

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

FIFTH SECTION

CASE OF MUSHYNSKYY v. UKRAINE

(Application no. 27182/16)

JUDGMENT

STRASBOURG

20 October 2022

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



In the case of Mushynskyy v. Ukraine,

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

Mārtiņš Mits*, President,*
Lado Chanturia*,*
Ivana Jelić*, judges,*
and Martina Keller, Deputy Section Registrar,

Having regard to:

the application (no. 27182/16) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 30 August 2013 by a Ukrainian national, Mr Ivan Mykhaylovych Mushynskyy ("the applicant"), who was born in 1979 and is serving a sentence of life imprisonment in Lviv, and who was represented by Ms G.V. Ovdiyenko, a lawyer practising in Kharkiv;

the decision to give notice of the complaint under Article 3 of the Convention to the Ukrainian Government ("the Government"), represented by their Agent, Mr I. Lishchyna, and then by their acting Agent, Ms O. Davydchuk, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 29 September 2022,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's complaint under Article 3 of the Convention that he was ill-treated during an emergency fire evacuation in Sokal Prison no. 47 on 27 March 2012 and that there was no effective domestic investigation into the matter.

2. From 4 April to 2 June 2012 the applicant underwent inpatient medical treatment for post-traumatic encephalopathy and brachial plexitis (inflammation of the nerves) of his right shoulder. According to him, those conditions resulted from his ill-treatment. According to the Government, the causes of the applicant's health problems were unknown.

3. The applicant submitted that he had immediately complained to various authorities, but his complaints had not been passed on. As submitted by the Government, the applicant raised the ill-treatment allegation for the first time in his letter to the Sokal Prison governor on 30 November 2012, but his complaint was dismissed as unfounded.

THE COURT'S ASSESSMENT

4. Relying on Article 3 of the Convention, the applicant complained that he and many other prisoners had suffered unjustified violence during the fire evacuation and that the domestic authorities had made no meaningful efforts to investigate the matter.

5. The Court notes that this 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.

6. In its judgment in *Starenkyy and Others v. Ukraine* ([Committee], no. 71848/13, 24 June 2021), the Court examined a similar complaint by sixteen other prisoners in respect of the same events. It found the allegation of unjustified mass beating of the life prisoners during the fire evacuation to be credible and held that the authorities had failed to duly investigate the matter. The Court therefore found a violation of Article 3 of the Convention in both its substantive and procedural aspects (ibid., §§ 77-121).

7. There is nothing in the present case to persuade the Court to reach a different conclusion. The applicant was among the prisoners who suffered indiscriminate violence on 27 March 2012. The origin of his injuries diagnosed shortly thereafter was never explained by the authorities. Nor was there any adequate response to his complaints in that regard.

8. There has therefore been a violation of Article 3 of the Convention under its substantive and procedural limbs.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

9. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage. The Court considers it reasonable to award him EUR 12,000 under this head, plus any tax that may be chargeable on that amount.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

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

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months, EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(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;

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

Done in English, and notified in writing on 20 October 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller	Mārtiņš Mits
Deputy Registrar	President