



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

FIFTH SECTION

DECISION

Application no. 37855/19
Nadiya Viktorivna SAVCHENKO
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 9 July 2026 as a Committee composed of:

María Elósegui, *President*,

Andreas Zünd,

Mykola Gnatovskyy, *judges*,

and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 37855/19) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 5 July 2019 by a Ukrainian national, Ms Nadiya Viktorivna Savchenko (“the applicant”), who was born in 1981, lives in Kyiv and was represented by Mr O.S. Shadrin and Mr D.O. Loyfman, lawyers practising in Irpin and Kyiv respectively;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case principally concerns the applicant’s complaints under Article 5 §§ 1 and 4 of the Convention regarding her allegedly unlawful detention and the alleged lack of procedural guarantees during proceedings concerning its extension.

2. The applicant, who was a member of parliament at the material time, was subject to a criminal investigation relating to charges of terrorism. On 22 March 2018 she was arrested and then placed in pre-trial detention, which was extended by the courts several times.

3. On 29 January 2019 the investigator transferred the list of charges against the applicant to the trial court for examination. Following several sets of proceedings concerning the recusal of certain judges and, as a consequence, the lack of judges at a single court competent to examine cases

involving State secrets, the courts were required to determine a competent court to examine the case (“the competent court”). During that time, the examination of the criminal case against the applicant could not begin.

4. On 15 February 2019 the Chernihiv Court of Appeal, in the presence of the applicant and her defence lawyer, examined an application of the President of the Chernihiv Local Court of the Chernihiv Region requesting that the Supreme Court determine the competent court. In its decision, which was not amenable to an appeal on points of law, the Chernihiv Court of Appeal endorsed the above application. It also examined a request from the prosecutor for an extension of detention of the applicant and the other co-accused, and an argument put forward by the applicant that the Chernihiv Court of Appeal did not have the jurisdiction to decide on her detention, which was about to expire on the same day, at that particular stage of the proceedings. In its decision, the Chernihiv Court of Appeal stated – with reference to Articles 34 and 132 of the Code of Criminal Procedure¹ – that it had competence to decide on the applicant’s detention, extending it until 15 April 2019.

5. The issue of determining the competent court was delegated to the Kyiv Court of Appeal, which decided on 8 April 2019 to transfer the criminal case to the Darnytskyi District Court of Kyiv for examination. The Kyiv Court of Appeal also set aside without examination the applicant’s request for release, stating that giving a ruling on that question was outside the scope of its competence as determined by Article 34 of the Code of Criminal Procedure.

6. On 12 April 2019 the Kyiv Court of Appeal again examined the request to determine the competent court, since the judges of the Darnytskyi District Court of Kyiv had recused themselves from the examination of the case. The Kyiv Court of Appeal transferred the case to the Brovary Local Court of the Kyiv Region for examination. It further noted that the examination of the applicant’s request for release and her complaint about her allegedly unlawful detention was outside its competence at that particular stage of the proceedings. Without giving further details in its decision, it also instructed the Prosecutor General and the Ombudsman to examine the applicant’s complaint about her allegedly unlawful detention. No further information about the examination of that complaint was provided to the Court.

¹ Article 34 of the Code of Criminal Procedure establishes the conditions and procedure for the transfer of criminal proceedings from one court to another. Article 132 establishes the general rules for the application of measures to ensure the proper conduct of criminal proceedings, one of which is the defendant’s detention. In particular, it provides that the defendant’s detention can be ordered or extended by a decision of the investigating judge (who has jurisdiction to authorise certain procedural actions, including the defendant’s detention, at the pre-trial investigation stage) or by the relevant court (which has such jurisdiction at other stages of the proceedings).

7. On 15 April 2019 the applicant was released upon the expiration of the validity of the detention order.

8. The applicant complained under Article 5 of the Convention that she had been unlawfully deprived of her liberty from 15 February until 15 April 2019 because the Chernihiv Court of Appeal had not been competent to extend her detention on 15 February 2019. She argued that the domestic legislation had allowed the court to impose or extend a defendant's detention either at the pre-trial investigation stage or during the trial; however, in her case the pre-trial investigation had ended by 15 February 2019, but the trial had not yet started. Furthermore, referring to Article 6 of the Convention, the applicant complained that the courts dealing with her detention had lacked impartiality and that the procedure for review of her detention had been unfair – given that, in particular, the Court of Appeal had speedily scheduled the hearing and had seemed to accept the prosecutor's arguments. She also complained under Articles 13 and 18 of the Convention that she had not been able to appeal against the decision of 15 February 2019 on points of law and that her prolonged detention had had the ulterior purpose of punishing her for being an opposition politician.

THE COURT'S ASSESSMENT

9. As regards the applicant's complaint under Article 5 of the Convention, the Court, referring to the general principles of the right to liberty as summarised in *Assanidze v. Georgia* ([GC], no. 71503/01, § 171, ECHR 2004-II), observes that the decision on the applicant's detention was taken by the Chernihiv Court of Appeal and that, in accordance with Ukrainian legislation, such a court has in general the jurisdiction to review and amend decisions on a defendant's detention taken by an investigating judge (see, for example, *Bevz and Others v. Ukraine* [Committee], no. 17955/13 and 6 others, §§ 16-18, 25 June 2020), to order the defendant's detention (see *Vadym Melnyk v. Ukraine*, nos. 62209/17 and 50933/18, § 27, 16 September 2022) or to extend it after completion of the pre-trial investigation (see, for similar circumstances, *Avraimov v. Ukraine* [Committee], no. 71818/17, § 26, 25 March 2021). There is no reason to doubt that in the present case, like in *Avraimov*, the Chernihiv Court of Appeal possessed the necessary legal and jurisdictional competence to deal with the extension of the applicant's detention.

10. The Court further observes that the Chernihiv Court of Appeal's answer to the arguments of the applicant's defence lawyer about its lack of jurisdiction does not appear to be unreasoned or manifestly irrelevant. The Chernihiv Court of Appeal referred to the applicable provisions of the Code of Criminal Procedure, and the Court sees no reason to question their relevance.

11. The Court notes in this connection that for an assessment of compliance with Article 5 § 1 of the Convention, a basic distinction has to be made between *ex facie* invalid detention orders – for example, an order given by a court in excess of jurisdiction, or where the interested party did not have proper notice of the hearing – and detention orders which are *prima facie* valid and effective unless and until they have been overturned by a higher court. A detention order must be considered as *ex facie* invalid if the flaw in the order amounted to a “gross and obvious irregularity” in the exceptional sense indicated by the Court’s case-law (see *Mooren v. Germany* [GC], no. 11364/03, § 75, 9 July 2009, with further references).

12. The Court notes that on 8 and 12 April 2019 the Kyiv Court of Appeal indeed took decisions that were the opposite of that taken by the Chernihiv Court of Appeal, refusing to examine the applicant’s request for release on the grounds that such an examination was outside the scope of its competence. Even though the justification for those decisions appears to be succinct, that fact alone is not sufficient for the Court to rule that the applicant’s right to liberty was breached. The Court also notes that it was not provided with the results of the examination of the applicant’s complaint about her allegedly unlawful detention initiated by the Kyiv Court of Appeal on 12 April 2019.

13. Even assuming the existence of procedural flaws in the Court of Appeal’s decision to extend the applicant’s detention, the Court, having regard to the considerations mentioned above, finds that those flaws could not in any way affect the lawfulness of the detention order on the substance.

14. As regards the applicant’s complaints under Articles 6 and 13 of the Convention, the Court considers that they fall to be examined under Article 5 § 4. The Court observes that the applicant and her defence lawyer participated in the proceedings of 15 February 2019 concerning the extension of her detention and that the Chernihiv Court of Appeal examined her arguments and substantiated its findings with relevant reasons. The substantiation and evidence provided by the applicant in support of her complaint does not demonstrate that she was unable to present her arguments or that the proceedings before the Chernihiv Court of Appeal lacked fairness, and there are no reasons for the Court to consider otherwise.

15. As regards the applicant’s complaint about the impossibility of appealing against the Chernihiv Court of Appeal’s decision of 15 February 2019 on points of law, the Court notes that Article 5 § 4 does not compel the Contracting Parties to set up more than one level of jurisdiction for the examination of the lawfulness of detention and for hearing applications for release (see *Illseher v. Germany* [GC], nos. 10211/12 and 27505/14, § 254, 4 December 2018).

16. As to the applicant’s complaint under Article 18, the Court considers that it does not go beyond the allegations of breaches of other provisions of the Convention as set out above and therefore no issue arises under Article 18

proper (compare *Abdi Ahmed and Others v. Malta* (dec.), no. 43985/13, § 85, 16 September 2014).

17. In the light of the foregoing, the Court finds that the applicant's complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 3 September 2026.

Martina Keller
Deputy Registrar

María Elósegui
President