



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

**FIFTH SECTION**

**CASE OF NESTERENKO AND OTHERS v. UKRAINE**

*(Applications nos. 26256/11 and 3 others -  
see appended list)*

JUDGMENT

STRASBOURG

3 October 2019

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



**In the case of Nesterenko and Others v. Ukraine,**

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

André Potocki, *President*,

Ganna Yudkivska,

Yonko Grozev, *judges*,

and Liv Tigerstedt, *Acting Deputy Section Registrar*,

Having deliberated in private on 12 September 2019,

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

**PROCEDURE**

1. The case originated in 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 Ukrainian Government (“the Government”) were given notice of the applications.

**THE FACTS**

3. The list of applicants and the relevant details of the applications are set out in the appended table.

4. The applicants complained of the excessive length of criminal proceedings and of the lack of any effective remedy in domestic law. In application no. 26256/11 the applicant also raised other complaints under the provisions of the Convention.

**THE LAW****I. JOINDER OF THE APPLICATIONS**

5. 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 ARTICLE 6 § 1 AND ARTICLE 13 OF THE CONVENTION**

6. The applicants complained principally that the length of the criminal proceedings in question had been incompatible with the “reasonable time” requirement and that they had no effective remedy in this connection. They relied on Article 6 § 1 and Article 13 of the Convention, which read as follows:

**Article 6 § 1**

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

**Article 13**

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

7. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II, and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

8. In the leading case of *Merit v. Ukraine* (no. 66561/01, 30 March 2004) the Court already found a violation in respect of issues similar to those in the present case.

9. 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 as to 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 length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

10. The Court further notes that the applicants did not have at their disposal an effective remedy in respect of these complaints.

11. These complaints are therefore admissible and disclose a breach of Article 6 § 1 and of Article 13 of the Convention.

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

12. The applicant in application no. 26256/11 submitted other complaints under Article 5 § 1 (c) of the Convention concerning unlawful deprivation of liberty, which also raised issues 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, 10 February 2011).

#### IV. REMAINING COMPLAINTS

13. The applicant in application no. 26256/11 further raised another complaint under Article 5 § 1 (c) of the Convention, concerning the unlawful deprivation of liberty related to the detention order of 24 February 2012.

14. The Court has examined the application and considers that, in the light of all the material in its possession and in so far as the matter complained of is within its competence, this complaint does not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or does not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

#### V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

15. 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.”

16. Regard being had to the documents in its possession and to its case-law (see, in particular, *Bevz v. Ukraine*, no. 7307/05, § 52, 18 June 2009), the Court finds it reasonable to award the sums indicated in the appended table.

17. The Court 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 complaints concerning the excessive length of criminal proceedings, the lack of any effective remedy in domestic law and the other complaints under well-established case-law of the Court, as set out in the appended table, admissible, and the remainder of application no. 26256/11 inadmissible;
3. *Holds* that these complaints disclose a breach of Article 6 § 1 and Article 13 of the Convention concerning the excessive length of criminal proceedings;

4. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention as regards the other complaints raised under the well-established case-law of the Court (see appended table);
5. *Holds*
  - (a) that the respondent State is to pay the applicants, within three months, the amounts 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 amounts 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 3 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt  
Acting Deputy Registrar

André Potocki  
President

## APPENDIX

List of applications raising complaints under Article 6 § 1 and Article 13 of the Convention  
(excessive length of criminal proceedings and lack of any effective remedy in domestic law)

No.	Application no. Date of introduction	Applicant's name Date of birth	Representative's name and location	Start of proceedings	End of proceedings	Total length Levels of jurisdiction	Other complaints under well-established case-law	Amount awarded for pecuniary and non- pecuniary damage and costs and expenses per applicant (in euros) <sup>1</sup>
1.	26256/11 20/04/2011	<b>Sergiy Viktorovych Nesterenko</b> 19/08/1980		09/03/2010	14/06/2016	6 years, 3 months and 6 days 3 levels of jurisdiction	Art. 5 (1) - unlawful deprivation of liberty, including unrecorded detention and detention without a judicial order and any other legal basis: The applicant was detained in the absence of any judicial order from 10/05/2011 to 02/06/2011; the detention orders lacked reasoning and did not set any time-limits for the applicant's detention from 02/06/2011 to 23/01/2012; the detention orders did not set any time-limits for his detention from 08/05/2012 to 19/03/2014.	5,900
2.	41777/18 28/07/2018	<b>Oksana Sergiyivna Korkiyaynen</b> 07/10/1963		18/11/2011	20/12/2018	7 years, 1 month and 3 days 1 level of jurisdiction		2,400
3.	47169/18 19/09/2018	<b>Valentyn Volodymyrovych Tuzovskyy</b> 24/09/1977	Oleg Volodymyrovych Glazov Odesa	01/03/2016	pending	More than 3 years, 5 months and 19 days 1 level of jurisdiction		900
4.	4692/19 08/01/2019	<b>Zenon Tarasovych Shykh</b> 04/04/1947	Oleg Volodymyrovych Mytsyk Lviv	12/09/2013	25/06/2019	5 years, 9 months and 14 days 2 levels of jurisdiction		1,500

<sup>1</sup> Plus any tax that may be chargeable to the applicants.