

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

FIFTH SECTION

CASE OF GAVRYLYAK v. UKRAINE

(Application no. 60692/16)

JUDGMENT

STRASBOURG

21 November 2024

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Gavrylyak v. Ukraine,

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

Lado Chanturia*, President*,
Mykola Gnatovskyy,
Úna Ní Raifeartaigh*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 60692/16) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 1 October 2016 by a Ukrainian national, Ms Olga Volodymyrivna Gavrylyak ("the applicant"), who was born in 1960, lives in Davydiv and was represented by Mr B.B. Bidnyy, a lawyer practising in Lviv;

the decision to give notice of the complaints under Articles 3 and 8 of the Convention to the Ukrainian Government ("the Government"), represented by their Agent, most recently Ms Marharyta Sokorenko, Representative of Ukraine to the European Court of Human Rights;

the parties' observations;

Having deliberated in private on 24 October 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's allegations that she was ill-treated by her nephew, Y.R., who on 4 August 2014 inflicted minor bodily injuries on her in an attempt to influence her decision to sell her house.

I. BACKGROUND TO THE CASE

2. On 30 November 2006 the applicant acquired, by means of a deed of gift, a seven-eighths share of the title to her parents' house, although she continued to live elsewhere. Her brother, Y.V., lived in the house until his death in April 2014. The applicant's nephew, Y.R., lived in the house until July 2010. In January 2014 Y.R. moved back into the house with his wife and their minor child. It appears that they moved out sometime at the end of 2014.

3. On 26 May 2011 the Skolivskyi District Court of the Lviv Region ("the Skolivskyi Court") annulled Y.V.'s one-eighth share of the title to the house and awarded him compensation in the amount of 42,683 Ukrainian hryvnias (UAH).

4. On 24 October 2012 the applicant's title to the remaining one-eighth share of the house was recorded in the State register.

5. On 29 May 2013 the Skolivskyi Court allowed a claim made by Y.V, seeking the payment of UAH 42,683 by the applicant. In July 2013 the applicant paid him the money due.

6. In 2015 the applicant initiated court proceedings against Skole City Council, seeking a declaration that she held title to the remaining one-eighth share of the house. On 16 March 2016 the Skolivskyi Court allowed her claim and made the declaration sought. That decision became final on 28 March 2016.

7. In 2017 the applicant sold the house.

II. ALLEGED EVENTS OF 4 AUGUST 2014

8. According to the applicant, on 4 August 2014 Y.R., together with three other people, entered the house without her permission and inflicted bodily injuries on her in two separate incidents. The same day the applicant complained about the incident to the police, who immediately opened a criminal case into the infliction of minor bodily injuries under Article 125 § 2 of the Criminal Code. The injuries were recorded in forensic medical reports dated 13 August 2014 and 25 March 2015 and were categorised as minor. Neither the applicant nor the Government have provided a copy of those reports to the Court.

9. Between 2012 and 2015, following criminal complaints lodged by the applicant, a total of fifteen criminal cases were opened in connection with the possession of and title to the house, including in relation to her allegations of unauthorised entry into the house, damage to the lock of the house and theft, and in relation to her complaints of ill-treatment by Y.R. on 4 August 2014.

10. According to the Government, who referred to the criminal case file, on 4 August 2014 the applicant had an altercation with Y.R. and S.B., who had arrived at her house and started to film on Y.R.'s mobile telephone. With a wooden stick, the applicant hit the telephone and then Y.R., on his back, head, neck and lower back. Y.R. also received several blows to his hands, which he was using to defend himself from the attack, following which he and S.B. left. That evening, following a further altercation, there was a scuffle between the applicant and Y.R's mother and stepfather.

11. The above version of events was partly confirmed by a neighbour, G., and her daughter, who stated that they had seen the applicant holding a wooden stick and that she had had an argument with Y.R. and S.B.

12. According to the Government, in August 2017 the recording from the mobile phone was joined as evidence to the criminal case and showed the applicant approaching Y.R. with a wooden stick in her hands and hitting the telephone with it, after which the recording stopped.

13. Lastly, the Government submitted that the applicant had complained to the forensic medical doctor that, on 4 August 2014, Y.R. and S.B. had come to the house while she had been there, had dragged her out by her hair and

had beaten her on her head, shoulders, and the rest of her body. However, that version of events had not been confirmed by the investigation.

14. In December 2017 two sets of criminal proceedings, relating respectively to the events of 4 August 2014 and to the alleged unlawful entry into the house, were merged.

15. Subsequently, the criminal proceedings were closed on several occasions for lack of evidence, but those decisions were quashed by the first-instance court.

16. On 19 February 2020 the Mykolayivskyi District Court of the Lviv Region allowed an application by the prosecutor and closed the criminal proceedings on account of the expiry of the limitation period for criminal prosecution.

17. On 15 June 2021 the Lviv Court of Appeal allowed an appeal by the applicant and quashed the decision to close the proceedings, on the grounds that the investigator had failed to carry out all the necessary investigative steps to establish the circumstances of the case, namely who had inflicted the injuries on the applicant and whether any criminal action had taken place.

18. On 22 June 2023 a pre-trial judge of the Mykolayivskyi District Court of the Lviv Region quashed a new decision of 13 May 2022 to close the criminal proceedings, on the grounds that the investigator had failed to consider Y.R.'s actions in connection with his alleged unlawful entry into the house or to verify the legal basis on which he had been living in the house and, apart from Y.R.'s explanation – that he had been born in the house and had lived there for almost his whole life – had provided no evidence that Y.R. had had any right to the house. The judge made no comment on the state of the investigation into the applicant's complaint of ill-treatment.

19. The proceedings are currently pending.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLES 3 AND 8 OF THE CONVENTION

20. Relying on Articles 6 and 13 of the Convention, the applicant complained that she had been ill-treated by her nephew near her house on 4 August 2014. The Court, being the master of the characterisation to be given in law to the facts of a case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), considers that this complaint falls to be examined under Articles 3 and 8 of the Convention.

21. The relevant principles concerning the requirement to undertake an effective investigation of alleged ill-treatment inflicted by private individuals have been summarised in *Muta v. Ukraine* (no. 37246/06, § 59, 31 July 2012). The principles for the assessment of the minimum level of severity can be found in *Labita v. Italy* ([GC], no. 26772/95, §§ 119-20, ECHR 2000-IV).

22. The Court observes that the applicant received minor bodily injuries, allegedly in the course of a dispute with Y.R (see paragraph 8 above). However, the parties have not provided the Court with a copy of the records of the forensic medical examination of the applicant. In those circumstances the Court is unable to examine whether the applicant's injuries were serious enough to trigger the application of Article 3 of the Convention.

23. Accordingly, the applicant's complaint under Article 3 of the Convention about the alleged failure of the State to adequately investigate her ill-treatment is manifestly ill-founded and must be rejected under Article 35 §§ 3 (a) and 4 of the Convention.

24. The applicant complained under Article 8 of the Convention that the State had failed to abide by their positive obligations and to effectively investigate her allegations of having been subjected to ill-treatment on 4 August 2014.

25. The Court notes that this complaint 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.

26. The relevant principles in relation to the positive obligations of a State under Article 8 of the Convention to protect people from ill-treatment administered by private individuals can be found in *Špadijer v. Montenegro* (no. 31549/18, §§ 87-88, 9 November 2021).

27. The Court observes that the criminal proceedings in the present case were opened immediately following the applicant's complaint of 4 August 2014. However, they were closed several times for lack of evidence and those decisions were quashed by the domestic courts (see paragraph 15 above), which found the investigation to be incomplete and set out the further procedural steps to be taken (see paragraphs 17 and 19 above). Furthermore, the Court notes that the proceedings, having been opened in August 2014, are still pending (see paragraph 19 above) and that the overall length of the proceedings is now almost ten years, making any further effective development of the investigation all but impossible.

28. In the light of the above, the Court finds that the State has failed to comply with its positive obligation under Article 8 of the Convention to conduct an effective investigation into the applicant's alleged ill-treatment.

29. There has accordingly been a violation of the procedural limb of Article 8 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award her any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the lack of an effective investigation raised under Article 8 of the Convention admissible and the remainder of the application inadmissible;

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

Done in English, and notified in writing on 21 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Lado Chanturia President