

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

FIFTH SECTION

CASE OF MALYEYEV v. UKRAINE

(Application no. 2300/14)

JUDGMENT

STRASBOURG

30 May 2025

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



In the case of Malyeyev v. Ukraine,

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

María Elósegui*, President*,
Gilberto Felici,
Kateřina Šimáčková*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 2300/14) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 18 December 2013 by a Ukrainian national, Mr Yuriy Georgiyovych Malyeyev ("the applicant"), who was born in 1965, lives in Zaporizhzhya and was represented by Mr I. Borovyk, a lawyer practising in Kyiv;

the decision to give notice of the application to the Ukrainian Government ("the Government"), represented by their Agent, Ms M. Sokorenko, and then by their acting Agent Ms I. Koval, from the Ministry of Justice;

the parties' observations, while the applicant's additional observations, along with the supplement to his just satisfaction claim, were submitted outside the time-limit set, and therefore not included in the case file;

Having deliberated in private on 7 May 2025,

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

SUBJECT MATTER OF THE CASE

1. The case concerns domestic authorities' failure to provide the applicant with free medication to which he was entitled under domestic law. It raises an issue under Article 1 of Protocol No. 1 to the Convention.

2. In 1986 the applicant, who is now a pensioner, participated in emergency operations at the Chernobyl nuclear disaster site. He was subsequently granted disability status and officially recognised as a category-one participant in the Chernobyl clean-up operations, indicating that his disability was directly related to his involvement in those events.

3. In 2010 the applicant suffered an acute myocardial infarction for which he was prescribed a number of medications. In accordance with section 20(1) of the Chernobyl Victims (Status) Act[1] ("the Act"), which entitles all category-one participants in the Chernobyl clean-up operations to free medication, these were supplied to him without charge by a designated pharmacy on presentation of a doctor's prescription.

4. Due to insufficient State funding, however, from April 2011 onwards the designated pharmacy could only occasionally provide the applicant with his prescribed medications in full. In those instances when it was unable to

[1] Закон "Про статус і соціальний захист громадян, які постраждали внаслідок Чорнобильської катастрофи".

supply all or any of the medications, the pharmacy returned the unfulfilled prescriptions to the applicant and he either purchased the medications at his own expense or went without them.

5. In September 2011 the applicant instituted judicial proceedings against the local authorities and the pharmacy, seeking a declaration that the refusal to provide him with free medication was unlawful. He also sought compensation for non-pecuniary damage and recovery of 211 Ukrainian hryvnias (UAH – around 21 euros (EUR) at the relevant time), representing the cost per month of the medications purchased at his own expense.

6. On 23 January 2012 the Komunarskyi District Court of Zaporizhzhya dismissed the applicant's claim. The court acknowledged that, as a category-one participant in the Chernobyl clean-up operations, the applicant had been entitled to free medication under the Act. However, provision of such medication could be carried out only within the limits of sums allocated from the State budget. As the insufficient funding earmarked for this purpose in the 2011 State budget could not be attributed to the local authorities or the pharmacy, the court found no fault on their part. In the explanatory part of its ruling, the court referred to the general principles underlying the budgetary system and to three rulings by the Constitutional Court of Ukraine concerning various social benefits under Ukrainian law[2].

7. The applicant's appeals were dismissed by the Dnipropetrovsk Administrative Court of Appeal and the Higher Administrative Court of Ukraine on 2 August 2012 and 25 July 2013, respectively.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

8. Relying on Articles 1, 3, 6 and 17 of the Convention, the applicant complained, in essence, that between April 2011 and December 2013 the authorities had refused to provide him with free medication. The Court, being master of the characterisation to be given in law to the facts of the case

[2] In these rulings the Constitutional Court examined legislative acts that amended the rules for determining the pension eligibility of academic scientists (no. 1-37/2001) and limited the amounts of one-time insurance payments to victims of industrial accidents (no. 1-32/2008). The Constitutional Court's decision no. 1-42/2011 held that the Government were entitled to regulate – in accordance with available financial resources – the amounts of social benefits envisaged by the Children of War Social Protection Act, the Military Personnel Pensions Act and sections 39, 50-52 and 54 of the Chernobyl Victims (Status) Act, which concerned payments to individuals working in the Chernobyl exclusion zone, monthly allowances to families which had lost a breadwinner due to the disaster, pensions for category-one participants in the clean-up operations and supplementary pensions for former participants in the operations whose health had been damaged as a result of these events. None of those provisions related to the provision of medication.

(see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), finds it appropriate to consider the applicant's complaint from the standpoint of Article 1 of Protocol No. 1 (see *Béláné Nagy v. Hungary* [GC], no. 53080/13, §§ 45-46, 13 December 2016).

A. The parties' submissions

9. Referring to the meagre amount claimed by the applicant for pecuniary damage (see paragraph 5 above), the Government submitted that the applicant had not suffered a significant disadvantage. They also claimed that since the applicant had not challenged the refusal to provide him with free medication after 2011, his application in respect of the subsequent periods ought to be declared inadmissible for failure to exhaust domestic remedies or rejected as having been submitted out of time. In the alternative, the Government contended that the interference in question had been provided for by law – namely the provisions of the Constitution and the relevant rulings of the Constitutional Court (see paragraph 6 above) – and did not constitute an excessive burden. They also asserted that on certain occasions the designated pharmacy had provided the applicant with the prescribed medications.

10. The applicant indicated that the amount claimed in respect of pecuniary damage represented the sum that he had been required to spend on the medications in question every month. He emphasised that this had been a significant sum for him, in that it constituted more than one-eighth of his monthly pension (which at the relevant time did not exceed the equivalent of EUR 160) and that the prescribed medications had been critical for his survival. He also disagreed with the Government's objections and claimed that the refusal to provide him with free medication had been unlawful. In support of his allegations, the applicant provided the Court with 36 unfulfilled prescriptions from 2011 and 40 from 2013.

B. The Court's assessment

1. Admissibility

(a) Lack of significant disadvantage

11. The Court notes that the applicant's claim before the domestic authorities concerned not only the medications which he had had to purchase himself and the expenses which he had sought to recover but also the medications which had been neither purchased by him nor provided by the State. As the cost of these medications is unknown, the Court cannot speculate on the exact amount in dispute or the financial impact of the alleged violation on the applicant (see *Budchenko v. Ukraine*, no. 38677/06, § 29, 24 April 2014). In any event, the Court notes that the medications in question were prescribed for the applicant's cardiac condition, that he considered them necessary for his life and well-being, and that the alleged failure to provide

them was not an isolated incident but continued over a prolonged period. In view of these circumstances and taking into account the applicant's disability and modest monthly pension at the relevant time, the Court agrees that this issue was important to him and thus he cannot be deemed not to have suffered a significant disadvantage (see, for instance, *Vira Dovzhenko v. Ukraine*, no. 26646/07, §§ 27-28, 15 January 2019). It follows that the Government's objection in this respect must be dismissed.

(b) Non-exhaustion of domestic remedies and six-month rule

12. It cannot be overlooked that the applicant complained before the domestic courts about the authorities' failure to provide him with medication in 2011 and that the courts examined his arguments specifically *vis-à-vis* the availability of funds in the 2011 State budget (see paragraphs 5-6 above). The question of the applicant's medication supply in subsequent years and, in particular, the sufficiency of funds earmarked for this purpose in the State budget for 2012 and 2013 has never been examined by domestic courts.

13. The applicant did not explain why he decided not to bring separate civil proceedings after he was allegedly denied medication again in 2012 and 2013. The Court does not consider that such proceedings would have been futile or prevented by the dismissal of the applicant's original claim. In any event, mere doubts in this regard on the part of the applicant are not sufficient to justify the failure to use these remedies (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 74, 25 March 2014).

14. The Court therefore finds that, in the particular circumstances of the present case, the part of the application relating to the period between 2012 and 2013 must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies. In consequence, it is unnecessary to address the Government's objection concerning the applicant's failure to comply with the six-month rule regarding the same period.

(c) Otherwise as to admissibility

15. The Court notes that the application in respect of the period between April and December 2011 is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

16. It is not in dispute between the parties that the applicant was entitled to the benefits in question and that the refusal to provide him with free medication constituted an interference with his right under Article 1 of Protocol No. 1. Regard being had to the conclusions of the domestic courts and the relevant provisions of domestic law (see paragraphs 3 and 6 above), the Court sees no reason to hold otherwise.

17. The relevant general principles for the Court's assessment have been summarised in *Fedulov v. Russia* (no. 53068/08, §§ 70-72 and 74-81, 8 October 2019).

18. In the present case, the Court finds that in rejecting the applicant's claim the domestic courts did not rely on any legal provision that granted the authorities discretion to reduce or refuse the supply of the free medications in question or made their supply conditional on budgetary transfers (compare *Fedulov*, cited above, § 76, and *Shebaldina v. Ukraine* [Committee], no. 75792/11, § 20, 18 June 2020). The fact that the court of first instance cited the general principles of the Ukrainian budgetary system and the case-law of the Constitutional Court (see paragraph 6 above) does not affect this finding, as the Court considers that these legal sources had no relevance to the circumstances of the applicant's case. In particular, the cited rulings of the Constitutional Court concerned other social benefits, rather than the right of former participants in the Chernobyl clean-up operations to free medication under section 20(1) of the Act (compare *Velikoda v. Ukraine* (dec.), no. 43331/12, §§ 16 and 26-27, 3 June 2014).

19. Thus, in the Court's view, the domestic authorities' failure to provide the benefit in question between April and December 2011 – essentially because of a lack of funds – had no basis in domestic law.

20. The Court also finds it important to note that in the present case, as in *Fedulov* (cited above, § 78), the applicant's diagnosis necessitated pharmacological treatment. To achieve the desired therapeutic effect, the applicant could reasonably expect that he would receive his prescribed medications in full. In the Court's view, a refusal to ensure the supply of these medications – in spite of the fact that the applicant satisfied all of the relevant conditions – was not foreseeable and is ultimately difficult to reconcile with the rule of law.

21. The above considerations make it unnecessary for the Court to ascertain whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. It therefore finds that there has been a violation of Article 1 of Protocol No. 1.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. The applicant claimed EUR 1,000 in respect of pecuniary damage, corresponding to the alleged cost of the medications which he had been required to purchase, and EUR 50,000 in respect of non-pecuniary damage. He also sought reimbursement of EUR 300 in respect of costs and expenses incurred before the Court.

23. The Government contested those claims.

24. The Court notes that in support of his claim for pecuniary damage the applicant did not produce any evidence of the expenses he incurred during the period in question and submitted that the evidence was no longer

available. In such circumstances, although the Court has no doubt that the State's failure to provide the applicant with free medication must have entailed pecuniary losses for him, it would be speculative to calculate their precise amount. Making an assessment on an equitable basis, the Court considers it reasonable to award the applicant an aggregate sum of EUR 2,400, all heads of damage combined, plus any tax that may be chargeable on that amount.

25. Lastly, since the applicant failed to provide any evidence in respect of the costs and expenses incurred before the Court, his claim under this head must be dismissed.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application in respect of the period between April and December 2011 admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

3. *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:
      EUR 2,400 (two thousand four hundred euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
   (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;

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

Done in English, and notified in writing on 30 May 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	María Elósegui President