

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

FIFTH SECTION

CASE OF PISOTSKYY v. UKRAINE

(Application no. 50764/20)

JUDGMENT

STRASBOURG

9 February 2023

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



In the case of Pisotskyy v. Ukraine,

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

Mārtiņš Mits*, President*,
Mattias Guyomar,
Mykola Gnatovskyy*, judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 19 January 2023,

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 5 November 2020.

2. The applicant was represented by Mr B.V. Fokiy, a lawyer practising in Chernivtsi, Ukraine.

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

THE FACTS

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

5. The applicant alleged that he did not receive adequate medical care in detention. He also raised other complaints under the provisions of the Convention.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

6. The applicant complained principally that he was not afforded adequate medical treatment in detention. He relied on Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

7. The Court notes that the applicant suffered from serious medical conditions, as indicated in the appended table, which affected his everyday functioning. Therefore, he could have experienced considerable anxiety as to whether the medical care provided to him was adequate.

8. 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, *Pokhlebin v. Ukraine*, no. 35581/06, § 62, 20 May 2010, and *Gorbulya v. Russia*, no. 31535/09, § 62, 6 March 2014, both 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).

9. 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.

10. The Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility, including the issue of compliance with the six-month period under Article 35 § 1 of the Convention (see *Saakashvili v. Georgia* (dec.), nos. 6232/20 and 22394/20, §§ 46-59, 1 March 2022, in which the Court addressed the COVID-related extension of the period in question and concluded that it should be exceptionally considered to have been suspended for three calendar months in total whenever it either started to run or was due to expire at any time between 16 March and 15 June 2020). Therefore, the afore mentioned complaints are admissible and disclose a breach of Article 3 of the Convention.

II. OTHER ALLEGED VIOLATIONS UNDER WELL-ESTABLISHED CASE-LAW

11. The applicant submitted other complaints which also raised issues under the Convention, given the relevant well-established case-law of the

Court (see appended table). These complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor are they inadmissible on any other ground. Accordingly, they must be declared admissible. Having examined all the material before it, the Court concludes that they also disclose violations of the Convention in the light of its findings in *Melnik,* cited above, and *Sukachov v. Ukraine* (no. 14057/17, 30 January 2020).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

12. 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."

13. 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 sums indicated in the appended table.

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* that there has been a violation of the Convention as regards the other complaints raised under well-established case-law of the Court (see appended table);

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the amounts 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 amounts 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 9 February 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina	Mārtiņš Mits
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	Representative's name and location	Principal medical condition	Shortcomings in medical treatment	Other complaints under well-established case-law	Amount awarded for pecuniary and non-pecuniary damage per applicant (in euros)[1]	Amount awarded for costs and expenses per application (in euros)[2]
50764/20 05/11/2020	**Igor Vitaliyovych PISOTSKYY** 1975	Fokiy Bogdan Vasylyovych Chernivtsi	Chronic bronchitis and bronchial asthma	Lacking/delayed drug therapy; absence of proper medical supervision and testing; absence of proper living conditions for a patient suffering from respiratory disease 25/05/2019 to 07/02/2020 8 months and 14 days	Art. 3 - inadequate conditions of detention - period between 25/05/2019 and 07/02/2020, when he was held at the Cherkasy Pre-Trial Detention Facility (i.e. overcrowding, mouldy or dirty cell, lack of fresh air, passive smoking, poor quality of food, lack of or insufficient natural light, lack of or poor quality of bedding and bed linen, lack of or inadequate hygienic facilities, lack of privacy for toilet, inadequate temperature, no or restricted access to shower, no or restricted access to warm water, infestation of cell with insects/rodents); Art. 13 - lack of any effective remedy in domestic law in respect of inadequate medical treatment in detention	9,750	250

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