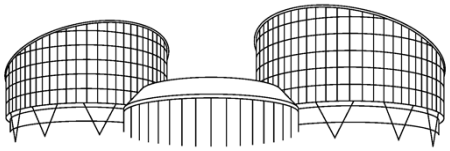

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF POZDNYAKOV AND OTHERS v. UKRAINE

(Applications nos. 33161/20 and 2 others)

JUDGMENT

STRASBOURG

2 May 2025

This judgment is final but it may be subject to editorial revision.

In the case of Pozdnyakov and Others v. Ukraine,

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

Gilberto Felici*, President*,
Diana Sârcu,
Mykola Gnatovskyy*, judges*,

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the applications against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by the applicants listed in the appended table ("the applicants"), on the various dates indicated therein;

the decision to grant legal aid to the applicants;

the decision to give notice of the complaints concerning alleged discrimination against the applicants while they participated in elections, to the Ukrainian Government ("the Government"), represented by their Agent, Ms M. Sokorenko, and to declare the remainder of the applications inadmissible;

the parties' observations;

Having deliberated in private on 27 March 2025,

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

SUBJECT MATTER OF THE CASE

1. The applications concern the allegedly discriminatory refusal to allow the applicants to participate in local and parliamentary elections at their current place of residence, where they were registered as internally displaced persons ("IDPs").

2. The applicants used to live in Donetsk, which was where they continued to have their registered place of residence. Following the outbreak of conflict in eastern Ukraine, they moved to Cherkasy where between November 2014 and February 2015 they were registered as IDPs. They continued to reside there permanently thereafter.

3. The applicants could not participate in local elections held in Ukraine on 25 October 2015 as they were not on the list of voters at their new place of residence.

4. On 27 November 2017 they applied to be included on the list of voters in Cherkasy, but their applications were rejected the following day on the grounds that the applicants did not belong to the relevant territorial community.

5. In December 2017 the applicants each instituted judicial proceedings, seeking a change in their electoral address to enable them to participate in local and parliamentary elections (that is, to vote in a single-seat constituency). All their complaints were ultimately dismissed by the appellate

and cassation courts (see the appended table for dates). The applicants subsequently lodged three separate constitutional complaints, but these were each rejected (see the appended table for dates) owing to the repeal on 1 January 2020 of the Local Elections Act as well as amendments made to certain provisions of the State Register of Voters Act.

6. While their respective administrative claims for a change in electoral address were pending before the Court of Cassation (see paragraph 5 above and the appended table), the applicants attended the polling station on 21 July 2019 to participate in extraordinary parliamentary elections. Those elections were conducted under a mixed-member proportional system, whereby half of the seats in Parliament were elected from the single-seat constituencies by simple plurality and the other half of seats were reserved for candidates from party lists (see *Kovach v. Ukraine*, no. 39424/02, § 30, ECHR 2008, with further references). Therefore, voters who had their electoral address in the constituency received two ballots, while voters registered in other constituencies – as was the case with the applicants – could vote only for the party lists. The same day, having been denied by the ward election commission the second ballot to vote for a candidate who was running to be elected to represent that constituency, the first and third applicants (but not the second applicant) complained to the district election commission about their being refused the second ballot.

7. On 22 July 2019 the district election commission replied to the first and third applicants, stating that it had not observed any violation of their voting rights.

8. The applicants complained that they had been refused to participate in local and parliamentary elections at their place of their actual residence in which they were registered as internally displaced persons. They relied on Article 3 of Protocol No. 1 to the Convention in conjunction with Article 14 of the Convention, and on Article 1 of Protocol No. 12 to the Convention.

THE COURT'S ASSESSMENT

I. JOINDER OF THE APPLICATIONS

9. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 12 TO THE CONVENTION

10. The Government submitted that the applicants' complaints concerning the local elections held on 25 October 2015 had been lodged out of time. Furthermore, there was no evidence that the applicants had genuinely

intended to participate in the local elections, as it had only been in November 2017 that they had sought to be included on the list of voters (see paragraph 4 above).

11. The applicants argued that, on account of the domestic law as it stood at the time, they had found themselves being denied the right to vote at their new place of residence, a situation that had persisted until legislative changes introduced by the Electoral Code had come into effect on 1 January 2020 (see *Selygenenko and Others v. Ukraine*, nos. 24919/16 and 28658/16, § 28, 21 October 2021).

12. In the light of the parties' submissions and all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that the applicants failed to demonstrate that their grievances at national level were promptly raised for these to be considered proof of their intention to participate in the local elections of October 2015 and to be considered recourse to domestic remedies in respect of their complaints about having been denied the right to participate in local elections in violation of Article 1 of Protocol No. 12 to the Convention. The Court therefore considers that the applicants' complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION, TAKEN IN CONJUNCTION WITH ARTICLE 3 OF PROTOCOL No. 1

13. The Government submitted that the complaints in relation to the parliamentary elections had been lodged out of time and were unsubstantiated and that the second applicant had failed to complain to the higher level electoral commission about the refusal to include her on the list of voters and thus she had not exhausted domestic remedies. They argued that the legislation at the material time was intended to prevent electoral tourism, whereby people moved around and voted in a constituency of which they were not permanent residents.

14. The applicants disagreed. They argued that their situation was different from that of other people who lived outside their registered places of residence, as they themselves could not return to their own place of residence and vote there.

15. The Court notes that registration on the list of voters was a precondition for the applicants' participation in the parliamentary elections in so far as voting in single-seat constituencies was concerned. The state of domestic legislation at the material time was clear on that point. The only possibility of challenging the legislative norm for being discriminatory, and thus unconstitutional, was to raise the issue in the domestic ordinary courts followed by a complaint lodged with the Constitutional Court. The applicants

made use of those remedies and, once these were exhausted, they subsequently lodged their applications within the six-month time-limit.

16. As to the Government's contention that the second applicant did not complain to the district election commission about her being denied the second ballot (see paragraphs 6 and 7 above), this does not appear to be decisive for her present complaint, as the Government did not substantiate the necessity for the second applicant to have recourse to that remedy in addition to the judicial remedies pursued by her. In any event the ward election commission acted in accordance with the law and there was no suggestion that the district election commission had the competence to depart from the legal provisions that regulated the conduct of parliamentary elections and the compilation of the lists of voters at the material time.

17. Therefore, given that this complaint brought by the applicants is not manifestly ill-founded or inadmissible on any other grounds listed in Article 35 of the Convention, it must be declared admissible.

18. Turning to the merits of the case, the Court notes that the relevant domestic law and practice relating to the registration onto the list of voters of IDPs was described in detail in *Selygenenko and Others* (cited above, §§ 13-28). The parliamentary elections of 2019 were conducted under a mixed system, whereby people voted in parallel for individual candidates in their respective constituencies under a winner-take-all system and for party lists under a proportional system. In the absence of registration in a given constituency, a person could vote only for the party lists and not for an individual candidate in the constituency (section 2(10) of the Parliamentary Elections Act 2011).

19. The Court notes that unlike in *Selygenenko and Others* (cited above), in which the applicants could not participate in local elections at all, the applicants in the present case could participate in the parliamentary elections but only in part – they were allowed to cast their votes for the party lists but not for individual candidates in their constituency. The denial of the applicants' right to the second vote derived from the same legal framework as that in *Selygenenko and Others*, in which the Court came to the conclusion that by failing to take into consideration the particular different situation of IDPs, the authorities had discriminated against the applicants in the enjoyment of their right – as guaranteed under domestic law – to vote in local elections, in violation of Article 1 of Protocol No. 12 to the Convention.

20. In the present case, the applicants complained under Article 3 of Protocol No. 1, taken in conjunction with Article 14 of the Convention, of having been discriminated against as IDPs in the parliamentary elections. The Court reiterates that the term "discrimination" is the same in both Article 14 of the Convention and Article 1 of Protocol No. 12. Notwithstanding the difference in scope between those provisions, the meaning of this term in Article 1 of Protocol No. 12 was intended to be identical to that in Article 14 (see paragraph 18 of the Explanatory Report to Protocol No. 12 to the

Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 2000, ETS 177). Thus, the Court follows the settled interpretation of "discrimination", as developed in the case-law concerning Article 14, when applying the same term under Article 1 of Protocol No. 12 (see *Zornić v. Bosnia and Herzegovina*, no. 3681/06, § 27, 15 July 2014).

21. The Court accepts that an electoral system which imposes a territorial link between the voters and their elected representatives pursues a legitimate aim, compatible with the principle of the rule of law and the general objectives of the Convention (see *Mironescu v. Romania*, no. 17504/18, § 39, 30 November 2021, with further references). However, failure to take into account the specific situation of the applicants as IDPs, which is comparable to those of the applicants in *Selygenenko and Others* (cited above), deprived them of full participation in the parliamentary elections of 2019.

22. The Court refers to its findings in the leading case of *Selygenenko and Others* (cited above, §§ 13-28) and given the similarity of the legal status of the applicants and the practically identical legal framework in both the present case and in *Selygenenko and Others*, it finds its conclusions in the latter case to be equally pertinent to the applicants' situation. Therefore, the Court finds that at the material time, by failing to take into consideration their particular situation, the authorities discriminated against the applicants in the enjoyment of their right to vote in the parliamentary elections for a candidate in a single-seat constituency, in violation of Article 3 of Protocol No. 1 to the Convention, taken in conjunction with Article 14 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. The applicants each claimed 20,000 euros (EUR) in respect of non-pecuniary damage. They also claimed the amounts indicated in the appended table in respect of pecuniary damage. Lastly, they jointly claimed EUR 9,000 for the costs and expenses incurred before the Court.

24. The Government submitted that the applicants' claims for just satisfaction were wholly unsubstantiated.

25. The Court notes that the pecuniary damage alleged in fact represents the costs and expenses incurred by the applicants before the domestic courts and thus that claim must be examined under the relevant head. As to non-pecuniary damage, the Court awards each of the applicants the amount of EUR 4,500, which corresponds to the awards in the leading *Selygenenko and Others* judgment (cited above, § 62), plus any tax that may be chargeable.

26. Having regard to the documents in its possession, the Court considers it reasonable to award in full the amounts indicated in the appendix for costs and expenses in the domestic proceedings and EUR 5,000 jointly for the proceedings before the Court, plus any tax that may be chargeable to the applicants, and dismisses the remainder of their claims.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the complaints under Article 3 of Protocol No. 1 to the Convention, taken in conjunction with Article 14 of the Convention, concerning the denial of the right to vote in the parliamentary elections admissible and the remainder of the applications inadmissible;

3. *Holds* that there has been a violation of Article 3 of Protocol No. 1 to the Convention, taken in conjunction with Article 14 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicants, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 4,500 (four thousand five hundred euros) to each of the applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) the individual sums indicated in the appended table to each of the applicants, plus any tax that may be chargeable to them, in respect of costs and expenses incurred in the domestic proceedings;
      (iii) EUR 5,000 (five thousand euros) to all applicants jointly, plus any tax that may be chargeable to them, in respect of costs and expenses incurred before the Court, to be transferred directly to the account of the applicant's lawyer Mr Tarakhkalo;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 2 May 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Gilberto Felici President

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of birth Place of residence Nationality	Represented by	Amount of costs and expenses in the domestic courts	Dates of judicial decisions in the applicants' cases
1.	33161/20	Pozdnyakov v. Ukraine	10/05/2020	**Sergiy Viktorovych POZDNYAKOV** 1979 Cherkasy Ukrainian	M. Tarakhkalo, O. Kuvaieva, O. Chilutyan, lawyers practising in Kyiv	EUR 414.01 (four hundred and fourteen euros and one cent)	4 April 2018 – Sosnovskyi District Court of Cherkasy 3 July 2018 – Kyiv Administrative Court of Appeal 30 March 2020 – Administrative Cassation Court within the Supreme Court 30 September 2020 – Constitutional Court
2.	36907/20	Kolodiy v. Ukraine	03/08/2020	**Lyubov Ivanivna KOLODIY** 1955 Cherkasy Ukrainian		EUR 332.41 (three hundred and thirty-two euros and forty-one cents)	8 December 2017 – Sosnovskyi District Court of Cherkasy 19 March 2018 – Kyiv Administrative Court of Appeal 12 June 2020 – Administrative Cassation Court within the Supreme Court 22 July 2020 – Constitutional Court

No.	Application no.	Case name	Lodged on	Applicant Year of birth Place of residence Nationality	Represented by	Amount of costs and expenses in the domestic courts	Dates of judicial decisions in the applicants' cases
3.	45594/20	Kolodiy v. Ukraine	01/10/2020	**Kostyantyn Mykolayovych KOLODIY** 1981 Cherkasy Ukrainian		EUR 354.48 (three hundred and fifty-four euros and forty-eight cents)	12 December 2017 – Sosnovskyi District Court of Cherkasy 27 February 2018 – Kyiv Administrative Court of Appeal 20 August 2020 – Administrative Cassation Court within the Supreme Court 23 September 2020 – Constitutional Court