



Ukrainian pre-trial detention procedure still not compliant with the Convention

In today's **Chamber** judgment¹ in the case of [Ignatov v. Ukraine](#) (application no. 40583/15) the European Court of Human Rights held, unanimously, that there had been:

violations of Articles 5 §§ 1, 3 and 4 (right to liberty and security) of the European Convention on Human Rights.

The case concerns criminal proceedings against Mr Ignatov, who complained that the domestic courts had failed to uphold the appropriate standards when ordering his pre-trial detention and extending it on multiple occasions.

The Court found in particular that the Krasnogvardiysk District Court had repeatedly failed to give proper reasons in support of its decisions to impose and extend Mr Ignatov's pre-trial detention; that on one occasion it had failed to give any reasons whatsoever; and that on two occasions there had been an undue delay before the District Court had examined Mr Ignatov's requests for release.

Furthermore the Court held that new legislation, which had been introduced in order to address shortcomings in Ukraine's criminal procedure, had not been sufficient in regard to pre-trial detention. Therefore, under **Article 46 (binding force and implementation of judgments)**, the Court considered that the most appropriate way to address the violation in the case was to bring forward the reform of legislation and/or practice, in order to ensure that domestic criminal procedure complies with the requirements of Article 5.

Principal facts

The applicant, Oleksandr Ignatov, is a Ukrainian national who was born in 1989 and lives in Nyzhni Sirogozy (Ukraine). Mr Ignatov was arrested on 4 June 2013, as a suspect in criminal proceedings about a carjacking. The following day, the Solanyansky District Court placed him in pre-trial detention. The court held that he might abscond, on the grounds that he was suspected of a serious crime, was unemployed, had no money, did not live in the area and was not living at his official registered address. The case was later transferred to the Krasnogvardiysk District Court.

Mr Ignatov's pre-trial detention was then extended by the District Court on at least 11 occasions, lasting until his conviction in January 2015. He made a number of applications for release, but these were all rejected. Following his trial Mr Ignatov was convicted of robbery and carjacking. He was sentenced to five years' imprisonment, though the court reduced this by half under the Amnesty Act. Four months later, he was granted early release.

Complaints, procedure and composition of the Court

Relying on Article 5 § 3 (right to trial within a reasonable time or to release pending trial) of the European Convention, Mr Ignatov complained that in their decisions ordering his continued detention, the domestic courts had failed to give convincing reasons for holding him in custody,

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

having merely referred to the seriousness of the charges against him. He also relied on Article 5 § 1(c) (right to liberty) to complain that Article 315 of the Code of Criminal Procedure had not required any reasons to be given by the domestic courts, when they had made decisions in preliminary hearings about selection of a preventive measure to a defendant. Furthermore, he complained that no such reasons had been given in his case, when the District Court had committed him to trial. Finally, Mr Ignatov relied on Article 5 § 4 (right to have lawfulness of detention decided speedily by a court) to complain that on two occasions there had been too much delay before the courts had examined his requests for release, it having taken the courts 25 and 19 days respectively to examine his applications.

The application was lodged with the European Court of Human Rights on 25 July 2015.

Judgment was given by a Chamber of seven judges, composed as follows:

Angelika **Nußberger** (Germany), *President*,
Erik **Møse** (Norway),
Ganna **Yudkivska** (Ukraine),
Faris **Vehabović** (Bosnia and Herzegovina),
Yonko **Grozev** (Bulgaria),
Síofra **O’Leary** (Ireland),
Mārtiņš **Mits** (Latvia),

and also Milan **Blaško**, *Deputy Section Registrar*.

Decision of the Court

[Article 5 \(right to liberty\)](#)

Failure to provide proper reasons for pre-trial detention

The Court found that there had been a violation of Article 5 § 3 of the Convention, because the authorities had failed to give convincing reasons for holding Mr Ignatov in custody prior to his conviction. In each of the decisions to continue the detention, the courts had relied on the same grounds as those given in the initial decision (with the exception of the hearing on 1 October 2013, when no reasons were given at all). The grounds relied upon were the seriousness of the charges against Mr Ignatov, and the consequent risk of him absconding. However, when given in a purely abstract form, such grounds are not sufficient to justify pre-trial detention. They must be supported by factual evidence, and considered with reference to a number of other relevant factors. In Mr Ignatov’s case, the courts merely gave this reason for his detention in general terms, using repetitive phrases. There was no suggestion that they had made an appropriate assessment of the facts relevant to the question of whether detention was necessary in the circumstances. Moreover, with the passage of time Mr Ignatov’s detention had required more justification – but the courts did not provide any. Finally, at no stage did the authorities consider any other preventative measures as an alternative to detention.

Failure to provide any reasons whatsoever – decision of 1 October 2013

The Court held that, in its decision of 1 October 2013 committing Mr Ignatov to trial, the District Court had given no reasons whatsoever in support of its ruling to continue Mr Ignatov’s pre-trial detention. Under Article 5 § 1, State authorities are not permitted to detain individuals arbitrarily. The failure of the domestic courts to give any reasons when ordering Mr Ignatov’s detention for a prolonged period of time had been incompatible with this principle of protection from arbitrariness. The Court therefore found that the decision had violated Article 5 § 1 of the Convention.

The Court also noted that, though Articles 315 and 331 of the Code of Criminal Procedure empower domestic courts to change, discontinue or apply a preventative measure when committing a person

to trial, it does not appear that these provisions require the courts to give any reasons in support of such decisions.

Failure to examine requests for release in good time

The Court found that Mr Ignatov's requests for release of 27 December 2013 and 15 August 2014 had not been examined by the court until 24 January and 4 September 2014, respectively. The courts had therefore failed to meet the requirement for a speedy review of requests for release under Article 5 § 4, in violation of the Convention.

Article 46 (binding force and implementation)

The Court noted that the violations it had found in the case had been recurrent in the case-law concerning Ukraine. In the case of *Kharchenko*², it was held that repeated violations of Article 5 §§ 1 (c), 3 and 4 had arisen from shortcomings in Ukraine's legislation, and the State was invited to take urgent action to bring its legislation and administrative practice into line with the Court's standards.

Having examined the circumstances of the present case, the Court found that it was not convinced that the new legislation, in particular the Code of Criminal Procedure 2012, is sufficient insofar as the relevant requirements for pre-trial detention are concerned. The Court therefore considered that the most appropriate way to address the above-mentioned violation is to bring the reform of legislation and/or practice forward, in order to ensure that domestic criminal procedure complies with the requirements of Article 5.

Just satisfaction (Article 41)

The Court held that Ukraine was to pay the applicant 6000 euros in respect of non-pecuniary damage.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.

2. *Kharchenko v. Ukraine*, no. 40107/02, §§ 98-100, 10 February 2011