

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

FIFTH SECTION

CASE OF SERGIYENKO v. UKRAINE

(Application no. 72678/16)

JUDGMENT

STRASBOURG

7 November 2024

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



In the case of Sergiyenko 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. 72678/16) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 18 November 2016 by a Ukrainian national, Mr Oleksandr Petrovych Sergiyenko ("the applicant"), who was born in 1982, lives in Kyiv and was represented by Ms O.O. Chernova, Mr K.V. Globa and Mr D.I. Mazurok, lawyers practising in Kyiv;

the decision to give notice of the complaints under Articles 3 and 5 § 4 of the Convention to the Ukrainian Government ("the Government"), represented by their Agent, Ms M. Sokorenko, from the Ministry of Justice, and to declare inadmissible the remainder of the application;

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 application concerns the alleged ill-treatment of the applicant in the course of his arrest and the lack of an effective investigation into the matter, in breach of Article 3 of the Convention, and the lengthy examination of his appeal against the court decision ordering his detention, in breach of Article 5 § 4.

I. CRIMINAL INVESTIGATION IN RESPECT OF THE APPLICANT AND HIS DETENTION

2. The applicant, a co-defendant in the context of a major criminal investigation by the National Anti-Corruption Bureau ("the NABU") into embezzlement and forgery committed in a group, was arrested on 17 June 2016. He was subsequently placed in pre-trial detention by the courts.

3. On 26 September 2016 the Solomyanskyi District Court of Kyiv decided to replace the applicant's pre-trial detention with 24-hour house arrest. On the morning of 27 September 2016, as the applicant was being escorted from the pre-trial detention facility to his home in line with that

decision, he was arrested by NABU officers on suspicion of money laundering.

4. On 29 September 2016 the Solomyanskyi District Court ordered his detention in the context of the new investigation. On 3 October 2016 the applicant appealed against that decision. However, the hearings at the Kyiv City Court of Appeal ("the Court of Appeal"), initially scheduled for 10 and 21 October 2016, were twice adjourned as the case file had not been transferred from the Solomyanskyi District Court. On 2 November 2016 the Court of Appeal examined the applicant's appeal and rejected it.

II. THE ALLEGED ILL-TREATMENT OF THE APPLICANT AND THE RELATED INVESTIGATION

5. In the course of his arrest on 27 September 2016, the applicant sustained contusions to the chest, hands and nose; these injuries were recorded upon his arrival at the Kyiv temporary detention facility. On 28 September 2016 the Shevchenkivskyi District Court of Kyiv ordered the investigating authority dealing with the criminal case against the applicant to conduct an investigation into the alleged ill-treatment. On 11 October 2016 the applicant submitted a formal complaint to the Kyiv city prosecutor's office about his ill-treatment.

6. Following complaints by the applicant and his relatives and the court order of 28 September 2016, and on instructions from the prosecuting authorities, the NABU opened a criminal investigation into the alleged ill-treatment of the applicant, following several lines of inquiry.

7. According to the findings of this investigation into ill-treatment, the NABU investigator stopped the police car in which the applicant was being transported from the pre-trial detention facility to his home in order to rearrest him in the context of the second set of proceedings that had been instituted against him. The applicant refused to comply with the investigator's request to accompany NABU officers. He started shouting, and his relatives, who had been following the police car, were aggressive towards the investigator and attempted to prevent the applicant's arrest. During this confrontation the investigator and the accompanying officers moved the applicant from the police car to their own car. They responded to the applicant's resistance by immobilising his hands and legs and by using handcuffs.

8. Between 3 November 2016 and 23 March 2017 all lines of inquiry were closed; it was found that the actions of the NABU officers had been lawful. On 23 March 2017 the NABU investigator took several decisions, in one of which he terminated the investigation into the alleged ill-treatment of the applicant, on the grounds that there were no constituent elements of a crime. The applicant challenged that decision. On 13 April 2017 the Solomyanskyi District Court rejected his complaint as having been lodged outside the statutory time-limit. The court noted that the applicant was entitled to

resubmit his complaint and to request that the time-limit be extended. However, the applicant failed to do so; nor did he appeal against the court's decision of 13 April 2017.

9. Referring to Article 3 of the Convention, the applicant complained that he had been ill-treated by the law-enforcement officers in the course of his arrest and also that there had been no effective investigation into the incident. He also complained under Article 5 § 4 and Article 6 § 1 of the Convention that the examination of his appeal against the Solomyanskyi District Court's decision of 29 September 2016 ordering his detention had been too lengthy.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

10. The Government argued that the applicant had failed to exhaust domestic remedies, in that he had not properly appealed against the NABU investigator's decision of 23 March 2017 terminating the criminal investigation into the alleged ill-treatment. In their view, he could have resubmitted his application to the Shevchenkivskyi District Court and requested that the time-limit be extended; he could also have lodged a civil claim for damages. As to the substance of the complaints, the Government submitted that the injuries sustained by the applicant during his arrest were the result of his and his relatives' aggression towards the NABU officers and resistance to their lawful actions. Those events had been duly examined by the authorities and the applicant had not challenged the findings of the related investigation.

11. The applicant disagreed, arguing in general terms about a violation of Article 3 under both its substantive and procedural limbs.

12. The Court finds that the Government's objections are closely linked to the merits of the applicant's complaint under the procedural limb of Article 3 of the Convention. It therefore joins them to the merits.

A. Complaint under the procedural limb of Article 3

13. It is a well-established principle of the Court's case-law that, where an individual raises an arguable claim that he or she has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision requires by implication that there should be an effective official investigation. Such investigation should be capable of leading to the identification and punishment of those responsible, as well as comply with the requirements of promptness, thoroughness, independence and public scrutiny (see, for example, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, §§ 182-85, ECHR 2012).

14. Given the circumstances of the present case (see paragraph 5 above) and the absence of a dispute between the parties regarding the nature and gravity of the injuries sustained by the applicant while under the control of the law enforcement officers, the Court considers that his claim was thus arguable for the purpose of triggering the State's procedural obligation to carry out an effective domestic investigation into the matter.

15. The Court notes at the outset that the Government did not provide copies of the NABU investigator's decision to terminate the criminal investigation into the alleged ill-treatment of the applicant. The Court is therefore unable to assess the effectiveness of the investigation in question. Furthermore, it observes that the investigation into the alleged ill-treatment by NABU officers was conducted by the same body (that is, the NABU itself; see paragraph 6 above). In this connection, the Court reiterates that for an investigation to be effective, the persons responsible for carrying it out must be independent from those under investigation. This means not only a lack of hierarchical or institutional connection, but also practical independence (see *Bouyid v. Belgium* [GC], no. 23380/09, § 118, ECHR 2015). The Court considers that this fact alone demonstrates that the investigation into the applicant's complaints of ill-treatment did not have the necessary element of independence to be compatible with the requirements of Article 3, and that this aspect would have remained unchanged even if the applicant had challenged the NABU investigator's decision of 23 March 2017, as suggested by the Government (see paragraph 10 above).

16. The Court therefore concludes that the Government's preliminary objection must be dismissed and that there has been a violation of the procedural aspect of Article 3 of the Convention.

B. Complaint under the substantive limb of Article 3

17. Having regard to the general principles in this area as summarised in *Bouyid (*cited above, §§ 81-90), the Court observes that, while under the control of law-enforcement officers, the applicant sustained injuries which triggered an obligation on the part of the national authorities to carry out an effective and thorough investigation with a view to establishing the origin of the applicant's alleged and documented injuries and to identifying and punishing those responsible, should the allegations of ill-treatment prove to be true.

18. It further notes that although the Government referred to the NABU investigator's decisions to terminate the criminal investigation into the alleged ill-treatment of the applicant, they failed to provide the Court with copies of the relevant decisions and did not provide any explanation for their absence. It follows that the Government did not disprove the applicant's allegation that he had been a victim of ill-treatment at the hands of law enforcement officers.

19. The above findings are sufficient for the Court to establish that the applicant was subjected to ill-treatment which must be classified as inhuman and degrading.

20. There has accordingly been a violation of the substantive aspect of Article 3 of the Convention.

II. OTHER ALLEGED VIOLATION UNDER WELL-ESTABLISHED CASE-LAW

21. The applicant also raised a complaint which is covered by the Court's well-established case-law. He complained under Article 5 § 4 of the Convention that the examination of his appeal against the decision of the Solomyanskyi District Court of 29 September 2016 ordering his detention had taken too long. This complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. Accordingly, it must be declared admissible. The Court observes that the applicant's appeal against the above-mentioned decision, lodged on 3 October 2016, was examined by the Court of Appeal on 2 November 2016, that is, within 28 days. The available material shows that the Court of Appeal had to adjourn the hearings of the applicant's appeal twice, as the case file had not been transferred from the Solomyanskyi District Court. Having examined all the material before it and owing to the absence of any explanation from the Government on the matter, the Court concludes that, in the light of its findings in *Lebedev v. Russia* (no. 4493/04, § 96, 25 October 2007), the examination of the applicant's appeal at the Court of Appeal was excessively lengthy and that the applicant's complaint discloses a violation of Article 5 § 4 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage. The Government considered that claim unsubstantiated and excessive.

23. The Court awards the applicant EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb;

3. *Holds* that there has been a violation of Article 3 of the Convention under its substantive limb;

4. *Holds* that there has been a violation of Article 5 § 4 of the Convention regarding the excessive length of the appeal proceedings;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *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.

Martina Keller Deputy Registrar	Lado Chanturia President