

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

FIFTH SECTION

DECISION

Applications nos. 453/21 and 9741/21
Sergiy Volodymyrovych ZBYRANYK against Ukraine and
Oleksandr Olegovych SMETANIN against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 10 March 2022 as a Committee composed of:

Lətif Hüseynov, *President,*
Lado Chanturia,
Arnfinn Bårdsen, *judges,*

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having regard to the above applications lodged on the various dates indicated in the appended table,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The list of applicants is set out in the appended table.

The applicants' complaints under Articles 3 and 13 of the Convention concerning the inadequate conditions of detention and the lack of any effective remedy in domestic law were communicated to the Ukrainian Government ("the Government").

THE LAW

A. Joinder of the applications

Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

B. Complaints under Articles 3 and 13 of the Convention (inadequate conditions of detention and lack of any effective remedy in domestic law)

The Government submitted that when lodging their application with the Court to complain about their stay in poor conditions of detention, the applicants had failed to inform it that they had already been transferred to a different detention facility of which they did not complain. The transfer occurred on the day preceding the lodging of the applications with the Court. The Government asked the Court to reject the applications as an abuse of the right of individual application in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

The applicants acknowledged the dates of the release or transfer as presented by the Government but provided no further explanation.

The Court reiterates that an application may be rejected as an abuse of the right of individual application within the meaning of Article 35 § 3 (a) of the Convention if, among other reasons, it was knowingly based on false information or if significant information and documents were deliberately omitted, either where they were known from the outset or where new significant developments occurred during the proceedings. Incomplete and therefore misleading information may amount to an abuse of the right of application, especially if the information in question concerns the very core of the case and no sufficient explanation is given for the failure to disclose that information (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014; *S.A.S. v. France* [GC], no. 43835/11, § 67, ECHR 2014; and *Čaluk and Others v. Bosnia and Herzegovina* (dec.) [Committee], nos. 3927/15 and 63 others, §§ 18-19, 25 September 2018).

Turning to the present case, the Court observes that the applicants had left the detention facilities of which they complained (see table attached) before they signed and dispatched the application and authority forms. However, in their application forms the applicants stated that they were still kept in the detention facilities mentioned in the table attached. This information remained unchanged until they received the Government's observations.

Even in their comments on the Government's submissions, the applicants acknowledged the dates of the detention as presented by the Government but failed to explain why they had not mentioned the salient and crucial fact of their transfer in their application forms to the Court. Neither the applicants nor their representatives commented on the Government's argument of abuse of individual petition. They sent in apparently pro-forma responses concerning conditions of detention, without any acknowledgement or adjustment to explain the incorrect information in the application forms.

Having regard to the fact that the misleading information concerned the very core of the applications, the Court finds that such conduct was contrary to the purpose of the right of individual application. Lawyers must understand

that, having due regard to the Court's duty to examine allegations of human rights violations, they must show a high level of professional prudence and meaningful cooperation with the Court by sparing it the introduction of unmeritorious complaints and, both before proceedings have been instituted and thereafter, they must inquire diligently into all the details of the case, meticulously abide by all the relevant rules of procedure and must urge their clients to do the same. Otherwise, the wilful or negligent misuse of the Court's resources may undermine the credibility of lawyers' work in the eyes of the Court and even, if it occurs systematically, may result in particular individual lawyers being banned from representing applicants under Rule 36 § 4 (b) of the Rules of Court (see *Stevančević v. Bosnia and Herzegovina* (dec.), no. 67618/09, § 29,10 January 2017).

In the light of the foregoing, the Court considers that the present applications constitute an abuse of the right of individual application within the meaning of Article 35 § 3 (a) of the Convention. They must therefore be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 15 September 2022.

Viktoriya Maradudina Acting Deputy Registrar	Lətif Hüseynov President

APPENDIX

List of applications raising complaints under Articles 3 and 13 of the Convention (inadequate conditions of detention and lack of any effective remedy in domestic law)

No.	Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Facility Start and end date Duration
1.	453/21 20/11/2020	**Sergiy Volodymyrovych ZBYRANYK** 1985	Vavrenyuk Oleksandr Volodymyrovych Pyatykhatky	Cherkasy Detention Facility 09/02/2020 to 19/11/2020 9 months and 11 days
2.	9741/21 20/01/2021	**Oleksandr Olegovych SMETANIN** 1958	Pustyntsev Andriy Vitaliyovych Dnipro	Mykolayiv Pre-trial Detention Facility 02/03/2018 to 15/01/2021 2 years and 10 months and 14 days