KEY THEME[1]
Article 5 § 4
Judicial review of short-term detentions

(Last updated: 31/08/2026)

Introduction

Article 5 § 4 of the Convention guarantees to all arrested or detained persons the right to take proceedings by which the lawfulness of their detention is decided speedily by a court and their release ordered if the detention is not lawful. This Key Theme addresses the approach to a complaint under Article 5 § 4 when the detainee is released speedily (within a matter of hours or a few days) and thus before any judicial review of the lawfulness of the detention could, in practice, take place.

Principles drawn from the current case-law

The wording of Article 5 § 4 of the Convention indicates that it becomes operative immediately after arrest or detention and is applicable to "[e]veryone who is deprived of his liberty" (*Petkov and Profirov v. Bulgaria*, 2014, § 67).

The right to "take proceedings" thus arises at that point, with the consequence that the denial of the right to *institute* such proceedings – subject to reasonable practical considerations – will raise an issue under Article 5 § 4 (*Döner and Others v. Turkey*, 2017, § 68).

Article 5 § 4 deals only with those remedies which must be made available during a person's detention with a view to that person obtaining speedy judicial review of the lawfulness of the detention capable of leading, where appropriate, to his or her release. The provision does not deal with other remedies which may serve to review the lawfulness of a period of detention which has already ended, including, in particular, a short-term detention (*Slivenko v. Latvia* [GC], 2003, § 158).

Examples of cases where the examination of the merits of an Article 5 § 4 complaint has been considered unnecessary or raising no issue

- *Slivenko v. Latvia* [GC], 2003, §§ 158-159 – applicants detained for periods of less than **24 hours** and **30 hours**;
- *Fox, Campbell and Hartley v. the United Kingdom*, 1990, § 45 – applicants instituted *habeas corpus* proceedings the day after their arrest but were released after **44 hours** of detention and before their applications could be considered by a judge;
- *Nolan and K. v. Russia*, 2009, §§ 91 and 101 – applicant detained for **9 hours** and lodged an application for judicial review of his detention after his release;
- *M.B. and Others v. Turkey*, 2010, § 45 – applicants detained for a maximum period of **6 hours**;
- *Baisuev and Anzorov v. Georgia*, 2012, §§ 28 and 69-70 – applicants detained for **3 hours**;

[1] Prepared by the Registry. It does not bind the Court.

- *Ghorbanov and Others v. Turkey*, 2013, § 49 – applicants detained for a **few hours**;
- *Tomaszewscy v. Poland*, 2014, §§ 129 and 146-147 – applicants detained for up to **2 hours**;
- *Babajanov v. Turkey*, 2016, § 96 – applicant detained for a **few hours**;
- *Tiba v. Romania*, 2016, §§ 49-51 – alleged lack of judicial review for a period of detention of **9 hours and 10 minutes**;
- *Rozhkov v. Russia (no. 2)*, 2017, § 65 – applicant detained for about **2 hours**; no issue under Article 5 § 4 as there was no time to "take proceedings"; manifestly ill-founded.
- *Friedrich and Others v. Poland*, 2024, §§ 228-230 – applicants detained between about **8 and 45 hours**; no issue under Article 5 § 4 as there was no time to "take proceedings"; manifestly ill-founded.

Examples of cases where the examination of the merits of an Article 5 § 4 complaint was considered warranted

- *Čonka v. Belgium*, 2002, § 55 – applicants detained for **5 days** and prevented from making any meaningful appeal (violation of Article 5 § 4);
- *Petkov and Profirov v. Bulgaria*, 2014, §§ 67-71 – no judicial remedy available to the applicants to challenge the lawfulness of their police detention for up to **24 hours** and to obtain release (violation of Article 5 § 4);
- *A.M. v. France*, 2016, §§ 36 and 42-43 – unduly limited scope of judicial review in respect of the applicants' detention lasting **3 and a half days**, such length justifying the examination of the Article 5 § 4 complaint (violation of Article 5 § 4);
- *Döner and Others v. Turkey*, 2017, §§ 68-70 – applicants denied access to a remedy to challenge the lawfulness of their **4-day** detention, following which they were released by virtue of an automatic but tardy review of their detention within the meaning of Article 5 § 3 (violation of Article 5 § 4);
- *Moustahi v. France*, 2020, §§ 101-104 – unaccompanied minors placed in administrative detention for **several hours** deprived *ab initio* of any remedy by which to obtain a review of the lawfulness of their detention; the lack of any remedy justified the examination of the Article 5 § 4 complaint, regardless of the length of the detention (violation of Article 5 § 4);
- *Marin Yosifov v. Bulgaria*, 2020, §§ 51-54 – lack of a sufficiently established judicial remedy in respect of the applicant's **4-day** detention during which he was not brought promptly before a judge in breach of Article 5 § 3 (violation of Article 5 § 4);
- *Y.F.C. and Others v. the Netherlands*, 2026, §§ 94, 106-107 – lack of information about the possibility of interim relief and lack of legal assistance during the applicants' **first week of detention**; impossibility for them, given the absence of legal aid, to reasonably instigate any legal proceedings for a speedy review of the lawfulness of their detention before their subsequent release (violation of Article 5 § 4).

Recap of general principles

- *Slivenko v. Latvia* [GC], 2003, §§ 158-159.

KEY CASE-LAW REFERENCES

Leading case:

- *Slivenko v. Latvia* [GC], no. 48321/99, ECHR 2003-X (not necessary to examine the merits of the complaint under Article 5 § 4).

Other cases:

- *Fox, Campbell and Hartley v. the United Kingdom*, 30 August 1990, Series A no. 182 (not necessary to examine the merits of the complaint under Article 5 § 4);
- *Čonka v. Belgium*, no. 51564/99, ECHR 2002-I (violation of Article 5 § 4);
- *Nolan and K. v. Russia*, no. 2512/04, 12 February 2009 (not necessary to examine the merits of the complaint under Article 5 § 4);
- *M.B. and Others v. Turkey*, no. 36009/08, 15 June 2010 (not necessary to examine the merits of the complaint under Article 5 § 4);
- *Baisuev and Anzorov v. Georgia*, no. 39804/04, 18 December 2012 (not necessary to examine the merits of the complaint under Article 5 § 4);
- *Ghorbanov and Others v. Turkey*, no. 28127/09, 3 December 2013 (not necessary to examine the merits of the complaint under Article 5 § 4);
- *Tomaszewscy v. Poland*, no. 8933/05, 15 April 2014 (not necessary to examine the merits of the complaint under Article 5 § 4);
- *Petkov and Profirov v. Bulgaria*, nos. 50027/08 and 50781/09, 24 June 2014 (violation of Article 5 § 4);
- *Babajanov v. Turkey*, no. 49867/08, 10 May 2016 (not necessary to examine the merits of the complaint under Article 5 § 4);
- *A.M. v. France*, no. 56324/13, 12 July 2016 (violation of Article 5 § 4);
- *Tiba v. Romania*, no. 36188/09, 13 December 2016 (not necessary to examine the merits of the complaint under Article 5 § 4);
- *Rozhkov v. Russia (no. 2)*, no. 38898/04, 31 January 2017 (Article 5 § 4 complaint inadmissible – manifestly ill-founded);
- *Döner and Others v. Turkey*, no. 29994/02, 7 March 2017 (violation of Article 5 § 4);
- *Moustahi v. France*, no. 9347/14, 25 June 2020 (violation of Article 5 § 4);
- *Marin Yosifov v. Bulgaria*, no. 5113/11, 13 October 2020 (violation of Article 5 § 4);
- *Friedrich and Others v. Poland*, nos. 25344/20 and 17 others, 20 June 2024 (Article 5 § 4 complaint inadmissible – manifestly ill-founded);
- *Y.F.C. and Others v. the Netherlands*, no. 21325/19, 21 April 2026 (violation of Article 5 § 4).