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

FIFTH SECTION

CASE OF DEREVYANKO AND TARASOVA v. UKRAINE

(Applications nos. 39465/23 and 43066/23)

JUDGMENT

Art 5 § 3 • Reasonableness of pre-trial detention • Applicants' pre-trial detention for offences against national security, under legislation introduced in the context of Russia's full-scale invasion of Ukraine • Absence of relevant and sufficient reasons • Form of the offence imputed to the first applicant the least serious under domestic law, rendering the severity of the punishment of imprisonment as a reason for the existence of the risk of absconding, unpersuasive • Findings as to a risk of influencing witnesses not supported by reference to any persuasive circumstances and as to a risk of reoffending not supported by any reasons • Domestic courts' possible misconception of the Court's case-law in deciding on the first applicant's detention • Alleged danger of absconding, influencing witnesses and evidence destruction relied upon in ordering the second applicant's pre-trial detention framed in a general manner with significant facts disregarded • Failure to take into account the second applicant's cooperation with the investigation prior to her arrest • No indication of any attempt to abscond or interfere with the investigation
Art 5 § 1 • Lawful arrest or detention • Domestic authorities' reliance at the time on newly introduced Criminal Code provision not without a reasonable basis • Domestic authorities' position that case-file elements could be seen as supporting an initial reasonable suspicion against the second applicant not arbitrary

Prepared by the Registry. Does not bind the Court.

STRASBOURG

23 July 2026

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Derevyanko and Tarasova v. Ukraine,

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

Kateřina Šimáčková, *President*,
María Elósegui,
Gilberto Felici,
Diana Sârcu,
Mykola Gnatovskyy,
Vahe Grigoryan,
Nicholas Emiliou, *judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the applications (nos. 39465/23 and 43066/23) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Ukrainian nationals, Mr Anatoliy Ivanovych Derevyanko ("the first applicant") and Ms Yuliya Mykolayivna Tarasova ("the second applicant"), on the various dates indicated in the appended table;

the decision to give notice to the Ukrainian Government ("the Government") of the complaints under Article 5 §§ 1 and 3 of the Convention and to declare the remainder of the applications inadmissible;

the parties' observations;

Having deliberated in private on 30 June 2026,

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

INTRODUCTION

1. The case concerns the applicants' complaints under Article 5 § 3 of the Convention that their pre-trial detention for offences against national security, under legislation introduced in the context of Russia's full-scale invasion of Ukraine, was unjustified and unreasonably lengthy. The second applicant also complained that her detention had been in breach of Article 5 § 1.

THE FACTS

2. The applicants' details and the dates of introduction of the applications are set out in the Appendix.

3. The Government were represented by their Agent, Ms M. Sokorenko, of the Ministry of Justice.

4. The facts of the cases may be summarised as follows.

I. THE FIRST APPLICANT'S CASE (*DEREVYANKO V. UKRAINE*, No. 39465/23)

5. The city of Balakliya (Izium district, Kharkiv Region) was occupied by Russian forces in March 2022. Ukrainian forces retook control of the city and the area in September 2022.

6. Prior to the Russian occupation the first applicant used to be an engineer of a privately owned grain processing and mill factory in Balakliya. According to the charges against him, since 1 August 2022 he had been the acting manager of the factory.

7. On 29 November 2022 criminal proceedings were initiated following the allegation that officials of more than 40 companies in the Izium district had committed the offence of "collaborationist activity" (Article 111-1 § 4 of the Criminal Code), which was defined as "transmission of material resources to the illegal armed groups created in the occupied territory, to the armed groups of the aggressor State[1] or conducting business activities in coordination with the aggressor State or with illegal authorities created in the occupied territory" and is punishable by a fine of up to 17,000 Ukrainian hryvnias (UAH) or up to five years' imprisonment with a prohibition on occupying certain functions for 10 to 15 years and confiscation of assets. The offence is contained in the chapter of the Criminal Code entitled "Offences against the foundations of Ukrainian national security".

8. Within the framework of that investigation, on 1 March 2023 the first applicant gave a statement to the Izium District Police about his role as acting manager of the factory, saying that he had attended a meeting held by the head of the Russian occupation administration with factory personnel; that from 1 August 2022 he had taken up the position of acting manager of the factory; and that in that role he had held meetings with staff, accepted grain from farmers and provided reports to the occupation administration.

9. On 10 March 2023 the first applicant was served with a formal notification of suspicion under Article 111-1 § 4 of the Criminal Code, arrested and questioned in relation to those charges. According to the charges, "in order to make a profit [and] to ensure the economic programmes and tasks of the occupation administration of Balakliya", the first applicant, holding the position of factory manager, had coordinated the economic activities of the factory, namely he had held meetings with its employees, distributed work among employees and received reports on the work performed. In addition he had also carried out other organisational and administrative functions as a manager to organise the work of the factory, participated in meetings of the occupation administration of Balakliya – during which he had received instructions on the conduct of the factory's economic activities – submitted

[1] Russia is defined in Ukrainian law as the "aggressor State". This is based, for example, on the declaration of the Ukrainian Parliament of 27 January 2015.

applications to the occupation administration to receive salaries (in kind) for the factory staff and entered into agreements under which he had accepted grain for storage from farmers.

10. On the same day the police investigator applied to have the first applicant remanded in custody. He argued that the first applicant was suspected of a "less serious offence" (see classification of offences under the Criminal Code in paragraph 41 below) punishable by three to five years' imprisonment. That, as well as the fact that the first applicant was accused of cooperating with the Russian authorities, indicated that he could abscond to Russia. The first applicant also knew the addresses of the witnesses and could influence them.

11. On 14 March 2023 the Novomoskovskyi District Court of the Dnipropetrovsk Region[2] ordered the first applicant's pre-trial detention. The court held that, in view of the severity of the punishment faced and in view of his prior cooperation with the occupation authorities, there was a risk that the first applicant would abscond, including to Russia, or would influence witnesses, since they were known to him.

The District Court referred to the following provisions of the Code of Criminal Procedure:

(i) Article 176 § 6 of the Code of Criminal Procedure ("the Wartime Detention Clause"), which provided that, while martial law was in effect, pre-trial detention would be the preventive measure applied to defendants suspected of certain listed offences, mostly offences against national security;

(ii) Article 183 § 4 of the Code ("the Exceptions to Mandatory Bail Clause") which allowed the court not to set bail for some listed offences.

More details concerning those clauses can be found in *Kolesnyk and Smelnytskyy v. Ukraine* (nos. 24465/23 and 25217/23, 23 July 2026, not yet final).

12. The first applicant opposed the imposition and, subsequently, the extension of his detention, arguing that there was no evidence of the alleged risks. The offence of which he was accused was a less serious offence. Had he wished to abscond, he had had an opportunity to do so in the period between Ukraine liberating the territory and his arrest, but he had remained at home – his registered address – where he had been arrested. There was no evidence of any risk of influencing witnesses; the case file showed that the witnesses were not living at their addresses (as they had evacuated to the west of Ukraine, for example). He was married, had two adult children and strong social connections, with no criminal record. He was 56 and was therefore subject to a prohibition on military-aged males (under 60 years of age) leaving Ukraine. Moreover, the risk of absconding abroad could be addressed by seizure of his passport.

[2] On 18 March 2022 the Supreme Court reassigned jurisdiction of the Balakliya Court to Novomoskovskyi District Court.

13. Citing *Piruzyan v. Armenia* (no. 33376/07, 26 June 2012) the first applicant also argued that the automatic denial of bail without effective judicial supervision was contrary to Article 5 § 3 of the Convention. The first applicant argued that the Exceptions to Mandatory Bail Clause made the setting of bail an option rather than an obligation, but did allow the court to set bail as an alternative to detention. The first applicant also pointed out that the reasons given by the courts for the extension of detention had been repetitive and had not evolved.

14. The first applicant also argued that there was no reasonable suspicion against him.

15. On 29 April 2023 the case was sent for trial to the Kominternivskyi District Court of Kharkiv.

16. On 8 May 2023 and then, at about two-month intervals until 2 October 2024 the trial court rejected the first applicant's requests for release and, allowing the investigator's applications to that effect, extended his detention. The court found that the initially identified risks of absconding and influencing witnesses had not diminished.

17. The Dnipro Court of Appeal upheld the detention decisions, endorsing and stating essentially the same reasons as those given by the lower court. In the decisions of 17 July and 14 September 2023, and 1 February and 13 June 2024 the Court of Appeal also stated the following:

> "According to the established case-law of the European Court of Human Rights detention can be justified if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty. While imposing a preventive measure in the form of detention, it must be taken into account that the court decision must ensure not only the rights of the suspect, but also the high standards of protection of the rights and interests of both society and the victim. The definition of such rights, as emphasised by the European Court of Human Rights, requires from society greater firmness in assessing social values (Letellier v. France).[3]"

18. In the decisions of 20 November 2023 and 26 August 2024 the Court of Appeal also stated that the extension of the first applicant's detention had not been contrary to Article 5 of the Convention and had been in compliance with the well-established case-law of the European Court of Human Rights, according to which "the court's decision must ensure not only the rights of the suspect, but also the high standards of protection of the rights and interests of the whole society, which requires the court to show greater firmness in assessing breaches of society's values".

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[3] "Застосовуючи запобіжний захід у виді тримання під вартою необхідно виходити з того, що судове рішення повинно забезпечити не тільки права підозрюваного, а й високі стандарти охорони прав і інтересів як суспільства, так і потерпілого. Визначення таких прав, як підкреслив Європейський суд з прав людини, вимагає від суспільства більшої суворості в оцінці цінностей суспільства ("Летельє проти Франції")".

19. In the decisions of 14 September and 20 November 2023, and 1 February 2024 the Court of Appeal also stated that the first applicant was accused of a less serious offence against the foundations of national security, and referred to the need to protect the "high standards of rights and interests of society", or similar formulae, as reasons for detention.

20. In its decision of 30 July 2024 the Court of Appeal also stated that there was risk of reoffending.

21. Witnesses were questioned at the trial from 22 August 2023 until 6 February 2024.

22. On 30 October 2024 the first applicant was convicted as charged, sentenced to four years' imprisonment, suspended for three years, with a prohibition on occupying certain positions for ten years.

23. On 19 December 2024 the Kharkiv Court of Appeal upheld the conviction and changed the sentence of imprisonment to a fine of UAH 17,000 (about 380 euros at the time) and imposed an additional punishment of confiscation of all the first applicant's assets.

24. According to the most recently available information, the Supreme Court was examining the first applicant's and the prosecutor's appeals on points of law.

II. THE SECOND APPLICANT'S CASE (*TARASOVA V. UKRAINE,* No. 43066/23)

25. As of December 2020 the second applicant had been working as a freelance sales representative for the N. company, a Ukrainian medicines manufacturer.

26. After Russia's full-scale invasion of Ukraine began, on 3 March 2022 the Cabinet of Ministers of Ukraine enacted Resolution no. 187 by which it prohibited the "performance of any monetary and other obligations" in favour of the Russian State, its citizens and legal entities registered in Russia. On 27 September 2022 the Cabinet of Ministers' Resolution no. 1076 prohibited the shipment of goods from Ukraine to Russia.

27. In March 2023 the Security Service of Ukraine (*Sluzhba bezpeky Ukrayiny* – "the SBU") started investigating a criminal case on suspicion of the offence of "assisting the aggressor State" (Article 111-2 of the Criminal Code), which was defined as "an intentional act aimed at assisting the aggressor State, its military groups or the occupation administration ... with the aim of harming the interests of Ukraine" and which was punishable by 10 to 12 years' imprisonment with the optional confiscation of assets.

The Criminal Code stated that the offence could be committed through either the "implementation or support for decisions of the aggressor State, its armed groups or the occupation administration" or through the "transmission of material resources to the aggressor State, its armed groups or the occupation administration".

The provision was added to the Criminal Code by Law no. 2198-IX of 14 April 2022. It was contained in the chapter of the Criminal Code entitled "Offences against the foundations of Ukrainian national security".

28. According to the investigative authority, in December 2021 the N. company entered into a contract for the sale of medicines with the A. company, a private Russian company. In early 2023 the N. company's shareholder and its managing director (hereinafter "the N. company's management") devised a scheme under which they disguised shipments of a medicine (used for general anaesthesia) to Russia as shipments to an Estonian company, with a delivery point indicated as Vilnius (Lithuania) and the final destination country indicated as Armenia. In fact, the shipments, while transiting through Belarus, were to be diverted to the A. company in Russia, which in turn was to supply the medicine to Russian companies and institutions.

29. It was alleged, withing the framework of the investigation, that the medication of the type in question, originating from N. company, was found in the first-aid kit of a Russian serviceman taken prisoner in Ukraine. However, that element was not part of the charges brought against the applicant (see below).

30. Within the framework of that investigation, in June 2023 the SBU searched the N. company's premises. The second applicant was interviewed as a witness and provided the content of messaging applications on her mobile telephone to the SBU. She retained lawyers in that connection. The SBU widely published information about the discovery of the alleged scheme in early July 2023.

31. On 14 September 2023 the second applicant was served a formal notification of suspicion under Article 111-2 of the Criminal Code and on the same day was questioned about the charges. According to the charges, she acted in conspiracy with the N. company's management to implement the above-mentioned scheme and thus "transmitted material resources to the aggressor State with the aim of assisting the aggressor State". The notification of suspicion contained references to various international and domestic-law instruments, including the UN Charter and the Cabinet of Ministers' resolutions prohibiting transactions with Russia (see paragraph 26 above).

32. On the same day the SBU investigator applied to have the second applicant remanded in custody. He argued that there was a risk that the second applicant would abscond. She had connections with people living abroad, including in Russia, and had sufficient financial resources, all of which could facilitate her flight. That meant that the second applicant could abscond to Russia from where she could continue her subversive activities against Ukraine. The second applicant could also destroy or corrupt information stored on WhatsApp. In addition, evidence could be stored on other electronic equipment that had not yet been identified and it could be destroyed. The

second applicant could influence employees of the N. company, as well as unidentified witnesses and co-conspirators.

33. The second applicant opposed the imposition and, subsequently, the extension of detention. She pointed out that there was no evidence that she had intended to help Russia or to harm Ukraine, which were constituent elements of the offence of "aiding the aggressor State" under Article 111-2 of the Criminal Code. There was no proof of the alleged risks. The second applicant had strong social connections, was married and was raising two minor children (4 and 12 years old). There was no risk of absconding. The applicant had been fully aware of being a target of the investigation since late June 2023 and had cooperated with the investigation and not absconded. As to the risk of absconding to Russia, all border crossings with it were closed. The absence of the risk of destroying evidence was evidenced by the fact that the second applicant had voluntarily shared the content of her telephone, including messaging applications, with the SBU. Two other suspects in the case, the N. company's managers, had been charged more than two months earlier, in late June, and there was no evidence that the second applicant had influenced them. There was no risk of reoffending since the applicant was not part of the N. company's management and as such could not direct any shipments of goods.

34. On 20 September 2023 the Shevchenkivskyi District Court of Kyiv ordered the second applicant's pre-trial detention. The applicant was taken into custody in the courtroom.

Responding to the applicant's objection as to the absence of a reasonable suspicion, the court referred to *Murray v. the United Kingdom* (28 October 1994, § 55, Series A no. 300-A) and *Merabishvili v. Georgia* ([GC], no. 72508/13, § 184, 28 November 2017), stating that facts which raised a suspicion did not need to be of the same level as those necessary to justify a conviction or even the bringing of a charge, which came at the next stage of the criminal investigation. The court considered that the evidence available was sufficient to support a reasonable suspicion. It was not the court's task at that stage to assess the specific legal categorisation of charges.

The court stated that the potential punishment faced was in itself the reason why the second applicant would possibly abscond. The fact that the second applicant had not absconded and had cooperated with the investigation since June 2023 was not decisive since at that time the applicant had not had the status of a suspect. Concerning the risk of influencing witnesses, that risk would exist until the witnesses were examined at the trial because the Code of Criminal Procedure required, as a rule, that witness statements be given as testimony during the trial and could not otherwise be admissible as evidence, with some limited exceptions (see paragraph 42 below). The court considered proven the risks of influencing witnesses and destroying evidence.

The court considered that only pre-trial detention could prevent those risks. The court also observed that the second applicant was suspected of an offence against the foundations of national security committed during Russia's military aggression against Ukraine, which indicated that the offence was particularly dangerous. In such circumstances, having regard to the Exemptions to Mandatory Bail Clause, there were grounds not to set bail.

35. On 4 October 2023 the Kyiv Court of Appeal upheld the detention order. In addition to endorsing the District Court's assessment, the Court of Appeal also stated that there was also the risk of the second applicant continuing the offence of which she was accused. The Court of Appeal stated that the District Court's decision to impose pre-trial detention was also correct having regard to the Wartime Detention Clause.

36. On 15 November 2023 the District Court rejected the second applicant's requests for release and allowed the investigator's applications to extend detention.

The court found that the investigation had not yet been completed and that, having regard to the punishment the second applicant faced, the dangerousness of the offence of which she was reasonably suspected, her age, state of health and personal characteristics, there were indications that she could abscond, influence witnesses, destroy evidence and reoffend. Preventive measures other than detention could not prevent those risks.

The court reaffirmed that it was not its role to assess the question of guilt or innocence but only to examine, in assessing the existence of a reasonable suspicion, whether the person's involvement in a criminal offence was probable, so as to justify the imposition of a preventive measure.

37. The District Court then extended the applicant's detention approximately every two months on similar grounds.

38. The Court of Appeal upheld those decisions, largely endorsing and repeating the lower court's reasons.

39. In some decisions extending detention and upholding those orders the courts referred to the Wartime Detention Clause and the Exceptions to Mandatory Bail Clause.

40. On 25 June 2024 the District Court set bail for the applicant. It was paid and the applicant was released on the same day.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

41. Article 12 of the Criminal Code (2001) classifies offences based on the maximum punishment which they carry under the Code as offences of minor severity, medium severity, serious and particularly serious (or grave) offences: (i) minor offences (*кримінальні проступки*) – a fine up to UAH 50,000[4] or another punishment not involving imprisonment; (ii)

[4] This is 3,000 times the non-taxable minimum citizens' income, which is currently UAH 17.

offences of lesser severity (*неважкі злочини*) – a fine up to UAH 170,000[5] or up to five years' imprisonment; (iii) serious offences (*тяжкі злочини*) – a fine of up to UAH 425,000[6] or five to ten years' imprisonment; (iv) particularly serious offences – a fine exceeding UAH 425,000, imprisonment for more than ten years or life imprisonment.

42. Article 95 § 4 of the Code of Criminal Procedure (2012) provides that the court is to only base its conclusions on the statements made directly before the trial court (or those obtained during the pre-trial investigation pursuant to the procedure established by Article 225 of the Code) and it cannot base judicial decisions on statements made to the investigator or prosecutor. Article 225 provides that, in exceptional cases, where it is likely to be impossible to question a witness during the trial, a party to the criminal proceedings may apply to the investigating judge to question that witness. Such questioning is conducted before a court in accordance with the rules on questioning applicable to the trial.

43. In its decision of 19 June 2024 in case no. 7-p(II)/2024, the Constitutional Court of Ukraine declared that the Wartime Detention Clause was not contrary to the Constitution of Ukraine. The Constitutional Court pointed out that the Wartime Detention Clause did not deprive courts of the power to impose a preventive measure less restrictive than detention. This was also evidenced by the fact that the Exceptions to Mandatory Bail Clause allowed, but did not require, courts not to set bail for certain offences. It was still open to courts to set bail for defendants accused of offences covered by the Wartime Detention Clause where it was justified. Thus, the Wartime Detention Clause did not provide for mandatory detention without alternatives.

44. Other relevant information about the domestic legal framework can be found in *Kolesnyk and Smelnytskyy* (cited above, §§ 26-34, 38-48).

II. RELEVANT INTERNATIONAL MATERIAL

45. The Office of the United Nations High Commissioner for Human Rights ("OHCHR") released the Report on the human rights situation in Ukraine, 1 August 2022 - 31 January 2023, the relevant part of which reads as follows (internal references omitted):

> "119. According to the Office of the Prosecutor General of Ukraine, as of 31 January 2023, 4,291 criminal proceedings had been launched under article 111-1 of the Criminal Code of Ukraine for collaborating with the Russian Federation. OHCHR is concerned that the law on collaboration activities does not comply with [international human rights law] and [international humanitarian law]. In particular, the law encompasses individuals who carry out uncoerced work for the occupying authorities, which may include educational and medical workers, among others providing key services. This

[5] This is 10,000 times the non-taxable minimum citizens' income.
[6] This is 25,000 times the non-taxable minimum citizens' income.

provision is not in line with the principles underlying the law of occupation under [international humanitarian law], compliance with which presumes a certain level of cooperation between the occupation and local authorities. In addition, articles 50 and 56 of Geneva Convention IV explicitly require the cooperation of national and local authorities with the occupying power to ensure the functioning of medical establishments and educational and care facilities for children.

120. Moreover, the use of vague and subjective terminology in article 111-1 does not sufficiently comply with international human rights standards on restrictions of the rights to liberty, security of persons and freedom of expression, or with the principle of legality. OHCHR is also concerned at the apparent lack of proportionality between offences and applicable penalty.

121. In addition, the broad language of the law, which de facto criminalises all employment and business activities in the occupied territory, may impact the enjoyment of the rights to work and to an adequate standard of living for residents in Russian-occupied territory. OHCHR is concerned that the law may have a far-reaching impact not only on the rights of individuals living in occupied territory, but also on social cohesion and, ultimately, on future reintegration efforts."

THE LAW

I. JOINDER OF THE APPLICATIONS

46. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. SCOPE OF THE CASE

47. In his application form, the first applicant, relying on Article 5 §§ 3 and 4 of the Convention, complained that the courts had not examined the possibility of imposing a non-custodial preventive measure, had only provided formulaic reasons for detention and had disregarded arguments in favour of his release.

48. In his reply to the Government's observations (which he submitted on 15 May 2025) the first applicant argued that a person can be found guilty of the offence of "collaborationist activity", of which he had been accused (see paragraph 7 above), only if they had provided some resources or services to the occupying authorities, which the first applicant had never done. The overly broad definition of "collaborationist activity" had been criticised as contrary to international humanitarian law and international human rights law by the OHCHR (see paragraph 45 above). In the conclusion of his reply to the Government's observations the first applicant stated, however, that his detention for more than one year and seven months had been unjustified, disproportionate and had not met the requirements of Article 5 § 3 of the Convention; that the national courts had failed to provide individualised, specific and convincing grounds for detention; and that they had not

considered alternative preventive measures. He asked the Court to find a violation of that provision and of Article 5 § 4.

49. The Court observes that the first applicant's argument that his actions did not meet the definition of "collaborationist activity" was not raised in his application form. In view of the conclusion of the first applicant's reply to the Government's observations, the Court finds that this should not be seen as an introduction of a new complaint but rather an additional argument in support of the complaint that the detention was unjustified, under Article 5 § 3 of the Convention, which the applicant already submitted in his application form.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION IN RESPECT OF THE FIRST APPLICANT

50. The first applicant, relying on Article 5 §§ 3 and 4 of the Convention, complained that the courts had not examined the possibility of imposing a non-custodial preventive measure and had disregarded his arguments in favour of his release.

51. The Court, being master of the characterisation to be given in law to the facts of the case (compare *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 61, 5 July 2016; *Kuc v. Slovakia*, no. 37498/14, §§ 34-35, 25 July 2017l; and *Titarenko v. Ukraine*, no. 31720/02, § 65, 20 September 2012), finds that the complaints at issue fall to be examined from the standpoint of Article 5 § 3 of the Convention, which reads as follows:

> "3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

52. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The first applicant

53. The first applicant submitted that the domestic courts' decisions had repeated the arguments raised in the applications for pre-trial detention. They had disregarded the defence's arguments that the first applicant had not absconded prior to his arrest, despite having had an opportunity to do so owing to the combat operations in the area; that he could not leave Ukraine

because of a prohibition imposed in Ukrainian law on men under 60 years of age leaving Ukraine; that he had been married, had adult children, had a permanent place of residence and owned real estate in the area; and that the offence with which he had been charged had been "less serious" and punishable by a fine.

(b) The Government

(i) As to the Wartime Detention Clause in general

54. The domestic courts' reliance on the Wartime Detention Clause had been compatible with Article 5 § 3 of the Convention. Referring to *Grubnyk v. Ukraine* (no. 58444/15, 17 September 2020) the Government submitted that pre-trial detention under the Wartime Detention Clause was not the only measure allowed and that the legislature established the discretion of the domestic courts in the application of detention by taking into account the grounds and circumstances set out in Articles 177 and 178 of the Code of Criminal Procedure. In the applicants' cases the domestic courts, which had had before them considerable evidence in support of the suspicion against the applicants, had exercised that power of control in their cases. The domestic courts had conducted a comprehensive analysis of all the circumstances of the cases and struck a balance between the interests of society and the rights of the applicants. The risks provided for in Article 177 § 1 of the Code of Criminal Procedure had been established and substantiated. Given the specific circumstances of the criminal cases (crimes committed against the foundations of Ukrainian national security during martial law), the risks had remained high enough to justify continued detention. The domestic courts had provided regular judicial reviews of the detention orders, ensuring that the continued deprivation of liberty had remained necessary and proportionate. The first-instance decisions had been reviewed and upheld on appeal.

(ii) The first applicant's case specifically

55. The Government submitted that the domestic courts had justified the first applicant's detention with reference to the facts and circumstances of the criminal proceedings, giving specific (rather than general and formulaic) reasons for detention. The exclusivity of the circumstances of the case meant that there had been genuine public interest in detention.

56. The existence of the risk of absconding was evidenced by the fact that the first applicant had cooperated with the occupation authorities and by the severity of the punishment he faced. The first applicant could have absconded to Russia, and he knew where the witnesses lived and could have influenced them. The investigating judge duly and fully examined the available evidence, which was sufficiently strong to confirm the validity of the suspicion. The courts also took into account the fact that the first applicant had committed a less serious offence against national security punishable by

a fine or imprisonment. Being aware of the seriousness of the offence charged and the punishment he would face if found guilty, there had been a real risk of the first applicant absconding. When extending detention the court had found that the risks had not diminished.

57. There had been genuine public interest in detention. Collaborationist activities were considered serious offences with potential national security implications. The ongoing war against Ukraine and the specific security concerns related to the Russian occupation had been relevant factors in the decision.

58. The Government submitted that the Court had already established that in some instances concerning particularly serious crimes, the nature and gravity of the charges against a defendant was a factor weighing heavily against his or her release and in favour of remanding him or her in custody (see *Mercep v. Croatia*, no. 12301/12, 26 April 2016). The generally formulated risk flowing from the organised nature of the criminal activities of the applicant might be accepted as the basis for his or her detention, in particular at the initial stages of the proceedings (see *Dudek v. Poland*, no. 633/03, § 36, 4 May 2006). Also, in some circumstances, for example where the suspect allegedly belonged to a gang implicated in violent crimes, or, probably, in terrorist cases, the "unavailability of bail" could be self-evident (see *Galuashvili v. Georgia*, no. 40008/04, §§ 6 et seq., 17 July 2008; *Kusyk v. Poland*, no. 7347/02, § 37, 24 October 2006; and *Celejewski v. Poland*, no. 17584/04, §§ 35-37, 4 May 2006).

59. The Government submitted that the above approaches were fully applicable to the first applicant's case and stressed that he had been suspected of a national security-related offence. In that context the authorities had been under a duty to protect the rights of the actual and potential victims of violent attacks under Articles 2, 3 and 5 § 1 of the Convention.

60. The Government stated that the authorities had demonstrated "special diligence" in the conduct of the proceedings, including timely investigations and efficient case processing.

2. The Court's assessment

61. The relevant general principles of the Court's case-law have been summarised in *Buzadji* (cited above, §§ 87-91).

62. Concerning reliance of the domestic courts on the Wartime Detention Clause and the Exceptions to Mandatory Bail Clause, the Court observes that it has held, on several occasions, that legislative schemes limiting the domestic courts' decision-making powers in matters of pre-trial detention breached Article 5 § 3 of the Convention (see *S.B.C. v. the United Kingdom*, no. 39360/98, §§ 23 and 24, 19 June 2001; *Boicenco v. Moldova*, no. 41088/05, §§ 134-38, 11 July 2006; and *Piruzyan v. Armenia*, no. 33376/07, §§ 105 and 106, 26 June 2012).

63. The Court considers, however, that no issue of this type arises in this case because the Wartime Detention Clause and the Exceptions to Mandatory Bail Clause do not remove the power of the domestic courts to set bail; they merely render bail possible, rather than mandatory, for certain offences (see the Constitutional Court of Ukraine's decision, in paragraph 43 above, and *Kolesnyk and Smelnytskyy v. Ukraine*, nos. 24465/23 and 25217/23, 23 July 2026, not yet final).

64. The Court will therefore proceed to examine, in the light of the principles well-established in its case-law (see *Buzadji*, cited above, and *Kharchenko v. Ukraine*, no. 40107/02, §§ 79-81 and 99, 10 February 2011), whether there were "relevant and sufficient" reasons for detention throughout its duration and whether the authorities conducted the proceedings with "special diligence".

65. The domestic courts referred to the severity of the punishment the first applicant faced as one of the primary factors in their assessment that he was likely to abscond and thus justifying their decision to place and maintain him in detention (see paragraph 11 above). In this context the Court reiterates that the danger of an accused's absconding cannot be gauged solely on the basis of the severity of the sentence risked, it must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see *Ignatov v. Ukraine*, no. 40583/15, § 41, 15 December 2016).

66. The Court also observes that the relevant provision of domestic criminal law, as interpreted by the authorities in the first applicant's case, appears to criminalise any participation in economic life under the Russian occupation. Leaving aside the question of the appropriateness of such broad criminalisation (which has been criticised by the OHCHR – see the report in paragraph 45 above) which the first applicant did not raise before the Court as such in this case (see paragraph 49 above), the form of the offence imputed to the first applicant was the least serious one provided under the relevant criminal-law provision, which provided for a fine as a potential punishment, and imprisonment only as an alternative.

67. Consequently, this renders the severity of the punishment faced, as a reason given by the domestic courts for the existence of the risk of absconding, particularly unpersuasive. The domestic authorities and courts themselves noted that the offence imputed to the applicant was classified under domestic law as a "less serious" offence (*нетяжкий злочин*; see paragraphs 10, 19 and 41 above). That the facts imputed to the applicant were not of particular gravity appears to have also been eventually borne out by the conviction judgment (see paragraph 23 above).

68. With regard to the risk of absconding, the domestic courts failed to rebut the first applicant's argument that, had he wished to flee, he could have done so in the period between Ukraine's liberation of territory and his arrest,

especially given that he knew about the criminal proceedings. The risk of influencing witnesses was also not supported by reference to any persuasive circumstances: there were no substantial additional elements in the charges which the first applicant did not admit himself in his statement given at the very outset of the investigation (see paragraph 8 above); there was no reply to the first applicant's argument that the witnesses had moved; and, lastly, the trial court continued to refer to the supposedly existing risk of influencing witnesses even after 6 February 2024, when all the witnesses had been questioned and no other witness examinations were planned (see paragraph above).

69. In addition, in its decision of 30 July 2024, also at a very late stage in the proceedings, the Court of Appeal stated, apparently for the first time, that there was also the risk of reoffending (see paragraph 20 above). The court did not provide any reasons for that finding, other than referring to the punishment faced.

70. The Court notes with satisfaction that the domestic courts endeavoured to take into account the Court's case-law in deciding the question of the first applicant's detention. The Court is concerned, however, that the domestic courts might have laboured under a certain misconception about the Court's case-law. While all the principles formulated in paragraph| 17 above are presented as a citation of *Letellier v. France* (26 June 1991, Series A no. 207), only the first of those sentences, which correctly represents the Court's well-established case-law, can be found in *Letellier* (ibid., § 35), the other two sentences of that paragraph do not appear in *Letelier* or any other Court judgment under Article 5 of the Convention.

71. While it is difficult to identify their actual source, those last two sentences may be a partial paraphrase of a statement contained in *Selmouni v. France* ([GC], no. 25803/94, § 101, ECHR 1999-V, *in fine*, with internal references omitted and emphasis added):

> "101. The Court has previously examined cases in which it concluded that there had been treatment which could only be described as torture ... However, having regard to the fact that the Convention is a 'living instrument which must be interpreted in the light of present-day conditions' ... the Court considers that certain acts which were classified in the past as 'inhuman and degrading treatment' as opposed to 'torture' could be classified differently in future. It takes the view that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably *requires greater firmness in assessing breaches of the fundamental values of democratic societies*."

72. The Court stresses that that principle formulated in *Selmouni* (cited above), which concerned the development of the Court's own approach to distinguishing various forms of ill-treatment under Article 3 of the Convention, is not relevant in the context of the assessment of whether pre-trial detention is justified under Article 5 conducted by domestic courts or this Court.

73. It is true that in cases of pre-trial detention the public interest must be balanced against the rule of respect for individual liberty and that the authorities are under a duty to protect the rights of the actual and potential victims of violent attacks under Articles 2, 3 and 5 § 1 of the Convention (see *Grubnyk*, cited above, § 124). However, the latter consideration is not relevant in the first applicant's case since he was not accused of any violent acts or acts representing imminent danger to life and limb of others.

74. The Court concludes that the first applicant's detention, which lasted from 10 March 2023 to 30 October 2024, was not based on relevant and sufficient reasons.

75. In these circumstances, it is not necessary to examine whether there was, in addition, an issue of lack of special diligence in the conduct of the proceedings.

76. There has, therefore, been a violation of Article 5 § 3 of the Convention in respect of the first applicant.

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION IN RESPECT OF THE SECOND APPLICANT

77. The second applicant, relying on Article 5 § 1 and Article 6 § 1 of the Convention, complained that the courts had not cited specific evidence of the existence of a reasonable suspicion against her or of the risks justifying detention, disregarding her arguments to the effect that there had been no such suspicion and no such risks and only taking into account the gravity of the alleged crime.

78. The Court, being master of the characterisation to be given in law to the facts of the case, observes that the second applicant's reliance on Article 6 of the Convention with regard to her pre-trial detention should be seen as a mere argument in support of her complaint under Article 5 § 1 (see, for example, *Mironenko and Martenko v. Ukraine*, no. 4785/02, § 44, 10 December 2009; *Lutsenko v. Ukraine*, no. 6492/11, §§ 49-50, 3 July 2012; and *Yılmaz Aydemir v. Türkiye*, no. 61808/19, § 25, 23 May 2023).

79. The second applicant also complained under Article 5 § 3 of the Convention that the courts had failed to provide relevant and sufficient reasons for her detention.

80. Article 5 §§ 1 and 3 of the Convention read, in so far as relevant, as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

> ...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

81. The Court notes that this part of the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Article 5 § 1 of the Convention

(a) The parties' submissions

82. The second applicant submitted that the court, when placing her in detention, had not verified the existence of a reasonable suspicion but had simply referred, in a general way, to the material attached to the applications for detention. The authorities had not provided specific and sufficient grounds for the suspicion. There had been no evidence of delivery of goods to Russia or that the second applicant had had any intention of aiding Russia or harming Ukraine, nor of any specific harm she had sought to cause. There was no evidence that the business transactions for the supply of medical products to Belarus (and not to Russia, as alleged by the prosecution) caused or could cause any harm to the State.

83. The Government submitted that the second applicant had been arrested on the basis of a reasonable suspicion, supported by the evidence in the file, and her detention had been in compliance with the requirements of Article 5. Her arguments to the contrary were refuted by the fact that the investigation had not been completed and witnesses had not been examined directly by the court.

(b) The Court's assessment

84. The Court reiterates that under the first limb of Article 5 § 1 (c) of the Convention, a person may be detained, in the context of criminal proceedings, only for the purpose of bringing him or her before the competent legal authority on reasonable suspicion of having committed an offence. Having a reasonable suspicion presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence. What may be regarded as reasonable will, however, depend on all the circumstances (see *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 314, 22 December 2020).

85. As a rule, problems with the "reasonableness of suspicion" arise at the level of the facts. The question then is whether the arrest and detention were based on sufficient objective elements to justify a "reasonable suspicion" that the facts at issue had actually occurred. In addition to its factual side, the existence of a "reasonable suspicion" within the meaning of Article 5 § 1 (c) requires that the facts relied on can be reasonably considered to fall under one of the sections of the law dealing with criminal behaviour (see *Selahattin Demirtaş*, cited above, § 317).

86. The Court also reiterates that, in order for deprivation of liberty to be considered free from arbitrariness, it does not suffice that this measure is executed in conformity with national law; it must also be necessary in the circumstances (see *Nešťák v. Slovakia*, no. 65559/01, § 74, 27 February 2007). Detention pursuant to Article 5 § 1 (c) must embody a proportionality requirement (see *Ladent v. Poland*, no. 11036/03, § 55, ECHR 2008 (extracts), *Khayredinov v. Ukraine*, no. no. 38717/04, §§ 28-31, 14 October 2010), which implies a reasoned decision balancing relevant arguments for and against release (see *Taran v. Ukraine*, no. 31898/06, § 68, 17 October 2013, and *Butkevich v. Russia*, no. 5865/07, § 64, 13 February 2018).

87. In the present case, it cannot be said that the suspicion against the applicant was based on her engaging in activity which was lawful at the time she conducted it (contrast, for example, *Taner Kılıç v. Turkey (no. 2)*, no. 208/18, § 105, 31 May 2022).

88. However, the offence with which the applicant was charged explicitly required, as formulated in the Criminal Code, a combination of two elements, a material (providing assistance to the Russian State) and mental element (doing that as an intentional act aimed at harming Ukraine) (see paragraph 27 above).

89. The Court has not been informed of any domestic legal provisions or case-law interpreting either of those elements. This in itself is not problematic since the relevant provision is recent and there must come a day when a given legal norm is applied for the first time (see *Włoch v. Poland*, no. 27785/95, § 111, ECHR 2000-XI, and *Selahattin Demirtaş*, cited above, § 253, with further references). However, the authorities did not provide elements demonstrating that the acts of which the applicant was accused could fall within the definition of the offence as set out in the Criminal Code, in particular concerning its required mental element. In the absence of precedents and an established interpretation of the domestic provisions relied upon, it was all the more important that the relevant decisions indicate some facts or information which would satisfy an objective observer that the required aim could be reasonably suspected to be present (see, for example, *Włoch*, cited above, §§ 111-14).

90. In fact, in the charges, the investigation authority appeared to suggest that the motivation for the suspected scheme had been rather commercial, the desire of the N. company's managers to continue a commercial relationship

with a Russian private entity, established prior to Russia's full-scale invasion of Ukraine, and to circumvent the prohibition on dealing with it, enacted after the invasion (see paragraphs 28 and 31 above). No domestic authority or court provided any explanation as to why such a motivation, however blameworthy it could be seen in the moral sense in the conditions of war and albeit in breach of the law, could be equated with the aim of harming Ukraine, within the meaning of domestic criminal law.

91. The investigation authority referred, in the notification of charges, to the resolutions of the Cabinet of Ministers of Ukraine introducing prohibitions on certain transactions with Russia (see paragraphs 26 above). However, those resolutions were listed among a vast array of other documents (see paragraph 31 above) and their relevance was not explained. It thus appears that the authorities did not articulate in a sufficiently clear and detailed manner their suspicion that the offence under Article 111-2 of the Criminal Code could have been committed.

92. Nonetheless, despite the shortcomings mentioned in paragraphs 89 to 91 above, having regard, in particular, to the principle that facts which raise a suspicion need not be of the same level as those necessary to justify a conviction, or even the bringing of a charge (see *Murray v. the United Kingdom*, 28 October 1994, § 55, Series A no. 300-A) and the fact that the text of the provision at issue, Article 111-2 of the Criminal Code, was newly introduced and untested, especially in conditions of war, the Court is unable to reach a conclusion that relying on that provision was without any reasonable basis at the time of the impugned events. The Court is prepared to accept that, given the above and the fact that the investigation was at early stages, the authorities' position that the elements in the file could be seen as supporting an initial reasonable suspicion against the applicant cannot be considered arbitrary.

93. The Court further considers that the question of whether the second applicant's detention was justified as a whole, beyond the question of existence of a reasonable suspicion, is more appropriately examined under Article 5 § 3 of the Convention, in light of its requirement that relevant and sufficient reasons must be given for deprivation of liberty under that provision (see *Buzadji*, cited above, § 61, *Zohlandt v. the Netherlands*, no. 69491/16, § 26, 9 February 2021, *Tercan v. Turkey*, no. 6158/18, §§ 167 and 172, 29 June 2021). It will revert to that question below.

94. Regarding the complaint under Article 5 § 1, the Court finds that there has been no violation of that provision in respect of the second applicant.

2. *Article 5 § 3 of the Convention*

(a) The parties' submissions

95. The applicant submitted that the courts made generic and formulaic findings that there were risks of absconding but this had not been based on a

genuine individualised assessment of the facts of the case. The applicant had learned of the criminal proceedings after a search was conducted, more than two and a half months before formal suspicion had been notified on 14 September 2023. Afterwards she was questioned and did not abscond but participated in the investigation. As to the risk of destruction of evidence the applicant had, in fact, voluntarily provided access to her phone and laptop and her password. There was no risk of pressure on witnesses: the applicant was not an employee of the company and could not influence its officers, notices of suspicion had been served on two other suspects a month and a half before the applicant and she had not pressured them in any way.

96. The Government submitted that the courts provided sufficient arguments for the applicant's detention. The risks were duly substantiated with reference to the facts and circumstances of the criminal proceedings. The court carefully weighed the severity of the alleged offence against the necessity of continued detention.

(b) The Court's assessment

97. The principles and considerations set out in paragraphs 61-64 above are equally pertinent for the second applicant's case.

98. The period under consideration lasted from 20 September 2023 till 25 June 2024.

99. The domestic courts, in ordering the second applicant's pre-trial detention, relied on the gravity of the charges against her and the risk that she would abscond, the risk of influencing witnesses and of destruction of the evidence.

100. In particular, the domestic courts referred to the gravity of the charges and the punishment faced as the determinative consideration in their assessment that those risks, in particular the risk of absconding, existed (see paragraph 34 above). The Court reiterates, however, that the danger of an accused's absconding cannot be gauged solely on the basis of the severity of the sentence risked, it must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see *Ignatov*, cited above, § 41).

101. As to the alleged danger of absconding, of influencing witnesses and evidence destruction, the Court considers that those were framed in a rather general manner and, importantly, significant facts were disregarded. In particular, the authorities failed to take into account the applicant's undisputed cooperation with the investigation for months prior to her arrest, nor did they point to any indications that she attempted, during the period when she was at liberty, to influence the course of the investigation in any manner.

102. Indeed, being aware of the investigation since at least June 2022 until her detention on 20 September 2023, the applicant cooperated with it. There

is no indication that she attempted to abscond or interfere with the investigation (see paragraph 30 above). The domestic court, by referring to the fact that for some part of that period the applicant was not formally a suspect, considered that that record of compliance could be disregarded. However, it did not address the fact that the applicant's compliance apparently continued even after she had become a suspect but remained at liberty (see paragraphs 31 to 34 above and compare, under Article 5 § 1, *Khayredinov*, cited above, § 29).

103. These considerations are sufficient for the Court to conclude that the second applicant's detention was not based on relevant and sufficient reasons throughout the period under consideration.

104. In these circumstances, it is not necessary to examine whether there was, in addition, an issue of lack of special diligence in the conduct of the proceedings.

105. There has, accordingly, been a violation of Article 5 § 3 of the Convention in respect of the second applicant.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

106. 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."

107. The first applicant claimed 2,990 euros (EUR) in respect of pecuniary damage, representing lost earnings for the period of detention, and EUR 20,000 in respect of non-pecuniary damage. The second applicant claimed EUR 5,000 in respect of non-pecuniary damage.

108. The Government contested those claims, considering then unjustified – as there were no violations of the applicants' rights – and unsubstantiated.

109. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the first applicant EUR 1,000 and the second applicant EUR 600 in respect of non-pecuniary damage, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 5 § 3 of the Convention in respect of the first applicant;

4. *Holds* that there has been no violation of Article 5 § 1 of the Convention in respect of the second applicant;

5. *Holds* that there has been a violation of Article 5 § 3 of the Convention in respect of the second applicant;

6. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 1,000 (one thousand euros) to the first applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 600 (six hundred euros) to the second applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (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;

7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 23 July 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Kateřina Šimáčková
President

APPENDIX

List of cases:

No.	Application no. Case name Introduction date	Applicant's name Year of birth Place of residence	Representative's name Location
1.	39465/23 Derevyanko v. Ukraine 24/10/2023	**Anatoliy Ivanovych DEREVYANKO** 1967 Verbivka, Kharkiv Region	Sergiy Volodymyrovych CHUB Kharkiv
2.	43066/23 Tarasova v. Ukraine 29/11/2023	**Yuliya Mykolayivna TARASOVA** 1978 Kyiv	Dmytro Sergiyovych LOSHAKOV Kyiv