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La Corte Edu sull'illegittimità della detenzione di una persona incapace di intendere e di volere (CEDU, sez. V, sent. 5 marzo 2026, ric. n. 5694/19)

La pronuncia resa dalla Corte attiene al caso riguardante la detenzione di una persona con disturbo mentale in un istituto di assistenza sociale gestito dallo Stato; in particolare, oltre alla presunta illegittimità di simile costrizione della libertà personale, il ricorrente ha denunciato l'assenza di un meccanismo efficace per avviare un procedimento giudiziario volto a riesaminare tale detenzione e ottenere un risarcimento, in violazione dell'art. 5 della Convenzione.

In via generale, i giudici osservano che il collocamento e la permanenza di individui mentalmente incapaci in istituti di assistenza sociale sono misure idonee ad integrare una privazione della libertà ai sensi dell'articolo 5 § 1 della Convenzione; essi ribadiscono inoltre che la nozione di privazione della libertà ai sensi dell'articolo 5 § 1 non comprende solo l'elemento oggettivo della reclusione di una persona in uno spazio ristretto specifico per un periodo di tempo più che trascurabile ma anche quello soggettivo per cui una persona può essere considerata privata della propria libertà solo se non abbia validamente acconsentito alla reclusione. La sussistenza di tali elementi appare integrata nel caso di specie laddove il ricorrente, detenuto presso il KPRI, aveva manifestato il proprio dissenso altresì denunciando l'illegittimità della detenzione.

Quanto, più nello specifico, alla questione relativa alla privazione della libertà di persone incapaci di intendere e di volere, la Corte - sulla scorta della pregressa giurisprudenza - ribadisce le tre condizioni minime necessarie affinché la detenzione di una persona incapace possa essere considerata legittima ai sensi dell'articolo 5 § 1 della Convenzione: 1. deve essere dimostrato in modo affidabile che l'individuo è incapace di intendere e di volere (il disturbo mentale deve essere accertato dinanzi a un'autorità competente sulla base di una perizia medica oggettiva); 2. il disturbo mentale deve essere di un tipo o di un grado che giustifichi la detenzione obbligatoria; 3. la validità della detenzione continuata deve dipendere dalla persistenza di tale disordine. Inoltre, la detenzione non può essere considerata "legittima" ai sensi dell'articolo 5 § 1 se la procedura interna non fornisce sufficienti garanzie contro l'arbitrarietà di tale misura.

Facendo applicazione di tale principi al caso di specie, la Corte rileva in primo luogo come non sia mai stata emessa alcuna decisione formale in relazione alla privazione della libertà del ricorrente; a parere dei giudici, l'assenza di tale decisione avrebbe lasciato il ricorrente in uno stato di incertezza circa la base giuridica della sua detenzione, una situazione incompatibile con i principi di certezza del diritto e di tutela contro l'arbitrarietà - principi cardine della Convenzione e dello Stato di diritto. A ciò si aggiunga che il ricorrente è stato *di fatto* privato della sua libertà presso il KPRI esclusivamente sulla base del consenso e delle istruzioni fornite dal suo tutore, in mancanza di qualsiasi autorizzazione giudiziaria. La Corte ritiene pertanto che la detenzione del ricorrente non fosse legittima, in quanto non accompagnata da sufficienti garanzie contro l'arbitrarietà nei termini

dell'articolo 5 § 1 della Convenzione. Al contempo, la Corte rileva come il Governo non abbia fornito alcuna giustificazione atta a dimostrare la necessarietà della detenzione del ricorrente per un periodo di tempo così prolungato.

Parimenti, i giudici hanno riscontrato una violazione dell'articolo 5 § 4 della Convenzione nella misura in cui al ricorrente non sarebbe stato garantito l'esercizio di alcuno strumento per avviare un procedimento di revisione giudiziaria della legittimità della detenzione cui era stato sottoposto.

Infine, la Corte ha accertato la violazione dell'articolo 5 § 5 della Convenzione rilevando l'assenza, nell'ordinamento giuridico ucraino, di una disposizione volta ad assicurare il diritto al risarcimento nei casi detenzione effettuata in violazione delle garanzie sancite dall'articolo 5 della Convenzione.

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

FIFTH SECTION

CASE OF XXX v. UKRAINE (No. 2)

(Application no. 5694/19)

JUDGMENT
STRASBOURG
5 March 2026

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 XXX v. Ukraine (no. 2)

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:
Kateřina Šimáčková, *President*,
María Elósegui,
Georgios A. Serghides,
Gilberto Felici,
Mykola Gnatovskyy,
Vahe Grigoryan,
Sébastien Biancheri, *judges*,
and Martina Keller, *Deputy Section Registrar*,
Having regard to:

the application (no. 5694/19) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr "omissis" ("the applicant"), on 26 December 2018;
the decision to give notice of part of the complaints to the Ukrainian Government ("the Government") and to declare the remainder of the application inadmissible;
the parties' observations;
Having deliberated in private on 3 February 2026,
Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the applicant's alleged detention in a State-run social care institution, as well as the absence of an effective mechanism to initiate court proceedings to review that detention and obtain compensation. The applicant relied mainly on Article 5 §§ 1, 4 and 5 of the Convention.

THE FACTS

2. The applicant was born in "omissis". He was represented by Mr M. Tarakhkalo, a lawyer from the Ukrainian Helsinki Human Rights Union ("the UHHRU") practising in Kyiv. The applicant passed away on "omissis".
3. The Government were represented by their Agent, Ms M. Sokorenko, from the Ministry of Justice.
4. The facts of the case may be summarised as follows.
5. The applicant had a long history of psychiatric conditions, including paranoid schizophrenia. In connection with his mental illness, in 1986 he was granted disability status. According to available medical documentation, his mental health deteriorated over time, leading to repeated hospitalisations and loss of employment, family, and accommodation. The applicant abused alcohol and engaged in irresponsible financial behaviour, including taking out loans and gambling with them. Reportedly, in May 2012 he attempted suicide in a metro station.
6. In June 2012 the applicant underwent a psychiatric assessment, on the basis of which on 11 September 2012 a district court in Kyiv found that he was unable to comprehend and control his actions. The applicant was declared legally incapable.
7. A legal guardian was assigned to the applicant from August 2013 onwards: initially his father, and subsequently (from May 2015) his brother.

I. the applicant's stay at the social care home

8. On 6 August 2014, on the basis of a written request by his guardian and a referral from the Kyiv City Department of Social Policy, the applicant was admitted to the Kyiv Psychoneurological Residential Institution (*Київський психоневрологічний інтернат*, "the KPRI"), a State-run social care home.
9. According to the available information, although he was never asked to formally consent to his admission to the KPRI, the applicant did not object to it. He lived in a residential block of the institution, enjoyed freedom of movement on the premises and was authorised by the management to periodically leave. Although he needed permission to leave the grounds, the applicant initially

considered that his stay at the KPRI was voluntary (see *Kaganovskyy v. Ukraine*, no. 2809/18, §§ 18 and 80, 15 September 2022).

10. The KPRI management described the applicant as tense, ambivalent, anxious and "senseless" ("*безглуздий*") in his speech and actions, negativistic, and at times aggressive towards others. Reportedly, he showed no critical awareness of his state of health or his behaviour, "stubbornly maintained" that he had never suffered from any mental disorder and claimed that his relatives had sold his apartment without his consent. He also suffered from disrupted sleep and on one occasion he threw his dentures and other personal belongings out of the window. According to the information provided, throughout the applicant's stay in the institution he was periodically given unspecified "maintenance therapy".

11. In 2016, while he was still living at the KPRI, the applicant considered that his mental condition had improved and requested that his guardian and the guardianship authorities take steps to restore his legal capacity. As he received no reply to his request, in February 2017, assisted by lawyers from the UHHRU, he personally applied to a domestic court, seeking the restoration of his legal capacity. In submissions which he made during the proceedings to restore his capacity, the applicant asserted that his mental condition had significantly improved, that he was again able to control his actions and that the previous decision declaring him legally incapable (see paragraph 6 above) was no longer justified. He also argued that he could not commission his own psychiatric assessment and that his legal guardian was unwilling to assist him in regaining his legal capacity.

12. According to the applicant, on or around 1 April 2017, soon after the launch of the proceedings to restore his capacity, the KPRI staff informed him that he was prohibited from leaving the institution's premises. The applicant claimed that that prohibition had been imposed at the request of his legal guardian with the intention of preventing him from attending court hearings in the proceedings to restore his capacity.

13. On 23 June 2017 the applicant's guardian, who at that time was his brother, wrote to the KPRI management, instructing them to prohibit the applicant from leaving the KPRI's premises on the basis of a deterioration in his health.

14. Between 27 June and 6 July 2017 the applicant was held in the KPRI enhanced (intensive) supervision unit (for more details and the Court's findings in respect of that period, see *Kaganovskyy*, cited above, §§ 13-22 and 87). After the applicant was moved back to the residential block of the KPRI, the prohibition on his leaving the KPRI's premises continued.

15. On 7 October 2017 the applicant's guardian wrote to the institution's management again, instructing them to prohibit the applicant from receiving any visitors, "including UHHRU lawyers", unless he was also present. He also reiterated his previous instruction (see paragraph 13 above) that the applicant should be prohibited from leaving the institution.

16. On 16 November 2017 two UHHRU lawyers visited the applicant at the KPRI with a view to taking him to a court hearing in the proceedings to restore his capacity. Video evidence submitted by the applicant demonstrates that during a conversation with the lawyers on that day, the KPRI director, Mr S., confirmed that the applicant was not permitted to leave the institution's premises. In that regard, the director specifically referred to the written instructions from the applicant's guardian (see paragraphs 13 and 15 above) and the alleged absence of legal grounds allowing him to override those instructions.

In another video recorded on the same day, while speaking to the UHHRU lawyers through the fence of the KPRI, the applicant complained that he was not allowed to leave the institution's premises, expressed his wish to undergo an independent psychiatric assessment to prove that his mental state had improved, and informed the lawyers about pressure from his legal guardian to abandon the proceedings to restore his capacity.

17. According to the applicant, the ban on his leaving the institution was in place until approximately 27 June 2018, when the KPRI management informed him that he was allowed to leave the institution three times a week. From around 15 July 2018 he was allowed to leave the institution every day for three hours.

18. In the meantime, after the applicant's request to restore his legal capacity had been reconsidered several times, for reasons including the domestic courts' initial denial of his right to launch civil proceedings without his guardian's approval (for a more detailed description of the relevant judicial proceedings, see *Kaganovskyy*, cited above, §§ 33-41), on 28 May 2019 a district court in Kyiv ordered that the applicant should undergo an inpatient psychiatric assessment with a view to establishing his ability to comprehend and control his actions. There is no information as to whether that assessment was ever carried out.

19. On 25 December 2019 the applicant died in the KPRI.

20. On 17 March 2021 the civil proceedings to restore his capacity were terminated owing to the applicant's death.

II. the applicant's complaints to the authorities

A. Criminal complaint

21. On 13 October 2017 UHHRU lawyers submitted a report of a crime to the police in which they complained, among other things, of the applicant's ongoing unlawful deprivation of liberty by the KPRI management, which had begun on or around 1 April 2017. They stated that the applicant was being forced to stay on the institution's premises and could not maintain contact with the outside world or attend church.

22. The relevant criminal investigation was launched by the Obolonskyi district police department in Kyiv on 12 December 2017. During that investigation, the police obtained a written statement from the KPRI management in which they confirmed that the applicant's guardian had prohibited the institution from arranging meetings between the applicant and third parties unless the guardian was also present. The institution's management also indicated that during the applicant's stay at the KPRI his state of health had not improved. In that connection, they referred to the results of his 2016 psychiatric assessment, a copy of which was not provided to the investigator. No information relating to the applicant's allegations of unlawful deprivation of liberty appears to have been provided. There is also no information as to whether the police ever questioned the applicant, his guardian or the KPRI management during the criminal investigation. The current status of the investigation is unknown.

B. Complaints made in the context of the proceedings to restore the applicant's capacity

23. In the context of the proceedings to restore his capacity, the applicant repeatedly raised the issue of the prohibition on his leaving the KPRI. In particular, in a letter which he sent to the Kyiv City Court of Appeal on 18 December 2017, the applicant informed the relevant judges that he wished to regain his legal capacity in order to leave the KPRI, meet a life partner and find a job, and at that

moment he could not do so because the KPRI management had unlawfully prohibited him from leaving. Similar arguments were made before the Supreme Court, which in its decision of 15 August 2018 referred to the applicant's argument that the hearings before the Kyiv City Court of Appeal had taken place in his absence because the KPRI management had not allowed him to leave the institution's premises.

C. Formal requests to the KPRI

24. On 7 and 29 August 2018 the applicant's lawyers submitted requests to the KPRI, seeking written confirmation of the prohibition on his leaving the institution. They also requested that the KPRI indicate the legal basis for such a measure and, if the allegations in question were unfounded, provide them with photocopies of the relevant entry-exit log records.

25. By letters dated 16 August and 7 September 2018, both requests were denied on the grounds that the KPRI did not recognise that the UHHRU lawyers had legal authority to act on behalf of the applicant and seek the requested information.

RELEVANT LEGAL FRAMEWORK and practice

I. domestic law

A. The Psychiatric Assistance Act (2000)

26. The Psychiatric Assistance Act distinguishes between the hospitalisation of persons with mental disorders in psychiatric hospitals and the admission of persons with mental disorders to psychoneurological social care institutions.

While hospitalisation in psychiatric hospitals may be on a voluntary or compulsory basis, admission to social care institutions is always considered a voluntary measure and domestic courts are not involved in that process at any point.

27. Sections 14, 16 and 17 establish that persons suffering from a mental disorder can be hospitalised in psychiatric hospitals on a compulsory basis if they can only receive the appropriate medical treatment as an inpatient in a mental health facility and if, as a result of a serious mental disorder, they have committed or expressed real intent to commit acts which are directly dangerous to themselves or to others, or if they are unable to deal with their basic needs. Such persons should have been assessed by a panel of psychiatrists within the previous 24 hours, and the mental health facility in question should have applied to a court for an order for compulsory hospitalisation. Such persons may lodge an individual application with a court every three months with a view to verifying that there are grounds justifying their compulsory psychiatric detention.

28. The admission of persons with mental disorders to psychoneurological social care institutions is regulated by section 23. In particular, such persons may be admitted on the basis of an application lodged on their own initiative (if they have legal capacity) or on the initiative of their legal guardian, supplemented by a report of a medical panel including a psychiatrist (if they have been deprived of legal capacity). According to section 24, the grounds for discharging persons from such institutions are (i) a request by the person concerned, together with a report by a panel of psychiatrists confirming that person's ability to live independently; (ii) a request by the person's legal guardian; or (iii) a court decision finding the placement of the person in such an institution to be unlawful.

29. Section 23 also obliges the management of such institutions to ensure that residents are assessed at least once a year by a medical panel (which should include, among other people, a psychiatrist)

with a view to determining whether their continued residence in such institutions is necessary and whether decisions declaring them legally incapable should be reconsidered.

30. In addition, section 25 provides such persons with the right to communicate privately with others (including their lawyers), to maintain the confidentiality of their correspondence, to access media, to engage in leisure and creative activities, to practise religious activities and follow religious customs, to contact the management of the institution, and to receive pension and other social payments. In the interest of protecting the health and security of both the persons concerned and others, a psychiatrist or a panel of psychiatrists may restrict their right to receive visitors privately, to purchase and use everyday items, and to spend time alone. Any decision to restrict those rights must be documented in medical records and can be challenged in court.

B. Rulings of the Constitutional Court of Ukraine of 1 June 2016 and 20 December 2018

31. In two rulings (nos. 2-рп/2016 and 13-p/2018) concerning the hospitalisation in psychiatric hospitals of persons lacking legal capacity who were unable to consent to such a measure, the Constitutional Court of Ukraine found that such persons could be hospitalised in that manner only on the basis of court orders. The then applicable provisions of the Psychiatric Assistance Act – which permitted such hospitalisation solely on the basis of either a psychiatrist's decision issued at the request of a legal guardian or a decision of the guardianship authorities – were found to be incompatible with the Constitution. In particular, in its ruling of 1 June 2016, the Constitutional Court held as follows:

"The hospitalisation of a person lacking legal capacity in a psychiatric institution ... entails the long-term provision of psychiatric care in an inpatient setting. A person lacking legal capacity ... is required to remain in the institution at all times, without the possibility of leaving the premises voluntarily, and is subject to constant supervision by the medical staff.

...

The procedure established in [the Psychiatric Assistance Act] for the hospitalisation of persons lacking legal capacity in a psychiatric institution ... does not provide for any judicial control over such hospitalisation, because the legislature effectively considered it voluntary, even though [the person concerned] is hospitalised without giving informed consent.

... [Such hospitalisation] must therefore be in accordance with the constitutional guarantees for the protection of human rights and fundamental freedoms ... and solely on the basis of a court order ..."

C. The 2016 Model regulations

32. The Model regulations on psychoneurological residential institutions were adopted by the Cabinet of Ministers on 14 December 2016. Their general provisions concerning the operation of such institutions and the admission of patients have been summarised in *Kaganovskyy* (cited above, §§ 54-58).

33. Regulation 26 provides that legally incapacitated patients may leave such institutions for a period of up to six months during a calendar year, on the basis of a written application submitted by their guardians and/or their relatives or other persons intending to host them temporarily. In the event that a patient leaves an institution without authorisation, the administration shall take measures to search for him or her.

34. Regulation 71 provides that the director and staff of such institutions bear personal liability for preserving the life and health of their residents, for respecting their rights, and for preventing discrimination against them.

II. relevant domestic reports and other material

A. Reports of the Ukrainian Ombudsperson

35. In her 2018 annual report, the Ombudsperson noted a systemic failure by the management of psychoneurological residential institutions in Ukraine to initiate proceedings to restore the legal capacity of their residents. Although some residents were capable of living independently in the community, mandatory medical assessments aimed at determining the appropriateness of their continued stay in such institutions were not carried out. The report also highlighted that once patients were declared legally incapable, the administration gained "virtually total" control over them. Such control, in the Ombudsperson's view, deprived legally incapacitated individuals of the opportunity to leave an institution or be transferred to a more appropriate facility.

36. In the 2024 report prepared following the Ombudsperson's monitoring visit to the KPRI, it was noted that the institution's premises were fenced and that residents were allowed to visit nearby shops and the church on their own. The 2025 report concerning a similar psychoneurological institution in the Zakarpattya Region stated that the premises of that facility were also fenced and included an entry-exit checkpoint, and that residents were permitted to leave the institution when accompanied by staff and upon obtaining authorisation.

B. Report by the Kharkiv Institute of Social Studies, a non-governmental organisation

37. In the 2023 report "The rights of people with disabilities staying in inpatient facilities during the war: study results", it was noted that some patients of psychoneurological institutions were allowed to leave the premises on their own. However, the procedure for such leave varied and depended on a patient's legal capacity, his or her behaviour and the established restrictions. In some institutions, patients could go out on their own, while in others they could do so only with permission or accompanied by staff; in some places, free movement was not allowed even on the institution's premises. The rules for leaving the premises often depended on the personal discretion of an institution's administration and staff.

C. Other publicly available material

38. In 2016 the applicant was interviewed by journalists from Hromadske Radio. The ensuing media article, which was published on 14 August 2016 and entitled "How can a legally incapacitated person restore his (or her) rights?" ("*Як людині, яку визнали недієздатною, поновити свої права?*")[1], stated as follows:

"[The applicant] considers that the decision to declare him legally incapacitated is absolutely unlawful. He currently lives in a social care institution, although he could be living freely, registered with a psychiatrist and taking very mild sedatives, as he did before. He receives a decent military pension, and with this money he could live in a hostel and work as a real-estate agent, just as he did for the previous 11 years.

In his free time, he plays chess, plays music on the piano, and reads detective novels. Unfortunately, the conditions in the institution are not very satisfactory: although the food is plentiful, its quality is poor. Moreover, being confined in a closed space with a large number of unstable individuals has

led [the applicant] to fall into a depression. He also complains that he is prescribed very strong medication, which makes him sleep all day.

'Over the many years of my illness, I have learned to control myself,' [the applicant] says. 'If I'm not feeling well, I can take mild medication for a week, and I immediately feel better. But in the [KPRI], they give me such strong drugs that even half a tablet is enough to keep me in bed all day.'

Without the doctors' permission, he cannot even go outside".

III. relevant international law and material

A. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

39. The standards of the CPT concerning the stay of legally incapacitated individuals in social care establishments, as summarised in a 2020 factsheet entitled "Persons deprived of their liberty in social care establishments" (CPT/Inf(2020)41), in so far as relevant, require:

"... [I]nvoluntary placement and stay of residents in social care establishments (including situations in which the restrictions imposed amount to *de facto* deprivation of liberty) should be regulated by law and accompanied by appropriate safeguards. In particular, placement must be made in the light of an objective medical assessment, including of a psychiatric nature.

Further, all residents who are involuntarily placed in a social care establishment (including situations in which the restrictions imposed amount to *de facto* deprivation of liberty), whether or not they have a legal guardian, must enjoy an effective right to bring proceedings to have the lawfulness of their placement and stay decided speedily and reviewed regularly by a court and, in this context, must be given the opportunity to be heard in person by the judge and to be represented by a lawyer".

As to the persons who have been voluntarily admitted to such establishments, the CPT indicated as follows (footnotes omitted):

"... [I]f it is considered that a given resident, who has been voluntarily admitted and who expresses a wish to leave the establishment, still requires care to be provided in the establishment, then the involuntary placement procedure provided by the law should be fully applied. In the absence of involuntary placement procedures, a clear and comprehensive legal framework should be put in place which allows residents who have been admitted voluntarily to challenge the imposition of any subsequent restrictions amounting to deprivation of liberty before a court as set out above".

40. The CPT addressed the issue of the rights of patients of psychoneurological institutions in Ukraine during its periodic country visits in 2002 and 2017, as well as during its *ad hoc* visit in 2019. In a report (CPT/Inf (2020) 1) issued following its visit to Ukraine from 2 to 11 April 2019, the CPT noted that despite its recommendations to amend the domestic legal framework so that residents of psychoneurological institutions who lacked legal capacity could apply to a court to terminate their placement in such institutions, and to ensure either that the need for the continued placement of such persons was automatically reviewed by a court at regular intervals or that the residents themselves could request a judicial review at reasonable intervals, the legal framework had not changed.

As to annual reviews by medical panels (see paragraph 29 above), the CPT highlighted that such reviews in the establishments that it had visited were performed in a perfunctory manner, were poorly documented and contained unclear or no conclusions.

As to the right to leave the premises of an institution, the CPT noted as follows:
"It is to be added that in the three 'internats' the delegation met many residents (especially on closed wards) who stated spontaneously and insistently that they did not wish to stay there; in Velykorybalske in particular, the impression was that a very large proportion of residents were *de facto* deprived of their liberty, without benefiting from any legal safeguards.
The CPT calls upon the Ukrainian authorities to ensure that residents in the three 'internats' visited ... benefit from the legal safeguards offered by the [Psychiatric Assistance Act]".
It was also observed that in all three of the institutions in question, the management had told the CPT delegation that any patients who absconded would be searched for and, once found, brought back to the establishment by the police.

B. Office of the United Nations High Commissioner for Human Rights

41. In a briefing note of 1 February 2022 entitled "The human rights situation of persons with intellectual and psychosocial disabilities in Ukraine", which was prepared by the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU) on the basis of 47 monitoring visits to long-term care facilities for persons with intellectual and psychosocial disabilities between October 2020 and October 2021, the following findings were made (footnotes omitted):
"3. The exact number of persons with intellectual and psychosocial disabilities in Ukraine is unknown. According to the Government of Ukraine, as of 1 January 2020, there were 40,327 persons deprived of legal agency ... At that time, 14,596 persons with removed legal agency resided in long-term care institutions in Ukraine.
...
50. All the long-term care facilities and psychiatric hospitals visited by HRMMU violated the right to liberty of persons with intellectual and psychosocial disabilities by imposing restrictions on freedom of movement, either inside the institution or in relation to outside visits. Such restrictions were even imposed on legally-capable persons ...
51. The arbitrary denial of the right of all or some of the residents with intellectual and psychosocial disabilities to leave the facilities, even during the day, is one of the major concerns observed by HRMMU. Decisions to allow residents to leave the facilities for a few hours during the daytime, after their written application, were often made by psychiatrists based on the mental conditions of the residents. While in some facilities only persons with legal agency were allowed to leave the facilities during the day, in other facilities, all residents, including those with full legal agency, were denied the right to go outside. 42 facilities allowed residents to go outside accompanied by staff members, usually in groups. Such groups mostly left the facility to visit specific places in the community – such as shops, churches or public institutions. The possibility to leave the facilities in a group was strictly dependent on the availability of accompanying staff ...
...
53. Directors of long-term care facilities could not explain to HRMMU the legal grounds for the restrictions of the right to liberty they imposed, including in relation to persons with removed legal agency, but referred to their personal duty to protect the life and health of the residents, which is provided in the legislation. Most of them also referred to the lack of staff responsible for supervising the residents (mostly, orderlies) as an excuse for restrictions on free movement inside the facility and to leave the facilities ..."

THE LAW

I. Preliminary remarks

42. The Court observes that in its previous judgment in *Kaganovskyy v. Ukraine* (no. 2809/18, 15 September 2022) it examined the applicant's confinement in the KPRI enhanced (intensive) supervision unit in the period between 27 June and 6 July 2017. In respect of that specific period, the Court found that the applicant's confinement had amounted to a deprivation of liberty within the meaning of Article 5 § 1 of the Convention and had not been lawful (ibid., §§ 87 and 104). It further found violations of Article 5 §§ 4 and 5 of the Convention regarding the same period. The question of whether the applicant's stay in the KPRI outside that period and outside the enhanced (intensive) supervision unit had constituted a deprivation of liberty fell outside the scope of the case since, as the Court noted in its judgment (ibid., §§ 73 and 74), the applicant had submitted complaints about another period only after the Government had been given notice of the case and had submitted a separate application in that regard.

43. In that separate application, the present case, the applicant complained about his stay at the KPRI immediately before and after his confinement in the enhanced supervision unit – that is, according to him, from approximately 1 April to 26 June 2017, and from 7 July 2017 to approximately 27 June 2018. Those separate complaints form the subject matter of the present case.

II. THE GOVERNMENT'S OBJECTION REGARDING CONTINUED EXAMINATION AFTER THE APPLICANT'S DEATH

A. The parties' submissions

44. The Government argued that since the applicant had died and there were no heirs or close relatives willing to pursue his case, the UHHRU did not have *locus standi*. They also indicated that there was no sufficiently close link between the applicant and the UHHRU, and that the subject matter of the present case did not raise any serious questions of general interest which could warrant its continued examination. Referring to the Court's reasoning in *Krotov v. Ukraine* ((dec.) [Committee], no. 30289/17, §§ 11-15, 5 September 2024), the Government argued that the present application should be struck out of the Court's list of cases.

45. The UHHRU disagreed. It reiterated the arguments it had made in *Kaganovskyy* (cited above, § 66) and additionally indicated that the prohibition on residents of social care institutions leaving those establishments remained a systemic problem in Ukraine. In the UHHRU's view, that problem transcended the applicant's individual situation and concerned all individuals residing in similar establishments in Ukraine. It also submitted that the problem of prohibitions on leaving social care institutions in Ukraine had not always received adequate attention in the Ombudsperson's reports.

B. The Court's assessment

46. The Court reiterates that it has struck out applications where the applicant died in the course of the proceedings and no heir or close relative expressed a wish to pursue the application (see *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 57, ECHR 2012, with further references). Nevertheless, as the Court pointed out in *Malhous v. the Czech Republic* ((dec.) [GC], no. 33071/96, ECHR 2000-XII), human rights cases before the Court generally also have a moral dimension, which must be taken into account when considering whether the examination of an application after the applicant's death

should be continued. This is especially true if the main issue raised by the case transcends the person and the interests of the applicant.

47. The Court refers to its conclusion in *Kaganovskyy* (cited above, §§ 71-72) that the case concerned issues that transcended the application and involved a question of general interest. Given the vulnerability of persons residing in psychoneurological institutions and the fact that the relevant domestic law had not been changed, the Court found that respect for human rights required it to continue the examination of the case.

48. Those findings are equally pertinent to the present case. As the relevant domestic and international reports demonstrate (see paragraphs 35-37 and 40-41 above), the issue which lies at the heart of the case – the lack of appropriate safeguards for persons with mental disorders staying in psychoneurological institutions – concerns not only the late applicant, but also a large number of vulnerable individuals who reside in such establishments across Ukraine (see paragraph 41 above). There is also no indication that there have been any significant changes in the relevant domestic legal framework (see paragraph 40 above) that could make the above-mentioned issue less relevant.

49. In these circumstances, the Court finds that it is not necessary to examine the *locus standi* of the UHHRU in the proceedings before it, as respect for human rights, as defined in the Convention and the Protocols thereto, requires it to continue the examination of the application in accordance with Article 37 § 1 *in fine* of the Convention.

III. alleged violations of article 5 §§ 1, 4 and 5 of the convention

50. Relying on Article 5 §§ 1, 4 and 5 of the Convention and Article 2 of Protocol No. 4 to the Convention, the applicant complained about the prohibition on his leaving the KPRI's premises between approximately 1 April and 26 June 2017, and between 7 July 2017 and approximately 27 June 2018. He also complained that under domestic law, he could not challenge the lawfulness of that prohibition in court and obtain compensation for it.

51. As the master of the characterisation to be given in law to the facts of a case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), the Court considers that the applicant's complaints should be examined solely under Article 5 §§ 1, 4 and 5 of the Convention (see, for example, *Mihailovs v. Latvia*, no. 35939/10, § 101, 22 January 2013), which 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:

(e) the lawful detention of persons ... of unsound mind ...

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

A. Admissibility

1. *Whether the applicant was deprived of his liberty within the meaning of Article 5 § 1 of the Convention*

(a) The parties' submissions

52. The applicant maintained that during the relevant period he had been deprived of his liberty against his will. He stated that his initial placement and stay at the KPRI had been voluntary and that he had been permitted to leave the premises with authorisation from the management. However, after approximately 1 April 2017 he had no longer been allowed to go out, and from that moment on he had considered himself deprived of his liberty. The applicant further indicated that the decision to lock him up on the KPRI's premises had been taken by the institution's staff informally, without any legal proceedings or medical justification, and with the sole purpose of obstructing his efforts to have his legal capacity restored. That prohibition, in the applicant's view, had rendered his otherwise voluntary stay at the KPRI tantamount to *de facto* detention.

53. As to the accuracy of the indicated start and end date of the alleged detention, 1 April 2017 and 27 June 2018 respectively, the applicant submitted that those were approximate dates as the relevant decisions of the KPRI staff had been communicated to him only verbally without any written order or entry in his medical file. His lawyers' formal requests to confirm the alleged dates and establish the grounds for the imposed restrictions had been dismissed by the KPRI management without proper justification (see paragraphs 24-25 above).

In support of his assertions, the applicant relied, *inter alia*, on (i) the letters from his legal guardian to the KPRI (see paragraphs 13 and 15 above) in which the guardian had explicitly instructed the administration to prohibit the applicant from leaving the premises; (ii) the video footage of his unsuccessful attempt to leave the institution with his lawyers in order to take part in the proceedings to restore his capacity (see paragraph 16 above); and (iii) his submissions to domestic courts in which he had complained about his detention at the KPRI and expressed his wish to leave (see paragraph 23 above).

54. The Government disagreed. They submitted that the applicant had initially been placed in the KPRI on the basis of the decision of his guardian. His subsequent stay there had been voluntary and – with the exception of the period when he had been confined in the enhanced supervision unit between 27 June and 6 July 2017, which had already been examined by the Court in *Kaganovskyy* – had not amounted to a deprivation of liberty within the meaning of Article 5 § 1. The Government also made reference to the nature of the KPRI, which was a residential care institution rather than a psychiatric hospital, and submitted that the applicant had not raised the issue of his alleged detention at domestic level.

55. Referring to the Court's criteria in *Storck v. Germany* (no. 61603/00, ECHR 2005-V), the Government further maintained that objectively, the applicant had not been under the constant supervision of the KPRI personnel, that the institution had not been locked, that he had enjoyed freedom of movement and that he had been able to maintain social contact with the outside world. In particular, he had been "permitted to leave for rehabilitation and social purposes", to have access to court hearings, and to speak to his lawyers and journalists. Subjectively, in their view, the applicant had been "undecided" as to whether he wished to stay at the KPRI or not. However, neither the applicant nor his representatives had lodged any formal complaints about his alleged deprivation of liberty during that period.

(b) The Court's assessment

56. The Court would start by observing that although the applicant's stay at the KPRI had been requested by his guardian, a private individual, it was implemented by a State-run institution – the KPRI. Accordingly, the responsibility of the authorities for the situation complained of was engaged.
57. The Court has previously considered cases involving the placement and stay of mentally incapacitated individuals in social care institutions, finding that such measures may constitute a deprivation of liberty within the meaning of Article 5 § 1 of the Convention (see, for example, *Stanev v. Bulgaria* [GC], no. 36760/06, § 132, ECHR 2012; *D.D. v. Lithuania*, no. 13469/06, § 152, 14 February 2012; *Mihailovs*, cited above, §§ 131-37; and *Červenka v. the Czech Republic*, no. 62507/12, §§ 103-04, 13 October 2016). It reiterates that the notion of deprivation of liberty within the meaning of Article 5 § 1 does not only comprise the objective element of a person's confinement in a particular restricted space for a length of time which is more than negligible. A person can only be considered to have been deprived of his or her liberty if, as an additional subjective element, he or she has not validly consented to the confinement in question (see *Storck*, cited above, § 74).
58. In the present case it is undisputed that the applicant's stay in the KPRI was uninterrupted from the date of his admission on 6 August 2014 until his death on 25 December 2019. He was placed there at the request of his guardian and remained legally incapacitated during his stay. As such, on the basis of the relevant provisions of the Psychiatric Assistance Act (see paragraph 28 above), at no point during his stay at the KPRI was the applicant entitled to discharge himself from that institution on his own initiative. He was also never free to leave the institution whenever he wished, as he was always required to seek prior authorisation from the KPRI staff, even for short periods away from the facility. If the applicant had left the institution without permission, the KPRI would have been required to take measures to search for him and bring him back (see the relevant domestic legislation in paragraph 34 above, and the practice described in the CPT report in paragraph 40 above).
59. The Court also observes that during the applicant's stay at the KPRI, its staff gave him medical treatment (see paragraph 10 above) and were able to move him from an ordinary residential block to the enhanced supervision unit and back (see paragraph 14 above). In the Court's view, those facts indicate that the KPRI staff exercised complete and effective control over the applicant's care, residence and movements (see *H.L. v. the United Kingdom*, no. 45508/99, § 91, ECHR 2004-IX). Thus, regardless of whether the applicant was sometimes given permission to leave the KPRI for short periods of time – which, in any event, has not been shown by the Government to have been the case – his entire stay in the institution bore all the objective features of a deprivation of liberty within the meaning of Article 5 of the Convention (see *Stanev*, cited above, §§ 124-32, where the Court considered that a resident of a social care home had been "deprived of liberty" even though he had been able to leave that facility with permission and had actually been granted leave to do so on several occasions).
60. Turning to the subjective element, the Court must assess whether the applicant validly consented to his confinement throughout the period under consideration. In this connection, it observes that the fact that the applicant lacked legal capacity does not mean that he was *de facto* unable to understand his situation (see *Shtukaturov v. Russia*, no. 44009/05, § 108, ECHR 2008).
61. That observation is particularly relevant, as the applicant chose to complain – both domestically and before the Court – not about his entire stay at the KPRI starting in 2014, which, as stated above, bore all the objective features of a deprivation of liberty, but only about the period in 2017 – 2018

during which the institution's staff had prohibited him from leaving the premises of the institution and during which he had considered himself to be deprived of his liberty.

62. In this connection, the Court would first observe that even if the applicant, as a person who lacked legal capacity, tacitly agreed to his admission to the institution, such initial agreement cannot be regarded as irrevocable or as depriving him of the protection of Article 5 § 1, particularly once he objected to his continued confinement. Also, the fact that for almost two years and seven months after his admission (August 2014-April 2017) the applicant did not contest his stay at the KPRI, even assuming that during that time he regarded it as voluntary, is not decisive in respect of any subsequent period.

63. Regarding the situation after approximately 1 April 2017, contrary to the Government's arguments, it was obvious that the applicant no longer wished to remain confined at the KPRI: he unsuccessfully attempted to leave the premises, expressly informed the courts of his wish to be discharged, and (through his lawyers) lodged a criminal complaint denouncing the unlawful deprivation of his liberty (contrast *Mihailovs*, cited above, §§ 138-39, where the applicant was satisfied with his stay in the social care home, refused to move to another one and did not approach any domestic authority with a view to his release, and *Storck*, cited above, §§ 127-28, where the applicant admitted in the domestic proceedings that her stay had been voluntary, and it was found that she had consented to it and had not attempted to escape).

64. As to the period to be taken into account, the Court finds the applicant's explanations about his inability to guarantee the accuracy of the start and end dates of his alleged deprivation of liberty convincing. In view of the failure of the Government to produce any documentation, such as entry-exit logs, that could have refuted the applicant's allegations (see *Creangă v. Romania* [GC], no. 29226/03, §§ 99-100, 23 February 2012), the Court considers it possible to accept the dates indicated by the applicant (that is, 1 April 2017 and 27 June 2018) as the start and end date of the impugned situation.

65. Having regard to the scope of the complaint under examination in the present case, which excludes the period that was the subject matter of the Court's 2019 judgment in *Kaganovskyy*, cited above, the Court concludes, in the light of the above-mentioned considerations, that the applicant's stay at the KPRI from 1 April to 26 June 2017 and from 7 July 2017 to 27 June 2018 amounted to a *de facto* deprivation of liberty within the meaning of Article 5 § 1 of the Convention (see, *mutatis mutandis*, *Osypenko v. Ukraine*, no. 4634/04, § 49, 9 November 2010, and *Červenka*, cited above, § 104).

2. Other admissibility issues

(a) The parties' submissions

66. The Government argued that the applicant had failed to exhaust domestic remedies. Without providing further details or adducing examples from the domestic case-law, they submitted that under Ukrainian legislation, the applicant could have challenged his alleged detention at the KPRI in civil proceedings or lodged a complaint with a court. They also referred to the failure by the applicant to lodge a criminal complaint in respect of his alleged unlawful detention. In that connection, they noted that neither the prosecutor's office nor the police had any record of the applicant's grievances about his stay at the KPRI.

67. Referring to the arguments made earlier (see paragraphs 54-55 above), the Government also contended that the complaints were manifestly ill-founded.

68. The applicant disagreed. He submitted that he had been deprived of access to judicial remedies owing to his lack of legal capacity. His attempts to restore his capacity had been ineffective, as the domestic law at the relevant time had not allowed him to do so without the consent of his legal guardian, and for that reason the courts had repeatedly remitted his case for reconsideration (see paragraph 18 above). Furthermore, contrary to the Government's assertions, on 13 October 2017 the applicant's legal representatives had registered with the police a criminal complaint about his allegedly unlawful detention at the KPRI. However, as the applicant's representative had found out in October 2018, that investigation had been ineffective, and its current status remained unknown.

(b) The Court's assessment

69. The Court considers that in the present case, the question of whether the applicant exhausted domestic remedies to challenge the lawfulness of his alleged detention at the KPRI is closely linked to his allegations under Article 5 § 4 of the Convention. It should therefore be joined to the merits under that provision (see *Mihailovs*, cited above, § 110).

70. The Court also notes that this part of the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Article 5 § 1 of the Convention

(a) The parties' submissions

71. The applicant argued that his detention had not been compatible with the requirements of Article 5 § 1 of the Convention. In particular, it had not been based on a clear and foreseeable domestic law. It had also not been medically necessary. The instructions of his legal guardian to prohibit him from leaving the KPRI's premises had not had any legal basis and had not pursued any legitimate aim. As a result of his detention at the KPRI, he had not been able to attend proceedings to restore his capacity, go to church or spend time with friends.

72. The Government did not comment on whether the applicant's deprivation of liberty had been in accordance with Article 5 § 1 of the Convention.

(b) The Court's assessment

73. The Court notes at the outset that the Government have not put forward any permissible justifications for the applicant's deprivation of liberty (see paragraph 72 above). Since it took place in the context of the applicant's mental illness, the Court will assess whether his detention was justified under Article 5 § 1 (e) of the Convention.

74. The relevant general principles concerning the deprivation of liberty of persons of unsound mind under Article 5 § 1 (e) of the Convention have been summarised in *Stanev* (cited above, §§ 143-47) and *Ilnseher v. Germany* ([GC], nos. 10211/12 and 27505/14, §§ 127-34, 4 December 2018). The Court has outlined three minimum conditions for the lawful detention of an individual on the basis of unsoundness of mind under Article 5 § 1 (e) of the Convention: he or she must reliably be shown to be of unsound mind (that is, a true mental disorder must be established before a competent authority on the basis of objective medical expertise); the mental disorder must be of a kind or degree warranting compulsory confinement; and the validity of continued confinement must depend upon the persistence of such a disorder (see *Winterwerp v. the Netherlands*, 24 October 1979, § 39, Series A no. 33).

75. Moreover, detention cannot be considered "lawful" within the meaning of Article 5 § 1 if the domestic procedure does not provide sufficient guarantees against arbitrariness (see *Shtukaturov*, cited above, § 113; *L.M. v. Latvia*, no. 26000/02, § 54, 19 July 2011; *B.M. v. Spain*, no. 25893/23, § 46, 6 November 2025).

76. Turning to the present case, the Court, referring to its findings in *Kaganovskyy* (cited above, §§ 98-104), firstly observes that no formal decision was ever issued in relation to the applicant's deprivation of liberty. The absence of such a decision, in the Court's view, must have left the applicant in a state of uncertainty as to the legal basis for his detention, a situation incompatible with the principles of legal certainty and protection against arbitrariness, which are common threads throughout the Convention and the rule of law (see, *mutatis mutandis*, *Proshkin v. Russia*, no. 28869/03, § 73, 7 February 2012).

77. The above considerations would in principle be sufficient for the Court to find a violation of Article 5 § 1 of the Convention. Nonetheless, in the circumstances of the present case, the Court considers it important to also examine the remaining aspects of the required protection against arbitrariness.

78. In this respect, the Court notes that the applicant's stay at the KPRI was based on the consent and instructions given by his legal guardian, who was presumed to be acting on his behalf. From the point of view of the domestic legislation, the applicant was thus considered to be in the social care institution voluntarily and the requirements for involuntary hospitalisation – such as a mandatory judicial authorisation, which was normally applicable in such cases (see paragraph 27 above) – did not apply.

79. As a result, the applicant was *de facto* deprived of his liberty at the KPRI solely on the basis of the consent and instructions given by his guardian.

80. The Court has previously acknowledged a trend in international standards to require that the detention of incapacitated persons be accompanied by requisite procedural safeguards, namely judicial authorisation. In particular, subjecting to judicial scrutiny the guardian's consent to the deprivation of his or her ward's liberty – either automatically or at the request of the ward or some other suitable person – could provide, in the Court's view, a relevant safeguard against arbitrariness (see, in respect of detention in a psychiatric hospital, *Sýkora v. the Czech Republic*, no. 23419/07, § 67, 22 November 2012, and, in respect of detention in a social care home, *Červenka*, cited above, § 107). The need for judicial authorisation in cases involving the deprivation of liberty of incapacitated persons – albeit in the context of their hospitalisation in psychiatric hospitals – has likewise been recognised by the Constitutional Court of Ukraine (see paragraph 31 above).

81. No such safeguards, however, were available to the applicant under Ukrainian law at the relevant time, and despite the recommendations of the CPT, the applicable legal framework remains unchanged to date (see paragraphs 39-40 above).

82. The Court also cannot but note that the applicant's *de facto* detention almost coincided in time with his attempts to restore his legal capacity. While the Court cannot speculate as to whether, as alleged by the applicant, his detention was in fact intended to obstruct those efforts, it nevertheless notes that no other reasons (including those of a medical nature) justifying the applicant's detention at the relevant time have been shown to exist.

83. In this connection, the Court refers to the relevant provisions of domestic law, in accordance with which social care institutions were under a legal obligation to carry out a psychiatric assessment of their residents at least once a year in order to determine whether their continued residence in such institutions was necessary (see paragraph 29 above). In the present case, however, the Government did not inform the Court of any psychiatric assessments carried out in respect of the applicant during 2017 – 2018 in which the necessity of his continued stay at the KPRI had been considered. In the absence of such assessments, the Court is unable to ascertain whether, during the relevant period, the applicant's mental disorder was of a kind or degree warranting compulsory confinement under the *Winterwerp* criteria (see paragraph 74 above).

84. The Court therefore considers that the applicant's detention was not lawful, as it was not accompanied by sufficient guarantees against arbitrariness and did not fall within the terms of Article 5 § 1 (e).

85. There has therefore been a violation of Article 5 § 1 of the Convention.

2. Article 5 § 4 of the Convention

(a) The parties' submissions

86. The applicant argued that Ukrainian law lacked any mechanisms by which the residents of psychoneurological institutions could challenge their detention, and that the judicial review mechanisms under the Psychiatric Assistance Act were not applicable to such situations. As a legally incapacitated person, he could not apply to the courts either.

87. The Government disagreed, submitting that the applicant had managed to initiate legal proceedings to restore his legal capacity. The outcome of those proceedings, in their view, could have terminated his placement in the KPRI.

(b) The Court's assessment

88. The general principles concerning the right of persons detained in social care institutions to institute proceedings for a review of the lawfulness of their detention have been summarised in *Stanev* (cited above, § 168) and *Kaganovskyy* (cited above, § 107).

89. The Court reiterates its findings made in *Kaganovskyy* (cited above, §§ 108-10) as to the absence of a legal procedure by which the applicant would be entitled to take court proceedings in which the lawfulness of his deprivation of liberty could be decided.

In addition, it notes that in the present case, domestic courts were not involved in deciding on the applicant's detention at any point or in any way. As underscored in the relevant reports of international bodies (see paragraphs 40 and 81 above), Ukrainian law does not provide for automatic judicial review of confinement in a social care institution in situations such as the applicant's. Nor can such a review be initiated by the person concerned.

90. That situation is in stark contrast to the situation of persons detained in psychiatric hospitals, who can initiate proceedings for judicial review of the lawfulness of their detention under the provisions of the Psychiatric Assistance Act (see paragraph 27 above). While it is not within the province of the Court to inquire into what would be the best or most appropriate system of judicial review in that sphere, it sees no justification for denying comparable judicial safeguards to residents of psychoneurological institutions. Similar concerns have likewise been noted by the CPT (see paragraphs 39-40 above).

91. As to an inquiry carried out by the prosecutor's office and/or the police, as suggested by the Government in their non-exhaustion objection (see paragraph 66 above), the Court has previously established that such inquiries cannot be regarded as judicial reviews satisfying the requirements of Article 5 § 4 of the Convention (see *Shtukaturov*, cited above, § 124). In any case, and contrary to the Government's assertions, it appears that on 13 October 2017 the applicant, through his lawyers, submitted a criminal complaint to the police in which it was explicitly stated that he was being unlawfully deprived of his liberty at the KPRI. Although a criminal investigation was launched, this did not lead to a judicial review of the lawfulness of the applicant's detention or to his release.

92. Lastly, the Court observes that the Government did not indicate any specific domestic remedy capable of affording the applicant, a person who lacked legal capacity, a direct opportunity to challenge the lawfulness of his detention at the KPRI. Although section 24 of the Psychiatric Assistance Act (see paragraph 28 above) listed a court order as one of the grounds on which a legally incapacitated person could obtain his or her release from a social care home, it did not provide a clear mechanism for initiating proceedings to that end. Nor did the Government clarify how that mechanism – if it indeed existed in law – operated in practice.

93. In the light of the above, the Court dismisses the Government's objection as to the applicant's alleged failure to exhaust domestic remedies which was previously joined to the merits (see paragraph 66 above) and finds that there has been a violation of Article 5 § 4 of the Convention.

3. Article 5 § 5 of the Convention

(a) The parties' submissions

94. The applicant submitted that he could not obtain compensation for the unlawful deprivation of his liberty, as the KPRI had never acknowledged it and the domestic authorities had failed to establish it. Without such prior acknowledgment, any attempt to claim compensation would have been futile.

95. The Government disagreed, arguing that a compensatory remedy had been available to the applicant under Articles 23 and 1167 of the Civil Code (see *Kaganovskyy*, cited above, §§ 43-44). Referring to an example from the domestic case-law where the claimant in question had been awarded compensation in respect of non-pecuniary damage for being prohibited from leaving a psychoneurological institution (ibid., §64), they argued that the suggested remedy had been effective both in theory and in practice.

(b) The Court's assessment

96. The Court's case-law under Article 5 § 5 in relation to the right to compensation where detention has been effected contrary to the guarantees enshrined in Article 5 of the Convention has been summarised in *Stanev* (cited above, § 182).

97. The Court notes that in *Kaganovskyy* (cited above, §§ 114-15) it examined and dismissed the same argument made by the Government. It further reiterates its previous findings that the right to compensation under Article 5 § 5 of the Convention was not ensured in the Ukrainian legal system, in particular where there had been no separate finding of unlawful deprivation of liberty by the domestic authorities (see, for example, *I.N. v. Ukraine*, no. 28472/08, §§ 93-102, 23 June 2016). In the present case, given that there was no separate finding by the domestic authorities that the applicant's deprivation of liberty in the KPRI had been unlawful, the Court sees no reason to reach a different conclusion.

98. There has accordingly been a violation of Article 5 § 5 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

99. Lastly, the applicant complained under Articles 8 and 9 of the Convention that he had not been able to leave the KPRI premises in order to attend church or to meet with his friends. He also complained under Article 13 of the lack of remedies in respect of his complaints.

100. Having regard to the facts of the case and the parties' submissions, as well as noting in relation to the Article 9 complaint that it did not concern any restrictions on the applicant's ability to practise his religion inside the KPRI premises, the Court considers that these complaints are linked to those examined under Article 5 of the Convention and must likewise be declared admissible.

101. However, having regard to its conclusions under this provision (see paragraphs 85, 93 and 98 above), the Court finds that no separate issue arises concerning the alleged breaches of Articles 8, 9 and 13 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

102. 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."

103. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT

1. *Decides*, unanimously, to continue the examination of the application in accordance with Article 37 § 1 *in fine* of the Convention;
2. *Declares*, unanimously, the application admissible;
3. *Holds*, unanimously, that there has been a violation of Article 5 § 1 of the Convention;
4. *Holds*, unanimously, that there has been a violation of Article 5 § 4 of the Convention;
5. *Holds*, unanimously, that there has been a violation of Article 5 § 5 of the Convention;
6. *Holds*, by six votes to one, that no separate issue arises under Articles 8, 9 and 13 of the Convention.

Done in English, and notified in writing on 5 March 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar

Kateřina Šimáčková President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Serghides is annexed to this judgment.

PARTLY DISSENTING OPINION OF JUDGE SERGHIDES

1. In the present case, the applicant complained about the prohibition on his leaving the premises of the Ukrainian Helsinki Human Rights Union (KPRI) between approximately 1 April and 26 June 2017, and between 7 July 2017 and approximately 27 June 2018. He also complained that

under domestic law he could not challenge the lawfulness of that prohibition in court or obtain compensation for it. For those complaints he relied on Article 5 §§ 1, 4 and 5 of the Convention and Article 2 of Protocol No. 4 to the Convention (see paragraph 50 of the judgment). The applicant also complained under Articles 8 and 9 of the Convention that he had not been able to leave the KPRI premises in order to attend church or to meet with his friends. Lastly, he complained under Article 13 of the Convention of a lack of remedies in respect of his complaints (see paragraph 100 of the judgment).

2. I agree with the majority that there has been a violation of Article 5 §§ 1, 4 and 5 of the Convention but I disagree that there was no need to examine the admissibility and merits of the remainder of the applicant's complaints. I therefore voted in favour of points 1-5 of the operative provisions of the judgment but against point 6, holding that no separate issue arises under Articles 8, 9 and 13 of the Convention.

3. The reasoning of the Court in deciding not to examine the admissibility and merits of the remainder of the applicant's complaints is given in paragraphs 51, 100 and 101 of its judgment. In paragraph 51 it is stated that, as master of the characterisation to be given in law to the facts of a case, the Court considers that the applicant's complaints should be examined solely under Article 5 §§ 1, 4 and 5 of the Convention. In paragraph 100 it is stated: "Having regard to the facts of the case and the parties' submissions, as well as noting in relation to the Article 9 complaint that it did not concern any restrictions on the applicant's ability to practise his religion inside the KPRI premises, the Court considers that these complaints are linked to those examined under Article 5 of the Convention and must likewise be declared admissible". In the following paragraph, paragraph 101, it is stated: "However, having regard to its conclusions under this provision (see paragraphs 85, 93 and 98 above), the Court finds that no separate issue arises concerning the alleged breaches of Articles 8, 9 and 13 of the Convention".

4. As I have also argued in a number of other separate opinions, one cannot absorb one right into another right or one Convention provision into another Convention provision and argue that there is no need to examine the admissibility and merits of the remainder of an applicant's complaints. Such a method of absorbing one right into another has no legal basis in the Convention and on the contrary, is not in line, *inter alia,* with the principles of the rule of law, effectiveness, indivisibility of rights and autonomy of rights, or with the purpose of individual application under Article 34 of the Convention, which is the cornerstone of the Convention. It should not be overlooked that each right possesses its own defined normative core, scope, purpose, parameters of application, and distinct legal and moral character. To treat one right as an empty receptacle to be filled by another is to risk undermining these fundamental distinctions. The Court has a responsibility not only to safeguard rights but also to preserve their individual identities within the Convention system.

5. The practice or principle applied by the Court, according to which it is master of the characterisation to be given in law to the facts of a case, is not intended to result in the subsuming of one right under another without an individual examination of its admissibility and merits. Rather, it is intended to ensure the effective protection of an applicant who has not invoked the appropriate Convention provision, even though, in substance, his or her application describes facts falling within its scope (see, further on this argument, paragraph 5 of my partly dissenting opinion in *Mandev and*

Others v. Belgium, nos. 57002/11 and 4 others, 21 May 2024, and paragraph 5 of my partly dissenting opinion in *Tomenko v. Ukraine*, no. 79340/16, 10 July 2025).

6. Furthermore, such subsuming of rights risks distorting the analytical structure of the Convention by collapsing distinct normative guarantees into a single, overextended provision. This approach not only weakens the doctrinal coherence of the Convention system but also, as said above, deprives individual rights of their autonomous protective function. The Convention was deliberately constructed as a constellation of complementary yet distinct guarantees, not as a hierarchy in which certain provisions may be treated as residual or merely ancillary to others. Allowing one right to be absorbed into another further undermines legal certainty and foreseeability. Applicants cannot reasonably anticipate that a complaint articulated under one provision will be effectively neutralised by its recharacterisation as redundant once another provision is examined. Such unpredictability is incompatible with the rule of law and risks eroding confidence in the individual application mechanism. Moreover, the subsuming of rights obscures the specific positive and negative obligations that attach to each Convention right. Different rights impose distinct duties on the respondent State, engage different justificatory tests, and require different forms of scrutiny. By failing to examine each right separately, the Court risks bypassing the tailored standards of review that the Convention demands and reducing the depth and precision of its reasoning. This practice also has significant implications for the development of the Court's jurisprudence. The progressive interpretation of the Convention depends upon the incremental clarification of the scope and content of each right. When complaints are dismissed by subsuming them rather than by reasoned examination, opportunities for jurisprudential development are lost, and doctrinal stagnation may result. Finally, the subsuming of rights diminishes the applicant's procedural position. Article 34 guarantees not merely access to the Court but meaningful judicial engagement with the substance of each alleged violation. To decline examination of a complaint on the basis that it is absorbed by another provision is to deprive the applicant of a reasoned response and to weaken the participatory dimension of Convention adjudication. Such an approach risks transforming the principle that the Court is master of the characterisation into a mechanism of procedural economy at the expense of substantive justice.

7. Another point that must be addressed concerns the manner in which the Court elects to absorb certain rights into others without clearly identifying the scope or content of what is being absorbed or of the right that is said to receive that absorption, while simultaneously concluding that there is no need to examine the admissibility and merits of those rights. Such an approach lacks methodological transparency and deprives the decision-making process of analytical clarity. By failing to specify which elements of a right are considered to overlap with, or be subsumed by, another provision, the Court leaves both applicants and respondent States uncertain as to the precise legal reasoning underpinning its conclusion. This ambiguity renders it impossible to determine whether the absorbed right has been fully and adequately addressed, partially considered, or effectively disregarded. Moreover, deciding not to examine the admissibility and merits of a complaint without first delineating the contours of the right allegedly to be absorbed amounts to a form of implicit dismissal without reasoning. This practice risks conflating analytical economy with substantive adjudication and undermines the requirement that judicial decisions be reasoned and intelligible. In the absence of a clear explanation as to what is absorbed and why, the Court's

approach also weakens the safeguards inherent in the Convention system. Each Convention right entails specific thresholds of admissibility, distinct standards of review, and particular legal consequences. To bypass this structured analysis without explicit justification risks eroding the internal coherence of Convention adjudication and the credibility of the Court's reasoning.

8. The argument that, having regard to its conclusion under one Convention provision, no separate issue arises in respect of alleged breaches of other provisions cannot be accepted as a matter of principle. The mere fact that a violation has been found (as in the present case), or no violation established, under one provision does not exhaust the legal and normative questions raised under other Convention rights invoked by the applicant. As said above, each Convention provision protects a distinct interest, pursues a specific purpose, and gives rise to its own set of obligations and standards of review. A conclusion reached under one right cannot, without further analysis, be presumed to resolve the substance of complaints raised under different provisions, even where there is factual overlap. To do so is to conflate factual commonality with normative equivalence. Furthermore, the formula that "no separate issue arises" risks functioning as a conclusory device rather than the result of reasoned judicial assessment. Without an explicit examination demonstrating that the essential elements of the other alleged violations have been fully addressed under the provision examined, such a finding remains unsubstantiated and deprives the applicant of an effective determination of his or her complaints.

9. It follows that any form of absorption of one Convention right into another is not permitted under the Convention, as it leads not merely to a limitation but to a deprivation of the right itself. Such an outcome runs directly counter to the principle of effective protection of human rights, which is an overarching principle of the Convention and underlies every Convention provision. A practice that results in the non-examination of a right, rather than its careful and individual assessment, empties that right of its practical and effective meaning and is therefore incompatible with the object and purpose of the Convention.

10. If I were not in the minority, I would carefully examine all of the applicant's remaining complaints and decide on both their admissibility and merits.