

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

FIFTH SECTION

CASE OF PARKHOMENKO v. UKRAINE

(Application no. 451/13)

JUDGMENT

STRASBOURG

28 October 2021

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



In the case of Parkhomenko v. Ukraine,

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

Lətif Hüseynov, *President,*
Lado Chanturia,
Arnfinn Bårdsen, *judges,*
and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 7 October 2021,

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 10 December 2012.

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

THE FACTS

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

4. The applicant alleged that she did not receive adequate medical care in detention.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

5. The applicant complained that she was not afforded adequate medical treatment in detention. She 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."

6. The Court notes that the applicant suffered from a serious medical condition, as indicated in the appended table, which affected her everyday functioning. Therefore, she could have experienced considerable anxiety as to whether the medical care provided to her was adequate.

7. 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).

8. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

10. 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."

11. 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.

12. The Court 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. *Declares* the application admissible;

2. *Holds* that this application discloses a breach of Article 3 of the Convention on account of the inadequate medical care in detention;

3. *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 28 October 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina	Lətif Hüseynov
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	Principal medical condition	Shortcomings in medical treatment	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros)[1]
451/13 10/12/2012	**Anna Mikhaylovna PARKHOMENKO** 1950	Cancer	Lack of post-operative treatment of cancer (radiotherapy) 28/09/2011 to 17/12/2012 1 year and 2 months and 20 days	7,500

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