

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

FIFTH SECTION

CASE OF PINCHUK v. UKRAINE

(Application no. 72777/13)

JUDGMENT

STRASBOURG

12 September 2024

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



In the case of Pinchuk v. Ukraine,

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

Lado Chanturia*, President*,
Stéphanie Mourou-Vikström,
Mykola Gnatovskyy*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 72777/13) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 7 November 2013 by a Ukrainian national, Mr Yuriy Olegovych Pinchuk ("the applicant"), who was born in 1974, lives in Zhytomyr and was represented by Mr A.O. Tkachuk, a lawyer practising in Zhytomyr;

the decision to give notice of the complaints set out in paragraph 1 below to the Ukrainian Government ("the Government"), represented, most recently, by their Agent Ms M. Sokorenko, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 11 July 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns allegations that the applicant's employer (the Zhytomyr Regional Police) had unlawfully collected sensitive medical data concerning him and that the national courts had failed to adduce relevant and sufficient reasons for dismissing his complaints in that regard. The applicant relied on Articles 6 and 8 of the Convention.

2. Between 24 October and 29 December 2012 the applicant, a police officer at the material time, periodically underwent inpatient and outpatient treatment sessions in the cardiovascular departments of the Zhytomyr City and Zhytomyr Regional Hospitals.

3. On four occasions in October and November 2012 the applicant's superior asked the chief doctors at the above-mentioned hospitals to confirm the fact that the applicant was undergoing treatment and to disclose his exact diagnosis and the particulars of his state of health.

4. On various dates the hospitals' staff provided their responses. At least one of them included a detailed description of the applicant's medical condition and diagnosis.

5. In January 2013 the applicant lodged a court claim, alleging, in particular, that his superior had unlawfully solicited his medical information from the hospitals. The applicant noted that he had complied with the requisite administrative formalities by notifying his superiors in a timely

manner of his absences on health grounds and providing official sick-leave certificates. Direct enquiries to the hospitals by his superior seeking detailed information, particularly regarding the applicant's medical condition and exact diagnosis, had not been warranted. Those enquiries had also breached the applicant's rights under section 39-1 of Law no. 2801-XII of 1992 on the Fundamentals of Health Protection Legislation ("the FHPL"). That provision read as follows at the material time:

> "Patients shall have the right to confidentiality of information concerning their state of health, the fact of their applying for medical assistance, [and/or their] diagnosis, as well as [confidentiality of] information obtained in the course of their medical examination.
>
> It shall be prohibited for the [patients'] employers ... to demand ... information concerning [the employees'] diagnosis and treatment methods ..."

6. On 21 May 2013 the Zhytomyr District Administrative Court dismissed the claim. The relevant part of the judgment read as follows:

> "The enquiries made by the defendant, as [the applicant's] employer, to medical establishments with a view to determining [the applicant's] state of health [and] the reason for [his] absence from duty do not qualify as unlawful collection and use of his personal data, since such an enquiry derives from the exercise of the employer's power to ensure observance of work discipline."

7. On 25 July 2013 the Zhytomyr Regional Court of Appeal dismissed the applicant's appeal, noting as follows:

> "As the first-instance court has correctly noted, enquiries by the defendant, as the [applicant's] employer, to medical establishments with a view to determining the state of [his] health and the reasons for his absence from duty did not amount to unlawful collection and use of his personal data, since [it entailed] the exercise by the employer of its powers to ensure work discipline. It has neither been demonstrated [by the applicant] nor established by the court that the [medical] information in question was used by the defendant for purposes unrelated to the claimant's service."

8. On 6 August 2013 the Higher Administrative Court rejected a request by the applicant for leave to appeal on points of law.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

9. The applicant complained that his employer had collected his medical information in breach of domestic law and Article 8 of the Convention.

10. Taking note of the Government's objection, contested by the applicant, that the latter had not exhausted domestic remedies because he had not brought any proceedings against the hospitals, the Court observes that the complaint before it concerns the alleged unlawfulness of the collection of that information by the applicant's employer and not its disclosure by the hospitals. That specific complaint was raised by the applicant before the

domestic courts at three levels of jurisdiction, a fact which has not been disputed by the Government. The Court therefore dismisses this objection. It finds that the applicant's complaint is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor inadmissible on any other grounds. It therefore declares it admissible.

11. Examining the present complaint in the light of the general principles developed in its case-law (see, for example, *Radu v. the Republic of Moldova*, no. 50073/07, §§ 27-32, 15 April 2014; *Y.Y. v. Russia*, no. 40378/06, §§ 52-60, 23 February 2016; *Surikov v. Ukraine*, no. 42788/06, §§ 70-74 and 91, 26 January 2017; and *M.K. v. Ukraine*, no. 24867/13, §§ 34-37, 50-51, and 59-61, 15 September 2022), the Court notes that the existence of an interference has not been in dispute between the parties. The Court likewise finds that the enquiries addressed by the applicant's superior – a police officer – to hospital staff with a view to obtaining his detailed medical information amounted to an interference with the applicant's right to respect for his private life within the meaning of Article 8 of the Convention.

12. The Court takes note of the Government's argument that the disputed interference had a basis in domestic law. More specifically, the Government relied, essentially, on section 17 of Law no. 565-XII on Militia, as in force at the material time, which set out the criteria for the recruitment of police officers, listing candidates' health status as one of them. Additionally, the Government noted that the Ministry of the Interior had adopted regulations with a view to setting up special medical commissions to monitor the fitness of police officers for service.

13. The Court accepts that the applicant's employer – a State agency – may have had a legitimate interest in being apprised about his health in the context of assessing his physical fitness for service. In order to comply with Article 8 of the Convention in pursuit of that interest, that State agency was bound, first of all, to adhere to specific legal rules accompanied by the requisite procedural safeguards (see *Surikov*, cited above, § 91). It has not been disputed by the Government that the applicant had duly notified his employer of his absence on health grounds and had promptly and duly provided official sick-leave certificates. In this context the Court cannot accept the Government's argument that general legal provisions on the recruitment of police officers and the functioning of medical fitness commissions provided the legal basis for the applicant's superior to make direct and specific enquiries to the hospitals seeking detailed information on his treatment and diagnosis. Furthermore, the Court takes note of the applicant's reliance on section 39-1 of the FHPL, which expressly prohibited employers from making such enquiries (see paragraph 5 above). It is not evident either from the Government's observations or the decisions taken by the domestic courts that an entitlement to make them followed from any other domestic legal provisions overriding the express prohibition in the FHPL relied upon by the applicant.

14. The Court accordingly finds that the interference in question was not in accordance with the law. This finding is sufficient to establish a breach of Article 8 of the Convention. It also obviates the need to examine other arguments by the parties concerning the existence of a legitimate aim or the necessity of the interference.

15. There has accordingly been a violation of Article 8 of the Convention.

II. OTHER COMPLAINTS

16. The applicant also complained under Article 6 of the Convention that the national courts had failed to adduce relevant and sufficient reasons for dismissing his complaint concerning the unlawful collection of his medical information. 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 question raised by the case and that there is no need to examine this complaint (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

17. The applicant, who had retired from the police shortly after the events in question, argued that the payments due to him in connection with his retirement had been calculated incorrectly and that he had sustained 6,359 euros (EUR) of pecuniary damage in that connection. He also asked the Court to award him equitable compensation for non-pecuniary damage in connection with the breach of his Convention rights and EUR 387 in legal fees for his representation before the Court. He provided supporting documents for the legal fees incurred.

18. The Government invited the Court to dismiss the applicant's claims as unsubstantiated.

19. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, ruling on an equitable basis, it awards the applicant EUR 4,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

20. Having regard to the documents in its possession, the Court also awards the applicant the amount claimed in legal fees, plus any tax that may be chargeable to the applicant on that amount.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 8 of the Convention admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds* that there is no need to examine the admissibility and merits of the remaining complaint under Article 6 of the Convention;

4. *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:
      (i) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 387 (three hundred and eighty-seven euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (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;

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

Done in English, and notified in writing on 12 September 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Lado Chanturia President