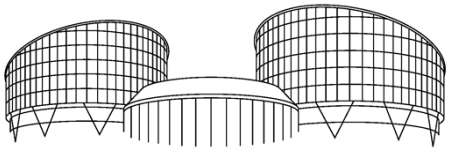

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF DUBOVTSEV AND OTHERS v. UKRAINE

(Applications nos. 21429/14 and 9 others – see appended list)

JUDGMENT

Art 5 § 1 • Lawful arrest or detention • Unjustified detention of Maidan protestors as part of the authorities' deliberate strategy to put an end to protests

STRASBOURG

21 January 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Dubovtsev and Others v. Ukraine,

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

Síofra O'Leary, *President,*
Yonko Grozev,
Ganna Yudkivska,
Mārtiņš Mits,
Gabriele Kucsko-Stadlmayer,
Lado Chanturia,
Angelika Nußberger, *judges,*
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the applications against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by fourteen Ukrainian nationals ("the applicants"), whose personal information and other details are set out in the appended table;

the decision to give notice to the Ukrainian Government ("the Government") of the applications;

the decision to give priority to the applications (Rule 41 of the Rules of Court);

the parties' observations;

Having deliberated in private on 7 May 2019 and 9 December 2020,

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

INTRODUCTION

1. These ten applications, brought by fourteen individuals, concern the applicants' allegedly unlawful and arbitrary detention, contrary to Article 5 § 1 of the Convention, in connection with a demonstration in Dnipro on 26 January 2014, one of the mass protests commonly referred to as "Euromaidan" and/or "Maidan". These applications are part of thirty-three applications against Ukraine lodged with the Court under Article 34 of the Convention by thirty-nine individuals in relation to the Maidan protests. For the reasons stated in *Shmorgunov and Others v. Ukraine* (nos. 15367/14 and 13 others, § 5, 21 January 2021, not final), those thirty-three applications could not all be joined and examined in a single judgment. The judgments in response to those applications should, however, be read as one whole.

THE FACTS

2. The applicants were represented by various lawyers, as indicated in the appended table.

3. The Government were represented by their Agent, most recently Mr I. Lishchyna, of the Ministry of Justice.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. DEMONSTRATION AND THE APPLICANTS' ARREST IN DNIPRO ON 26 JANUARY 2014

5. At about 2 p.m. on 26 January 2014 a demonstration in support of the Euromaidan/Maidan protests was held in front of the Dnipropetrovsk Regional Administration building in Dnipro (at the time, Dnipropetrovsk). Several thousand individuals took part.

6. Some of the applicants took part in it (Mr S. Khmelyovskyy, Mr E. Shevchenko, Mr V. Shevchenko, Mr Y. Bezotosnyy, Mr K. Pegarkov, Mr O. Tsyganov, Mr V. Shebanov and Mr V. Khlusov, applications nos. 21424/14, 32024/14, 32161/14, 32778/14, 33719/14 and 51084/14), whereas other applicants stated that they had not participated and had merely been present nearby (Mr V. Dubovtsev, Mr L. Babin, Mr K. Orbeladze, Mr Y. Balabay, Mr V. Lapin and Mr O. Bereza, applications nos. 21429/14, 33729/14, 42200/14 and 42204/14).

7. According to the parties, the demonstration was peaceful.

8. The applicants stated that an unspecified number of police officers were guarding the Dnipropetrovsk Regional Administration building, together with several hundred non-State agents, so-called "titushky" (see *Shmorgunov and Others*, cited above, § 15, with further references) dressed in plain clothes and armed with wooden and metal sticks. Many of those individuals wore face masks. The Government did not contest this.

9. According to the Government, during the protest on 26 January 2014 there was a "clash" or "conflict" and some of the protesters and other individuals who were present were detained by police.

10. The applicants were arrested by the police between around 5 p.m. and 6 p.m., and subsequently they were taken to either the Babushkinskyy District police station or the Kirovskyy District police station in Dnipro.

11. According to Mr Y. Balabay, he was arrested and then taken to the Kirovskyy District police station by several titushky.

12. Mr V. Lapin stated that he had been beaten by the police in the course of his arrest, but provided no details in that regard (application no. 42200/14).

II. CRIMINAL PROCEEDINGS AGAINST THE APPLICANTS

13. At around midnight, while at the police station, the applicants were informed that they were suspected of having committed the crime of mass disorder (Article 294 of the Criminal Code, see *Shmorgunov and Others*,

cited above, § 201). The suspicion was based on the statements of a number of police officers who had been questioned as witnesses. Most of those police officers were those who had arrested the applicants. According to their statements, during the demonstration on 26 January 2014, the applicants had been part of a group of individuals wearing face masks and armed with sticks who had called for a change of regime and/or the occupation of the Dnipropetrovsk Regional Administration building, behaved aggressively, and used obscene language. Allegedly, some of the applicants had thrown stones and other unspecified objects at the police officers, and some had shown resistance to the police in the course of their arrest.

14. The notification of suspicion in respect of Mr Y. Balabay, a copy of which was provided to the Court, indicated that during the protest on 26 January 2014 he had called for the occupation of the Dnipropetrovsk Regional Administration building, used obscene language regarding the police officers and "used wooden sticks as weapons".

15. The official notifications of suspicion in respect of the other applicants, copies of which were provided to the Court, contain almost identical wording, while adding that those applicants had taken an active part in dismantling a fence with the aim of seizing the building and, having got into the courtyard, had started throwing stones at police officers, thereby "provoking" the police officers and "showing [them] resistance".

16. Between around midnight and 6 a.m. on 27 January 2014 the applicants were questioned. They denied having committed any unlawful actions or resisted the police and stated that they had been arrested for no reason.

17. In the records on the applicants' arrest it was noted that they had been arrested on the grounds set out in Article 208 § 1 (1) and (2) of the CCP (see *Shmorgunov and Others*, cited above, § 206).

18. Between around 3 a.m. and 10 a.m. on 27 January 2014 Judges B. and R. of the Babushkinskyy District Court of Dnipro held hearings and ordered the applicants' detention for sixty days pending the criminal investigations against them on grounds that they were suspected of a serious crime, as evidenced by police reports, "witness statements" and "other material". It was further stated, without specific details, that there was a danger of the applicants absconding, obstructing justice and reoffending.

19. In the decisions, it was noted that the applicants had been arrested by the police at various times between 5 p.m. and 6.45 p.m. on 26 January 2014 and that they had denied the charges against them.

20. On different dates in the period between 31 January and 12 February 2014 the Babushkinskyy District Court and the Dnipropetrovsk Court of Appeal ordered the applicants' release. Some of the applicants were placed under house arrest, whereas some were released upon giving an undertaking

to appear before the investigator. In those decisions, the courts noted that the applicants were "reasonably suspected of having committed a serious crime of ... mass disorder", in some instances stating, in general terms, that there were "witness statements" in their cases and that the applicants' submissions to the contrary could not be accepted.

21. Eventually, on different dates in the period between May and June 2014 the criminal proceedings against the applicants were discontinued for the reason that no crime had been committed. In particular, it was noted that on 26 January 2014 the applicants had taken part in a peaceful protest, *inter alia*, "with the aim of eliminating the threat to Ukraine's constitutional order, sovereignty and independence, and to citizens' right of movement, [and] freedom of speech and peaceful assembly".

III. THE APPLICANTS' CLAIMS FOR COMPENSATION

22. On different dates in the period between June and November 2014 eleven of fourteen applicants, except Mr K. Orbeladze, Mr O. Tsyganov and Mr V. Shebanov (applications nos. 21429/14, 32778/14 and 33719/14), instituted civil proceedings before the Babushkinskyy District Court, seeking compensation for the non-pecuniary damage they had allegedly suffered because of their unlawful prosecution and detention.

23. By separate decisions issued in November and December 2014, the Babushkinskyy District Court, noting that the criminal proceedings had been discontinued because no crime had been committed and citing, *inter alia*, Article 1176 of the Civil Code of 2003 and sections 1-4 of the Act of 1 December 1994 on the procedure for claiming compensation for damage caused to citizens by the unlawful acts of bodies of inquiry, pre-trial investigation authorities, prosecutor's offices and courts ("the Compensation Act of 1994", see paragraph 48 below), allowed those claims in part and awarded, in respect of non-pecuniary damage, UAH 40,000 (the equivalent of about EUR 2,100) to Mr V. Dubovtsev (application no. 21429/14) and UAH 50,000 (the equivalent of about EUR 2,600) to each of the other applicants who had submitted a compensation claim.

24. In so far as those decisions concerned Mr K. Pegarkov, Mr V. Lapin and Mr V. Khlusov (applications nos. 32161/14, 42200/14 and 51084/14), Mr E. Shevchenko (application no. 21424/14) and Mr L. Babin (application no. 21429/14), the court noted that the criminal proceedings against them had been terminated on "exonerating" grounds and that their detention had thus been unlawful.

25. In so far as those decisions concerned Mr Y. Bezotosnyy, Mr Y. Balabay and Mr O. Bereza (applications nos. 32024/14, 33729/14 and 42204/14) and Mr S. Khmelyovskyy and Mr V. Shevchenko (application no. 21424/14), the court held that they had suffered

non-pecuniary damage as the criminal proceedings against them had been instituted unlawfully and they had been under investigation for several months, during which time they had been detained for periods between five and seventeen days and subsequently subjected to house arrest.

26. The applicants did not appeal.

27. On various dates the Dnipropetrovsk Regional Treasury, the Dnipropetrovsk regional police department and the Dnipropetrovsk regional prosecutor's office challenged some of those judgments before the higher courts.

28. By various decisions issued in the period between February and June 2015, the Dniproipetrovsk Regional Court of Appeal and the Higher Specialised Court for Civil and Criminal Matters upheld those judgments in their relevant parts.

29. As regards Mr Y. Bezotosnyy (application no. 32024/14), the Higher Specialised Court for Civil and Criminal Matters held that the lower courts' decision that his detention had been unlawful was correct, without providing any further details in that regard.

30. According to the documents submitted by the Government, in the period between August and September 2016 the awarded amounts were paid to Mr S. Khmelyovskyy, Mr E. Shevchenko, Mr V. Shevchenko, Mr Y. Bezotosnyy, Mr Y. Balabay, Mr V. Lapin and Mr V. Khlusov (applications nos. 21424/14, 32024/14, 33729/14, 42200/14 and 51084/14) and to Mr L. Babin in application no. 21429/14.

31. It was also noted that payment of the awards to Mr V. Dubovtsev (application no. 21429/14) and Mr O. Bereza (application no. 42204/14), regarding which writs of execution were submitted to the State Treasury, "was being considered".

32. According to the documents submitted by the Government, Mr K. Pegarkov (application no. 32161/14) was not paid the awarded amount, as no writ of execution was submitted to the State Treasury. There is no information as to whether this was due to an omission on his part or was imputable to the authorities.

IV. CRIMINAL PROCEEDINGS AGAINST VARIOUS OFFICIALS IN RELATION TO THE EVENTS AT ISSUE

33. Between June and July 2014 some of the applicants and their lawyers petitioned the Dnipro regional prosecutor's office to open criminal proceedings against Judges B. and R. of the Babushkinskyy District Court of Dnipro, as they had allegedly committed criminal offences by knowingly ordering unlawful detention and other unlawful acts (Articles 371, 372 and 375 of the Criminal Code respectively; see *Shmorgunov and Others*, cited above, § 201).

34. Between July 2014 and March 2016 the Dnipropetrovsk regional prosecutor's office initiated several sets of criminal proceedings against some of the officials, police officers, investigators, prosecutors and judges, including Judges R. and B., who had been involved in the proceedings against those who had taken part in the demonstration on 26 January 2014 or had been suspected of participating in it.

35. On 4 March 2015 Judge R. of the Babushkinskyy District Court was indicted, and, according to the Government and the information published on the PGO's dedicated website, he is currently standing trial before a first-instance court (the Leninskyy District Court in Zaporizhzhya).

36. On the same date Judge B. of the Babushkinskyy District Court was notified that he was suspected of having committed the above crimes; the proceedings against him were severed and a separate file[1] was created. Eventually, he absconded, and accordingly he was put on a wanted list. For that reason, the proceedings against him were suspended on 19 January 2016.

37. The official notification of suspicion in respect of Judge B. of the Babushkinskyy District Court, a copy of which was provided to the Court by the Government, contained, *inter alia*, the following points which referenced the applicants in the present case:

(i) On 26 January 2014 a peaceful protest had taken place near the Dnipropetrovsk Regional Administration building. Officials from the law-enforcement bodies and courts of the Dnipropetrovsk Region had been given oral instructions to detain, allegedly regardless of relevant legal constraints, those who took or "could have taken" part in the demonstration and to initiate criminal proceedings against them under Article 294 of the Criminal Code (mass disorder). Allegedly, this had to be done in order to intimidate other protesters and dissuade them from taking part in the protests.

(ii) In accordance with those instructions, between 2 p.m. and 6.30 p.m. on 26 January 2014 a number of protesters, including the applicants, had been arrested. Acting under instructions, police officers had issued allegedly unlawful reports on their arrest without there having been evidence that the protesters had committed the crime of mass disorder.

(iii) When dealing with the applications for authorisation of the continued detention of some of the individuals concerned, including Mr E. Shevchenko, Mr L. Babin, Mr K. Orbeladze, Mr Y. Bezotosnyy, Mr V. Lapin, Mr O. Bereza and Mr V. Khlusov, Judge B. had allegedly been aware: that they had been unlawfully detained; that there had been insufficient evidence to warrant a reasonable suspicion that they had committed the offence; that the information contained in the applications for their detention had been untrue; and that there had been no risk of

[1] Domestic case no. 42015040000000167.

absconding, obstruction or reoffending. Nonetheless, he had subjected them to the most severe preventive measure.

38. On 14 March 2015 criminal proceedings[2] were also brought under Articles 171, 294, 340 and 365 of the Criminal Code (illegal hindrance of journalists' activity, mass disorder, illegal interference with the organisation of demonstrations, and abuse of power involving violence, see *Shmorgunov and Others*, cited above, § 201) against two officials from the Dnipropetrovsk Regional Administration, B. and N., who were suspected of "having obstructed the peaceful protest on 26 January 2014". Notably, they were suspected of having unlawfully permitted at least 300 titushky to access the Dnipropetrovsk Regional Administration building between 24 and 26 January 2014. This had been done for the purpose of instigating mass disorder and disrupting the ongoing "peaceful protest". To that end, it was alleged that the titushky had been given wooden and metal sticks so that they could inflict bodily injuries on the peaceful protesters. On 24 April 2015 B. and N. were indicted, and according to the information published on the PGO's dedicated website, they were, at the time of the adoption of this judgment, standing trial before a first-instance court (the Kirovskyy District Court in Dnipro).

39. On 4 February 2016 criminal proceedings[3] were brought under Article 367 of the Criminal Code (neglect of official duty, see *Shmorgunov and Others*, cited above, § 201) against the investigators from the Dnipro police and the prosecutors from the Dnipropetrovsk regional prosecutor's office who had initiated and conducted the criminal proceedings against those who had taken part in the demonstration on 26 January 2014 or had been suspected of participating in it. According to the information published on the PGO's dedicated website, on 30 December 2016 those proceedings were terminated in accordance with Article 284 § 1 (3) of the CCP (as no elements of a crime had been found in their actions; see *Shmorgunov and Others*, cited above, § 206).

40. According to the parties, the applicants concerned were accorded victim status in the abovementioned proceedings.

V. DISCIPLINARY PROCEEDINGS AGAINST SOME OF THE JUDGES OF THE BABUSHKINSKYY DISTRICT COURT IN RELATION TO THE EVENTS AT ISSUE

41. Between June and July 2014 some of the applicants and the prosecutor of the Dnipropetrovsk Region complained to the Temporary Special Commission ("the TSC") established under the Restoration of Trust in the Judiciary Act of 8 April 2014 (see *Shmorgunov and Others*, cited

[2] Domestic case no. 42015040000000197.
[3] Domestic case no. 42016040000000093.

above, §§ 220-29) that Judges B. and R. of the Babushkinskyy District Court of Dnipro had failed to act objectively and impartially when dealing with the cases of individuals arrested by the police in connection with the protest on 26 January 2014, including the applicants.

A. Decisions relating to Judge B.

42. On 24 September 2014 the TSC issued an opinion considering that there were "elements of a breach of oath" in how Judge B. had dealt with the cases at issue on 27 January 2014. The TSC found, *inter alia*: that the judge had unlawfully admitted the police reports and the statements of police officers as evidence of a "reasonable suspicion"; that he had failed to assess the reliability of the information contained in those reports and statements and take into consideration the arrested persons' individual circumstances; that he had disregarded the absence of record of the exact time of arrest and had wrongly calculated the time which they had had to spend in detention; and that he had heard the cases outside of official working hours and during the night, which had hindered the exercise of the detained persons' defence rights.

43. On 1 October 2015 the High Council of Justice ("the HCJ") (see *Shmorgunov and Others*, cited above, §§ 220-29) re-examined the matter and essentially upheld the findings of the TSC. The HCJ also found that Judge B. had failed to assess whether an alternative preventive measure could be applied in the cases concerned and that he had failed to examine the cases independently and impartially. The HCJ decided to petition the President of Ukraine to dismiss Judge B.

44. On 23 November 2015 the President dismissed Judge B. of the Babushkinskyy District Court of Dnipro for breach of oath. This decision apparently was not challenged before the courts.

B. Decisions relating to Judge R.

45. On 2 August, 30 November 2017 and 25 January 2018 the HCJ issued decisions in respect of Judge R. containing findings essentially similar to those in the case of Judge B. The HCJ also found that the violations committed by Judge R. had been of an arbitrary and systemic nature. For those reasons, the HCJ, to which the power to dismiss judges was transferred by that time from the President, decided to dismiss Judge R. of the Babushkinskyy District Court of Dnipro.

46. By a final decision of 21 June 2018, the Supreme Court dismissed an appeal by Judge R. and upheld, in their relevant part, the HCJ's findings, while adding that R.'s unlawful acts had led to the unjustified detention of the individuals concerned and showed that he had failed to act

independently and impartially. These proceedings are the subject of an application currently pending before the Court (application no. 2001/19).

RELEVANT LEGAL FRAMEWORK AND OTHER MATERIAL

47. Summaries of and extracts from the domestic legal framework and international reports of relevance for the examination of all applications lodged in relation to the Maidan protests and their aftermath, including the present applications, are to be found in *Shmorgunov and Others* (cited above, §§ 194-269).

48. Additionally, the relevant provisions of the Compensation Act of 1994 must be reproduced in the present case, which read as follows:

Section 1

"Under the provisions of this Act, a citizen is entitled to compensation for damage caused by:

(1) unlawful conviction; unlawful notification of suspicion of a crime; unlawful remand and detention in custody; [an] unlawful search [and] seizure in the course of criminal proceedings; unlawful attachment of property; unlawful suspension from work and other procedural actions restricting the citizen's rights;

(2) unlawful administrative arrest or correctional labour; unlawful confiscation of property; [an] unlawful fine;

...

In [those] circumstances, the damage should be compensated for in full, irrespective of whether the officials of the bodies of inquiry, pre-trial investigation authorities, prosecutor's offices or courts were responsible for [that damage]."

Section 2

"The right to compensation for damage in the amount and in accordance with the procedure established by this Act shall arise in the following circumstances:

(1) in the event of an acquittal by a court;

(1-1) where a court establishes, in a verdict or other judicial decision (except for a decision ordering new consideration [of a criminal case]), the fact that there has been unlawful notification of suspicion of a crime; unlawful remand and detention in custody; [an] unlawful search [and] seizure in the course of criminal proceedings; unlawful attachment of property; unlawful suspension from work and other procedural actions restricting a citizen's rights; [or] unlawful conduct of operational-search activities;

(2) in the event of criminal proceedings being terminated for the reason that no crime has been committed, for the absence of *corpus delicti*, or for the lack of evidence to prove the accused's guilt in trial [where] all possible means to obtain such evidence have been exhausted;

...

(4) in the event of proceedings concerning an administrative offence being terminated.

..."

Section 3

"In the circumstances set out in section 1 of this Act, a citizen shall be entitled to recover or be compensated for:

(1) the salary and other income which he or she has lost as a consequence of the unlawful actions;

(2) the property ... which has been confiscated by the court or seized by the bodies of inquiry or the pre-trial investigation authorities, or which has been attached;

(3) the fines paid as part of the execution of a sentence; [or] the court fees and other expenses paid by the citizen [concerned];

(4) the sums paid by the citizen [concerned] for legal assistance;

(5) non-pecuniary damage."

Section 5

"In the event of the death of the citizen [concerned], the right to compensation [under] the first paragraph of section 3 (1)-(4) of this Act shall be transferred to his or her heirs in accordance with the procedure set out by law."

Section 11

"Where a person acquires the right to compensation under section 2 of this Act, the body of inquiry, investigator, prosecutor or court shall inform him or her of the procedure for restoring his or her rights or freedoms and [the procedure] for compensation."

THE LAW

I. JOINDER OF THE APPLICATIONS

49. Having regard to the common factual and legal background of the ten applications under examination, the Court finds it appropriate to examine them jointly in a single judgment (Rule 42 § 1 of the Rules of Court).

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

50. Relying on Article 5 § 1 of the Convention, the applicants complained that their detention had been arbitrary and unlawful.

51. The relevant parts of Article 5 of the Convention read as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

..."

A. Admissibility

1. The parties' submissions

52. The Government argued that eleven of the fourteen applicants - Mr S. Khmelyovskyy, Mr E. Shevchenko, Mr V. Shevchenko, Mr V. Dubovtsev, Mr L. Babin, Mr Y. Bezotosnyy, Mr K. Pegarkov, Mr Y. Balabay, Mr V. Lapin, Mr O. Bereza and Mr V. Khlusov (applications nos. 21424/14, 21429/14, 32024/14, 32161/14, 33729/14, 42200/14, 42204/14 and 51084/14) - could no longer be considered victims of the alleged violation of Article 5 § 1 of the Convention for the following reasons: the Amnesty Law of 21 February 2014 and the domestic courts had declared their criminal prosecution and detention illegal; the criminal proceedings against them had been terminated on "exonerating" grounds; and they had been awarded reasonable and sufficient compensation by the domestic courts (see paragraphs 21-25 above). In their further observations of September and October 2016 the Government stated that eight of the applicants concerned had been paid the awarded amounts (see paragraph 30 above).

53. As regards the remaining three of the fourteen applicants - Mr K. Orbeladze, Mr O. Tsyganov and Mr V. Shebanov (applications nos. 21429/14, 32778/14 and 33719/14), the Government argued that they should have lodged compensation claims with the civil courts under Article 1176 of the Civil Code of 2003 and/or the Compensation Act of 1994. The Government referred to the domestic decisions awarding compensation under those provisions to eleven applicants in the present case (see paragraphs 23 and 52 above). The Government also argued that the complaints of those three applicants were premature, as the investigations into the unlawful prosecution and detention of the protesters on 26 January 2014 and related court proceedings were still ongoing (see paragraphs 34-38 above).

54. In their observations of July 2016 the eleven applicants who were awarded compensation by the judgments of the Babushkinskyy District Court (see paragraph 23 above) contended that the domestic authorities had not clearly acknowledged a violation of their Article 5 rights, that no

rigorous examination of the impugned measures against them had been conducted and that the payment of the awards had been delayed (see paragraphs 23 and 30-32 above).

55. The three remaining applicants - Mr K. Orbeladze, Mr O. Tsyganov and Mr V. Shebanov (applications nos. 21429/14, 32778/14 and 33719/14) - contended essentially that bringing a civil action under either the Compensation Act of 1994 or the Civil Code of 2003, as suggested by the Government, was not an effective remedy notably because the domestic decisions on which the Government relied (see paragraph 23 above) did not contain an acknowledgment of a violation of Article 5 or a rigorous examination of the authorities' actions. Moreover, there had been a prolonged delay in enforcing those decisions.

2. The Court's assessment

56. Having regard to the Government's admissibility objections, the Court must examine essentially (i) whether the applicants, who were awarded compensation by the decisions of the Babushkinskyy District Court, lost their victim status and, as regards a separate, albeit related question, which must be examined in the specific circumstances of the present series of cases (ii) whether the applicants, who did not seek such compensation, could be regarded as having failed to exhaust domestic remedies.

(a) Victim status

57. The Court notes that no provision expressly acknowledging the unlawfulness of the applicants' detention is contained in the Amnesty Law of 21 February 2014 (see *Shmorgunov and Others*, cited above, § 213).

58. As to the Government's argument that such an acknowledgement is contained in the judicial decisions by which the eleven applicants listed in paragraph 52 above were awarded compensation, the Court notes that some of those decisions contained no express finding that their detention had been unlawful (see paragraph 25 above). In respect of other applicants, while the compensation decisions did contain such a finding (see paragraphs 23 and 24 above), it was not based on some irregularity in their detention, for instance absence of a reasonable suspicion or insufficient reasoning in the court decisions ordering their detention, but on the very fact that the relevant criminal proceedings had been terminated on "exonerating" grounds – namely, because no crime had been committed (ibid. and compare and contrast to the situation in *Orlovskiy v. Ukraine*, no. 12222/09, §§ 52-61, 2 April 2015, and *Tikhonov v. Ukraine*, no. 17969/09, §§ 22, 36-39, 10 December 2015, where the courts expressly found that the applicants' detention had been unlawful because of certain irregularities in the manner in which it had been imposed).

59. It transpires that, since the criminal proceedings against the eleven applicants concerned were terminated on "exonerating" grounds, the Babushkinskyy District Court essentially presumed the unlawfulness of their prosecution and detention, and awarded them compensation in that connection (see, for a somewhat similar situation, *Lopushanskyy v. Ukraine* [Committee], no. 27793/08, § 36, 2 February 2017). It is thus understandable that in the present case that court might not have considered it necessary to examine more specific issues such as the alleged lack of reasonable suspicion or insufficient reasoning in the court decisions ordering their detention. It is questionable though whether those findings can be considered as containing the required acknowledgment of the alleged violation of Article 5 in the cases of the applicants concerned (see, among other authorities, *Labita v. It*aly [GC], no. 26772/95, §§ 143-144, ECHR 2000 IV and further references in paragraph 68 below).

60. Nonetheless, the Court further notes that in disciplinary proceedings against the judges who had authorised the applicants' detention, it was established that the judges had acted unlawfully and arbitrarily (see paragraphs 42, 43, 45 and 46 above). Since some of the applicants concerned initiated those proceedings, in the course of which it was eventually decided that one of the judges' unlawful acts had led to the unjustified detention of some of the applicants concerned (see paragraphs 41 and 46 above), and the relevant decisions were made public, the applicants must have been appraised of those findings.

61. The Court is therefore prepared to accept that in the cases of the eleven applicants listed in paragraph 52 above and in so far as this concerns its assessment of their victim status under the Convention, overall they benefited from sufficient acknowledgment in the circumstances that their detention involved elements of unlawfulness and arbitrariness.

62. The Court further notes that the applicants concerned did not contest, either in the domestic proceedings or before the Court, the reasonableness of the compensation awarded to them (see paragraph 26 above).

63. As regards eight of them who received payment of the awards, the Court considers that the delays (between fourteen and eighteen months) and the fact that payment was only effected after notice of their applications had been given to the Government (see paragraph 30 above), while relevant, are not decisive in the particular circumstances with regard to the question of whether or not they retain victim status under Article 34 of the Convention.

64. The Court notes that Mr K. Pegarkov (application no. 32161/14) did not demonstrate that he had been unable to recover the sum awarded to him or that the fact that no writ of execution had been submitted in that regard could be imputable to the authorities (see paragraph 32 above).

65. It follows that nine of the fourteen applicants - Mr S. Khmelyovskyy, Mr E. Shevchenko, Mr V. Shevchenko, Mr Y. Bezotosnyy, Mr K. Pegarkov, Mr Y. Balabay, Mr V. Lapin and

Mr V. Khlusov (applications nos. 21424/14, 32024/14, 32161/14, 33729/14, 42200/14 and 51084/14) and Mr L. Babin in application no. 21429/14 - should be considered, in the particular circumstances of the present case, to have lost their victim status as regards their complaints under Article 5 § 1 of the Convention. Those complaints must therefore be rejected in accordance with Article 35 § 4.

66. However, the Court notes that two other applicants who were awarded compensation and in whose cases writs of execution were submitted to the State Treasury – Mr V. Dubovtsev (application no. 21429/14) and Mr O. Bereza (application no. 42204/14) – have not yet received the sums which were awarded, and no justification for this was provided by the Government (see paragraph 31 above). Despite the fact that the judgments in their favour appear to still be enforceable, the Court considers that the delay in payment, now exceeding five years, as well as the lack of explanation for that delay, are sufficient to conclude that those applicants may still claim to be "victims" of the alleged violation of Article 5 § 1 of the Convention within the meaning of Article 34. Therefore, the Government's objection in respect of them must be rejected.

(b) Exhaustion of domestic remedies with regard to Mr K. Orbeladze, Mr O. Tsyganov and Mr V. Shebanov (applications nos. 21429/14, 32778/14 and 33719/14), who failed to lodge a civil compensation claim

67. The Court notes that domestic law provided for a right to compensation for unlawful detention, *inter alia*, in situations where criminal proceedings were terminated on "exonerating" grounds and set out the procedure to be followed (see paragraph 48 above). As stated previously, eleven applicants in the present case had recourse to that procedure and were awarded compensation in connection with the criminal proceedings against them and their detention. On this basis, the Court has found that those who actually received payment and also Mr K. Pegarkov should be considered to have lost their victim status in relation to their complaints under Article 5 § 1 of the Convention (see paragraphs 58-65 above).

68. However, as the Court has noted above, the compensation awards made in favour of eleven applicants in the present case were based essentially on the fact that the relevant criminal proceedings had been terminated on "exonerating" grounds (see paragraph 58 above). In a number of cases which concerned the somewhat similar legal framework of other Contracting States, the Court has found that claiming compensation on account of the termination of the criminal proceedings was not capable of providing redress for breaches of Article 5, where such an action could not or did not entail an assessment and/or sufficient acknowledgment of the applicants' specific complaints under that provision (see, among others, *Labita*, cited above, §§ 143-144; *Shkarupa v. Russia*, no. 36461/05, §§ 16-19, 71 and 75-78, 15 January 2015; *Lyubushkin v. Russia*,

no. 6277/06, §§ 50-53, 22 October 2015; *Shalya v. Russia* [Committee], no. 27335/13, §§ 19-23, 13 November 2014; *Mergen and Others v. Turkey*, nos. 44062/09 and 4 others, §§ 36-38, 31 May 2016; *Dimo Dimov and Others v. Bulgaria*, no. 30044/10, §§ 58 and 62, 7 July 2020; and *Bilal Akyildiz v. Turkey*, no. 36897/07, § 42, 15 September 2020).

69. As in those cases, the Court cannot presume, based on the material provided by the respondent Government, that the specific complaints under Article 5 of Mr K. Orbeladze, Mr O. Tsyganov and Mr V. Shebanov regarding the alleged absence of a reasonable suspicion and insufficient reasoning in the court decisions ordering their detention would have been adequately dealt with and/or acknowledged by the civil courts in the framework of the compensation procedure to which the Government referred. It is true that eventually, between sixteen months and four years after the termination of the criminal proceedings against the three applicants concerned, the HCJ established that the judges who had authorised their detention had acted unlawfully and arbitrarily. However, those findings were made in the different context of disciplinary proceedings against those judges and it was not explained or demonstrated how those findings would have helped the applicants concerned to obtain redress regarding their specific complaints under Article 5 of the Convention and thus to avail themselves of an effective remedy. The latter issue is not coterminous with that of victim status with which the Court has dealt above (see paragraphs 43, 45, 46, 60 and 61 above).

70. The Court further notes that the criminal proceedings against the three applicants concerned were terminated on exonerating grounds between two and three months after the introduction of their applications to the Court. As a result, the possibility for them to bring civil actions for compensation on the basis of this termination did not exist at the moment when they submitted their applications. In *Kotiy v. Ukraine*, no. 28718/09, § 38, 5 March 2015, the Court previously found that the applicant was not required to have recourse to the compensation procedure at issue, which became available to him more than two and a half years after the introduction of his application and which was not shown to be capable of addressing all the elements of his complaint under Article 5 of the Convention. In addition, the Court observes that the decisions of the Babushkinskyy court to which the respondent Government refer, and which could be seen as demonstrating that it was possible to obtain compensation, were issued in November and December 2014 (see paragraph 23 above), namely several months after the three applications at issue were submitted to the Court.

71. On the basis of the above, the Court finds that Mr K. Orbeladze, Mr O. Tsyganov and Mr V. Shebanov (applications nos. 21429/14, 32778/14 and 33719/14) cannot be reproached, in the circumstances of the present case, for not having lodged compensation claims with civil courts

under Article 1176 of the Civil Code of 2003 and/or the Compensation Act of 1994 for the purpose of exhaustion of domestic remedies as required by Article 35 § 1 of the Convention. The Court therefore rejects the Government's objections in this regard. It considers, moreover, that the exceptional nature of the Maidan applications and the material available to the Court in these cases do not lend themselves to reviewing further the effectiveness of the remedies relied on by the respondent Government, which review would require an assessment of examples of domestic cases in which they have been applied.

72. The Court further dismisses the Government's objection that their complaints are premature, noting that the investigations and proceedings have lasted for more than six years so far (see paragraphs 34-37 above). Therefore, the Court is not precluded from examining the complaints under Article 5 § 1 of the Convention of three applicants concerned (see, for a similar approach, *Shmorgunov and Others*, cited above, § 453).

(c) Conclusion as to the admissibility

73. The Court finds that the complaints of Mr V. Dubovtsev, Mr K. Orbeladze, Mr O. Tsyganov, Mr V. Shebanov and Mr O. Bereza (applications nos. 21429/14, 32778/14, 33719/14 and 42204/14) under Article 5 § 1 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Nor are they inadmissible on any other grounds. Therefore, the Court declares their complaints admissible.

74. In contrast, as indicated previously, the complaints under Article 5 of the Convention of nine of the fourteen applicants - Mr S. Khmelyovskyy, Mr E. Shevchenko, Mr V. Shevchenko, Mr Y. Bezotosnyy, Mr K. Pegarkov, Mr Y. Balabay, Mr V. Lapin and Mr V. Khlusov (applications nos. 21424/14, 32024/14, 32161/14, 33729/14, 42200/14 and 51084/14) and Mr L. Babin in application no. 21429/14 - are declared inadmissible pursuant to Article 35 §§ 1 and 4 of the Convention.

B. Merits

75. The applicants stated that there had been no factual basis for a "reasonable suspicion" that they had committed any criminal offence, that the domestic criminal-law provision on mass disorder was vague and unclear and that therefore they had not been able to foresee that their participation in the protest would be characterised as mass disorder. They further argued that the court decisions ordering their detention had not been reasoned and had not been based on a proper assessment of the relevant facts. Nor had the courts examined whether the risks required for the application of that preventive measure had existed or assessed the possibility of the application of alternative preventive measures.

76. The Government submitted no observations on the merits of the applicants' complaints under Article 5.

77. The general principles in relation to Article 5 § 1 of the Convention are set out in *Shmorgunov and Others* (cited above, §§ 459-61). Turning to the present case, the Court notes that that Mr V. Dubovtsev and Mr O. Bereza were detained between 26 January and 3 February 2014; Mr K. Orbeladze, Mr O. Tsyganov and Mr V. Shebanov were detained between 26 and 31 January 2014 in the framework of the criminal proceedings which were conducted against them on suspicion of mass disorder.

78. The Court further refers to its examination of similar complaints in *Shmorgunov and Others* (cited above, § 477), where it found that that in those applicants' cases the minimum standard set by Article 5 § 1 (c) of the Convention for the reasonableness of a suspicion was not met and that there was an element of arbitrariness. The impugned events in the present case disclose similarities. In particular, when the applicants were placed in custody, the suspicion against them was based exclusively on the statements of police officers, even though the events at issue had taken place in public and hundreds of individuals had been present and involved. The wording of those statements was almost identical, and essentially they were couched in general terms (see paragraphs 5 and 13-15 above).

79. Furthermore, the decisions on the applicants' detention simply reproduced parts of the official notifications of suspicion and, even though they had denied committing any offence, provided no reasons as to why the suspicion was considered to have a sufficient evidential basis, apart from referring to unidentified "witness statements" and unspecified "other material" (see paragraphs 16, 18 and 19 above).

80. On the whole, it appears that on 27 January 2014 the Babushkinskyy District Court of Dnipro examined the question of the applicants' detention in a summary manner, conducting no thorough, objective and individualised assessment of their cases.

81. The Court also notes that the criminal proceedings against the applicants were eventually discontinued for the reason that no crime had been committed (see paragraph 21 above) and that, in disciplinary proceedings against the judges who had detained them, it was established that the latter had acted unlawfully and arbitrarily (see paragraphs 42, 43, 45 and 46 above). Furthermore, the information contained in the related official notification of suspicion, while not conclusive, appears to indicate that officials from law-enforcement bodies and courts of the Dnipropetrovsk Region had been given "oral instructions" to detain, allegedly regardless of relevant legal constraints , those who had taken part or could have taken part in the "peaceful protests" in Dnipro, and to initiate criminal proceedings against them. Allegedly, this was to be done in order to intimidate other protesters and dissuade them from continuing their participation in the

protests (see paragraph 37 above). While the Court is not prepared to attach decisive weight to those findings and suspicions, which were made in the different context of disciplinary and criminal proceedings against the judges concerned, it has already highlighted the fact that at the relevant time the authorities appear to have adopted a deliberate strategy to put an end to and further hinder those protests. That strategy could explain the widespread detention of certain protesters. In this regard, the Court refers to its findings in *Shmorgunov and Others* (cited above, §§ 473-75 and 520).

82. In the light of the foregoing, the Court considers that the domestic authorities failed to advance sufficient reasoning and evidence to justify the detention of Mr V. Dubovtsev, Mr K. Orbeladze, Mr O. Tsyganov, Mr V. Shebanov and Mr O. Bereza (applications nos. 21429/14, 32778/14, 33719/14 and 42204/14) on the dates specified in paragraph 77 above and that their detention cannot be regarded as being free from arbitrariness. Accordingly, there has been a violation of Article 5 § 1 of the Convention in those applicants' cases.

III. CONCLUDING REMARKS

83. The Court observes, in conclusion, that, in relation to the five applicants whose complaints were deemed admissible, it has found a violation of Article 5 § 1 of the Convention on account of unjustified detention in connection with their actual or suspected participation in the Maidan protests in Dnipro on 26 January 2014. As in the other Maidan-related judgments (*Shmorgunov and Others*, cited above, §§ 520 and 527; *Lutsenko and Verbytskyy v. Ukraine*, nos. 12482/14 and 39800/14, §§ 115 and 121, 21 January 2021, not final; *Kadura and Smaliy v. Ukraine*, nos. 42753/14 and 43860/14, § 153, 21 January 2021, not final; and *Vorontsov and Others v. Ukraine*, nos. 58925/14 and 4 others, §§ 48 and 51, 21 January 2021, not final), the violations established in this case point to a deliberate strategy on the part of the authorities, or parts thereof, to hinder and put an end to the protests.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. 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."

A. Damage

85. Mr V. Dubovtsev and Mr O. Bereza (applications nos. 21429/14 and 42204/14) did not submit claims for just satisfaction. Accordingly, the Court considers that there is no call to award them any sum on that account.

86. Mr K. Orbeladze, Mr O. Tsyganov and Mr V. Shebanov (applications nos. 21429/14, 32778/14 and 33719/14) claimed 5,000 euros (EUR) each in respect of non-pecuniary damage.

87. The Government contested the applicants' claims in respect of pecuniary and non-pecuniary damage, arguing that they were excessive and that the applicants had failed to seek compensation for non-pecuniary damage at domestic level, even though such compensation had been available to them.

88. Having regard to its findings concerning the admissibility of those complaints under Article 5 of the Convention (see paragraph 71 above), the Court considers that the Government did not demonstrate that the applicants concerned were able in practice to obtain reparation for the consequences of the violation of their Convention rights found in this case in such a way as to restore as far as possible the situation existing before the breach.

89. Judging on an equitable basis, the Court awards the applicants concerned EUR 1,200, plus any tax that may be chargeable, each in respect of non-pecuniary damage.

B. Costs and expenses

90. The applicants did not submit claims for costs and expenses. Accordingly, the Court considers that there is no call to award them any sum on that account.

C. Default interest

91. 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. *Declares* the complaints under Article 5 § 1 of the Convention of the unlawfulness and arbitrariness of the detention of Mr V. Dubovtsev, Mr K. Orbeladze, Mr O. Tsyganov, Mr V. Shebanov and Mr O. Bereza (applications nos. 21429/14, 32778/14, 33719/14 and 42204/14) admissible and the remainder of the applications inadmissible;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the detention of Mr V. Dubovtsev, Mr K. Orbeladze, Mr O. Tsyganov, Mr V. Shebanov and Mr O. Bereza (applications nos. 21429/14, 32778/14, 33719/14 and 42204/14) during the periods set out in paragraph 77 above;

4. *Holds*
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,200 (one thousand two hundred euros), plus any tax that may be chargeable, each to Mr K. Orbeladze, Mr O. Tsyganov and Mr V. Shebanov (applications nos. 21429/14, 32778/14 and 33719/14) in respect of non-pecuniary damage, 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.

5. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 21 January 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Síofra O'Leary
President

APPENDIX

No.	Application no. and date application was lodged	Applicant's name year of birth place of residence	Representatives	Principle outcome / Convention violation	Amount awarded under Article 41, if applicable
1	21429/14 07/03/2014	**Valeriy Oleksandrovych DUBOVTSEV** 1992 Dnipro **Leonid Georgiyovych BABIN** 1975 Dnipro **Kostyantyn Kakhovych ORBELADZE** 1991 Dnipro	Vitaliy Eduardovych POGOSYAN, Hanna Volodymirivna OVDIIENKO	Violation of Article 5 § 1 regarding Mr V. Dubovtsev and Mr K. Orbeladze Inadmissible, in so far as Mr L. Babin is concerned	1,200 (one thousand two hundred euros) to Mr K. Orbeladze in respect of non-pecuniary damage. Otherwise, no awards.
2	21424/14 05/03/2014	**Sergiy Vitaliyovych KHMELYOVSKYY** 1974 Dnipro **Eduard Vyacheslavovych SHEVCHENKO** 1962 Dnipro **Vladyslav Eduardovych SHEVCHENKO** 1988 Dnipro	Vitaliy Eduardovych POGOSYAN, Fedir Sergiyovych DANILCHENKO	Inadmissible	N/A
3	32024/14 16/04/2014	**Yuriy Petrovych BEZOTOSNYY** 1959 Dnipro	Vitaliy Eduardovych POGOSYAN, Gennadiy Vladimirovich TOKAREV	Inadmissible	N/A
4	32161/14 16/04/2014	**Kostyantyn Volodymyrovych PEGARKOV** 1982 Dnipro	Vitaliy Eduardovych POGOSYAN, Gennadiy Vladimirovich TOKAREV	Inadmissible	N/A
5	32778/14 16/04/2014	**Oleg Mykolayovych TSYGANOV** 1976 Dnipro	Vitaliy Eduardovych POGOSYAN, Gennadiy Vladimirovich TOKAREV	Violation of Article 5 § 1	1,200 (one thousand two hundred euros) in respect of non-pecuniary damage.

No.	Application no. and date application was lodged	Applicant's name year of birth place of residence	Representatives	Principle outcome / Convention violation	Amount awarded under Article 41, if applicable
6	33719/14 16/04/2014	**Vadym Anatoliyovych SHEBANOV** 1969 Dnipro	Vitaliy Eduardovych POGOSYAN, Gennadiy Vladimirovich TOKAREV	Violation of Article 5 § 1	1,200 (one thousand two hundred euros) in respect of non-pecuniary damage.
7	33729/14 16/04/2014	**Yevgen Vitaliyovych BALABAY** 1982 Dnipro	Vitaliy Eduardovych POGOSYAN, Gennadiy Vladimirovich TOKAREV	Inadmissible	N/A
8	42200/14 16/04/2014	**Valeriy Volodymyrovych LAPIN** 1960 Dnipro	Vitaliy Eduardovych POGOSYAN	Inadmissible	N/A
9	42204/14 16/04/2014	**Oleksandr Anatoliyovych BEREZA** 1965 Dnipro	Vitaliy Eduardovych POGOSYAN, Gennadiy Vladimirovich TOKAREV	Violation of Article 5 § 1	N/A
10	51084/14 03/07/2014	**Vitaliy Andriyovych KHLUSOV** 1990 Dnipro	Vitaliy Eduardovych POGOSYAN, Gennadiy Vladimirovich TOKAREV	Inadmissible	N/A