

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

FIFTH SECTION

CASE OF IVANYUTA v. UKRAINE

(Application no. 24897/17)

JUDGMENT

STRASBOURG

19 December 2024

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



In the case of Ivanyuta v. Ukraine,

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

Armen Harutyunyan*, President*,
Andreas Zünd,
Mykola Gnatovskyy*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 24897/17) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 24 March 2017 by two Ukrainian nationals, Mr Oleg Dmytrovych Ivanyuta ("the first applicant") and Ms Iryna Volodymyrivna Ivanyuta ("the second applicant", together "the applicants"), who were born in 1978 and 1987 respectively and live in Kherson;

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 28 November 2024,

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

SUBJECT MATTER OF THE CASE

1. The application concerns alleged ill-treatment of the applicants by private security guards using truncheons and tear gas, and alleged lack of an effective investigation into the matter. The applicants complained under Articles 3, 6 and 13 of the Convention.

I. EVENTS LEADING TO THE APPLICANTS' INJURIES

2. The applicants submitted that on the evening of 3 August 2015, following a disagreement with the security staff at the F. café, who had not allowed the second applicant to enter, they and their friend G. had been assaulted by private security guards from the K. LLC with a rubber truncheon, an electroshock device and tear gas which was sprayed in their eyes.

3. The Government submitted, with reference to witness statements in the criminal case file, that on the night of the event, the applicants had tried to enter the café in a state of intoxication. The café's security staff had refused them entry and had called the K. LLC to send private security guards, who promptly arrived at the scene. The applicants had behaved aggressively and torn the private security guards' uniforms and body armour, forcing them to spray the applicants with tear gas.

4. On 4 August 2015 the applicants went to a local hospital. Two medical certificates dated 4 August 2015 show that the first applicant sustained

bruising to the right side of his chest, a bruise to his right hand, a concussion and chemical burns to both eyes. The second applicant had a concussion, bruising to the soft tissue of her head and chemical burns to both eyes. The applicants did not seek outpatient treatment. The case file does not contain any documents proving that the applicants had been in a state of intoxication.

5. On 31 August 2015 a forensic medical doctor examined the applicants and issued two expert opinions (*Мнение специалиста*).

6. In relation to the first applicant, the doctor concluded that he had sustained a concussion, a bruise on his right shoulder, chemical burns to both eyes, a haemorrhage in the soft tissue of his head and face and abrasions on his face and upper limbs. The doctor described those injuries as minor. The first applicant told the doctor that a private security guard from the K. LLC had hit him on the head with a rubber truncheon, following which he had fallen to the ground. While he was lying on the ground, someone had hit him again on his head and torso. When he had tried to get up, he had had tear gas sprayed in his eyes.

7. In relation to the second applicant, the doctor concluded that she had chemical burns to both eyes, scratches on her back and on a right upper limb, and haemorrhages on her back, on her upper and lower limbs and in the soft tissue of her head; those injuries were described as minor. The doctor denied that the applicant had sustained a concussion. The second applicant told the doctor that a private security guard from the K. LLC had hit her in the face, following which she had fallen to the ground; he had then hit her on the head and she had lost consciousness. Someone had grabbed her hands and dragged her along the ground. She had been helped to stand up, but someone had then used an electroshock device on her right leg and sprayed tear gas in her eyes.

8. On 8 September 2015 another forensic medical examination of the second applicant was carried out. The doctor reiterated his conclusion from 31 August 2015 that the second applicant had sustained minor bodily injuries.

II. CRIMINAL INVESTIGATION

9. The applicants submitted that on 3 August 2015, they had complained to the police about the incident.

10. The Government submitted that on 3 August 2015 the applicants' friend, G., had complained to the police of ill-treatment and that a criminal case (no. 12015230040004457) had been opened into the infliction of minor bodily injuries. The applicants had complained to the police on 7 September 2015, following which the police had opened two further criminal cases (nos. 12015230040005196 and 12015230040005197) into the infliction of minor bodily injuries. The Government provided the Court with relevant documentary evidence.

11. During the investigation, in August and September 2015, G. and two private security guards from the K. LLC were questioned as victims, and certain B. as a witness. The applicants were also questioned.

12. On 22 October 2015 an investigator closed case no. 12015230040005197 for lack of evidence. On 10 November 2015 a prosecutor overruled that decision.

13. In November 2015 all three of the above-mentioned criminal cases were merged into one case (no. 12015230040004457).

14. On 17 December 2015 the police closed the criminal proceedings for lack of evidence. On 25 February 2016 the Suvorivskyi District Court of Kherson set aside that decision, stating that the police had failed to identify and question all the private security guards who had arrived at the café on 3 August 2015, had failed to identify potential witnesses and had not questioned the wife of G., who had been present at the scene of events, as a witness.

15. On 13 September 2016 a security company, private entrepreneurship K., replying to a request from the investigator, said that it had not entered into a contract with the café and denied that its employees had arrived at the café following the telephone call from the café's security staff.

16. On the same day the K. LLC replied to a request from the investigator that the information about which its security guards had gone to the café on the evening of 3 August 2015 had already been destroyed.

17. On 13 January 2017, 27 September 2019 and 18 January 2021, criminal case no. 12015230040004457 was closed a further three times for lack of evidence. On 6 March 2017, 6 April 2020 and 29 April 2021 respectively, the Kherson City Court set aside those decisions. The court reiterated its instructions, asking the police to question all eight security guards who had arrived at the café on the evening of 3 August 2015, to ensure access to data kept by telephone operators in order to identify potential witnesses and to ensure access to footage from surveillance cameras.

18. The Government provided the Court with a letter from the head of the Kyiv police, attaching a report detailing the procedural steps that had been taken in criminal case no. 12015230040004457. At the end of the report, the head of the Kyiv police referred to a letter dated 4 April 2023, sent from the Kherson circuit prosecutor's office, which informed the police that the prosecutor's office had performed a stock-taking of ninety-five criminal case files which had been evacuated from Kherson, including the file in case no. 12015230040004457.

19. At present, the investigation is still ongoing.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

20. The applicants complained under Articles 3, 6 and 13 of the Convention that they had been ill-treated at the hands of private security guards and that the police had failed to carry out an effective investigation in this respect.

21. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), is of the view that the complaints fall to be examined under Article 3 of the Convention alone.

A. As regards the procedural limb

22. The Court notes that this part of 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.

23. It considers that the treatment to which the applicants were subjected fell within the scope of Article 3 of the Convention (compare *Skorokhodov v. Ukraine*, no. 56697/09, §§ 10 and 30, 14 November 2013).

24. The general principles concerning the requirement of an effective investigation into alleged ill-treatment inflicted by private individuals have been summarised in *Muta v. Ukraine* (no. 37246/06, § 59, 31 July 2012), *Skorokhodov v. Ukraine* (cited above, § 32), *Aleksandr Nikonenko v. Ukraine* (no. 54755/08, § 43, 14 November 2013), and, for illustrative purposes, *Peleshok v. Ukraine* ([Committee], no. 10025/06, §§ 42-46, 8 December 2016).

25. The Court observes that in August and September 2015, the police questioned only two out of the eight private security guards and in October 2015 they first closed the criminal case for lack of evidence (see paragraph 12 above). It appears that it was not until 2016 that the police tried to establish the identity of the other six private security guards who had been at the café on 3 August 2015. By that time, the relevant records kept by the K. LLC had been destroyed (see paragraph 16 above). Furthermore, between 2017 and 2021 the police closed the criminal case a further three times, without having complied with the instructions of the Kherson City Court (see paragraph 17 above). Despite the fact that the criminal investigation is still ongoing and that the case file has been evacuated from Kherson (see paragraph 18 above), the Court considers that the above-mentioned procedural defects impede the effectiveness of any future investigation.

26. Therefore, in the circumstances of the present case, the Court finds that the authorities, who were empowered to open and conduct a criminal

investigation, failed to take a prompt and thorough examination of the matter, establish the facts and, if necessary, bring those responsible to account.

27. There has accordingly been a violation of the procedural limb of Article 3 of the Convention.

B. As regards the substantive limb

28. The applicants complained that the private security guards, whose activities had allegedly been under the control of the State, based on a licence delivered by its authorities, and who were authorised to use special equipment, had inflicted minor bodily injuries on the applicants.

29. The Court notes, in view of the parties' submissions and all the material in its possession, that the private security guards, whose coercive authority appears to be in issue in the present case (see paragraph 16 above), worked for a private security company, having no attachment to the police or any other State body. The mere fact that the private security company operates its activities on the basis of a licence delivered by the State authorities under the relevant laws is not sufficient to attribute the responsibility of the respondent State (see, *a contrario*, *Verzilov and Others v. Russia*, no. 25276/15, §§ 86-90, 29 August 2023; and, *mutatis mutandis*, *Haji and Others v. Azerbaijan* [Committee], no. 3503/10, § 205, 1 October 2020). Furthermore, the applicant did not submit any other factual elements which could be relevant to engage the responsibility of the State under the substantive part of Article 3 of the Convention with regard to the incident in question.

30. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. The applicants claimed 5,000 euros (EUR) each in respect of non-pecuniary damage.

32. The Government contested the claim.

33. The Court awards the applicants EUR 4,500 jointly in respect of non-pecuniary damage, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the lack of an effective investigation admissible and the remainder of the application inadmissible;

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

3. *Holds*

(a) that the respondent State is to pay the applicants jointly, within three months, EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 19 December 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Armen Harutyunyan President