

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

FIFTH SECTION

CASE OF ZAKHAROV v. UKRAINE

(Application no. 52784/19)

JUDGMENT

STRASBOURG

10 November 2022

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



In the case of Zakharov v. Ukraine,

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

Stéphanie Mourou-Vikström*, President*,
Ivana Jelić,
Kateřina Šimáčková*, judges*,
and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 20 October 2022,

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

PROCEDURE

1. The case originated in an application against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 28 September 2019.

2. The Ukrainian Government ("the Government") were given notice of the application.

THE FACTS

3. The applicant's details and information relevant to the application are set out in the appended table.

4. The applicant complained of the life sentence with no prospect of release. He also raised other complaints under the provisions of the Convention.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

5. The applicant complained principally of the life sentence with no prospect of release. He relied on Article 3 of the Convention, which reads as follows:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

6. The Court reiterates that the Convention does not prohibit the imposition of a life sentence on those convicted of especially serious crimes, such as murder. Yet to be compatible with Article 3 such a sentence must be reducible *de jure* and *de facto*, meaning that there must be both a prospect of release for the prisoner and a possibility of review. The basis of such review must extend to assessing whether there are legitimate penological grounds for the continuing incarceration of the prisoner. These grounds include

punishment, deterrence, public protection and rehabilitation. The balance between them is not necessarily static and may shift in the course of a sentence, so that the primary justification for detention at the outset may not be so after a lengthy period of service of sentence. The importance of the ground of rehabilitation is underlined, since it is here that the emphasis of European penal policy now lies, as reflected in the practice of the Contracting States, in the relevant standards adopted by the Council of Europe, and in the relevant international materials (see *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09 and 2 others, §§ 59-81, ECHR 2013 (extracts)).

7. In the leading case of *Petukhov v. Ukraine (no. 2)* (no. 41216/13, 12 March 2019), the Court already found a violation in respect of issues similar to those in the present case.

8. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints.

9. These complaints are therefore admissible and disclose a breach of Article 3 of the Convention.

II. REMAINING COMPLAINTS

10. The applicant also raised other complaints under various Articles of the Convention.

11. The Court has examined the application and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, these complaints either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

12. 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."

13. Regard being had to the documents in its possession and to its case-law (see, in particular, *Petukhov (no. 2),* cited above), the Court considers that the finding of a violation constitutes in itself sufficient just satisfaction.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the life sentence with no prospect of release admissible and the remainder of the application inadmissible;

2. *Holds* that these complaints disclose a breach of Article 3 of the Convention concerning the life sentence with no prospect of release;

3. *Holds* the finding of a violation constitutes in itself sufficient just satisfaction.

Done in English, and notified in writing on 10 November 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina Acting Deputy Registrar	Stéphanie Mourou-Vikström President

APPENDIX

Application raising complaints under Article 3 of the Convention (life sentence with no prospect of release)

Application no. Date of introduction	Applicant's name Year of birth	Name of the trial court Date of the life sentence	Judicial decision upholding the conviction
52784/19 28/09/2019	**Grygoriy Sergiyovych ZAKHAROV** 1980	Volyn Regional Court 28/05/2001	Supreme Court of Ukraine 10/07/2001