



FIFTH SECTION

CASE OF DERIGLAZOV AND OTHERS v. UKRAINE

*(Applications nos. 42363/18 and 5 others –
see appended list)*

JUDGMENT

STRASBOURG

30 September 2021

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

In the case of Deriglazov and Others v. Ukraine,

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

Stéphanie Mourou-Vikström, *President*,

Jovan Ilievski,

Mattias Guyomar, *judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar*,

Having deliberated in private on 9 September 2021,

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 inadequate conditions of their detention and of the lack of any effective remedy in domestic law. In application no. 42363/18 the applicant 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. THE LOCUS STANDI OF MS VALERIYA OLEKSANDRIVNA GOLOVA (APPLICATION NO. 10720/20)

6. As concerns the complaints raised by the applicant in application no. 10720/20, the Court notes that the applicant died on 8 December 2020, while the case was pending before the Court. The applicant’s wife, Ms Valeriya Oleksandrivna Golova, has requested to pursue the application in her husband’s stead. Having regard to its case-law (see, for example, *Benyaminson v. Ukraine*, no. 31585/02, § 83, 26 July 2007, and

Horváthová v. Slovakia, no. 74456/01, §§ 25-27, 17 May 2005), the Court sees no reason to refuse the request. However, reference will still be made to the applicant throughout the present text.

III. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

7. The applicants complained principally of the inadequate conditions of their detention and lack of an effective remedy in this connection. They relied on Articles 3 and 13 of the Convention, which read as follows:

Article 3

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

Article 13

“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority ...”

8. The Court notes that the applicants were kept in detention in poor conditions. The details of the applicants’ detention are indicated in the appended table. The Court refers to the principles established in its case-law regarding inadequate conditions of detention (see, for instance, *Muršić v. Croatia* [GC], no. 7334/13, §§ 96-101, ECHR 2016). It reiterates in particular that a serious lack of space in a prison cell weighs heavily as a factor to be taken into account for the purpose of establishing whether the detention conditions described are “degrading” from the point of view of Article 3 and may disclose a violation, both alone or taken together with other shortcomings (see *Muršić*, cited above, §§ 122 -141, and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 149-159, 10 January 2012).

9. In the leading cases of *Melnik v. Ukraine*, no. 72286/01, 28 March 2006 and *Sukachov v. Ukraine*, no. 14057/17, 30 January 2020, the Court already found a violation in respect of issues similar to those in the present case.

10. 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. Having regard to its case-law on the subject, the Court considers that in the instant case the applicants’ conditions of detention, as described in the table attached below, were inadequate.

11. The Court further notes that the applicants did not have at their disposal an effective remedy in respect of these complaints.

12. These complaints are therefore admissible and disclose a breach of Articles 3 and 13 of the Convention.

IV. OTHER ALLEGED VIOLATIONS UNDER WELL-ESTABLISHED CASE-LAW

13. In application no. 42363/18 the applicant 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 *Merit v. Ukraine*, no. 66561/01, 30 March 2004.

V. REMAINING COMPLAINTS

14. In application no. 7943/20, the applicant raised further complaints under Article 3 of the Convention as to the inadequate conditions of his detention between 18 August 2020 and 11 February 2021.

15. The Court has examined these complaints 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, they 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 application must be rejected in accordance with Article 35 § 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

16. 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.”

17. Regard being had to the documents in its possession and to its case-law (see, in particular, *Sukachov*, cited above, §§ 165 and 167), the Court considers it reasonable to award the sums indicated in the appended table.

18. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Decides* that Ms V.O. Golova, the widow of the applicant in application no. 10720/20, can pursue the proceedings in his stead;
3. *Declares* the complaints concerning the inadequate conditions of detention, the lack of any effective remedy in domestic law and the other complaints under well-established case-law of the Court, as set out in the appended table, admissible and the remainder of application no. 7943/20 inadmissible;
4. *Holds* that these complaints disclose a breach of Articles 3 and 13 of the Convention concerning the inadequate conditions of detention and the lack of any effective remedy in domestic law;
5. *Holds* that there has been a violation of the Convention as regards the other complaints raised under well-established case-law of the Court (see appended table);
6. *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 30 September 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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Viktoriya Maradudina
Acting Deputy Registrar

Stéphanie Mourou-Vikström
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	Sq. m per inmate	Specific grievances	Other complaints under well-established case-law	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros) ¹
1.	42363/18 22/08/2018	Artem Igorovych DERIGLAZOV 1989	Tarasenko Anatoliy Volodymyrovych Kharkiv	Kharkiv Pre-Trial Detention Facility 08/07/2010 pending More than 11 years and 29 days	3 m ²	infestation of cell with insects/rodents, lack of or insufficient electric light, lack of or insufficient natural light, overcrowding, constant electric light, inadequate temperature	Art. 6 (1) - excessive length of criminal proceedings - from 08/07/2010 to 20/03/2018 for 3 levels of jurisdiction	9,800
2.	7943/20 29/01/2020	Yevgen Oleksandrovykh KRASNOSHCHOK 1989	Kychenok Andriy Sergiyovych Kyiv	Mykolayiv Pre-Trial Detention Facility 03/05/2019 to 18/08/2020 1 year and 3 months and 16 days	6,9-7,9m ²	inadequate temperature, lack of fresh air, lack of or inadequate hygienic facilities, lack of or insufficient natural light, lack of or insufficient physical exercise in fresh air, lack or insufficient quantity of food, no or restricted access to shower, poor quality of potable water, poor quality of food		3,700

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

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No.	Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Facility Start and end date Duration	Sq. m per inmate	Specific grievances	Other complaints under well-established case-law	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros) ¹
3.	10720/20 17/02/2020	Vadym Lvovych CHORNYI 1972 The applicant died on 8 December 2020. <u>Heir:</u> Valeriya Oleksandrivna GOLOVA	Leshchenko Andriy Viktorovych Odessa	Odessa Pre-Trial Detention Facility 20/08/2019 to 27/11/2019 3 months and 8 days	3.4 m ²	bunk beds, constant electric light, inadequate temperature, lack of fresh air, lack of or insufficient physical exercise in fresh air, lack or insufficient quantity of food, passive smoking, sharing cells with inmates infected with contagious disease		1,300
4.	16962/20 17/03/2020	Georgiy Dmytrovych YANYEV 1949	Yolkin Andriy Valeriyovych Kryvyy Rig	Kyiv Pre-Trial Detention Facility 03/12/2018 to 19/09/2019 9 months and 17 days	2,5 m ²	overcrowding		2,600
5.	18891/20 11/03/2020	Dmytro Mykolayovych NOVOKHATSKYY 1992	Pustyntsev Andriy Vitaliyovych Dnipro	Dnipro Detention Facility no.4 10/05/2016 pending More than 5 years and 2 months and 27 days	2.6 m ²	lack of fresh air, lack of or inadequate hygienic facilities, lack of or poor quality of bedding and bed linen, lack or insufficient quantity of food, poor quality of food, no or restricted access to shower, lack of or insufficient electric light, overcrowding		7,500

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No.	Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Facility Start and end date Duration	Sq. m per inmate	Specific grievances	Other complaints under well-established case-law	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros) ¹
6.	43631/20 26/08/2020	Valeriy Yevgenovych VOLKOV 1967	Rybiy Sergiy Mykolayovych Dnipro Kulbach Sergiy Oleksandrovyich Limoges Zhukova Yevgeniya Borysivna Dnipro	Dnipro Detention Facility no. 4 12/06/2019 to 26/08/2020 1 year and 2 months and 15 days	2.6 m ²	overcrowding		3,500