

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

FIFTH SECTION

CASE OF KRYUK v. UKRAINE

(Applications nos. 43993/19 and 2 others –
see appended list)

JUDGMENT

STRASBOURG

29 September 2022

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



In the case of Kryuk v. Ukraine,

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

Stéphanie Mourou-Vikström*, President,*
Ivana Jelić*,*
Kateřina Šimáčková*, judges,*
and Viktoriya Maradudina, *Acting Deputy Section Registrar*,

Having deliberated in private on 8 September 2022,

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

PROCEDURE

1. The case originated in three applications against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on the various dates indicated in the appended table.

2. The applicant was represented by Mr O. A. Ignatov.

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

THE FACTS

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

5. The applicant alleged that he did not receive adequate medical care in detention. He also raised other complaints under the provisions of the Convention.

THE LAW

I. JOINDER OF THE APPLICATIONS

6. 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 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, which reads as follows:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

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. OTHER ALLEGED VIOLATIONS UNDER WELL-ESTABLISHED CASE-LAW

12. The applicant submitted other complaints which also raised issues under the Convention, given the relevant well-established case-law of the Court (see appended table). These complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor are they

inadmissible on any other ground. Accordingly, they must be declared admissible. Having examined all the material before it, the Court concludes that they also disclose violations of the Convention in the light of its findings in *Melnik,* cited above, *Kharchenko v. Ukraine* (no. 40107/02, 10 February 2011), *Tymoshenko v. Ukraine* (no. 49872/11, §§ 286-87, 30 April 2013), *Kotiy v. Ukraine* (no. 28718/09, § 55, 5 March 2015), *Ignatov v. Ukraine* (no. 40583/15, 15 December 2016), *Sukachov v. Ukraine* (no. 14057/17, 30 January 2020) and *Nechay v. Ukraine* (no. 15360/10, 1 July 2021).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

13. 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."

14. 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 sum indicated in the appended table.

15. The Court further considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a breach of Article 3 of the Convention on account of the inadequate medical care in detention;
4. *Holds* that there has been a violation of the Convention as regards the other complaints raised under well-established case-law of the Court (see appended table);
5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the amount 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 amount 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 29 September 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina Acting Deputy Registrar	Stéphanie Mourou-Vikström President

APPENDIX

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

Application no. Date of introduction	Applicant's name Year of birth	Principal medical condition	Shortcomings in medical treatment	Other complaints under well-established case-law	Amount awarded for pecuniary and non-pecuniary damage per applicant (in euros)[1]
43993/19 10/08/2019 52366/19 07/11/2019 11914/20 22/02/2020	**Oleksandr Ivanovych KRYUK** 1986	posttraumatic spinal disc herniation	lack of/delay in medical examination, lacking/delayed drug therapy 10/06/2017 to 18/11/2019 2 years and 5 months and 9 days	Art. 3 - inadequate conditions of detention - from 10/06/2017 to 23/04/2020, Zaporizhzhya Pre-Trial Detention Facility no. 10, 2.3-4.7 sq. m. per inmate, overcrowding, lack of fresh air, lack of or inadequate hygienic facilities, lack of or insufficient electric light, lack of or poor quality of bedding and bed linen, no or restricted access to shower, poor quality of food, lack or insufficient quantity of food, lack of privacy for toilet. Art. 5 (3) - excessive length of pre-trial detention - from 08/06/2017 to 29/10/2020, failure to examine the possibility of applying other measures of restraint; failure to assess the applicant's personal situation reducing the risks of re-offending, colluding or absconding; use of assumptions, in the absence of any evidentiary basis, of the risks of absconding or obstructing justice. Art. 5 (4) - excessive length of judicial review of detention - the applicant's request for release of 30/03/2019 was considered by the Zhovtnevyy Distrcit Court of Zaporizhzhya on 23/04/2019, i.e. in 24 days. Art. 5 (5) - lack of, or inadequate compensation, for the violation of Article 5 § 3 of the Convention (see *Tymoshenko v. Ukraine*, no. 49872/11, §§ 286-87, 30 April 2013 and *Kotiy v. Ukraine*, no. 28718/09, § 55, 5 March 2015). Art. 6 (1) - excessive length of criminal proceedings - from 08/06/2017 - pending; one level of jurisdiction. Art. 13 - lack of any effective remedy in domestic law in respect of inadequate conditions of detention. Art. 13 - lack of any effective remedy in domestic law in respect of excessive length of criminal proceedings.	9,750

[1] Plus any tax that may be chargeable to the applicant.