

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

FIFTH SECTION

# CASE OF AGEYEV AND OTHERS v. UKRAINE

*(Applications nos. 39666/16 and 2 others –*
*see appended list)*

JUDGMENT

STRASBOURG

18 January 2024

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



**In the case of Ageyev and Others v. Ukraine,**

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

Mārtiņš Mits*, President*,
Kateřina Šimáčková,
Mykola Gnatovskyy*, judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 14 December 2023,

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

# PROCEDURE

1. The case originated in applications against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on the various dates indicated in the appended table

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

# THE FACTS

3. The list of applicants and the relevant details of the applications are set out in the appended table.

4. The applicants complained of the deficiencies in proceedings for review of the lawfulness of detention. Some applicants also raised other complaints under the provisions of the Convention.

# THE LAW

## I. JOINDER OF THE APPLICATIONS

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

## II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

6. The applicants complained principally of the deficiencies in proceedings for review of the lawfulness of detention. They relied, expressly or in substance, on Article 5 § 4 of the Convention.

7. The Court reiterates that under Article 5 § 4 of the Convention, arrested or detained persons are entitled to a review bearing upon the procedural and substantive conditions which are essential for the "lawfulness", in the sense of the Convention, of their deprivation of liberty (see *Lietzow v. Germany*, no. 24479/94, § 44, ECHR 2001-I). It is true that the provision in question does not compel the Contracting States to set up a second level of jurisdiction

for the examination of the lawfulness of detention and for hearing applications for release. Nevertheless, a State which institutes such a system must in principle accord to the detainees the same guarantees on appeal as at first instance (see *Fodale v. Italy*, no. 70148/01, § 39, ECHR 2006-VII).

8. In the leading cases of *Lebedev v. Russia* (no. 4493/04, §§ 109-15, 25 October 2007), *Kharchenko v. Ukraine*, (no. 40107/02, §§ 84-87, 10 February 2011) and *Korneykova v. Ukraine* (no. 39884/05, §§ 69-70, 19 January 2012) the Court found a violation in respect of issues, similar to those in the present case (see the appended table).

9. 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.

10. The Court therefore concludes that there has been a breach of Article 5 § 4 of the Convention in the instant case.

## III. OTHER ALLEGED VIOLATIONS UNDER WELL-ESTABLISHED CASE-LAW

11. In application no. 27733/21, the applicant also submitted other complaints which also raised issues under the Convention, given the relevant well-established case-law of the Court (see appended table). These complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor are they inadmissible on any other ground. Accordingly, they must be declared admissible. Having examined all the material before it, the Court concludes that they also disclose violations of the Convention in the light of its findings in the cases set out in the appended table.

## IV. REMAINING COMPLAINTS

12. In application no. 39666/16, the applicant also raised other complaints under Article 13 of the Convention.

13. 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.

## V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

14. Regard being had to the documents in its possession and to its case-law (see, in particular, *Oravec v. Croatia,* no. 51249/11, §§ 78-80,

11 July 2017), the Court considers it reasonable to award the sums indicated in the appended table.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the complaints concerning the deficiencies in the proceedings for review of the lawfulness of detention and the other complaints under the well-established case-law of the Court, as set out in the appended table, admissible and the remainder of application no. 39666/16 inadmissible;

3. *Holds* that these complaints disclose a breach of Article 5 § 4 of the Convention concerning the deficiencies in the proceedings for review of the lawfulness of detention;

4. *Holds* that there has been a violation of the Convention as regards the other complaints raised under the well-established case-law of the Court (see appended table);

5. *Holds*
   (a) that the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table, 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 amounts 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 18 January 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Viktoriya Maradudina | Mārtiņš Mits |
| Acting Deputy Registrar | President |

# APPENDIX

## List of applications raising complaints under Article 5 § 4 of the Convention (deficiencies in proceedings for review of the lawfulness of detention)

| No. | Application no.<br>Date of introduction | Applicant's name<br>Year of birth | Representative's name and location | Name of the first-instance court<br>Date of detention order | Other relevant dates | Appellate court or court examining request for release<br>Date of decision | Procedural deficiencies | Other complaints under well-established case-law | Amount awarded for non-pecuniary damage per applicant (in euros)[1] | Amount awarded for costs and expenses per application (in euros)[2] |
|---|---|---|---|---|---|---|---|---|---|---|
| 1. | 39666/16<br>10/06/2016 | **Yuriy Mykolayovych AGYEYEV**<br>1974 | Lyapin Volodymyr Yuriyovych<br>Zaporizhzhya | Zaporizhzhya Regional Court of Appeal<br>21/03/2016 | | | Applicant's absence from detention hearings, attributable to the authorities (*Lebedev v. Russia*, no. 4493/04, §§ 109-15, 25 October 2007; *Korneykova v. Ukraine*, no. 39884/05, §§ 69-73, 19 January 2012) | | 500 | 250 |
| 2. | 27733/21<br>19/05/2021 | **Vadym Borysovych IZOTOV**<br>1969 | Boychenko Yegor Leonidovych<br>Strasbourg | Dzerzhynskyy District Court of Kharkiv<br>13/11/2020<br><br>Dzerzhynskyy District Court of Kharkiv<br>16/03/2021 | Date of the request for review of detention<br>15/12/2020,<br><br>Date of lodging appeal<br>17/03/2021 | Dzerzhynskyy District Court of Kharkiv, 03/02/2021<br><br>Kharkiv Court of Appeal, 19/04/2021 | Lack of speediness of review of detention (*Kharchenko v. Ukraine*, no. 40107/02, §§ 86-87, 10 February 2011) | Art. 5 (5) - lack of, or inadequate compensation, for the violation of Art. 5 § 4 of the Convention – (*Tymoshenko v. Ukraine*, no. 49872/11, §§ 286-87, 30 April 2013; *Kotiy v. Ukraine*, no. 28718/09, § 55, 5 March 2015) | 500 | 250 |
| 3. | 57905/21<br>17/11/2021 | **Sergiy Sergiyovych ISAKOV**<br>2003 | Muravska Oksana Oleksandrivna<br>Rivne | Bilyayivskyy Local Court of Odesa Region<br>22/09/2021 | Date of lodging appeal<br>27/09/2021 | Odesa Court of Appeal 18/11/2021 | Lack of speediness of review of detention (*Kharchenko v. Ukraine*, no. 40107/02, §§ 86-87, 10 February 2011) | | 500 | 250 |

[1] Plus any tax that may be chargeable to the applicants.
[2] Plus any tax that may be chargeable to the applicants.