

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

FIFTH SECTION

CASE OF BILYY v. UKRAINE

(Application no. 59945/18)

JUDGMENT

STRASBOURG

13 February 2025

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



In the case of Bilyy v. Ukraine,

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

María Elósegui*, President*,
Gilberto Felici,
Kateřina Šimáčková*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 59945/18) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 18 October 2018 by a Ukrainian national, Mr Ivan Ivanovych Bilyy ("the applicant"), who was born in 1984 and is serving a prison sentence, and who, having been granted legal aid, was represented by Mr M.O. Sosyedko, a lawyer practising in Kyiv;

the decision to give notice of the application to the Ukrainian Government ("the Government"), represented by their Agent, Ms Marharyta Sokorenko;

the parties' observations;

Having deliberated in private on 23 January 2025,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's complaints under Article 3 of the Convention concerning his alleged ill-treatment by the police and the related investigation.

2. At the time of the events, the applicant had been convicted of murder by a first-instance court and was awaiting the appellate proceedings.

3. On 3 August 2016 he sustained a head injury while consulting the case file on the court premises, with four convoy officers (K., G., S. and B.) ensuring his security.

4. The applicant provided the following account of the events. The convoy officers had treated him disrespectfully and had taken food from the lunchbox prepared for him by his wife. When he had objected, the convoy officers had sprayed him with tear gas and beaten him. One officer had kicked him in the back of his leg, causing the applicant to fall. As he fell, he had hit his head on some metal bars which resulted in a head wound and substantial bleeding. Fearing for his safety, the applicant had shouted for help. His wife, who had been in the vicinity, had heard him and had called an ambulance. However, the convoy officers had not allowed paramedics to attend to the applicant, falsely claiming that he had been behaving too aggressively. The applicant's wife had then telephoned a senior official at the police station, as a result of which another ambulance had been called for the applicant.

5. According to the convoy officers' report, the applicant had injured himself by deliberately banging his head on some metal bars without any reasons or explanations. They reported that they had provided him with first aid.

6. Still on 3 August 2016 the police launched an internal inquiry into "a self-injury incident".

7. Records provided by the ambulance dispatch centre show that two ambulances were called for the applicant that day, the first at 3.33 p.m. by his wife and the second at 4.17 p.m. by "officer D." When the ambulance had arrived after the first call, paramedics had not been able to provide any medical assistance to the applicant because he "had been behaving in an aggressive and inappropriate manner and the police had not been able to ensure the ambulance crew's safety". On the second call-out, paramedics were able to examine the applicant. They diagnosed him with an open wound to the parietal area and treated that wound. The applicant was then taken to the local hospital for an in-depth examination and further treatment.

8. In hospital the applicant's head wound was closed with six stitches. Hospital records indicate that he did not raise any complaints.

9. On 4 August 2016 the police completed the internal inquiry report. The report concluded that the applicant had injured himself and had failed to provide any explanation in that regard. The convoy officers had been questioned and had confirmed that version of events.

10. On 12 October 2016 the applicant's wife complained to the Dnipropetrovsk Region Prosecutor's Office about the applicant's alleged ill-treatment by the convoy officers. In the absence of any reaction, on 18 October 2016 she brought the matter to the Zhovtnevyy District Court ("the Zhovtnevyy Court").

11. On 4 November 2016 the prosecutor opened an investigation into the incident, having been ordered to do so by the Zhovtnevyy Court.

12. The applicant applied to the investigator on 17 November 2016, 6 April 2017 and again on 6 December 2018, asking to be granted the procedural status of a victim and to be questioned in that capacity. On 25 November 2016 the investigator rejected his first application as unfounded. It appears, however, that the applicant was not aware of that decision. He received no response to his subsequent applications to the same effect and neither did he receive a response to a request for a reconstruction of the events which he submitted on 23 July 2018.

13. Even though the applicant had consistently requested access to the case file (in particular, on 9 June, 13 July and 5 September 2017), his representative was only allowed access to the case file for the first time in August 2018.

14. In three identical decisions – dated 29 December 2016, 28 April 2017 and 21 November 2018 – the regional prosecutor's office discontinued the investigation on the grounds that there was no indication of a criminal

offence having been committed. The investigator relied on the police inquiry report and the convoy officers' statements denying any violence towards the applicant. The applicant's version of the events, given on 23 December 2016 when he had been questioned as a witness, was dismissed as being unsupported by evidence.

15. Following complaints made by the applicant under Article 303 of the Code of Criminal Procedure[1], on 29 March 2017, 15 August 2018 and 2 April 2019 the Zhovtnevyy Court quashed the above-mentioned decisions as premature and unfounded.

16. On 31 July 2019 the prosecutor's office once again discontinued the investigation. In addition to its earlier reasoning, it noted that the applicant had previously injured himself in November 2015 and that he was known for his hot temper. The applicant did not challenge that decision.

THE COURT'S ASSESSMENT

17. The applicant complained under Article 3 of the Convention that he had been ill-treated by the convoy officers and that the domestic investigation into the matter had not been effective.

18. The Government argued that the applicant could not be regarded as having exhausted domestic remedies. They noted that, at the time the applicant had lodged his application with the Court, the investigation had still been ongoing. The Government further pointed out that the applicant had subsequently failed to challenge the investigator's decision of 31 July 2019 to discontinue the investigation.

19. The Government also submitted that the applicant's allegation of ill-treatment was not supported by evidence, unlike the version in which he had injured himself. In addition, in their view, the domestic investigation had complied with the standards of an effective investigation for the purposes of Article 3.

20. The Court has on many occasions dismissed similar objections of non-exhaustion of domestic remedies raised by the Government (for recent examples, see *Khrus and Others v. Ukraine* [Committee], nos. 38328/14 and 4 others, §§ 6 and 7, 2 March 2023, and *Storozhuk and Kononov v. Ukraine* [Committee], nos. 3577/16 and 48768/16, §§ 7 and 8, 8 February 2024). The Court has also expressed doubts about the effectiveness in practice of challenging an investigator's decisions or omissions under Article 303 of the Code of Criminal Procedure (see, for example, *Karter v. Ukraine*, no. 18179/17, § 62, 11 April 2024, and the reference therein to *Adnaralov v. Ukraine*, no. 10493/12, § 39, 27 November 2014). Reviewing the Government's objection in the light of the available documents and

[1] Article 303 of the CCP allows the omissions, acts or decisions of an investigating official to be challenged during a pre-trial investigation.

the principles developed in its case-law, the Court considers that the applicant provided the domestic authorities with an appropriate opportunity to deal with his allegation, thus discharging his obligation to exhaust domestic remedies.

21. The Court further notes that the application is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

22. Having regard to the general principles established in its case-law (see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 81-90 and 114-23, ECHR 2015), the Court considers that the applicant raised a credible allegation of ill-treatment at the domestic level, which triggered the national authorities' obligation to carry out an effective investigation. It appears, however, that the domestic investigation did not reflect a serious effort to determine the relevant facts. The investigator took three identical decisions (see paragraph 14 above) to discontinue the investigation despite criticism by the court (see paragraph 15 above). The applicant was not accorded the procedural status of a victim and no investigative measures were undertaken to verify his allegation. Instead, the investigator relied on the convoy officers' version of events without any attempt to check its credibility. Also, it remained unclear who had called the ambulance for the applicant and under what circumstances (as can be seen from the documents in the case file, "officer D." was not part of the convoy – see paragraphs 3 and 7 above). The Court has already condemned patterns of investigation similar to those seen in the present case (see, for example, *Pomilyayko v. Ukraine*, no. 60426/11, § 57, 11 February 2016, with further references).

23. Having regard to the undisputed fact that the applicant, while under police control, sustained a potentially serious injury (a head wound which needed stitches), for which no plausible explanation has been provided, the Court considers that the State's responsibility for his inhuman and degrading treatment is engaged (see *Bouyid*, cited above, § 83; see also, by way of example, *Adnaralov v. Ukraine*, no. 10493/12, § 45, 27 November 2014; *Kulik v. Ukraine*, no. 10397/10, § 59, 19 March 2015; and *Yaroshovets and Others v. Ukraine*, nos. 74820/10 and 4 others, § 85, 3 December 2015).

24. The Court therefore concludes that there has been a violation of Article 3 of the Convention under both its procedural and substantive limbs.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage and EUR 5,600 in respect of costs and expenses incurred before the Court. In support of his claims, he submitted a copy of a legal assistance contract dated 4 September 2023 stipulating an hourly rate of EUR 100 and a timesheet dated 23 December 2023 on which fifty-six hours of legal work by Mr Sosyedko had been recorded.

26. The Government contested those claims.

27. The Court considers it appropriate to award the applicant EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

28. Furthermore, regard being had to the documents in its possession and to its case-law, the Court awards, in addition to the legal aid received, the sum of EUR 1,000 for costs and expenses, plus any tax that may be chargeable to the applicant. At the request of the applicant, the amount awarded under this head should be paid directly into the bank account of Mr Sosyedko (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 288, 15 December 2016).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb;

3. *Holds* that there has been a violation of Article 3 of the Convention under its substantive limb;

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 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly into the account of his representative, Mr M. Sosyedko;
   (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 13 February 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	María Elósegui President