

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

FIFTH SECTION

CASE OF NIKOLAYEV v. UKRAINE

(Application no. 54309/20)

JUDGMENT

STRASBOURG

6 November 2025

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



In the case of Nikolayev v. Ukraine,

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

Andreas Zünd*, President*,
Mykola Gnatovskyy,
Vahe Grigoryan*, judges*,

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 54309/20) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 8 January 2021 by a Ukrainian national, Mr Gennadiy Vasylyovych Nikolayev ("the applicant"), who was born in 1973 and, according to the most recent information, lives in Dobrooleksandrivka, Odesa region;

the decision to give notice of the complaints set out in paragraph 1 below to the Ukrainian Government ("the Government"), represented by their then Acting Agents, Ms O. Davydchuk and then Mr A. Luksha, and to declare the remainder of the application inadmissible;

the decision not to indicate interim measures to the Government of Ukraine under Rule 39 of the Rules of Court, taken on 21 April 2021;

the parties' observations;

Having deliberated in private on 9 October 2025,

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

SUBJECT MATTER OF THE CASE

1. The case mainly concerns the applicant's complaints under Article 3 of the Convention that while in detention he had not been provided with adequate medical care in respect of retinitis pigmentosa, under Article 5 § 3 of the allegedly unreasonable length of his pre-trial detention and under Article 5 § 4 that his appeals against some detention orders had not been examined "speedily".

I. BACKGROUND

2. The applicant suffers from retinitis pigmentosa (RP), which was diagnosed in 2006 at the latest. It is a congenital disorder of the retina which causes gradual loss of vision and generally results in blindness. There is no commonly available treatment, although it is believed that vitamin A and some food supplements may help, to some extent, to slow down vision loss

from some common forms of the disease.[1] In 2014 the applicant was diagnosed as suffering from the most serious form of the disability. He received some treatment (apparently of a preventive nature, as described above) at the Filatov Institute of Eye Diseases and Tissue Therapy ("the Filatov Institute"), a premier eye disease treatment and research facility in Ukraine, in 2006, 2007, 2009 and 2014.

3. The applicant was accused of inflicting, in July 2018, grievous head and liver injuries which had resulted in the victim's death. He was initially detained and then in September 2018 he was released and placed under house arrest which, it appears, eventually expired.

4. While awaiting trial, on 6 July 2019 the applicant inflicted injuries (a hammer blow to the head) on another person, Mr B., causing a skull fracture. He was charged with an offence in that connection.

5. It appears from the charges that both suspected offences had been committed while the applicant was in a state of alcoholic intoxication.

II. THE APPLICANT'S DETENTION

6. On 8 July 2019 the Ovidiopol District Court ordered the applicant's pre-trial detention in view of, in particular, the risk that he might commit new offences (as he was being prosecuted for a new offence analogous to the one already charged), influence the victim, interfere with the investigation or abscond. The applicant was placed in the Odesa pre-trial detention centre (SIZO).

7. On 30 August 2019 a second criminal case against the applicant was sent for trial and the two criminal cases were joined.

8. The prosecutor regularly requested the extension of the applicant's detention and the District Court granted those requests and extended the applicant's detention approximately every two months or less.

9. For example, in her request for an extension of detention dated 21 May 2020 the prosecutor argued, in particular, that detention was necessary because the applicant had no strong social connections, was abusing alcohol and had no regular employment. Moreover, he stood accused of a violent crime committed after being released on house arrest. Given that house arrest was the most severe preventive measure other than pre-trial detention provided for in domestic law and it had failed to prevent the applicant's reoffending, pre-trial detention was the only suitable measure.

10. In the detention extension orders the District Court granted the prosecutors' requests and stated that, despite the applicant being in detention for a considerable time, his continued detention was justified by the public interest in preventing him from committing violent actions against

[1] https://www.nei.nih.gov/learn-about-eye-health/eye-conditions-and-diseases/retinitis-pigmentosa

others and absconding. They cited, in particular, the applicant's lack of employment and social ties and the fact that he had previously already been charged with a grave violent offence which meant that the public interest in protecting third parties from violent acts outweighed the rule of respect for individual liberty.

11. The applicant appealed against certain detention orders. His appeals were lodged and examined on the following dates:

Detention order	Appeal lodged	Order expired	Appeal examined
17/07/2020	22/07/2020	07/09/2020	10/09/2020
07/09/2020	15/09/2020	04/11/2020	18/11/2020
27/11/2020	27/11/2020	14/01/2021	13/01/2021

12. In upholding the detention order of 7 September 2020 the Odesa Court of Appeal stated in particular that the applicant was facing a considerable prison sentence in relation to the charges, noting the prosecutor's argument that a less severe preventive measure would not be effective. It also noted that there was a risk that witnesses might be influenced since they had not yet been examined during the trial. The Court of Appeal acknowledged the applicant's disability but stated that the case-file material showed that that disability had not prevented him from using force on the victims.

13. In its subsequent decisions of 18 November 2020 and 13 January 2021, and also of 3 March and 22 April 2021, the Court of Appeal reiterated the same risks: the applicant had been accused of two violent crimes carrying a considerable sentence, the witnesses had not been questioned and could be influenced, the applicant's request to be released under house arrest was not substantiated since had proven unable to prevent reoffending. The court found unsubstantiated and rejected the applicant's allegations that he was caring for his minor son, that he was employed or that he could not be kept in detention because of his state of health.

14. On 12 August 2021 the Odesa Court of Appeal ordered the applicant's release and placement under twenty-four-hour house arrest.

III. THE APPLICANT'S HEALTH

15. The applicant had a consultation with an ophthalmologist in November 2018 (while he was not in detention). According to the records, at that time he had 30% vision in the right eye and 35% in the left eye.

16. In July 2019 the applicant underwent a number of psychiatric examinations in prison. He was diagnosed with a psychotic disorder caused by alcohol and alcoholic delirium.

17. On 12 May 2020 the applicant was examined by the ophthalmologist of the prison's medical unit, who diagnosed him with aggravation of RP. It was recommended that the applicant "undergo annual preventive treatment."

18. On 23 November 2020 the applicant was examined by the chief of the prison's medical unit. He complained of a sharp decrease in vision. It was recommended that the applicant be examined by an ophthalmologist.

19. On 26 November 2020 the Filatov Institute, in reply to a request submitted by the prison, stated that it stood ready to examine the applicant at any time.

20. On 8 January 2021 the applicant submitted a request for interim measures under Rule 39. The Court, after requesting from the Government information on the applicant's health and the medical care he was receiving, on 21 April 2021 decided not to indicate interim measures.

21. On 27 January 2021 the applicant was examined by a doctor of the Filatov Institute, who confirmed his diagnosis of RP, found no visual acuity in the right eye and uncertain light perception (*perceptio et proectio lucis incerta*) in the left eye. The ophthalmologist noted the innate nature of the disease and prescribed, "as an experimental treatment",[2] certain medications used to treat vascular and cognitive disorders and a medication used to treat vitamin B1 deficiency. There was no indication in the doctor's opinion that the applicant required hospitalisation or care in a specialised institution. The Government did not provide any information on whether the applicant had received the prescribed medication.

22. In December 2021 the applicant underwent an examination at the Filatov Institute. It was noted that he had no light perception in the right eye and uncertain light perception in the left eye. Certain prescriptions were prescribed, "as an experimental treatment", similar to those prescribed in January 2021.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

23. The applicant complained that he had not been afforded adequate medical treatment in detention. The Government contested that argument.

24. The Court observes that the applicant suffers from a congenital disease for which there is no commonly available cure. Therefore, the fact that the applicant's vision suffered an apparently serious deterioration during his detention (see paragraphs 15, 21 and 22 above) does not mean, in itself, that the authorities failed to comply with their positive obligations (see *Goginashvili v. Georgia*, no. 47729/08, § 71, 4 October 2011).

25. Some experimental treatment was prescribed for the applicant, in the apparent hope of slowing the progress of his disease somewhat (see paragraphs 17 and 21 above). However, there is no indication that that

[2] *Враховуючи вроджений характер захворювання, в якості спроби*.

treatment was indicated by any relevant protocols or that its efficacy for the applicant's condition has ever been recognised.

26. In this context, the Court reiterates that an unsubstantiated allegation that medical care has been non-existent, delayed or otherwise unsatisfactory is normally insufficient to disclose an issue under Article 3 of the Convention. A credible complaint about inadequate medical treatment should normally include sufficient reference to the medical condition in question; medical treatment that was sought, provided, or refused; and some evidence – such as expert reports – which is capable of disclosing serious failings in the applicant's medical care (see *Krivolapov v. Ukraine*, no. 5406/07, § 76, 2 October 2018, with further references).

27. The Court considers that no arguable case has been made that the medical care from which the applicant benefited was inadequate.

28. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

29. The applicant complained that his pre-trial detention had been unjustified and had lasted an unreasonable length of time.

30. The Government contested those arguments. They asserted, notably, that the applicant had abused his right of individual application by failing to inform the Court of his release from prison and placement under house arrest on 12 August 2021 (see paragraph 14 above).

31. The Court cannot establish, to the required standard of proof, that in omitting to inform the Court of his placement under house arrest the applicant intended to mislead the Court. It cannot therefore find that he has abused the right of application.

32. The Court also notes that the applicant only complained about the length of the detention which occurred during the period between 8 July 2019 and 12 August 2021.

33. The relevant general principles of the Court's case-law have been summarised in *Buzadji v. the Republic of Moldova* ([GC], no. 23755/07, §§ 87-91, 5 July 2016).

34. The domestic courts found, referring to the specific circumstances of the case (see paragraphs 6, 8-10 and 12-13 above), that the relevant risks, notably the risk of reoffending and absconding, justified the applicant's detention. They noted, in particular, that the applicant had been charged with a life-threatening attack which he had allegedly committed while awaiting trial on charges related to a previous mortal attack. They also referred to the applicant's alcohol abuse, a relevant factor given that alcohol intoxication had allegedly had a role in both attacks and the applicant had been diagnosed with a serious alcohol-related disorder (see paragraphs 5 and 16 above).

35. The Court sees no reason to criticise that assessment. This conclusion is not changed by the fact that some of those reasons might have been cited by the prosecutor and endorsed by the courts (see paragraphs 9 and 10 above; see also *Ugulava v. Georgia*, no. 5432/15, § 101, 9 February 2023).

36. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

37. The applicant also raised complaints under Article 5 § 4 of the Convention that his appeals against the detention orders, as set out in paragraph 11 above, had not been examined "speedily".

38. The Government contested that argument.

39. This part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. Accordingly, it must be declared admissible.

40. The applicant's appeals against the extension orders were examined with considerable delay, after they had already expired or were about to expire (see paragraph 11 above) and no adequate explanation has been provided for that delay.

41. Having examined all the material before it, and in the light of its well-established case-law on the matter (see *Ilnseher v. Germany* [GC], nos. 10211/12 and 27505/14, § 256, 4 December 2018; *Frasik v. Poland*, no. 22933/02, §§ 64-66, 5 January 2010; and *Kharchenko v. Ukraine*, no. 40107/02, §§ 84-87, 10 February 2011), the Court finds that there has been a violation of Article 5 § 4 of the Convention on account of the failure to examine speedily the applicant's appeals against the detention orders of 17 July, 7 September and 27 November 2020.

IV. OTHER COMPLAINTS

42. The applicant also complained under Article 5 § 4 of the Convention about the review of his appeal against the detention order dated 4 November 2020, which he had withdrawn. Having regard to the facts of the case, the submissions of the parties and its findings above, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. The applicant claimed 4,500 euros (EUR) in respect of non-pecuniary damage. The Government considered that claim to be unjustified and excessive.

44. Ruling on an equitable basis, the Court considers it reasonable to award the applicant EUR 500 euros in respect of non-pecuniary damage.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* admissible the complaint under 5 § 4 of the Convention in respect of the examination of appeals against the detention orders of 17 July, 7 September and 27 November 2020, and declares inadmissible the complaints under Articles 3 and 5 § 3 of the Convention;

2. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the failure to examine speedily the applicant's appeals against the detention orders of 17 July, 7 September and 27 November 2020;

3. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 5 § 4 of the Convention concerning the review of the applicant's appeal against the detention order of 4 November 2020;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 500 (five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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 6 November 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Andreas Zünd President