnatovskyy,
Vahe Grigoryan*, judges*,

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 56119/14) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 18 December 2014 by a Ukrainian national, Mr Mykhaylo Mykhaylovych Rychka ("the applicant"), who was born in 1970, is detained in Temnivka Prison no. 100 and, having been granted legal aid, was represented by Mr Y.A. Fabro, a lawyer practising in Poltava;

the decision to give notice of the complaint concerning the absence of the applicant from a hearing before the court of cassation, raised under Article 6 § 1 of the Convention, to the Ukrainian Government ("the Government"), represented by their Agent, most recently Ms Marharyta Sokorenko, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 19 March 2026,

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

SUBJECT MATTER OF THE CASE

1. The application concerns an alleged breach of the principle of equality of arms in criminal proceedings against the applicant. The applicant complained under Article 6 § 1 and Article 13 of the Convention.

2. On 15 March 2011 the Lubny City District Court of the Poltava Region convicted the applicant on two counts of murder and sentenced him to life imprisonment. On 13 December 2011 the Poltava Regional Court of Appeal upheld the decision of the first-instance court.

3. On 12 February 2014 the applicant lodged an appeal on points of law.

4. On 20 March 2014 the head of the Poltava SIZO forwarded, along with a cover letter, a written request by the applicant to be present at the court hearing to the Higher Specialised Civil and Criminal Court ("the HSC"). It was registered under outgoing no. P-53.

5. On 7 April 2014 the HSC sent a letter to the parties to the proceedings, including the applicant, informing them that a hearing in the applicant's case was scheduled for 22 May 2014 at 10 a.m. The HSC stated that the applicant's presence at the hearing was not mandatory.

6. On 22 May 2014 the HSC held a hearing in the applicant's absence, but in the presence of a prosecutor, who made his submissions, asking the court

to dismiss the applicant's appeal on points of law as unsubstantiated. On the same date the HSC dismissed the applicant's appeal on points of law and upheld the judgments of the lower courts.

7. On an unspecified date the head of the Poltava SIZO issued a certificate stating that the applicant's request of 20 March 2014, addressed to the HSC, had been registered in the record book of outgoing correspondence under no. P-53.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

8. With reference to Article 6 § 1 and Article 13 of the Convention, the applicant complained that his absence from the hearing of 22 May 2014 had breached the principle of equality of arms. This complaint should be examined only under Article 6 § 1 of the Convention (see, for instance, *Sukhanov v. Ukraine* [Committee], no. 32598/07, § 21, 5 October 2017).

9. The Government submitted that the applicant had failed to exhaust the available domestic remedies in that he had not requested to be present at the hearing, asserting that no request dated 20 March 2014 had been included in the case file. They submitted that the applicant's failure to attend the hearing had been the result of his own omission in the exercise of his procedural rights and had not been attributable to any procedural failing on the part of the State. Furthermore, he had not applied for the re-examination of the case on procedural grounds after the hearing. The Government failed to specify the exact procedure to be followed by the applicant, nor did they provide copies of relevant court decisions demonstrating the effectiveness of such a remedy in similar cases.

10. The applicant maintained his complaint.

11. The Court considers it necessary to join the issue of whether the applicant informed the court of cassation of his intention to be present at the hearing to the merits. It dismisses the remainder of the Government's objection about the non-exhaustion of domestic remedies, as the Government failed to demonstrate that the remedy they referred to would have been effective in the circumstances of the present case.

12. The Court notes that 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.

13. The general principles concerning the equality of arms have been summarised in, among other authorities, *Zhuk v. Ukraine* (no. 45783/05, §§ 25-26, 21 October 2010), and *Korobov v. Ukraine* (no. 39598/03, § 89, 21 July 2011).

14. The Court observes that the applicant transmitted his written request to be present at the hearing before the court of cassation to the Poltava SIZO,

which, in turn, forwarded it to the registry of the HSC on 20 March 2014 (see paragraph 4 above). The Government disputed that the applicant had requested to be present at the hearing, stating that no such request had been included in the case file (see paragraph 9 above). However, they did not comment on the cover letter from the Poltava SIZO to the HSC dated 20 March 2014.

15. The Court reiterates that the principle of equality of arms requires that each party be given a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* his or her opponent (see *Kress v. France* [GC], no. 39594/98, § 72, ECHR 2001-VI).

16. In the present case, the hearing before the court of cassation was held in the presence of the prosecutor, who presented his position, asking the HSC to dismiss the applicant's appeal on points of law (see paragraph 6 above). However, the principle of procedural fairness required that the applicant should also have been given an opportunity to make oral submissions at the cassation hearing in reply to those made by the prosecutor (compare *Liepiņš v. Latvia*, no. 31855/03, § 53, 25 November 2014).

17. The Court cannot establish from the documents in its possession whether the applicant's request of 20 March 2014 reached the HSC or whether it was overlooked by that court; nor did the Government make any submissions on that subject. However, the Court notes that the applicant was under the full control of the State and expressed his wish to participate in the hearing via a request which was forwarded by the Poltava SIZO to the correct addressee. By doing so, the applicant acted in accordance with the procedure established by law for SIZO detainees. In view of the above, the Court finds that the applicant did not fail to inform the HSC of his wish to be present at the cassation hearing and, therefore, dismisses the Government's preliminary objection regarding the applicant's failure to act, which it previously joined to the merits (see paragraph 9 above).

18. The Court has already found violations of procedural fairness in cases where applicants were not given an opportunity to be present at cassation hearings and to make oral submissions in reply to those from prosecutors who attended the hearings (see, for instance, *Liepiņš*, cited above, §§ 53-55, and, for illustrative purposes, *Gryb v. Ukraine* [Committee], no. 65078/10, §§ 37-39, 14 December 2017). The Court sees no reason to reach a different conclusion in the present case. It therefore finds that the principle of equality of arms was not respected.

19. There has accordingly been a violation of Article 6 § 1 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. The applicant claimed 35,000 euros (EUR) in respect of pecuniary damage, which comprised EUR 15,000 for his loss of earnings since 23 July 2010 and EUR 20,000 for the destruction of his home and personal property as a result of his absence from home. The applicant also claimed EUR 60,000 in respect of non-pecuniary damage and EUR 2,350 in respect of costs and expenses, comprising EUR 850 for the legal costs incurred before the Court and EUR 1,500 for the postal and stationary costs incurred before the domestic courts. The applicant did not submit copies of receipts in support of his claim for postal costs.

21. The Government asked that those claims be dismissed as exorbitant and unsubstantiated.

22. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

23. In respect of non-pecuniary damage, the Court decides that the finding of a violation of Article 6 § 1 of the Convention constitutes in itself sufficient just satisfaction and that there is no call to award any financial compensation.

24. Lastly, having regard to the documents in its possession and bearing in mind that the applicant was granted EUR 850 in legal aid, the Court rejects the claim for costs and expenses.

25. Accordingly, the Court dismisses the applicant's just satisfaction claim.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* the Government's preliminary objection regarding exhaustion of domestic remedies on account of the applicant's failure to inform the court of cassation of his intention to be present at the hearing before that court and *dismisses* it;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

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

Done in English, and notified in writing on 9 April 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Gilberto Felici President