

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

FIFTH SECTION

# CASE OF CHEREDNYCHENKO v. UKRAINE

*(Application no. 33630/17)*

JUDGMENT

STRASBOURG

7 November 2024

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



**In the case of Cherednychenko v. Ukraine,**

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

Lado Chanturia*, President*,
Mykola Gnatovskyy,
Úna Ní Raifeartaigh*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 33630/17) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 26 April 2017 by a Ukrainian national, Mr Oleksandr Oleksandrovych Cherednychenko ("the applicant"), who was born in 1974, lives in Sverdlovsk and was represented by Mr M. Tarakhkalo, Ms V. Lebid and Ms O. Protsenko, lawyers practising in Kyiv;

the decision to give notice of the application to the Ukrainian Government ("the Government"), represented by their Agent, Ms M. Sokorenko, of the Ministry of Justice;

the parties' observations;

Having deliberated in private on 10 October 2024,

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

## SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's continued detention in a psychiatric facility following a murder conviction and, in particular, its sixteen-day period not covered by a court order. The applicant relied on Article 5 §§ 1 and 4 and Articles 6 and 13 of the Convention.

2. The applicant, who suffered from schizophrenia, had been held in continued compulsory psychiatric confinement since 2011, when he was found to have committed a murder while lacking mental capacity. The courts periodically reviewed his detention and extended the duration of his compulsory inpatient treatment.

3. By an order of the Krasnogvardiyskyy District Court of Dnipropetrovsk of 11 April 2016, the applicant's compulsory inpatient treatment was extended once again. It relied *inter alia* on Article 514 of the Code of Criminal Procedure of Ukraine which, as in force at the relevant time, stipulated that the extension of compulsory treatment in a psychiatric hospital had to be based on a judicial decision.

4. On the basis of Article 95 of the Criminal Code of Ukraine and section 19 of the Psychiatric Assistance Act, which provided that reviews of compulsory inpatient treatment should be carried out at least every six months, the applicant considered that his compulsory inpatient treatment

as extended by the order of 11 April 2016 was due to expire on 11 October 2016.

5. On 29 September 2016 the psychiatric hospital applied to the domestic court for a further extension of the applicant's compulsory inpatient treatment. Its request was based on the recent results of the applicant's examination by a psychiatric medical commission, which indicated that the applicant required further psychiatric treatment.

6. On 20 October 2016 the applicant's lawyer lodged a habeas corpus application with the domestic court, in which he sought the applicant's immediate release. No judicial decision appears to have been taken in response to that application.

7. On 27 October 2016 the Krasnogvardiyskyy District Court of Dnipropetrovsk granted the hospital's request for the extension of the applicant's inpatient treatment.

8. The applicant's lawyer appealed, arguing that the hospital had failed to discharge the applicant on 11 October 2016 when his previous psychiatric treatment order had expired. On 7 December 2016 the Dnipropetrovsk Regional Court of Appeal upheld the decision of the court of first instance, noting that the applicant's detention had been lawful as the request for his continued detention had been lodged before the expiry of the six-month time-limit. On 3 March 2017 the Higher Specialised Court for Civil and Criminal Matters declined to examine an appeal on points of law lodged by the applicant's lawyer, on the grounds that the lawyer had failed to comply with procedural formalities.

9. Subsequently, on 6 September 2018, owing to an improvement in the applicant's mental health, the Samarskyy District Court of Dnipropetrovsk ordered his discharge from hospital for outpatient treatment.

## THE COURT'S ASSESSMENT

### ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

10. Relying on Article 5 §§ 1 and 4 and Articles 6 and 13 of the Convention, the applicant complained that his detention in the psychiatric hospital between 11 and 26 October 2016 had been unlawful as it had not been authorised by a court decision, and that he did not have an effective procedure at his disposal to challenge it. Being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), the Court considers that the applicant's complaints should be examined solely under Article 5 §§ 1 and 4 of the Convention.

## A. Admissibility

11. The Government submitted that by failing to properly lodge his appeal on points of law, the applicant had not exhausted domestic remedies. They further contended that it had been open to the applicant to bring a claim for damages against the hospital administration.

12. The applicant disagreed, arguing that those domestic remedies could not be considered effective as they could not have secured his release.

13. The Court reiterates that under Article 35 § 1 of the Convention, an applicant should have normal recourse to remedies which are available and sufficient to afford redress in respect of the alleged breaches. Where the lawfulness of deprivation of liberty is concerned, retrospective remedies, such as an action for damages against the State, would not normally be considered remedies that have to be used while the deprivation of liberty is ongoing since they cannot secure the applicant's release if his or her detention is unlawful, as required by Article 5 § 4 (see *Zaichenko v. Ukraine (no. 2)*, no. 45797/09, §§ 84-88, 26 February 2015, and, *mutatis mutandis*, *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 207, 22 December 2020).

14. Turning to the present case, the Court observes that neither a claim for damages, nor the applicant's appeal on points of law against the domestic court's decision of 27 October 2016, would have afforded the applicant a possibility of release while the deprivation of his liberty between 11 and 26 October 2016 was ongoing. The Court therefore dismisses the Government's preliminary objection.

15. The Court further considers that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, nor inadmissible on any other grounds. It must therefore be declared admissible.

## B. Merits

### *1. Article 5 § 1 of the Convention (detention between 11 and 26 October 2016)*

16. The Government submitted that the delay in examining the hospital's request for the extension of the applicant's detention had not affected the overall lawfulness of his deprivation of liberty. The need for the applicant's detention and treatment in a psychiatric facility had been based on a consensus among medical professionals.

17. The Court reiterates that any deprivation of liberty must, in addition to falling within one of the exceptions set out in sub-paragraphs (a) to (f) of Article 5 § 1, be "lawful". Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof

(see *Ilnseher v. Germany* [GC], nos. 10211/12 and 27505/14, § 135, 4 December 2018).

18. Having regard to the provisions of national law (see paragraphs 3-4 above), the Court agrees with the applicant that his compulsory inpatient treatment as extended on 11 April 2016 automatically expired six months later, namely on 11 October 2016. It further notes that from that date until the domestic court's decision of 27 October 2016, there was no judicial decision authorising the applicant's continued psychiatric detention. The applicant's detention in hospital during that period was therefore incompatible with a procedure prescribed by domestic law (see *Storck v. Germany*, no. 61603/00, § 112, ECHR 2005-V, and *D.R. v. Lithuania*, no. 691/15, § 71, 26 June 2018).

19. It follows that there has been a violation of Article 5 § 1 of the Convention.

*2. Article 5 § 4 of the Convention*

20. The Government reiterated their arguments as to the availability of domestic measures (see paragraph 11 above), arguing that there had been no violation of Article 5 § 4 of the Convention.

21. The Court reiterates that Article 5 § 4 deals only with those remedies which must be made available during a person's detention with a view to that person obtaining a speedy judicial review of the lawfulness of the detention leading, where appropriate, to his or her release (see *Slivenko v. Latvia* [GC], no. 48321/99, § 158, ECHR 2003-X, and *Bataliny v. Russia*, no. 10060/07, § 69, 23 July 2015).

22. The Court notes that on 20 October 2016 the applicant's lawyer filed a habeas corpus application, a procedure by which the lawfulness of the applicant's detention following the expiry of his compulsory inpatient treatment could have been examined. In the absence of a judicial ruling concerning that application, there is no evidence that the domestic courts ever examined it, which in itself raises an issue under Article 5 § 4 (compare *Trofymenko v. Ukraine* [Committee], no. 18444/18, §§ 20-22, 4 May 2023).

23. However, even assuming that on 27 October 2016 the Krasnogvardiyskyy District Court of Dnipropetrovsk, while considering the hospital's request for the extension of the applicant's compulsory treatment, also examined the substance of the lawyer's habeas corpus application, the period of seven days which elapsed before the domestic court reviewed the lawfulness of the applicant's detention would not have been compatible with the "speediness" requirement (see *O.P. v. the Republic of Moldova*, no. 33418/17, § 48, 26 October 2021).

24. Regard also being had to its earlier findings as to the ineffectiveness of the available domestic remedies (see paragraphs 13-14 above), the Court holds that there has been a violation of Article 5 § 4 of the Convention.

## APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 3,750 in respect of costs and expenses incurred before the Court.

26. The Government contested those claims.

27. The Court awards the applicant EUR 6,200 in respect of non-pecuniary damage, plus any tax that may be chargeable.

28. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 1,000 for costs and expenses in the proceedings before it, plus any tax that may be chargeable to the applicant, to be paid directly into the bank account of his representative Mr M. Tarakhkalo.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 6,200 (six thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be transferred directly to the account of the applicant's representative Mr M. Tarakhkalo;
   (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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Martina Keller<br>Deputy Registrar | Lado Chanturia<br>President |