



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

FIFTH SECTION

CASE OF BOGDAN SHEVCHUK v. UKRAINE

(Application no. 55737/16)

JUDGMENT

Art 34 • Hinder the exercise of the right of application • Involvement of the same District Court judge in the initial criminal proceedings against the applicant, forming the subject-matter of his application before the Court, and the new criminal proceedings against him • Continued hearing of the new proceedings by that judge, after having learned about the present application • Sufficient indirect proof that the applicant's request for withdrawal of his application before the Court made under undue pressure from the District Court judge in the new criminal proceedings against him

Art 5 § 1 • Unlawful detention of the applicant following its extension by the District Court judge in the initial criminal proceedings after the Court of Appeal had transferred his case to a different court • Extension of detention in excess of jurisdiction and amounted to "gross and obvious irregularity" which could not be remedied by judicial review proceedings

Prepared by the Registry. Does not bind the Court.

STRASBOURG

24 April 2025

FINAL

24/07/2025

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Bogdan Shevchuk v. Ukraine,

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

Mattias Guyomar, *President*,
Armen Harutyunyan,
Stéphanie Mourou-Vikström,
Gilberto Felici,
Diana Sârcu,
Kateřina Šimáčková,
Mykola Gnatovskyy, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 55737/16) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Bogdan Grygorovych Shevchuk (“the applicant”), on 3 September 2016;

the decisions to give notice to the Ukrainian Government (“the Government”) of the complaints concerning the alleged unlawfulness of the applicant’s detention and the authorities’ alleged interference with the applicant’s right of individual application;

the parties’ observations;

Having deliberated in private on 25 March 2025,

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

INTRODUCTION

1. The case concerns complaints under Article 5 §§ 1 and 4 of the Convention concerning the lawfulness of the applicant’s detention and the availability of an effective procedure to challenge the lawfulness of that detention. It furthermore concerns the alleged pressure exerted on the applicant by the authorities to withdraw his application to the Court, in breach of Article 34 of the Convention.

THE FACTS

2. The applicant was born in 1979 and lives in Zatoka, Odesa Region. He was represented by Mr M.G. Korotyuk, a lawyer practising in Kyiv.

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

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

I. FIRST SET OF PROCEEDINGS AGAINST THE APPLICANT

5. In January 2016 the investigative authorities opened a criminal investigation into abuse of power in respect of the applicant (“the first investigation”). On 31 May 2016 the applicant was arrested in the context of that investigation and on 1 June 2016 the Kyivskyi District Court of Odesa (“the Kyivskyi District Court”) ordered his detention and set bail as an alternative measure. On 30 June 2016 the applicant’s detention was extended until 28 August 2016.

6. On 17 August 2016 the Odesa Regional Court of Appeal (“the Court of Appeal”) ruled that the case should be transferred to the Bilgorod-Dnistrovskyi Court of Odesa Region for examination, finding that that was the court that was competent to deal with the criminal proceedings against the applicant.

7. On 22 August 2016 the Kyivskyi District Court, acting as a trial court, extended the applicant’s detention until 20 October 2016. The decision, which was not amenable to appeal, was given by Judge F.

8. Judge F. dismissed the argument of the applicant’s defence lawyer that the Kyivskyi District Court was no longer competent to deal with the criminal proceedings against the applicant on the basis that she needed a clarification of the decision of the Court of Appeal of 17 August 2016.

9. In a letter of 6 September 2016 the Court of Appeal reminded Judge F. of the importance of complying with the decisions of higher courts and domestic law.

10. From August to September 2016 the applicant lodged numerous complaints with the courts in which he argued that his continued detention was unlawful and sought his release, but to no avail. In particular, on 5 September 2016 the Malynovskyi District Court of Odesa dismissed an application lodged by his defence lawyer for the applicant’s release as the decision of the Kyivskyi District Court of 22 August 2016 on the extension of the applicant’s detention had become final, which prevented the examination of its lawfulness in accordance with Article 206 of the Code of Criminal Procedure, which the applicant had relied upon. On 16, 21 and 23 September 2016 the Izmail Local Court of Odesa Region dismissed applications by his defence lawyer for the applicant’s release for similar reasons.

11. Also, from August to September 2016 several complaints were lodged with the Higher Qualification Commission of Judges regarding the unlawful extension, by Judge F., of the applicant’s detention after the Court of Appeal’s decision of 17 August 2016, and the delays with the transfer of the case file from the Kyivskyi District Court to the new competent court. There is no information in the case file about the outcome of the examination of those complaints.

12. The applicant submitted to the Court a copy of an information note posted on the website of the Court of Appeal on 2 September 2016, according to which the Kyivskyi District Court had not transferred by that date the criminal case against the applicant to the Bilgorod-Dnistrovskyi Court of Odesa Region.

13. On an unspecified date the criminal case against the applicant was transferred to the Bilgorod-Dnistrovskyi Court of Odesa Region, which on 18 October 2016 extended the applicant's detention for another term until 16 December 2016. On 14 December 2016 the applicant was released on bail.

14. On 21 April 2020, the trial court approved a plea agreement that had been reached between the prosecution and the applicant and found the latter guilty sentencing him to one year and six months' imprisonment. Having counted the period of time the applicant had spent in detention at the pre-trial stage, the trial court furthermore acknowledged the applicant as having served his imprisonment term in full. The applicant lodged appeals against his conviction on grounds of fact and law; they were rejected on 26 October 2021 and 18 January 2022 respectively.

II. NOTICE OF THE APPLICATION GIVEN TO THE RESPONDENT GOVERNMENT

15. In November 2016, August 2021 and October 2022 the applicant confirmed that he maintained his application and updated the Court about developments in his case.

16. On 25 January 2023 the Court gave notice to the Government of the applicant's complaints under Article 5 §§ 1 and 4 of the Convention. On 12 July 2023 the Government submitted their observations on the merits of the applicant's complaints. On 5 September 2023 the Court received the applicant's comments on the Government's observations, signed by his representative.

17. On 13 October 2023 the Court informed the parties that the exchange of parties' submissions had been completed.

III. SECOND SET OF PROCEEDINGS AGAINST THE APPLICANT

18. On 20 June 2023 the authorities notified the applicant that he was suspected of fraud, forgery and money laundering in the context of a criminal investigation that had been opened on 28 September 2022 ("the second set of proceedings").

19. On 22 June 2023 Judge F. of the Kyivskyi District Court allowed an application made by the investigator seeking the detention of the applicant in the context of that new investigation.

20. On 4 August 2023 Judge F. extended the applicant's detention.

21. While the investigation was underway the applicant requested the court to alter the preventive measure to a non-custodial one, arguing that he was the only caregiver for his dependent father and a minor son.

22. On 11 September 2023 Judge F. dismissed that request as unsubstantiated.

23. On 28 September 2023 Judge F. refused an application from the investigator to extend the applicant's detention and instead placed him under 24-hour house arrest.

24. On an unspecified date the investigator transferred the indictment against the applicant to the Kyivskyi District Court for examination.

25. On 8 November 2023 Judge V. of the Kyivskyi District Court, acting as a trial judge, adjourned the preparatory hearing until 22 November 2023 and extended the applicant's 24-hour house arrest.

IV. THE APPLICANT'S WITHDRAWAL REQUEST

26. On 9 November 2023 the applicant personally sent an email to the Court in which he sought "to withdraw [his] application as the issues under consideration were no longer relevant [for him]". In response to that email, which had been forwarded to him for information, the applicant's representative submitted that the applicant had made that request under influence from Judge F. of the Kyivskyi District Court and the regional prosecutor's office that had been involved in his case in 2016. The applicant's representative furthermore submitted a copy of electronic correspondence between him and his client that took place on 5 December 2023, from which it follows that the applicant had had fears of being pressured by Judge F. if he pursued his application before the Court. In particular, the applicant wrote the following:

"[Judge] F. is not a stupid person and sooner or later she will find out that [the proceedings before the Court] are ongoing ... when she [does find out] she will use all her malice to shut me up. Currently [my criminal case] is going relatively well and I don't want to create problems for myself in the future."

27. On 20 February 2024 notice of the complaint of possible pressure exerted on the applicant was given to the Government.

RELEVANT LEGAL FRAMEWORK

28. Article 34 of the Code of Criminal Procedure ("the CCP") deals with question of the transfer of criminal proceedings from one court to another. In particular, Article 34 § 1 (2) of the CCP provides that the transfer of a criminal case from one (competent) court to another within the territorial limits of a court of appeal's jurisdiction must be considered by a panel of judges of the relevant court of appeal. Article 34 § 1 (5) of the CCP provides

that disputes between courts [of the same level] regarding jurisdiction to deal with a case should not be allowed.

29. Article 75 of the CCP defines the circumstances that mean a judge cannot participate in a set of criminal proceedings. In particular, Article 75 § 1 provides that a judge cannot participate in a particular set of criminal proceedings if:

(1) he or she is a claimant, victim, plaintiff or defendant, or a close relative or family member of an investigator, prosecutor, suspect, accused, claimant, victim, plaintiff or defendant;

(2) he or she participated in the same proceedings as a witness, expert, specialist, representative of the probation service, interpreter, investigator, prosecutor, defendant or representative;

(3) he or she, or his or her relatives, or his or her family members have an interest in the outcome of the proceedings;

(4) there exist other circumstances which give rise to doubts as to his or her impartiality; or

(5) the procedure for assigning a judge to deal with the criminal proceedings has been breached.

30. Article 80 of the CCP provides that if any of the circumstances listed in Article 75 of the CCP exist in a given case, the judge is obliged to submit an application for recusal.

31. Article 206 of the CCP establishes the general duties of a judge regarding the protection of human rights. Article 206 § 1 of the CCP entitles any judge whose territorial jurisdiction extends to a person held in custody to issue a decision ordering any public authority or official to ensure respect for that person's rights.

Article 206 § 2 provides that whenever a judge receives information from any source whatsoever which gives grounds for a reasonable suspicion that there is a person within the court's territorial jurisdiction who has been deprived of his or her liberty without a valid court decision, or who has not been released from custody after the payment of bail in accordance with the procedure laid down in the CCP, that judge is required to issue a decision ordering any public authority or official in whose custody the person is held to immediately bring that person before the judge in order to check the grounds for the deprivation of his or her liberty.

Article 206 § 3 provides that the judge will be obliged to release the person deprived of his or her liberty unless the public authority or official holding the person in custody presents a court decision which has already become enforceable or demonstrates the existence of other legal grounds for depriving the person of his or her liberty.

THE LAW

I. SCOPE OF THE CASE

32. After notice of the case was given to the respondent Government, the applicant lodged a new complaint with the Court alleging that the amount of bail set by the Kyivskyi District Court in its decision of 1 June 2016 (see paragraph 5 above) had been too high. In the Court's view, the applicant's new complaint is not an elaboration of his original complaints to the Court on which the parties have commented. The Court considers, therefore, that it is not appropriate to take it up in the context of the present case (see *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005).

II. AS TO THE APPLICANT'S WITHDRAWAL REQUEST AND THE ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

33. Having regard to the circumstances of the case, the Court considers it necessary to examine the applicant's strike-out request made under Article 37 of the Convention in the light of his further complaint regarding the authorities' interference with his right of individual application under Article 34 of the Convention. The above-mentioned provisions, in so far as relevant, read as follows:

Article 34

"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

Article 37

"1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

(a) the applicant does not intend to pursue his application

...

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires. ..."

A. Parties' submissions

34. The applicant submitted that he had been under pressure from Judge F. of the Kyivskyi District Court and the regional prosecutor's office that had been involved in the 2016 events related to the first set of proceedings. He furthermore submitted that after notice of the applicant's

complaints under Article 5 §§ 1 and 4 had been given to the Government in January 2023, the applicant had been notified that he was a suspect in another set of proceedings concerning fraud on 20 June 2023, and that on 22 June 2023 Judge F. had placed him in detention in the context of that new investigation. After the applicant had been offered, in autumn 2023, the “resolution” of the criminal proceedings against him in return for his withdrawing of the application pending before the Court, his detention had been replaced with house arrest. When arguing that the treatment of the applicant by Judge F. and the regional prosecutor’s office amounted to a breach of Article 34 of the Convention, the applicant’s representative contended that the applicant had been in a vulnerable position when requesting the Court to strike his case out.

35. He also referred to Article 75 of the CCP, which prohibited a judge from taking part in proceedings if there were circumstances giving rise to doubts as to his or her impartiality. He considered that Judge F. should have recused herself from the second set of proceedings as soon as she realised that it involved a defendant who had in fact challenged before the Court decisions that she had made in the first set of proceedings. Lastly, the applicant’s representative argued that a copy of electronic correspondence between him and his client that took place on 5 December 2023 (see paragraph 26 above), had proved that the applicant had had fears of being pressured by Judge F. if he pursued his application before the Court.

36. The Government submitted that there had been no pressure on the part of Judge F. or the regional prosecutor’s office and that the applicant had never raised this issue before the authorities. The applicant had not informed the Kyivskiy District Court of his application to the Court and the decisions taken by Judge F. in the second set of proceedings had been lawful and well-reasoned.

37. The Government furthermore argued that, following the initial communication of the case in January 2023, on 20 June 2023 they had sent requests to the relevant authorities regarding the questions put to Government by the Court, with a view to preparing observations in the present case. On 28 June 2023 the Kyivskiy District Court had provided the requested documents and information. They stressed that Judge F. had not known of the applicant’s application to the Court before 20 June 2023.

38. They added that the applicant had submitted his request to withdraw his application from the list of the Court’s cases after the criminal proceedings had been assigned to another judge for examination at the trial stage. The Government furthermore argued that there had not been proper communication between the applicant and his representative as the latter had learned about the alleged pressure on the applicant from the Court’s correspondence and not from his client. Lastly, they stressed that in view of the applicant’s request to discontinue examination of his case, it should be struck out of the list of the Court’s cases.

B. The Court's assessment

39. Relevant general principles regarding the State's obligation not to hinder the effective exercise of the right of individual application under Article 34 of the Convention have been recently outlined in the case of *Shirkhanyan v. Armenia* (no. 54547/16, §§ 191-94, 22 February 2022). In particular, it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 that applicants or potential applicants should be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints (see *Sisojeva and Others v. Latvia* (striking out) [GC], no. 60654/00, §§ 115-16, ECHR 2007-I, and *McShane v. the United Kingdom*, no. 43290/98, § 149, 28 May 2002 and the cases cited therein).

40. In this context, "any form of pressure" includes not only direct coercion and flagrant acts of intimidation, but also other improper indirect acts or communication designed to dissuade or discourage applicants from pursuing a Convention complaint, or having a "chilling effect" on the exercise of the right of individual petition of applicants and their representatives (see *Rasul Jafarov v. Azerbaijan*, no. 69981/14, § 177, 17 March 2016 and the cases cited therein). The intentions or reasons underlying the acts or omissions in question are of little relevance when assessing whether Article 34 of the Convention was complied with; what matters is whether the situation created as a result of the authorities' act or omission conforms to Article 34 (see *Paladi v. Moldova* [GC], no. 39806/05, § 87, 10 March 2009). Moreover, the Court must assess the vulnerability of the complainant and the risk of his or her being influenced by the authorities. An applicant's position might be particularly vulnerable when he or she is held in custody with limited contact with his or her family or the outside world (see *Cotlet v. Romania*, no. 38565/97, § 71, 3 June 2003).

41. The Court takes note of applicant's withdrawal request as well as his representative's submissions that the request had been made under pressure from Judge F. of the Kyivskyi District Court and the regional prosecutor's office that had been involved in the 2016 events (see paragraph 26 above).

42. The Court observes that it normally strikes applications out of its list of cases when the applicants inform it that they are no longer interested in pursuing their applications. In analysing such requests, the Court takes into account whether the applicant might be in a particularly vulnerable position (see, in the context of Article 34, *Knyazev v. Russia*, no. 25948/05, § 116, 8 November 2007, with further references). Such requests must be treated with caution. For instance, in previous cases the Court had to deal, in the context of Article 34, with situations where statements of withdrawal were subsequently revoked by the applicants because they had been produced

under pressure (see, in so far as relevant, *Knyazev*, cited above, and *Enache v. Romania*, no. 10662/06, §§ 69-71, 1 April 2014).

43. Turning to the circumstances of the present case the Court, noting that the applicant's complaints of interference with his right to individual petition, submitted by his representative, postdated the withdrawal request he had sent, observes that the applicant appears to have eventually decided to pursue the case (see paragraph 26 above). In any event, having regard to its findings below that the applicant was in a vulnerable situation and that his withdrawal request was clearly motivated by fears about the outcome of the 2023 criminal proceedings (see paragraphs 44-54 below), the Court finds that the applicant's request cannot be considered as demonstrating his genuine intention to have his case struck out of the list of the Court's cases in accordance with the requirements of Article 37 of the Convention. The Court therefore cannot accept that request and, furthermore, considers that respect for human rights requires it to continue examination of the present application by virtue of Article 37 § 1 of the Convention *in fine*.

44. As to the applicant's complaint under Article 34 of the Convention, the Court observes that Judge F. was involved in the initial set of criminal proceedings against the applicant in 2016, when she had examined the question of the applicant's detention after the case had been transferred to another court competent to deal with it (see paragraphs 7 and 8 above). Furthermore, Judge F. was also involved in the new set of criminal proceedings, in which she decided on the applicant's detention several times in the period from June to November 2023 (see paragraphs 19, 20, 22 and 23 above).

45. There is no doubt that Judge F. became aware of the present case at the latest on 28 June 2023, when the Kyivskyi District Court replied to the Government's request for information relevant to the case (see paragraph 37 above).

46. Having regard to the applicant's attempts to initiate disciplinary proceedings against Judge F. on account of the 2016 events (see paragraph 11 above) and the fact that by bringing the present case the applicant sought a ruling from the European Court of Human Rights on, to a large extent, the conformity of Judge F.'s 2016 acts with the Convention, the Court cannot exclude that the fact that Judge F. continued to hear the applicant's domestic case, in particular after having learned about the present case, could have created doubts as to her impartiality. The Court observes that the judge's recusal, as provided for by Article 75 of the CCP, could have been one way to eliminate all possible doubts in the eyes of both a reasonable observer and a defending party.

47. In these very specific circumstances, Judge F. could reasonably have been expected to take steps to exclude any perception of a conflict of interest and to eliminate doubts that a reasonable observer might have had regarding her impartiality when taking decisions, in 2023, seriously affecting the

applicant, such as those concerning deprivation of liberty within the meaning of Article 5 of the Convention.

48. In this connection the Court observes, however, that the subject matter of the present case does not concern the issues of fairness of the proceedings within the meaning of Article 6 § 1 of the Convention setting specific framework for the presiding judge's impartiality and his or her obligations in a situation of a conflict of interest (see *Sigríður Elín Sigfúsdóttir v. Iceland*, no. 41382/17, §§ 35-36, 25 February 2020 and *Croatian Golf Federation v. Croatia*, no. 66994/14, §§ 112-13, 17 December 2020). Therefore, it will not analyse the question whether Judge F. was obliged to recuse herself from examining the 2023 proceedings.

49. The Court further notes the content and undertone of the correspondence between the applicant and his representative, which leaves no doubts that the former felt that he was vulnerable to being pressured by Judge F. and had fears for the outcome of his 2023 criminal case in the event of his pursuing his application before the Court (see paragraph 26 above).

50. However, while the fact that an applicant is in a situation of vulnerability is highly relevant in the assessment of complaints under Article 34, in most circumstances there must be an action or inaction that is alleged to have amounted to undue pressure (see the case-law cited in paragraphs 39-40 above).

51. In the present case the applicant referred to the creation of conditions of his dependency on Judge F. and the Kyivskyi District Court and stated that he had been offered the "resolution" of the criminal proceedings against him in return for his withdrawing of the application pending before the Court. The Court observes that he failed to elaborate on that argument and to indicate who made such an offer and in what circumstances (see paragraph 34 above).

52. The Court considers, however, that it would be unrealistic to expect that proof of an "offer" made to an applicant to withdraw his application in circumstances such as those in the present case could be found and submitted. At the same time, the Court is prepared to accept that there exist a number of indirect indications that the conduct of Judge F. could be interpreted as amounting to pressure on the applicant to withdraw his application. In particular, despite the existence of serious doubts regarding Judge F.'s impartiality examined in paragraphs 45-47 above, she continued to sit in the case and decided, in a single judge formation, on questions significantly affecting the applicant's rights, including his liberty (see paragraphs 20-23 above). Furthermore, the Court finds credible the applicant's version of the events according to which the letter of withdrawal was in reaction to what he interpreted, apparently, as deliberate creation of a situation of pressure on him.

53. The Court recalls in this context its well-established approach that "any form of pressure" includes, *inter alia*, improper indirect acts or communication designed to dissuade or discourage applicants from pursuing

a Convention complaint or having a “chilling effect” on the exercise of their right of individual application (see paragraph 40 above). It also notes that a failure by the respondent Government to comply with their procedural obligation under Article 34 of the Convention does not necessarily require that the alleged interference should have actually restricted, or had any appreciable impact on, the exercise of the right of individual petition. The Contracting Party’s procedural obligations under Article 34 of the Convention must be enforced irrespective of the eventual outcome of the proceedings and in such a manner as to avoid any actual or potential chilling effect on the applicants or their representatives (see *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, § 209, ECHR 2013).

54. In the present case, having regard to the very specific facts and the parties’ submissions, the Court finds that there exist sufficient elements which all, taken together, render credible the applicant’s allegation about an “offer” having been made, and that there is sufficient indirect proof of undue pressure on the applicant in the exercise of his right of individual application, contrary to the requirements of Article 34 of the Convention.

55. There has accordingly been a violation of that provision.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

56. The applicant complained, referring to Article 5 § 1 and Article 6 § 1 of the Convention, that his detention from 28 August to 18 October 2016 had been unlawful as it had been ordered by a court which had not been competent to do so. Relying on Article 5 § 4 of the Convention, the applicant further complained that he had not had access to an effective procedure to review the lawfulness of his detention during the above period. The Court considers that those complaints fall to be examined under Article 5 §§ 1 and 4 of the Convention, which reads 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;

...

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

A. Admissibility

57. The Court notes that these complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. Article 5 § 1

58. The applicant maintained his submissions made in the application form and furthermore submitted that the Court of Appeal had had to issue a letter to the Kyivskyi District Court explaining the need for judges to comply with the procedural legislation (see paragraph 9 above). He also added that the case file in the first set of proceedings had been transferred to the Bilgorod-Dnistrovskyi Court of Odesa Region with significant delay; that fact had been confirmed by a note that had been posted on the website of the Court of Appeal (see paragraph 12 above).

59. The Government conceded that a procedural error had been made which had led to the case file not having been transferred from the Court of Appeal to the competent court on time. They further submitted that the Kyivskyi District Court had extended the applicant's detention on 22 August 2016 in order to respect his right to regular reviews of the lawfulness of his detention. The decision to extend his detention had been lawful and in compliance with the requirements of Article 5 § 1.

60. The Court reiterates that the expressions “lawful” and “in accordance with a procedure prescribed by law” in Article 5 § 1 essentially refer back to national law and enshrine the obligation to conform to the substantive and procedural rules thereof. Although it is in the first place for the national authorities (notably the courts) to interpret and apply domestic law, under Article 5 § 1 a failure to comply with domestic law entails a breach of the Convention, and the Court can and should review whether the domestic law has been complied with (see, among many other authorities, *Assanidze v. Georgia* [GC], no. 71503/01, § 171, ECHR 2004-II). For an assessment of compliance with Article 5 § 1 of the Convention, a basic distinction has to be made between *ex facie* invalid detention orders – for example, an order given by a court in excess of jurisdiction, or where the interested party did not have proper notice of the hearing – and detention orders which are *prima facie* valid and effective unless and until they have been overturned by a higher court. A detention order must be considered as *ex facie* invalid if the flaw in the order amounted to a “gross and obvious irregularity” in the exceptional sense indicated by the Court's case-law (see *Mooren v. Germany* [GC], no. 11364/03, § 75, 9 July 2009, with further references).

61. It is clear that after the Court of Appeal transferred the case to the Bilgorod-Dnistrovskyi Court of Odesa Region on 17 August 2016, the

Kyivskiy District Court no longer had jurisdiction to continue dealing with the case. The Court notes that the domestic legislation which governs the procedure for appointing the competent court to deal with a case (see paragraph 28 above) leaves no room for a different interpretation of that rule. That fact was also pointed out by the Odesa Regional Court of Appeal in its letter of 6 September 2016 (see paragraph 9 above).

62. The foregoing considerations are sufficient to enable the Court to conclude that when the Kyivskiy District Court extended the applicant's detention on 22 August 2016 it was acting in excess of jurisdiction and that the issue under consideration amounts to a "gross and obvious irregularity" which in the circumstances of the present case could not be remedied by the domestic appeal courts in the course of the judicial review proceedings.

63. There has accordingly been a violation of Article 5 § 1 of the Convention owing to the unlawfulness of the applicant's detention from 22 August to 18 October 2016.

2. Article 5 § 4

64. The applicant submitted that he had had no effective procedure to challenge the lawfulness of his detention at the material time.

65. In the circumstances of the case and in view of the Court's earlier finding that the applicant's detention on the basis of the court order of 22 August 2016 was not lawful, the Court does not consider it necessary to examine separately the applicant's complaint under Article 5 § 4 of the Convention (see for example *Roman Petrov v. Russia*, no. 37311/08, § 60, 15 December 2015).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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."

Damage

67. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

68. The Government contested that claim.

69. Having regard to the circumstances of the case and the nature of the violations found, the Court awards the applicant the full amount claimed in respect of non-pecuniary damage, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* that respect for human rights requires it to continue examination of the present application and dismisses the applicant's request to strike the present application out of the list of the Court's cases;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 5 § 1 of the Convention regarding the unlawfulness of the applicant's detention from 28 August to 18 October 2016;
4. *Holds* that the State has failed to fulfil its obligation under Article 34 not to hinder the effective exercise of the right of individual petition;
5. *Holds* that there is no need to examine the complaint under Article 5 § 4 of the Convention;
6. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 24 April 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytschik
Registrar

Mattias Guyomar
President