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Date: 26/11/2026

DH-DD(2026)1607

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Meeting: 1577th meeting (December 2026) (DH)

Communication from the applicant's representative (24/11/2026) in the case of Agureyev and Others v. Ukraine (Application No. 1843/23) (in respect of the applicant Igor Oliynychok (Application No. 12818/24)) (Nevmerzhitsky group)

Information made available under Rule 9.1 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1577e réunion (décembre 2026) (DH)

Communication du représentant du requérant (24/11/2026) relative à l'affaire Agureyev et autres c. Ukraine (Requête n° 1843/23) (concernant le requérant Igor Oliynychok (Requête n° 12818/24)) (Groupe Nevmerzhitsky) ***[anglais uniquement]***

Informations mises à disposition en vertu de la Règle 9.1 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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DGI
24 NOV. 2026
SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

TO THE DEPARTMENT FOR THE EXECUTION
OF JUDGMENTS OF THE ECHR
COUNCIL OF EUROPE
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Complainant:
Oliynychok Igor Volodymyrovych, born 1964
Currently held at the Odesa Pre-Trial Detention Centre

Complainant's Representative:
Chuieva Kateryna Oleksandrivna
[redacted]

Case Group: Agureyev and Others v. Ukraine
Application No.: 12818/24 (Oliynychok v. Ukraine)
Judgment final date: 03/04/2025

24/11/2026

ADDENDUM TO RULE 9.2 COMMUNICATION

Regarding individual and general measures in the case of *Agureyev and Others v. Ukraine* (Application no. 1843/23 and 5 others, specifically regarding Mr Ihor Volodymyrovych Oliynychok, Application no. 12818/24) *(Ignatov v. Ukraine group of cases, no. 40583/15)*

I. EXECUTIVE SUMMARY

1. Further to the Representative's Rule 9.2 communication of 16 September 2026 (which was transmitted by the Secretariat to the Government Agent of Ukraine), the Representative hereby informs the Committee of Ministers of the outcome of the extraordinary review proceedings before the Grand Chamber of the Supreme Court of Ukraine (case no. 504/4983/21, proceedings no. 13-313ВО25).
2. On 28 October 2026 (full text dispatched on 10 November 2026, followed by the Concurring Opinion of Judge [redacted]), the Grand Chamber of the Supreme Court dismissed the defense's application for *restitutio in integrum* under Article 459 § 3 (2) of the Code of Criminal Procedure of Ukraine (CCP), refusing to quash the unlawful detention orders of 11 October 2024 and 24 April 2025 or to replace the Applicant's detention with a non-custodial preventive measure.
3. While the Grand Chamber formally acknowledged the admissibility of reviewing detention orders in pending proceedings (§§ 75–85) and admitted the systemic nature of quasi-automatic extensions of pre-trial detention in Ukraine (§§ 38–74), its refusal to grant any individual redress to Mr Oliynychok—compounded by the judicial admissions contained in Judge [redacted] Concurring Opinion—demonstrates the complete practical and legislative ineffectiveness of the domestic review mechanism under Article 5 of the Convention.

II. KEY DEFICIENCIES IN THE GRAND CHAMBER'S RESOLUTION OF 28 OCTOBER 2026

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A. Misapplication of Article 5 § 1 (a) of the Convention in breach of Article 53 of the Convention (lowering higher domestic constitutional guarantees)

4. To justify its refusal to review the Applicant's unlawful detention or order his release, the Grand Chamber noted that on 2 June 2025 the Dobroslavskyi District Court of Odesa Region delivered a first-instance judgment sentencing the Applicant to 11 years' imprisonment (which is currently under appeal before the Mykolaiv Court of Appeal and has not entered into legal force) (§§ 86–90). Relying on the Court's case-law in *Wemhoff v. Germany* and *Ruslan Yakovenko v. Ukraine*, the Grand Chamber held that from the moment of the first-instance conviction on 2 June 2025, the Applicant's deprivation of liberty falls under Article 5 § 1 (a) ("after conviction by a competent court") rather than Article 5 § 3 of the Convention, and therefore quashing earlier detention orders cannot achieve *restitutio in integrum* (§§ 91–102).
5. This reasoning constitutes a flagrant violation of **Article 53 of the Convention** (*Safeguard for existing human rights*), which explicitly prohibits interpreting the Convention in a way that limits or derogates from any human rights ensured under the laws of a High Contracting Party.
6. Under **Article 62 of the Constitution of Ukraine** and **Articles 17 and 532 of the CCP of Ukraine**, a person is presumed innocent and retains the procedural status of an **accused (not a convicted person)** until the judgment enters into legal force following appellate review. During appellate proceedings, the restriction of liberty under domestic law remains a **preventive measure**, not the execution of a criminal sentence.
7. By invoking the autonomous Convention concept of "conviction" under Article 5 § 1 (a) to strip the Applicant of his domestic constitutional status as an unconvicted accused person, the Grand Chamber inverted the purpose of the Convention: it used the Court's case-law as a shield to lower domestic human rights protections and deny effective judicial review of ongoing preventive detention, in direct contravention of Article 53 and Article 13 of the Convention.

B. Internal contradiction. The Grand Chamber's own finding in § 89 proves that the Applicant's current detention is unlawful under domestic law (Article 5 § 1)

8. The Grand Chamber's assertion in §§ 91–100 that the Applicant is currently lawfully detained "on the basis of the first-instance judgment of 2 June 2025" is directly refuted by **paragraph 89 of the very same Resolution**.
9. In paragraph 89, the Grand Chamber noted that the first-instance judgment of 2 June 2025 merely stated that the preventive measure of detention should remain unchanged "until the judgment enters into legal force" without setting any time-limit. Assessing this exact wording, the Grand Chamber explicitly held in paragraph 89:

"In this context, the Grand Chamber considers it necessary to draw attention to the fact that maintaining a preventive measure in the form of detention in a judgment until that judgment enters into legal force ***does not absolve the court from complying with the requirements of the criminal procedural law regarding the time-limit of such a measure****. Article 197 § 1 of the CCP stipulates that the validity period of a court decision applying or extending detention* ***cannot exceed sixty days****... Therefore, when leaving a preventive measure of detention in place after delivering a judgment and until it enters into legal force,* ***the court must ensure the certainty of such a decision, in particular regarding the maximum time-limit of its validity, since any other interpretation would create a risk of de facto indefinite detention, incompatible with the requirements of the criminal procedural law****."*

10. Even under Article 5 § 1 (a) of the Convention, any deprivation of liberty must be **"lawful"** and effected **"in accordance with a procedure prescribed by law"** (i.e., domestic procedural law). Given that the first-instance judgment was delivered on **2 June 2025** without a time-limit, the maximum statutory 60-day validity period under Article 197 § 1 CCP expired on **1 August 2025**.

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11. Consequently, by the Grand Chamber's own binding legal standard set out in paragraph 89, Mr Oliynychok has been held in **"de facto indefinite detention, incompatible with the requirements of the criminal procedural law"** for over **15 months** (since 1 August 2025). Yet, in paragraphs 99–105, the Grand Chamber refused to intervene, claiming that his detention is validly based on that very same defective judgment!

C. The State profited from its own excessive delays (*ex injuria jus non oritur*)

12. The timeline of the case exposes the illusory nature of the domestic review procedure:

- **3 April 2025:** The ECtHR delivered its judgment in *Ahuryeyev and Others v. Ukraine*, finding a violation of Article 5 §§ 3, 4, and 5 in respect of Mr Oliynychok's ongoing detention since 9 August 2021.
- **24 April 2025:** Prior to any conviction, the Kominternivskyi District Court dismissed the defense's motion for release based on the ECtHR judgment and extended detention for another 60 days.
- **2 June 2025:** The first-instance verdict was delivered.
- **28 October 2026:** After more than a year and a half of delays, adjournments, and technical failures (documented in the previous Rule 9.2 submission), the Grand Chamber finally examined the case and held that because a verdict had been delivered in the meantime, *restitutio in integrum* under Article 5 § 3 was no longer possible.

13. Had the domestic courts complied with the ECtHR judgment immediately in April 2025, or had the Grand Chamber reviewed the application promptly, no conviction would have existed at the time of review. Allowing the State to protract Article 5 review proceedings until a first-instance verdict is reached—and then invoke that verdict to deny individual measures—renders Article 46 of the Convention meaningless in ongoing detention cases.

D. Judicial confirmation of a systemic legislative gap. The concurring opinion of Judge [redacted]

14. The complete structural breakdown of domestic remedies for enforcing ECtHR Article 5 judgments is confirmed by Judge [redacted] in his **Concurring Opinion** (*Окрема думка*) to the Resolution of 28 October 2026. While disagreeing with the majority on jurisdiction—arguing that the Grand Chamber lacks statutory competence altogether under Article 459 § 3 (2) CCP to review interim detention orders in pending proceedings (§§ 2, 39)—Judge [redacted] made several critical admissions directly relevant to the Committee of Ministers' supervision of general and individual measures:

- **Inadequacy of just satisfaction alone (§ 22):** Judge [redacted] explicitly criticized the majority's reliance on the award of €9,800 in just satisfaction (see § 103 of the Resolution), emphasizing that *"the award of just satisfaction does not absolve domestic courts of the obligation to put an end to a violation if it is ongoing"*.
- **Duty of trial and appellate courts to comply with ECtHR findings (§§ 20–21):** He confirmed that upon receiving an ECtHR judgment finding a violation of Article 5, the competent trial or appellate court cannot merely repeat reasoning already deemed insufficient by the ECtHR, and noted that the defense's complaint regarding the trial court's failure to properly account for the ECtHR judgment on 24 April 2025 *"is a serious argument requiring judicial verification"*.
- **Absence of an expedited statutory mechanism for *restitutio in integrum* (§§ 28–37):** Most importantly, Judge [redacted] acknowledged that Chapter 34 of the CCP lacks any special expedited procedure to review ongoing deprivation of liberty following an ECtHR judgment, noting that the general two-month statutory time-limit (which in Mr Oliynychok's case stretched to **over 18 months** between 3 April 2025 and 28 October 2026) renders extraordinary review completely

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incapable of providing urgent judicial control over current detention (§ 33). He concluded that the current legal framework creates procedural uncertainty, *"generates expectations among applicants of a remedy whose ability to secure their release remains unclear"* (§ 35), and leaves formal annulment of expired detention orders incapable of terminating an ongoing violation unless Parliament enacts specific legislative amendments (§§ 36–37).

15. Thus, even from within the Grand Chamber itself, it is now officially documented that Ukrainian criminal procedural law lacks an effective, timely mechanism to execute ECtHR judgments by terminating ongoing unlawful detention—creating a vicious circle where lower courts ignore ECtHR judgments and the Supreme Court either lacks competence (according to Judge [redacted]) or delays review until a first-instance verdict extinguishes *restitutio in integrum* (according to the majority).

III. CONCLUSIONS AND REQUESTS TO THE COMMITTEE OF MINISTERS

16. In light of the above, the Representative respectfully requests the Committee of Ministers and the Department for the Execution of Judgments to:

- **1) Reject any assertion by the Government** that the Grand Chamber's Resolution of 28 October 2026 constitutes an effective individual or general measure in executing the *Agureyev and Others v. Ukraine* judgment (*Ignatov* group);
- **2) Note with concern** that the Grand Chamber's invocation of Article 5 § 1 (a) to refuse *restitutio in integrum* violates Article 53 of the Convention by overriding higher domestic constitutional guarantees of the presumption of innocence (Article 62 of the Constitution of Ukraine), and directly contradicts the Grand Chamber's own finding in § 89 that the Applicant's post-verdict detention without a 60-day statutory time-limit constitutes unlawful indefinite detention under the CCP of Ukraine;
- **3) Take note of the Concurring Opinion of Judge** [redacted] confirming the absence in Ukrainian law (Chapter 34 CCP) of an effective, expedited mechanism to terminate ongoing Article 5 violations following an ECtHR judgment, and urge the Ukrainian authorities to address this legislative lacuna within the general measures of the *Ignatov* group;
- **4) Call upon the Ukrainian authorities** to immediately bring Mr Oliynychok's detention into compliance with Article 5 of the Convention and paragraph 89 of the Grand Chamber's Resolution of 28 October 2026 during the pending appellate proceedings before the Mykolaiv Court of Appeal.

Annexes:

1. Copy of the Resolution of the Grand Chamber of the Supreme Court of 28 October 2026 in case no. 504/4983/21 (proceedings no. 13-313ВО25), dispatched on 10 November 2026 (26 pages).
2. Copy of the Concurring Opinion of Judge [redacted] to the Resolution of the Grand Chamber of the Supreme Court of 28 October 2026 in case no. 504/4983/21 (proceedings no. 13-313ВО25).

Yours faithfully

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Kateryna Chuieva