



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

FIFTH SECTION

CASE OF KOLESNYK AND SMELNYTSKYY v. UKRAINE

(Applications nos. 24465/23 and 25217/23)

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 • Relevant and sufficient reasons • In case- circumstances and context of administrating justice in wartime conditions, no lack of "special diligence" in the conduct of the proceedings shown

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.

In the case of Kolesnyk and Smelnytskyy v. Ukraine,

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

Kateřina řimáčková, *President*,

María Elósegui,

Gilberto Felici,

Diana Sârcu,

Mykola Gnatovskyy,

Vahe Grigoryan,

Nicholas Emiliou, *judges*,

and Victor Soloveychik, *Section Registrar*,

Having regard to:

the applications (nos. 24465/23 and 25217/23) 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 Pavlo Yevgenovych Kolesnyk (“the first applicant”) and Mr Sergiy Mytrofanovych Smelnytskyy (“the second applicant”), on 28 and 29 May 2023 respectively;

the decision to give notice of the applications to the Ukrainian Government (“the Government”);

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 FACTS

2. The applicants were born in 1971 and 1975 respectively and, at the time of the most recent communication with the Court, were in detention in Kharkiv. The applicants were represented by Mr Y. Vyshnevetsky, a lawyer practising in Kharkiv.

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

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

5. On 24 February 2022 Russia launched a full-scale military attack against Ukraine (see *Ukraine and the Netherlands v. Russia* [GC], nos. 8019/16 and 3 others, §§ 61-79, 9 July 2025). On the same day the President of Ukraine introduced martial law in the territory of Ukraine, a

decision later endorsed by Parliament. The regime of martial law has been periodically extended and remains in effect to this day.

6. Starting from 24 February 2022 Kharkiv became the scene of heavy urban warfare (see *Ukraine and the Netherlands v. Russia*, cited above, § 68).

7. On 29 July 2022 the applicants were arrested by the Security Service of Ukraine (*Sluzhba bezpeky Ukrayiny* – “the SBU”) and served formal notifications of suspicion that, on 27 July 2022, they had filmed Ukrainian military fortifications and equipment in Kharkiv and had shared that material on Telegram channels¹ used by the Russian intelligence services for the collection of information and subversive activities against Ukraine, an offence under Article 114-2 § 3 of the Criminal Code prohibiting the unauthorised dissemination of information about Ukrainian military positions during wartime, unless that information had already been published by military authorities (see paragraph 38 below).

8. According to the charges, the first applicant was driving a car while the second applicant assisted with filming using a camera mounted on the car. They thus captured footage of fortifications and military equipment belonging to Ukrainian armed units in a manner that made it possible to locate them. The first applicant then transmitted the video to the Telegram channels.

9. On 1 August 2022 the Kyivskyi District Court of Kharkiv (“the District Court”), in two similarly worded rulings, ordered the applicants’ pre-trial detention. The court found it established that: (i) there was sufficient evidence in support of reasonable suspicion against the applicants, including the results of an examination of digital material and witness statements (notably identifying the applicants as driving a particular car in the relevant area of Kharkiv at the relevant time); and (ii) there were risks of absconding (which were aggravated owing to the severity of the punishment faced), influencing witnesses or otherwise interfering with the investigation and reoffending.

10. The District Court stated that it had had regard to the fact that: (i) Mr Kolesnyk had a higher level of education, was married, used to serve in the police, had no criminal record, had an address in Kharkiv and had provided positive references from his neighbours; (ii) Mr Smelnytskyi had a university level education, was receiving a pension, was married and his wife had recently lost her job, had two minor children including a disabled son, and was reportedly taking care of an elderly mother. The court concluded that, despite their personal situation, having regard notably to the seriousness of the alleged crime against national security, the above-mentioned risks could not be prevented by any preventive measure other than detention.

11. At the same time, referring to the Code of Criminal Procedure provisions concerning bail (see paragraph 33 below), the court set, in the

¹ According to the charges the channels were entitled, in Russian: *Харьков знает* (Kharkiv knows); *Направленец по Украине* (Staff officer in charge of Ukraine); and *Сводки ополчения Новороссии* (News from Novorossiia Militia).

alternative, bail equivalent to 372,150 Ukrainian hryvnias (approximately 9,800 euros at the time) for each applicant².

12. Bail was paid for the applicants on 2 August 2022.

13. On 3 August 2022 the SBU investigator reclassified the offence as “treason” under Article 111 of the Criminal Code (see paragraph 37 below) and asked the District Court to order the applicants’ detention without bail. He stated that the investigation had found indications that the applicants had disseminated information with the aim of helping Russia conduct subversive activities against Ukraine. Thus, their actions had contained elements of treason and could not, therefore, be classified under Article 114-2 § 3 of the Criminal Code, since that Article required the absence of elements of treason or espionage. He argued that the change in the preventive measure was justified by the change of legal classification of the offence resulting from additional information gathered in the course of investigation.

14. The investigator also pointed out that the applicants were former police officers and thus knew about the methods of investigation and could use that knowledge to influence witnesses or otherwise hinder the investigation. They were also aware of the gravity of the alleged offence; the complexity of the investigation, particularly in wartime conditions; and the inability of the State authorities to fully control the State border and all of the State territory, and so they could abscond to Russia or to the occupied territory of Ukraine. They could also commit other offences against national security.

15. On 3 August 2022 the District Court, in two similarly worded decisions which were also closely similar to the initial orders of 1 August 2022, ordered the applicants’ detention without bail. It found it established that: (i) there was sufficient evidence in support of reasonable suspicion against the applicants (it referred to the same evidence as in the detention orders of 1 August 2022 and some additional reports); and that (ii) there were risks of absconding (which were aggravated owing to the severity of the punishment faced), influencing witnesses or otherwise interfering with the investigation and reoffending. No other preventive measure was capable of addressing them.

The District Court (as did the investigator) referred to the following provisions of the Code of Criminal Procedure (see paragraphs 29 and 34 below):

(i) Article 176 § 6 of the Code (“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;

² The equivalent of about 9,777 euros or 150 subsistence minimums, as defined by law at the time.

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

The court stated that, under the Exception to Mandatory Bail Clause, it was the court’s right not to set bail in criminal cases concerning treason and other offences listed in that Clause.

16. At the relevant time, the offence of “unauthorised publication” was not listed among the offences covered by those Clauses, but treason was. The “unauthorised publication” offence was added to the Wartime Detention and the Exception to Mandatory Bail Clauses by Law no. 2531-IX of 16 August 2022. Both offences were contained in the chapter of the Criminal Code dedicated to “Offences against the foundations of Ukrainian national security”.

17. The applicants appealed, arguing that there was no evidence to support a reasonable suspicion or the existence of the risks that the District Court had found established. They referred to their personal circumstances (such as their families and previous service in the police) as evidence of the absence of any such risks.

18. On 15 and 29 September 2022 the Kharkiv Court of Appeal rejected the first and the second applicant’s appeals respectively, largely endorsing and stating the same reasons as those given by the lower court.

19. The investigator submitted applications for the extension of detention, arguing that there was a need to conduct additional investigative steps, such as a forensic expert analysis of computer material, and in relation to considerations similar to those set out in paragraph 14 above. In the extension application of 17 December 2022 the investigator also argued that there was a risk of essential evidence being destroyed or concealed because the video in question had been deleted from the main storage location of the mobile telephone, as had the chat room and its participants. The investigator argued that, after the pre-trial investigation had been initiated, the second applicant or, on his instructions, unidentified third parties had deleted his page on the Russian social network Odnoklassniki in order to hide or destroy information relevant to the investigation.

20. On 23 September, 26 October, 21 and 23 December 2022 the District Court reviewed and extended the applicants’ detention. The court referred to the circumstances set out in the extension applications and held that there was a risk of absconding, especially in the light of the nature and the seriousness of the alleged offence against national security and the punishment faced, and which the applicants’ references to family ties did not dispel, as well as the risk of influencing witnesses. Those risks had not diminished. As for the risk of influencing witnesses the court referred to the provision of the domestic law which stated that witness testimony could only be admissible if given directly to the court during the trial and could not otherwise be admissible as evidence, with some limited exceptions (see paragraph 36 below).

21. In January 2023 the investigation was completed and the case was sent for trial to the Zhovtnevyi District Court of Kharkiv (“the trial court”).

22. On 25 January 2023 and subsequently on an approximately bi-monthly basis the trial court conducted a review and extended the applicants’ detention on the same grounds as before.

23. In the appeals lodged against the extension of their detention, the applicants raised the same arguments concerning the absence of a reasonable suspicion and of the relevant risks, argued that the additional time needed for the investigation was not attributable to them, that reasons for detention did not evolve and that the courts were endorsing the applications for extension without effectively scrutinising them. The Exceptions to the Mandatory Bail Clause allowed the courts not to set bail but did not require it. They cited domestic court decisions in similar cases where bail had been set. Referring to *Piruzyan v. Armenia* (no. 33376/07, §§ 104-06, 26 June 2012), they argued that automatic denial of bail was contrary to Article 5 § 3 of the Convention.

24. The extension orders were upheld by the Court of Appeal which largely endorsed and stated the same reasons as those given by the lower court.

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

26. In October 2022 new charges against the second applicant for justification of Russian aggression, under Article 436-2 § 2 of the Criminal Code (see paragraph 39 below) were added to the main criminal case. He was charged with having published material justifying Russia’s aggression against Ukraine on his page on the above-mentioned Russian social network between March and June 2022³.

27. The most recent detention extension orders were delivered on 13 December 2024. There is no information on further progress in the proceedings.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CODE OF CRIMINAL PROCEDURE (2012)

A. Pre-trial detention, bail and other preventive measures

28. Article 176 § 1 of the Code of Criminal Procedure provides for the following preventive measures: (i) a personal undertaking of the defendant; (ii) a personal warranty of a third party; (iii) bail; (iv) house arrest; and (v) pre-trial detention.

³ From channels with titles *Alex Stalingrad*, *StekloVATA Z*, *Rossiya-Germaniya FREUNDSCHAFT*, *Donbass – Novaya istoriya*, *Den pobedy* and others.

29. Article 176 § 6 of the Code of Criminal Procedure (“the Wartime Detention Clause”) provides that, while martial law is in effect, pre-trial detention will be the preventive measure applied to defendants suspected of certain listed offences, mostly offences against national security, public safety (including terrorism-related offences) and international peace and security, provided that proven risks set out in Article 177 of the same Code are established.

30. Article 177 § 1 of the Code provides that the purpose of preventive measures is to prevent the risk of the suspect or accused:

- “(i) absconding from the pre-trial investigation authorities and/or the court;
- (ii) destroying, concealing or spoiling any of the items or documents that are of essential importance for establishing the circumstances of the criminal offence;
- (iii) exerting unlawful influence on the victim, witnesses, other suspects, the accused, experts ...;
- (iv) obstructing the criminal proceedings in any other way;
- (v) committing another criminal offence or continuing the criminal offence of which he or she is suspected or accused.”

Article 177 § 2 states that a preventive measure can be imposed provided that there is a reasonable suspicion that the defendant has committed a criminal offence and there are risks giving sufficient grounds for the judge to believe that the defendant could commit the actions specified in Article 177 § 1.

31. Article 178 provides that, when deciding on a preventive measure, the court, in addition to considering the risks under Article 177, must assess the overall the circumstances on the basis of the material presented by the parties, including: (i) the weight of the evidence against the defendant; (ii) the severity of the sentence faced in the event of conviction; (iii) the defendant’s age and state of health, and the strength of social connections in his or her place of permanent residence, including any family and dependants; (v) whether the defendant has stable employment or is pursuing studies; (vi) the defendant’s reputation; (vii) the defendant’s assets; (viii) whether the defendant has a criminal record; (ix) the defendant’s compliance with previously imposed preventive measures; (x) any concurrent charges against the defendant; and (xi) pecuniary damage caused by the suspected offence or gain from the suspected offence, and the strength of the evidence demonstrating such circumstances.

32. Article 183 § 1 defines pre-trial detention as an “exceptional” preventive measure which can only be applied where the prosecutor has proven that no less restrictive preventive measure would prevent the risks set out in Article 177 of the Code of Criminal Procedure, except in the situations set out in the Wartime Detention Clause.

33. Article 183 § 3 provides that, as a rule, where the courts impose pre-trial detention, they must also set bail as an alternative to detention, so that the defendant would be released if he or she posted bail.

34. Article 183 § 4 (“the Exceptions to Mandatory Bail Clause”) provides for exceptions to the mandatory bail rule: in particular, the courts are not required to set bail in cases of crimes committed with violence or in cases conducted while martial law is in effect and which concern a certain exhaustive list of offences against national security, public safety, or international peace and security.

35. Both the Wartime Detention Clause and the Exceptions to Mandatory Bail Clause were added to the Code of Criminal Procedure by Law no. 2198-IX of 14 April 2022. The offences listed in both Clauses are largely similar.

B. Admissibility of witness evidence

36. Article 95 § 4 of the Code of Criminal Procedure 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.

II. CRIMINAL CODE (2001)

37. Article 111 of the Criminal Code provides for a sentence of up to 15 years’ imprisonment or life imprisonment for treason, including espionage and providing help to a foreign country in subversive activities against Ukraine, if committed while martial law is in effect.

38. Article 114-2 of the Code prohibits the unauthorised dissemination of information about Ukrainian military units or military equipment during the period when martial law is in effect, unless that information has already been published by military authorities. Paragraph 3 sets out an aggravated form of the offence, punishable by 8 to 12 years’ imprisonment, where disclosure of the information is committed in a group or where information is disseminated in order to transmit it to a State waging a war of aggression against Ukraine, unless such acts have the characteristics of treason or espionage.

39. Article 436-2 § 2 of the Code makes the creation and publication of material justifying the Russian Federation’s armed aggression against Ukraine punishable by up to five years’ imprisonment.

III. DECISION OF THE CONSTITUTIONAL COURT OF 19 JUNE 2024

40. 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 (Article 176 § 6 of the Code of Criminal Procedure) was not contrary to the Constitution of Ukraine, including its Article 29 which guaranteed the right to freedom and personal inviolability.

41. The case arose from a constitutional complaint by two individuals who had been accused of offences covered by the Wartime Detention Clause and who had challenged the constitutionality of that provision, as applied to them.

42. The Constitutional Court referred to its decision of 25 June 2019 in which it had declared unconstitutional a provision of the Code of Criminal Procedure which used to prohibit the use of bail for certain national security-related offences (see *Grubnyk v. Ukraine*, no. 58444/15, § 53, 17 September 2020). In its decision, the Constitutional Court had explained that Article 29 of the Constitution notably required, as a way of preventing arbitrariness, a reasoned court decision involving an assessment, in the specific circumstances of the case, of the possibility of alternatives to detention.

43. The Constitutional Court stressed the role of the courts in upholding the rule of law and protection of rights from arbitrariness in times of emergency. At the same time the Constitutional Court stressed the importance of protection of sovereignty and territorial integrity as the missions of the State and of the Ukrainian people. That required the State to ensure the effective functioning of the system of criminal justice which would, in wartime conditions, strengthen the protection of sovereignty, territorial integrity and State security, as well as the criminal prosecution of those who would commit offences against those supremely important constitutional public interests.

44. The Constitutional Court highlighted that the Wartime Detention Clause had been introduced in April 2022 and concerned offences against fundamental aspects of national security, against public security (notably terrorism-related offences) and those against peace and international security (such as a war of aggression or war crimes).

45. Accordingly, the aim of the introduction of the temporary legislative provision in question had been legitimate. Concerning the proportionality of the measure the Constitutional Court stated that in some cases detention could be the only effective and justified preventive measure capable of ensuring the aims of criminal procedure in wartime conditions, where law enforcement was complicated and there were massive, heightened threats to life and health as well as to fundamental rights and freedoms.

46. The principle of proportionality also required that the application of the legislative provision under review did not cause excessive harm to the

rights and freedoms of a person. In this context the Constitutional Court noted that under the Wartime Detention Clause the imposition of detention depended not only on the severity of the crime of which the person was suspected or accused, but also on the existence of risks of absconding, obstructing criminal proceedings (notably through the destruction of evidence or exerting influence on witnesses) or reoffending.

47. Furthermore, to impose detention under the Wartime Detention Clause, it was still necessary to comply with the provisions of the Code of Criminal Procedure, which defined the circumstances which the courts had to take into account as a precondition for the imposition and extension of detention (see paragraphs 30 and 31 above).

48. The Constitutional Court pointed out that the Wartime Detention Clause dispensed the prosecutor from having to prove that none of the less restrictive preventive measures would prevent the occurrence of the relevant risks. However, that did not deprive the court of the power to impose a preventive measure that was less restrictive than detention. That was also evidenced by the fact that Article 183 § 4 of the Code of Criminal Procedure (the Exceptions to Mandatory Bail Clause) allowed, but did not require, the court not to set bail for certain offences.

49. The Constitutional Court concluded, reading the Wartime Detention Clause in the context of other provisions of the Code of Criminal Procedure, that it was still open to the courts to set bail for defendants accused of offences covered by the Wartime Detention Clause where it was justified. The Wartime Detention Clause therefore did not provide for mandatory detention without alternatives.

50. The Constitutional Court observed that, in the cases of both individuals who had brought the case before it, the criminal courts had understood and applied the Wartime Detention Clause precisely as interpreted by the Constitutional Court and had eventually set bail for one of them.

THE LAW

I. JOINDER OF THE APPLICATIONS

51. 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 5 § 1 OF THE CONVENTION

52. The applicants, relying on Article 5 § 1 of the Convention, complained that there had been no reasonable suspicion against them. The initial classification of the offence had been changed arbitrarily, without any grounds or new evidence which would have justified such a change, in bad

faith with the aim of having detention imposed without the bail alternative. Article 5 § 1 reads, 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 ...”

53. The Government contested those arguments.

54. As regards the applicants’ complaint that the decision to change the classification of offences imputed to them was in bad faith and led to the arbitrary deprivation of liberty, the Court observes that, at the time the reclassification occurred (on 3 August 2022, mere days after the applicants’ arrest on 29 July 2022), criminal proceedings against the applicants were at very early stages. It is not unusual in itself for initial criminal-law classification to evolve when an investigation is at an early stage.

55. In this context, the Court reiterates that under Article 5 § 1 (c) of the Convention, a person may be detained 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 (see *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 314, 22 December 2020). However, the 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 *Merabishvili v. Georgia* [GC], no. 72508/13, § 184, 28 November 2017).

56. 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).

57. In the present case, no arguable case has been made by the applicants that there were no factual elements to support the charge of treason against the applicants, that their actions could not be reasonably considered to fall under the relevant provision of the Criminal Code or that the reclassification was made in bad faith.

58. The Court therefore finds that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

59. In their application forms the applicants, relying on Article 5 §§ 1 and 4 of the Convention, submitted that the repeated decisions to extend their detention had been unjustified and had lacked relevant and sufficient grounds, and in extending their detention the courts had not taken into account their arguments in favour of release and had only examined alternatives to detention as a formality.

60. 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 2017; 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

61. 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. *The parties' submissions*

62. After notice of the applications was given to the Government, the applicants maintained their applications but did not make any additional submissions.

63. The Government submitted that the courts had provided relevant and sufficient reasons for detention and had conducted the proceedings with the “special diligence” required. The courts had established that there had been a reasonable suspicion against the applicants, that there had been risks of absconding, obstruction of justice through influencing witnesses and destruction of evidence, and of reoffending, in the sense that the applicants could potentially continue aiding the enemy. Repeated extensions of the applicants’ detention had demonstrated ongoing judicial oversight over its lawfulness.

64. The case was different from those in which detention decisions had been couched in general terms and repetitive phrases. The risks had been duly substantiated with reference to the specific facts and circumstances. There

had been a genuine public interest in detention: the applicants were former police officers and had been involved in filming military fortifications in Kharkiv which had seen heavy fighting from the very start of Russia's full-scale invasion of Ukraine. Heavy fighting had been ongoing in the vicinity while the courts had imposed and extended detention. The applicants' cases were to be examined against that background.

65. The Government compared the case to *Grubnyk v. Ukraine* (no. 58444/15, 17 September 2020) where the Court had found that the former Article 176 § 5 of the Code of Criminal Procedure had not deprived the courts of the power to release individuals awaiting trial. That was also valid for the relevant legislation in the present case. The seriousness of the offence had not been sufficient to impose detention under that legislation; it had also been necessary to show the existence of risks justifying detention. The courts could also have imposed bail as an alternative to detention. The Government referred to the Constitutional Court's decision concerning the relevant provisions (see paragraphs 40-50 above). Given the exceptional circumstances faced by the State, the Wartime Detention Clause was compatible with Article 5 § 3 of the Convention in general and in its application to the applicants' cases.

2. The Court's assessment

66. The relevant general principles of the Court's case-law have been summarised in *Buzadji v. the Republic of Moldova* ([GC], no. 23755/07, §§ 87-91, 5 July 2016).

67. The Court 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). Any system of mandatory detention on remand is contrary to the requirements of Article 5 § 3 (see *Ilijkov v. Bulgaria*, no. 33977/96, § 84, 26 July 2001, with further references).

68. The Court considers that no arguable case can be made that the Wartime Detention Clause and the Exceptions to Mandatory Bail Clause establish a system of mandatory detention since they, as explained by the Constitutional Court, do not take away the power of the domestic courts to set bail but merely render bail possible, rather than mandatory, for certain offences (see paragraphs 48-50 above). This was also the position of the applicants before the domestic courts (see paragraph 23 above).

69. The Court reached a similar conclusion in *Grubnyk* (cited above, § 119) where it dealt with a previous provision of the Code of Criminal Procedure which (in the period from 2014 to 2019) used to provide that preventive measures other than pre-trial detention could not be imposed on a person suspected of certain offences related to terrorism and national security.

In that case the Court found that the domestic courts had had the power to review the existence of a reasonable suspicion against the defendant, examine the evidence in that regard and order his release.

70. The same is also valid regarding the Wartime Detention Clause and the Exceptions to Mandatory Bail Clause which, as interpreted by the Constitutional Court, impose fewer restrictions on the courts' decision-making than the legislative provision at issue in *Grubnyk* (cited above).

71. 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 and whether the authorities conducted the proceedings with "special diligence".

72. The domestic courts found that the risks of absconding, destroying evidence, influencing witnesses and reoffending justified the applicants' detention, and that no other preventive measure could prevent those risks (see paragraphs 9 and 15 above). In doing so, they referred to the investigator's application for the imposition and extension of detention, which, in turn, cited facts specific to the applicants' cases which demonstrated those risks (see paragraphs 14 and 19 above).

73. The Court sees no reason to criticise the domestic courts' assessment as to the existence of those risks. That conclusion is not changed by the fact that some of those reasons might have been cited by the prosecutor and merely endorsed by the courts (see *Ugulava v. Georgia*, no. 5432/15, § 101, 9 February 2023).

74. The fact that originally bail was set for the applicants does not change the Court's assessment for the following reasons. The particularity of the applicable domestic legislative framework is that it requires the courts, simultaneously, to establish that no preventive measure other than detention would prevent the risks justifying detention and still, at the same time, set bail regardless of their assessment of the circumstances of the case (see paragraphs 32 and 33 above), provided that the offence is not covered by the Exceptions to Mandatory Bail Clause. This apparent contradiction inherent in the domestic legislative framework was also reflected in the District Court's decision (see paragraphs 10 and 11 above).

75. Thus, in essence, the original decision to set bail for the applicants was not necessarily based on the court's genuine assessment that it would be justified, in the circumstances, to release them on bail but may well have been dictated by the need to comply with the legislative framework in place, which imposed bail regardless of the court's assessment of the facts of the case (compare, for example, *Plachkov v. Ukraine* [Committee], no. 76250/13, 15 April 2021).

76. It is true that the reasons for some of the extension of detention orders were often stated in a succinct fashion and did not considerably evolve over time. However, the court's succinct reasoning cannot alone amount to a

violation of Article 5 § 3 (see, for example, *Van der Tang v. Spain*, 13 July 1995, § 60, Series A no. 321, and *Grubnyk*, cited above, § 127) where, as here, justification for the applicants' detention was sufficiently established, having regard to the underlying facts of their cases, already set out in earlier court decisions.

77. Lastly, the applicants did not argue that the authorities failed to apply "special diligence" in the conduct of the proceedings (see *Grubnyk*, *ibid.*), and have not shown that there were any delays in the proceedings attributable to the authorities. The applicants' pre-trial detention lasted from 29 July 2022 until at least 13 December 2024. Noting that the parties, while they made submissions as recently as October 2025, did not inform the Court about any further developments in the proceedings beyond 13 December 2024, the Court considers that it is not called upon to examine any possible period of detention after that date. The applicants have been free to submit complaints in respect of later developments.

78. The period under examination, two years and more than four months, appears considerable in absolute terms. However, the Court observes that in some cases it found no violation of Article 5 § 3 of the Convention on account of even longer periods of pre-trial detention (see, for example, *Van der Tang*, cited above, §§ 58-76, 3 years and 1 month, *Chraidi v. Germany*, no. 65655/01, §§ 33, 44-48, ECHR 2006-XII, 5 years and 6 months, *Buta v. Poland*, no. 18368/02, §§ 29-48, 28 November 2006, 2 years and 6 months, *Titarenko v. Ukraine*, no. 31720/02, § 74, 20 September 2012, 3 years and almost 8 months, *Erezen v. Germany*, no. 67522/09, §§ 53-66, 6 November 2014, 5 years and 8 months, *Gábor Nagy v. Hungary (no. 2)*, no. 73999/14, §§ 66-80, 11 April 2017, almost 3 years, *Štvrtecký v. Slovakia*, no. 55844/12, §§ 56-72, 5 June 2018, 3 years and 8 months). In the present case, as already mentioned, the applicants have not argued that there had been any inordinate delays.

79. Moreover, in assessing the question of compliance with the right to a trial within a reasonable time of release pending trial the Court must have regard to the context in which the case arose (see *Khlebik v. Ukraine*, no. 2945/16, § 71, 25 July 2017, and *Vyacheslavova and Others v. Ukraine*, nos. 39553/16 and 6 others, §§ 285-86, 13 March 2025).

80. While the relevant domestic legal provisions relied upon in the applicants' detention decisions are formulated as operating while the "regime of martial law" is in effect, what is particularly relevant for the Court's examination is not that domestic legal regime as such but the circumstances which led to its imposition, that is Russia's full-scale invasion of Ukraine. It has already held that those circumstances were unprecedented in the history of the Council of Europe and involved threats to Ukraine's statehood, its independence and its very right to exist (see *Ukraine and the Netherlands v. Russia* [GC], nos. 8019/16 and 3 others, § 177, 9 July 2025).

81. These considerations apply, in particular, where the Ukrainian authorities administer justice in wartime conditions in the regions in immediate proximity to the frontline, as in this case.

82. The Court concludes that, in the circumstances of the case, having regard notably to the lack of specific submissions on this point from the applicants and the above-mentioned context, it has not been shown that the authorities failed to display “special diligence” in the conduct of the proceedings.

83. There has accordingly been no violation of Article 5 § 3 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 5 § 3 of the Convention admissible and the remainder of the applications inadmissible;
2. *Holds* that there has been no violation of Article 5 § 3 of the Convention.

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

Victor Soloveytschik
Registrar

Kateřina řimáčková
President