KEY THEME[1]
Articles 5 and 34
Victim status as regards Article 5 complaints and compensation/acknowledgment of a breach by domestic courts

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Introduction

When examining victim status as regards Article 5 complaints, the Court has found that the award of compensation alone is generally not sufficient to provide redress: domestic courts should make an assessment of the applicants' specific complaints under this provision and/or acknowledge, either expressly or implicitly, a violation of this provision. However, in some cases, the Court has found that a sufficient acknowledgement of a violation of Article 5 by the domestic courts could be inferred from an overall assessment of the circumstances of the case.

This Key Theme seeks to identify and analyse the nuances of the Court's approach in such cases.

Principles drawn from the case-law

As a general rule, a decision or measure favourable to the applicant is not, in principle, sufficient to deprive him of his 'victim' status unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (*Dalban v. Romania* [GC], 1999, § 44; *Scordino v. Italy (no. 1)* [GC], 2006, §§ 179-180). The redress afforded must be appropriate and sufficient. Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (*Rooman v. Belgium* [GC], 2019, §§ 129 and 132; *Selahattin Demirtaş v. Turkey (no. 2)* [GC], 2020, §§ 218 and 220).

In the context of unlawful detention, the Court has generally found that the payment of compensation on account of the termination of criminal proceedings or acquittal is 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 (*Labita v. Italy* [GC], 2000, §§ 143-144; *Dubovtsev and Others v. Ukraine*, 2021, § 68, with further references). Accordingly, the award of compensation alone does not amount to a finding by the domestic authorities that the detention did not satisfy the requirements of Article 5 of the Convention (*Labita v. Italy* [GC], 2000, § 143; *Lyubushkin v. Russia*, 2015, §§ 49-52). Merely taking into account the length of pre-trial detention in determining the amount of compensation was not deemed sufficient in the absence of adequate acknowledgement, either express or implied, of non-compliance with Article 5 § 3 (*ibid.*).

However, the Court has distinguished this approach in some cases where, under an overall assessment of the circumstances, it could be inferred that there had been a sufficiently clear acknowledgement of a breach of Article 5 by the domestic authorities (*Dimo Dimov and Others*

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v. Bulgaria, 2020, § 54; *Dubovtsev and Others v. Ukraine*, 2021, §§ 59-61; *Shipovikj v. North Macedonia* (dec.), 2021, §§ 50-51). This may involve an examination of the nature of the right in issue, the reasons advanced by the national authorities in their decision, and the persistence of adverse consequences for the applicant after the decision (*Ščensnovičius v. Lithuania*, 2018, § 89). Accordingly, an acknowledgement of excessive length of proceedings, for example, may be considered as amounting to an adequate acknowledgement of excessive detention on remand (*ibid.*, § 91; compare and contrast with *Malkov v. Estonia*, 2010, § 41). A domestic court's conclusions as to the legality of the deprivation of liberty could also imply that there has been an acknowledgment, at least in substance, of a violation of the applicant's rights under Article 5 § 3 (*Bulaç v. Turkey*, 2021, § 51; *İlker Deniz Yücel v. Turkey*, 2022, § 71).

Furthermore, a recognition in substance of the excessive length of the applicant's detention, albeit during the process of determining the compensation amount, may also be considered as sufficient for these purposes. The fact that compensation is granted, relying on the legal basis for terminating proceedings or acquittal, does not appear to be of particular relevance in this context as long as there has been sufficient acknowledgement of a violation (*Dimo Dimov and Others v. Bulgaria*, 2020, § 54; *Shipovikj v. North Macedonia* (dec.), 2021, §§ 50-51). The nature and amount of the award, as well as the arguments used by the domestic courts in granting compensation, may equally be important factors in the Court's assessment of whether there has been a sufficient acknowledgement of a violation (*ibid.*).

Moreover, as to the 'appropriate' and 'sufficient' nature of the redress which has to be afforded, the Court has considered this to be dependent on all the circumstances of the case, having regard, in particular, to the nature of the Convention violation at stake (*Selami and Others v. the former Yugoslav Republic of Macedonia*, 2018, §§ 95-96; *Shipovikj v. North Macedonia* (dec.), 2021, § 48). In general, adequate and sufficient redress will require an award of compensation (*Moskovets v. Russia*, 2009, § 50). In assessing the sufficiency of the amount awarded, the Court will consider its own practice in comparable situations concerning unlawful detention (*Staykov v. Bulgaria*, 2006, §§ 91-92; *Vedat Doğru v. Turkey*, 2016, §§ 39-40; *Bilal Akyıldız v. Turkey*, 2020, § 42). Adequate redress does not, nevertheless, necessarily imply monetary compensation: a reduction of a sentence imposed on an applicant may also be considered as sufficient redress (*Ščensnovičius v. Lithuania*, 2018, § 92; *Porchet v. Switzerland* (dec.), 2019, §§ 21-26; compare and contrast with *Malkov v. Estonia*, 2010, § 40).

Noteworthy examples

- *Selahattin Demirtaş v. Turkey (no. 2)* [GC], 2020 – the Constitutional Court's finding that the decisions on the applicant's *continued* detention contained insufficient reasons was considered by the Court as not having the effect of holding that the *initial* decision on the applicant's pre-trial detention had contravened Article 5 § 3. There had therefore been no acknowledgement of the violation of the right protected by that provision (§ 222) - *victim status accepted;*
- *Staykov v. Bulgaria*, 2006 – in awarding compensation, the domestic court had pointed out, albeit summarily, the excessive length of the applicant's pre-trial detention. In addition, the compensation amount was considered to provide adequate and sufficient redress to the applicant (§§ 90-93) - *victim status lost;*
- *Malkov v. Estonia,* 2010 – while the domestic court had mentioned the applicant's long period of detention in its judgment, it had done so to come to the conclusion that the length of the criminal proceedings had not been reasonable. In addition, the reduction of the applicant's sentence was not considered sufficient redress for the violation of Article 5 of the Convention (§ 41) - *victim status accepted;*

- *Shkarupa v. Russia*, 2015 - while referring to Article 5 in its judgment, the domestic court did not find the applicant's detention unlawful because it had been inconsistent with that provision, but because he had been acquitted. The length of detention was taken into account in calculating the amount of compensation, but there was no acknowledgement in the judgment that it had been excessive in its duration or that the decisions ordering the applicant's continued detention were not based on relevant and sufficient reasons (§ 77) - *victim status accepted;*
- *Lyubushkin v. Russia*, 2015 - while granting the applicant's claim for non-pecuniary damages, the domestic court found the applicant's detention unlawful not because it had been inconsistent with the requirements set out in Article 5 § 3 of the Convention, but because he had been acquitted. The length of the applicant's detention pending trial was taken into account only in calculating the amount of compensation, but there was no acknowledgment in the judgment concerned, either express or implied, that it had been excessive in its duration or that the decisions ordering the applicant's continued detention were not based on relevant and sufficient reasoning (§ 51) - *victim status accepted;*
- *Ščensnovičius v. Lithuania*, 2018 – referring to the finding that the applicant had been held in detention on remand for a long period of time and that the length of the criminal proceedings was unjustifiable, the Court held that the domestic court had sufficiently acknowledged the infringement of Article 5 of the Convention. In addition, the reduction of the sentence was considered as sufficient redress (§§ 90-92) - *victim status lost*;
- *Dimo Dimov and Others v. Bulgaria*, 2020 – the Court noted that, according to well-established domestic case-law, the abandonment of criminal proceedings also had the effect of rendering pre-trial detention irregular and in the specific circumstances of the case the Supreme Court of Cassation recognized in substance the excessive length of the detention with regard to Article 5 § 3 of the Convention. The nature and amount of the compensation were also considered adequate and sufficient (§§ 54-55) - *victim status lost*. However, the Court held that the applicant did not lose his victim status in relation to the complaints made under Article 5 §§ 4 and 5 of the Convention, as these issues had not been addressed, implicitly or explicitly, by the domestic courts in this case (§ 58);
- *Bilal Akyıldız v. Turkey*, 2020 – the domestic court had found that the applicant's detention had been unjust and awarded compensation simply upon his acquittal, without examining whether the applicant's detention had been procedurally defective or whether it had been based on a reasonable suspicion that he had committed the offence of which he had been charged. In addition, the Court considered that the sum awarded in respect of non-pecuniary damages was significantly lower than the sums it has awarded in similar cases concerning unlawful detention (§ 42) - *victim status accepted;*
- *Dubovtsev and Others v. Ukraine*, 2021 – the disciplinary proceedings against the judges who had authorised the applicants' detention (initiated by the applicants themselves) following which it was decided that one of the judges' unlawful acts had led to the unjustified detention of some of the applicants concerned, were considered by the Court as sufficient acknowledgement that the applicant's detention was unlawful and arbitrary (§§ 60-61). The fact that the applicants had not contested the adequacy of the compensation was also taken into account (§ 62) - *victim status lost;*
- *Shipovikj v. North Macedonia* (dec.), 2021 – although compensation was granted under the legal provisions for an award following the dismissal of criminal charges, the Court held that the findings of the domestic courts contained a clear acknowledgment that the applicants' pre-trial detention was unjust. In particular, it noted the comprehensive nature of the award in that it concerned "all harmful non-pecuniary effects" for the applicants and that it took into account "all circumstances of the case". The Court held

that the compensation awarded for the dismissal of criminal charges against the applicants was indissociable from any compensation to which they might have been entitled as a result of their unjustified deprivation of liberty (§§ 50-51). Moreover, the monetary award was considered adequate (§§ 52-53) - *victim status lost;*

- *Bulaç v. Turkey*, 2021 - the domestic court's conclusions as to the legality of the deprivation of liberty implied that there had been an acknowledgment, at least in substance, of a violation of the applicant's rights under Article 5 § 3 (§ 51). However, in light of the length of the applicant's detention, the Court found that the compensation awarded was manifestly insufficient with regard to the circumstances of the case (§ 53; see also *İlker Deniz Yücel v. Turkey*, 2022, §§ 71-74) - *victim status accepted;*
- *Yapuquan v. Türkiye* (dec.), 2022 – the Constitutional Court's conclusions as to the legality of the deprivation of liberty amounted to an express acknowledgment of a violation of Article 5 (§§ 78-79). As to the compensation awarded, although inferior to what the Court would have granted in comparable situations, it was not manifestly disproportionate due to the particular circumstances of the case: the applicant's communication with the outside world was allowed in an unlimited manner, he disposed of reception facilities in the detention premises and the possibility for him to receive medical care was not restricted (§ 81) - *victim status lost*.

Further references

Case-law guides:

- Admissibility Guide
- Guide on Article 5 - Right to liberty and security

Other key themes:

- Short-term detentions (Article 5)
- The *locus standi* of relatives (indirect victims) to bring a case to the Court when the direct victim has died (Article 34/35)
- The *locus standi* of representatives to bring/pursue a case before the Court when the direct victim has died (Article 34/35)
- The notion of deprivation of liberty (Article 5)

KEY CASE-LAW REFERENCES

Leading case:

- *Labita v. Italy* [GC], no. 26772/95, ECHR 2000-IV (victim status accepted);
- *Rooman v. Belgium* [GC], no. 18052/11, 31 January 2019 (victim status accepted);
- *Dimo Dimov and Others v. Bulgaria*, no. 30044/10, 7 July 2020 (victim status lost in relation to complaint under Article 5 § 3; victim status accepted in relation to complaints under Article 5 §§ 4 and 5);
- *Dubovtsev and Others v. Ukraine*, nos. 21429/14 and 9 others, 21 January 2021 (victim status lost for nine applicants; victim status accepted for the remainder).

Other cases under Article 5:

- *Staykov v. Bulgaria*, no. 49438/99, 12 October 2006 (victim status lost);
- *Moskovets v. Russia*, no. 14370/03, 23 April 2009 (victim status accepted);
- *Malkov v. Estonia*, no. 31407/07, 4 February 2010 (victim status accepted);
- *Shkarupa v. Russia*, no. 36461/05, 15 January 2015 (victim status accepted);
- *Lyubushkin v. Russia*, no. 6277/06, 22 October 2015 (victim status accepted);
- *Vedat Doğru v. Turkey*, no. 2469/10, 5 April 2016 (victim status accepted);
- *Selami and Others v. the former Yugoslav Republic of Macedonia*, no. 78241/13, 1 March 2018 (victim status accepted);
- *Ščensnovičius v. Lithuania*, no. 62663/13, 10 July 2018 (victim status lost);
- *Porchet v. Switzerland* (dec.), no. 36391/16, 8 October 2019 (victim status lost);
- *Bilal Akyıldız v. Turkey*, no. 36897/07, 15 September 2020 (victim status accepted);
- *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, 22 December 2020 (victim status accepted);
- *Shipovikj v. North Macedonia* (dec.), nos. 77805/14 and 77807/14, 9 March 2021 (victim status lost);
- *Bulaç v. Turkey*, no. 25939/17, 8 June 2021 (victim status accepted);
- *İlker Deniz Yücel v. Turkey*, no. 27684/17, 25 January 2022 (victim status accepted);
- *Yapuquan v. Türkiye* (dec.), nos. 70333/16 and 160/18, 20 September 2022 (victim status lost).