

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

FIFTH SECTION

CASE OF GALYTSKYY v. UKRAINE

(Application no. 9151/17)

JUDGMENT

STRASBOURG

26 June 2025

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



In the case of Galytskyy v. Ukraine,

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

María Elósegui*, President*,
Andreas Zünd,
Mykola Gnatovskyy*, judges*,

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 9151/17) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 17 January 2017 by a Ukrainian national, Mr Oleksandr Anatoliyovych Galytskyy ("the applicant"), who was born in 1970, lives in Kryvyi Rih and was represented by Ms M.V. Zakharova, a lawyer practising in Kryvyi Rih;

the decision to give notice of the application to the Ukrainian Government ("the Government"), represented by their Agent, Ms M. Sokorenko;

the parties' observations;

Having deliberated in private on 5 June 2025,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's allegation under Article 3 of the Convention that he was ill-treated by staff members at the Kryvyi Rih pre-trial detention centre ("SIZO") and that there was no effective domestic investigation into his related complaints.

2. In December 2007 the applicant was found to have breached the terms of the conditional suspended prison sentence previously imposed on him. On 26 December 2007 he was detained with a view to the enforcement of that sentence. Medical examinations carried out on that date and on the following day in the Dnipropetrovsk temporary detention facility indicated no sign of any injuries, health concerns or other complaints.

3. On the morning of 27 December 2007 the applicant was taken to the Kryvyi Rih SIZO. According to the applicant, at approximately 1 p.m. several officers subjected him to such a severe beating that he lost consciousness. The applicant submitted that, once he had regained consciousness, he had been unable to walk on account of acute pain in his right hip. He alleged that he spent three days in the SIZO medical unit without any assistance. He also alleged that the SIZO doctor warned him that if he wished to remain safe he should not make any complaints.

4. On 4 January 2008 the applicant was transferred to the Dnipropetrovsk SIZO, where he was immediately hospitalised on account of a closed femoral neck fracture. The Government submitted, referring to the explanations

provided by two staff members of the Dnipropetrovsk SIZO hospital on an unspecified date, that at the relevant time the applicant's fracture had been four to six months old. The applicant's medical file from that hospital has been lost (see paragraph 12 below).

5. On 24 January 2008 the applicant was transferred to the Luhansk SIZO where he was hospitalised until 8 March 2008. He allegedly explained that his injury had been caused by an accidental fall on 30 December 2007.

6. On 21 February 2008 the applicant was certified as having a second degree disability on account of his hip fracture. That certificate was valid for one year.

7. On 13 February 2009 the applicant was released.

8. On 17 February 2009 the applicant was examined by a traumatologist on account of the persistent pain in his right hip and his difficulties in walking. He was diagnosed with bony ankylosis (fusion of a joint with bone tissue) of the right hip joint resulting from incorrect consolidation of the pelvic and femoral neck fracture, together with subluxation of the hip. His right hip and the right side of his pelvis were deformed and asymmetrical and his right leg was 7 cm shorter than the left. It was noted in the hospital records that the applicant had stated that he had had "an [innocuous] accident" on 26 December 2007, while in detention. He received inpatient medical treatment from 11 March to 25 March 2009 but saw no improvement. The applicant was subsequently certified as having a third degree disability (the mildest level) on account of his hip injury and was granted life-long disability status.

9. From April 2009 the applicant lodged numerous complaints with the prosecution authorities in respect of his alleged ill-treatment and the lack of timely medical assistance in the Kryvyi Rih SIZO. He submitted that he had been afraid to complain earlier, while he remained in prison.

10. The Dnipropetrovsk Regional Prosecutor's Office repeatedly refused to open a criminal investigation into the matter.

11. Finally, on 28 February 2014, the prosecutor opened an investigation after having been ordered to do so by a court. The applicant's request to be granted the procedural status of victim was, however, rejected as unfounded. He was examined as a witness at a later date.

12. On 10 April 2014 the investigation was discontinued on the grounds that there was no indication of any criminal offence. It was noted that all the relevant records from the Kryvyi Rih SIZO had been destroyed when the statutory storage period expired and that the applicant's medical file from the Dnipropetrovsk SIZO hospital, and his X-rays from January 2008, had been lost. Although a forensic medical expert examination had been ordered on 21 March 2014, the absence of essential medical documents made it impossible to conduct such an examination. The prosecutor also referred to statements made by the Kryvyi Rih SIZO doctor, who submitted that when the applicant had arrived on 27 December 2007 he had been suffering from

acute alcohol withdrawal syndrome and had been lame in the right leg due to chronic thrombophlebitis. The doctor stated that the applicant had already had an old hip fracture that had initially been overlooked. In addition, the prosecutor relied on statements from two of the applicant's neighbours, who said that they had often seen him drunk, sometimes to the point of falling asleep on the stairs. Accordingly, it was concluded that the applicant might have sustained the hip injury prior to his detention.

13. On 22 October 2014 the Dnipropetrovsk Zhovtnevyy District Court quashed the decision of 10 April 2014 as premature and ordered that an additional investigation be carried out.

14. On 30 August 2016 the investigation was discontinued again, on similar grounds as before. It was found impossible to establish when and how the applicant had sustained the injury in question.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

15. The Government argued that the applicant had not exhausted domestic remedies, in that he had not challenged the prosecutor's decision of 30 August 2016. They further submitted that there was no evidence to support the applicant's allegation that he had sustained his hip injury while detained. Lastly, the Government pointed out that there had been a delay in the applicant making his complaint to the prosecution authorities and that his statements as to the origin and timing of his injury had lacked consistency.

16. The applicant maintained that he had never been notified of the prosecutor's decision of 30 August 2016. He also submitted that he had been afraid to complain while detained and that he had raised his complaint immediately after his release.

17. The Court finds that the Government's objection is closely linked to the merits of the applicant's complaint under the procedural limb of Article 3. It therefore joins it to the merits of that complaint. The Court further notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

18. Reviewing the facts of the present case in the light of the general principles established in its case-law (see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 81-90 and 114-23, ECHR 2015), the Court considers that the applicant made a credible allegation of ill-treatment at the domestic level, which triggered the national authorities' procedural obligation to carry out an effective investigation.

19. The Court notes, however, that no full-fledged investigation was launched until almost five years after the applicant had raised his complaint for the first time (see paragraphs 9-11 above). By that time, most of

the relevant essential documents had been either mislaid or destroyed (see paragraph 12 above). In the Court's view, such a flagrant and entirely unjustified delay is sufficient in itself to indicate a lack of will on the part of the domestic authorities to establish the truth and, if applicable, to bring those responsible to justice. The Court also finds it unacceptable that, once the investigation had been opened, the applicant's request for the procedural status of victim was rejected as unfounded (see paragraph 11 above).

20. The foregoing considerations are sufficient to enable the Court to find a violation of Article 3 of the Convention under its procedural limb and to dismiss the Government's objection, previously joined to the merits (see paragraph 17 above).

21. In deciding whether the State's responsibility was engaged for the applicant's injury, the Court refers to the following principles laid down in its case-law. A medical examination is an important safeguard against the ill-treatment of detained persons which should apply as from the very outset of deprivation of liberty (see *Djundiks v. Latvia*, no. 14920/05, § 52, 15 April 2014). When the national authorities failed to conduct a medical examination before placing the applicant in detention, the Government cannot rely on that failure in their defence and claim that the injuries in question pre-dated the applicant's detention in police custody (see *Türkan v. Turkey*, no. 33086/04, § 43, 18 September 2008, and *Korobov v. Ukraine*, no. 39598/03, § 68, 21 July 2011). The Court notes that it cannot accept the Government's contention that the applicant's state of health upon his placement in custody did not require a full medical examination as there was no reason "to suspect any hidden injury ... as the applicant did not make any health-related complaints", since this clearly reverses the burden of proof (see *Djundiks*, cited above, § 53).

22. It is undisputed in the present case that while the applicant had no reported injuries or health concerns when he was placed in detention on 26 December 2007 and underwent a medical examination on that date and on the following date, he required lengthy hospital treatment for a hip fracture about ten days later. That hip fracture was the cause of a lifelong disability (see paragraphs 2, 4-6 and 8 above). The Court discerns nothing in the Government's submissions to disprove the applicant's allegation of ill-treatment and the argument that he might have sustained the hip injury prior to his detention appears to be nothing more than an attempt to reverse the burden of proof.

23. In sum, the Court considers it established that the applicant was injured while under the control of the State and that no plausible explanation has been provided for his injury other than the ill-treatment alleged.

24. Accordingly, the Court also finds a violation of Article 3 of the Convention under its substantive limb.

II. REMAINING COMPLAINT

25. The applicant also alleged that there had been a violation of Article 13 of the Convention on account of the lack of an effective remedy under domestic law for his ill-treatment complaint.

26. Having regard to the facts of the case, the submissions of the parties, and its findings under Article 3 of the Convention (see paragraphs 20 and 24 above), the Court considers that it has examined the main legal questions raised in the present case, and that there is no need to give a separate ruling on the admissibility and merits of the applicant's complaint under Article 13 of the Convention (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014, and *Lutsenko and Verbytskyy v. Ukraine*, nos. 12482/14 and 39800/14, §§ 118-20, 21 January 2021).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. The applicant claimed 20,000 euros (EUR) in respect of pecuniary damage and EUR 30,000 in respect of non-pecuniary damage. He also claimed EUR 2,000 in respect of costs and expenses incurred in the domestic proceedings, EUR 1,800 for his legal representation in the proceedings before the Court and EUR 1,000 in respect of other expenses related to his application before the Court. The applicant submitted a copy of a legal assistance contract with Ms Zakharova, signed on 11 August 2024, according to which he was obliged to pay her EUR 1,800 for his legal representation in the proceedings before the Court.

28. The Government contested the above claims as exorbitant and unsubstantiated.

29. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects that claim. However, it awards the applicant EUR 16,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to him.

30. Furthermore, having regard to the documents in its possession, the Court also considers it reasonable to award the applicant EUR 1,800 for his representation in the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join to the merits the Government's objection concerning non-exhaustion of domestic remedies in respect of the applicant's complaint under Article 3 of the Convention and dismisses it;

2. *Declares* the complaint under Article 3 of the Convention admissible;

3. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb;

4. *Holds* that there has been a violation of Article 3 of the Convention under its substantive limb;

5. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 13 of the Convention;

6. *Holds*
   (a) that the respondent State is to pay the applicant, 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 16,000 (sixteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,800 (one thousand eight hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (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;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 June 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	María Elósegui President