

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

FIFTH SECTION

CASE OF KOSKO v. UKRAINE

(Application no. 41832/16)

JUDGMENT

STRASBOURG

6 July 2023

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



In the case of Kosko v. Ukraine,

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

Carlo Ranzoni, *President*,
Lado Chanturia,
María Elósegui*, judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 15 June 2023,

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

PROCEDURE

1. The case originated in an application against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 21 July 2016.

2. The applicant was represented by Mr G.V. Tokarev, a lawyer practising in the city of Kharkiv, Ukraine.

3. Notice of the application was given to the Ukrainian Government ("the Government").

THE FACTS

4. The applicant's details and information relevant to the application are set out in the appended table.

5. The applicant alleged that he did not receive adequate medical care in detention.

THE LAW

I. THE LOCUS STANDI OF MS TAYISIYA VYACHESLAVIVNA KOSKO

6. The Court notes that the applicant died on 16 March 2021, while the case was pending before the Court. The applicant's wife, Ms Tayisiya Vyacheslavivna Kosko, has requested to pursue the application on his behalf. As the request is in line with its case-law, the Court sees no reason to refuse it (see, among other authorities, *Benyaminson v. Ukraine*, no. 31585/02, § 83, 26 July 2007, and *Horváthová v. Slovakia*, no. 74456/01, §§ 25-27, 17 May 2005). However, reference will still be made to the applicant throughout the present text.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

7. The applicant complained principally that he was not afforded adequate medical treatment in detention. He relied on Article 3 of the Convention.

8. The Court notes that the applicant suffered from serious medical conditions, as indicated in the appended table, which affected his everyday functioning. Therefore, he could have experienced considerable anxiety as to whether the medical care provided to him was adequate.

9. The Court reiterates that the "adequacy" of medical assistance remains the most difficult element to determine (see *Blokhin v. Russia* [GC], no. 47152/06, § 137, ECHR 2016). It has clarified in this context that the authorities must ensure that diagnosis and care are prompt and accurate (see, for example, *Gorbulya v. Russia*, no. 31535/09, § 62, 6 March 2014, with further references, and *Pokhlebin v. Ukraine*, no. 35581/06, § 62, 20 May 2010, with further references) and that – where necessitated by the nature of a medical condition – supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at successfully treating the detainee's health problems or preventing their aggravation (see, *inter alia*, *Ukhan v. Ukraine*, no. 30628/02, § 74, 18 December 2008, with further references, and *Kolesnikovich v. Russia*, no. 44694/13, § 70, 22 March 2016, with further references). The Court stresses that medical treatment within prison facilities must be appropriate and comparable to the quality of treatment which the State authorities have committed themselves to providing for the entirety of the population. Nevertheless, this does not mean that each detainee must be guaranteed the same level of medical treatment that is available in the best health establishments outside prison facilities (see, for instance, *Sadretdinov v. Russia*, no. 17564/06, § 67, 24 May 2016, with further references, and *Konovalchuk v. Ukraine*, no. 31928/15, § 52, 13 October 2016, with further references)

10. Having examined all the material submitted to it, the Court has identified the shortcomings in the applicant's medical treatment, which are listed in the appended table. The Court has already found a violation in respect of issues similar to those in the present case (see *Nevmerzhitsky v. Ukraine,* no. 54825/00, §§ 103-05, ECHR 2005 II, *Melnik v. Ukraine,* no. 72286/01, §§ 104-06, 28 March 2006, and *Logvinenko v. Ukraine,* no. 13448/07, §§ 68-78, 14 October 2010). Bearing in mind its case-law on the subject, the Court considers that in the instant case the applicant did not receive comprehensive and adequate medical care whilst in detention.

11. These complaints are therefore admissible and disclose a breach of Article 3 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

12. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

13. Regard being had to the documents in its possession and to its case-law (see, in particular, *Logvinenko,* cited above, §§ 89-95), the Court considers it reasonable to award the sums indicated in the appended table.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* that Ms Tayisiya Vyacheslavivna Kosko, the widow of the applicant, can pursue the proceedings in his stead;

2. *Declares* the application admissible;

3. *Holds* that these complaints disclose a breach of Article 3 of the Convention on account of the inadequate medical care in detention;

4. *Holds*
   (a) that the respondent State is to pay Ms Tayisiya Vyacheslavivna Kosko, within three months, the amounts indicated in the appended table, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (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.

Done in English, and notified in writing on 6 July 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina	Carlo Ranzoni
Acting Deputy Registrar	President

APPENDIX

Application raising complaints under Article 3 of the Convention (inadequate medical treatment in detention)

Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Principal medical condition	Shortcomings in medical treatment	Amount awarded for pecuniary and non-pecuniary damage (in euros)[1]	Amount awarded for costs and expenses (in euros)[2]
41832/16 21/07/2016	**Sergiy Sergiyovych KOSKO** 1986 Deceased in 2021 Heir Tayisiya Vyacheslavivna KOSKO	Tokarev Gennadiy Volodymyrovych Kharkiv	Impairment of spinal cord, serious back pain, 1st level disability.	Lack of/delay in consultation by a specialist, lack of/delay in medical examination, lacking/delayed drug therapy, including pain relief. 20/06/2015 to 03/08/2016 1 year and 1 month and 15 days	7,500	250

[1] Plus any tax that may be chargeable.
[2] Plus any tax that may be chargeable.