



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

FIFTH SECTION

CASE OF OSTROLUTSKYY v. UKRAINE

(Application no. 50141/20)

JUDGMENT

STRASBOURG

15 October 2026

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

In the case of Ostrolutskyy v. Ukraine,

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

Gilberto Felici, *President*,

Mykola Gnatovskyy,

Vahe Grigoryan, *judges*,

and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 50141/20) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 5 November 2020 by a Ukrainian national, Mr Vitaliy Vitaliyovych Ostrolutskyy (“the applicant”), who was born in 1976 and lives in Kyiv, and was represented by Mr M. Tarakhkalo, Ms O. Kuvaieva and Ms Y. Kovalenko, lawyers from the Ukrainian Helsinki Human Rights Union, practising in Kyiv;

the decision to give notice of the complaints concerning excessive length and alleged ineffectiveness of domestic proceedings in respect of the applicant’s allegations of medical malpractice and the dismissal of his compensation claim to the Ukrainian Government (“the Government”), represented by their Agent, Ms M. Sokorenko, from the Ministry of Justice, and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 24 September 2026,

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

SUBJECT MATTER OF THE CASE

1. The application concerns allegedly ineffective domestic proceedings in respect of the applicant’s complaints that he had been subjected to unnecessary medical interventions for financial gain.

2. Since childhood, the applicant has been suffering from type 1 diabetes. In 2014 doctors at a public hospital in Kyiv (“the hospital”) diagnosed him with multiple heart abnormalities, following which he underwent three cardiac surgeries there. All three interventions were carried out at the applicant’s own expense. After his discharge from the hospital, the applicant complained that he had been misdiagnosed, that the above-mentioned surgeries had not been medically necessary and that they had been carried out only with a view to obtaining money from him.

3. In April 2017 a Clinical Expert Commission of the Ministry of Health reviewed the applicant’s medical file and issued a report (“the Ministry of Health’s report”) concluding that the medical care provided to the applicant at the hospital had not complied with the relevant standards. In their view, given the applicant’s stable cardiac condition, there had been no indications

for surgery and he should have undergone additional clinical assessments instead.

I. CRIMINAL PROCEEDINGS

4. In 2017 the police instituted criminal proceedings in connection with the applicant's allegations of medical malpractice. In the context of those proceedings, a number of the applicant's medical files were seized and sent for forensic examination. That examination concluded in 2020 that no medical negligence had taken place. There is no information about any investigative activities conducted from that time until late in 2025, when the proceedings were terminated for the lack of constituent elements of a crime. In January 2026 a domestic court found the decision to terminate the investigation unsubstantiated and ordered that the proceedings be resumed. There is no information about its current status.

II. CIVIL PROCEEDINGS

5. In September 2017, relying on the Ministry of Health's report and arguing that the allegedly unnecessary surgeries had resulted in health complications (including temporary kidney dysfunction, deterioration of vision, respiratory complications and hypertension), the applicant instituted civil compensation proceedings against the hospital. In the context of those proceedings, in February 2020 a forensic medical examination, ordered by the domestic court, concluded that, despite some irregularities in the applicant's diagnosis, the surgeries had been justified and that the applicant's post-operative complications had resulted from his existing medical conditions.

6. The applicant contested the findings of the forensic experts, arguing that the medical examination had been carried out on the basis of incomplete information, given that certain medical files, including pre-surgery imaging, had been seized by the police in the context of the ongoing criminal investigation (see paragraph 4 above) and had not been presented to the team of experts. He also asserted that one of the experts who had taken part in the examination could not be considered independent. In particular, the applicant claimed that that expert had been a subordinate of the hospital's head doctor at a medical school where they both had worked part-time. The applicant also requested another expert examination, which the domestic court ordered in September 2020 at the applicant's expense. The experts were provided with all the materials contained in the case file.

7. In November 2020 the domestic court requested that the police also supply the originals of the applicant's medical documents attached to the criminal case file, including the pre-surgery imaging (see paragraph 4 above). The applicant made repeated enquiries with the domestic court, the police and

the forensic institution, but there is no indication that that court request was complied with. In June 2022 the experts informed the domestic court that they could not proceed with the examination, as the applicant had failed to pay their fees.

8. By a decision of the Desnyanskyi District Court of Kyiv of 14 July 2023, the applicant's claim was dismissed. The court relied primarily on the 2020 forensic report and noted that it had been the fault of the applicant that the further medical examination had not been completed. It neither commented on the Ministry of Health's report nor addressed the applicant's allegations concerning the lack of independence of one of the experts. The applicant appealed, maintaining his arguments. On 20 February 2024 the Kyiv Court of Appeal dismissed his appeal. The appellate court reiterated the reasoning of the first-instance court and noted that the applicant had not put forward any arguments capable of calling into question its conclusions. On 25 April 2024 the Supreme Court declared an appeal on points of law lodged by the applicant inadmissible.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

9. Relying on Articles 3, 6 and 13 of the Convention and on Article 1 of Protocol No. 1 thereto, the applicant complained that the domestic proceedings in respect of his allegations of medical malpractice had been ineffective and that his compensation claim had been unlawfully dismissed. He asserted, *inter alia*, that those proceedings had been excessively lengthy, that one of the forensic experts in his case had lacked independence and that the domestic courts had failed to respond to his key arguments. The Court, being master of the characterisation to be given in law to the facts of the case, will examine the applicant's complaints from the standpoint of the procedural limb of Article 8 of the Convention only (see *Botoyan v. Armenia*, no. 5766/17, §§ 90-92, 8 February 2022).

10. The Government did not raise any objections as to admissibility of the application. On the merits, they argued that the domestic judicial system had afforded the applicant an effective remedy in criminal and civil proceedings. With regard to the latter, they specifically relied on three examples of domestic case-law where victims of medical negligence had successfully pursued civil claims against medical institutions without the establishment of guilt in criminal proceedings.¹ In their view, however, the applicant had not demonstrated the requisite diligence in pursuing his claim, as he had failed to pay the experts' fees.

¹ They referred to domestic proceedings nos. 953/3696/22, 175/779/17 and 344/3764/21.

11. The applicant maintained his argument that both the civil and criminal remedies to which he had resorted had not been effective in practice. As to his failure to pay the fees of the forensic experts (see paragraph 7 above), the applicant submitted that despite his best efforts, the domestic court had not ensured that those experts had had access to his medical documentation, seized in the context of the parallel criminal investigation (see paragraph 4 above). In such circumstances, he considered it unnecessary to pursue that forensic examination and chose to rely on existing evidence.

12. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

13. The general principles concerning the State's procedural obligations in the context of healthcare have been summarised in *Mehmet Ulusoy and Others v. Turkey* (no. 54969/09, §§ 90-93, 25 June 2019).

14. Turning to the present case, the Court observes that the applicant held the hospital's staff responsible for performing allegedly unjustified medical interventions and for the alleged deterioration of his health, arguing that the domestic authorities had been ineffective in establishing the responsibility of the medical practitioners concerned. Accordingly, the Court's task is to review the effectiveness of the remedies used by the applicant and thus to determine whether the judicial system ensured the proper implementation of the legislative and regulatory framework designed to protect patients' right to physical integrity (see *İbrahim Keskin v. Turkey*, no. 10491/12, § 68, 27 March 2018).

15. The Court notes that the applicant pursued legal action through both criminal and civil proceedings. The Court will examine those remedies in turn.

16. As regards the criminal remedy, the Court observes that the investigation into the alleged medical malpractice lasted for more than nine years, with no investigative activities carried out between 2020 and its termination in 2025. Moreover, in 2026 – that is, nine years after the investigation had been launched – the domestic court acknowledged that the decision to terminate those proceedings had been taken without sufficient justification and remitted the case for further investigation. In the Court's view, these circumstances may indicate that the criminal proceedings in the applicant's case lacked promptness (see *Eryiğit v. Turkey*, no. 18356/11, § 51, 10 April 2018).

17. Turning to the civil proceedings, which appeared, in principle, the most appropriate remedy for the applicant's complaints (see, for illustrative purposes, *Tsmokalov v. Ukraine* [Committee], no.15524/13, § 17, 3 November 2022; see also the examples of domestic case-law cited in paragraph 10 above), the Court cannot but find that the manner in which those proceedings were conducted in the present case likewise did not provide adequate protection of the applicant's right to physical integrity.

18. In particular, the Court observes that despite the applicant's specific references to the Ministry of Health's report, which suggested that the actions of the medical staff concerned had been inappropriate and, in that regard, contradicted the findings of the subsequent forensic examination, the domestic courts left it without any consideration and did not explain why they preferred one medical assessment over the other. It further appears that the courts did not address the applicant's substantiated allegations that one of the experts involved in the court-appointed forensic examination had lacked independence from the head doctor of the hospital whose medical personnel had been implicated in the events. In the Court's view, both of these issues were important for the determination of the applicant's case and therefore called for a specific response (see *Reyes Jimenez v. Spain*, no. 57020/18, § 37, 8 March 2022, and *Traskunova v. Russia*, no. 21648/11, § 84, 30 August 2022).

19. With regard to the Government's argument concerning the applicant's failure to pay the experts' fees, the Court notes that, after ordering a further expert assessment, the domestic court had requested a number of medical files from the parallel criminal proceedings, thereby acknowledging their relevance. However, it has not been shown that these were produced (see paragraph 7 above). In these circumstances, even if the applicant had paid the experts' fees, the Court doubts that an assessment carried out without access to all the medical documentation considered relevant by the domestic court could have meaningfully addressed the applicant's allegations. Be that as it may, and without speculating as to the possible outcome of such an assessment, the Court considers that, in any event, the applicant's failure to pay the experts' fees did not relieve the domestic courts of their obligation to examine and properly address his pertinent arguments.

20. The above elements are sufficient for the Court to conclude that the applicant did not receive an adequate judicial response which complied with the requirements inherent in the protection of the right to physical integrity. There has, accordingly, been a violation of Article 8 of the Convention.

21. In view of these findings, the Court does not consider it necessary to address separately the remaining aspects of the applicant's complaint under the above-mentioned provision of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. The applicant claimed 68,480 Ukrainian hryvnias, corresponding to 3,686.41 euros (EUR), in respect of pecuniary damage, representing the cost of a coronary stenting kit used during one of the surgeries, and EUR 100,000 in respect of non-pecuniary damage. He also sought EUR 4,050 in respect of costs and expenses incurred before the Court (to be paid into Mr Tarakhkalo's bank account).

23. The Government contested those claims.

24. Given the nature of the violation found, the Court finds that the applicant undoubtedly suffered some pecuniary and non-pecuniary damage. Making an assessment on an equitable basis as is required by Article 41 of the Convention, the Court awards the applicant EUR 5,000 covering damage under all heads.

25. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 1,500 for the proceedings before the Court, plus any tax that may be chargeable to the applicant. At the applicant's request, the above-mentioned amount should be paid directly into the bank account of Mr M. Tarakhkalo.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *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 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
 - (ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly into the bank account of the applicant's representative, Mr M. Tarakhkalo;
 - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 October 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller
Deputy Registrar

Gilberto Felici
President