

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

FIFTH SECTION

CASE OF TSYUSMAK v. UKRAINE

(Application no. 5533/23)

JUDGMENT

STRASBOURG

14 November 2024

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



In the case of Tsyusmak v. Ukraine,

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

Kateřina Šimáčková*, President*,
Mykola Gnatovskyy,
Artūrs Kučs*, judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 17 October 2024,

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 13 January 2023.

2. The applicant was represented by Ms K.Y. Voronyuk, a lawyer practising in Rivne.

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.

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, *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)

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

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

11. The applicant also submitted complaints under Article 5 of 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 the case set out in the appended table.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

12. 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 the 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 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 14 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina	Kateřina Šimáčková
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]
5533/23 13/01/2023	**Oleg Mykolayovych TSYUSMAK** 1981	Voronyuk Kateryna Yuriyivna Rivne	hepatitis, old non-union fracture of the right leg and broken implanted screw	lacking/delayed drug therapy, lacking/delayed surgery 12/01/2022 to 08/11/2022 9 month(s) and 28 day(s)	Art. 5 (3) - excessive length of pre-trial detention - 25/02/2021-14/09/2022 - the domestic courts provided repetitive and insufficient reasons for their decisions extending the applicant's pre-trial detention (see *Kharchenko v. Ukraine*, no. 40107/02, §§ 77-81, 10 February 2011, *Ignatov v. Ukraine*, 40583/15, §§ 38-42, 15 December 2016)	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.