

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

FIFTH SECTION

CASE OF KHOMENKO v. UKRAINE

(Application no. 20212/13)

JUDGMENT

STRASBOURG

5 October 2023

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Khomenko v. Ukraine,

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

Carlo Ranzoni, *President,*
Lado Chanturia,
María Elósegui*, judges*,
and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 14 September 2023,

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 14 March 2013.

2. The applicant was represented by Mr M. O. Tarakhkalo, a lawyer practising in Kyiv.

3. The Ukrainian Government ("the Government") were given notice of the application. The Government objected to the examination of the application by a Committee. Having considered the Government's objection, the Court rejects it.

THE FACTS

4. The applicant's details and information relevant to the application are set out in the appended table.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

5. The applicant complained of the ineffective investigation into ill-treatment inflicted by private parties or in circumstances that exclude involvement of State agents. He relied, expressly or in substance, on Article 3 of the Convention.

6. The Court notes at the outset that the violent treatment in question fell within the scope of Article 3 of the Convention. The Court reiterates that Article 3 of the Convention requires that the authorities conduct an effective official investigation of alleged ill-treatment, even if such treatment has been inflicted by private individuals (see *M.C. v. Bulgaria*, no. 39272/98, § 151, ECHR 2003-XII, and *Denis Vasilyev v. Russia*, no. 32704/04, § 99, 17 December 2009). The minimum standards of effectiveness laid down by the Court's case-law include the requirements that the investigation must be independent, impartial and subject to public scrutiny, and that the competent

authorities must act with exemplary diligence and promptness (see, *mutatis mutandis*, *Menesheva v. Russia*, no. 59261/00, § 67, ECHR 2006-III).

7. The procedural requirements of Article 3 go beyond the preliminary investigation stage when the investigation leads to legal action being taken before the national courts: the proceedings as a whole, including the trial stage, must meet the requirements of Article 3. This means that the domestic judicial authorities must on no account be prepared to let the physical or psychological suffering inflicted go unpunished. This is essential for maintaining the public's confidence in, and support for, the rule of law and for preventing any appearance of the authorities' tolerance of or collusion in unlawful acts (see, *mutatis mutandis, Okkalı v. Turkey*, no. 52067/99, § 65, ECHR 2006 XII (extracts)).

8. Reviewing the facts of the present case in the light of those principles, the Court considers that the authorities, who were empowered to open and conduct a criminal investigation, did not make a genuine attempt to take a prompt and thorough examination of the matter, establish the facts and, if necessary, bring those responsible to account. The specific shortcomings are indicated in the appended table.

9. In the leading case of *Muta v. Ukraine* (no. 37246/06, 31 July 2012) the Court already found a violation in respect of issues similar to those in the present case.

10. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. Having regard to its case-law on the subject, the Court considers that in the instant case the investigation failed to meet the criteria of effectiveness.

11. These complaints are therefore admissible and disclose a breach of Article 3 of the Convention under its procedural limb.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

12. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

13. Regard being had to the documents in its possession and to its case-law (see, in particular, *Pobokin v. Ukraine,* no. 30726/14, 6 April 2023), the Court considers it reasonable to award the sum indicated in the appended table and rejects any additional claims for just satisfaction raised by the applicant.

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 concerning the ineffective investigation into ill-treatment inflicted by private parties or in circumstances that exclude involvement of State agents;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the amount 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.

4. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 5 October 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina	Carlo Ranzoni
Acting Deputy Registrar	President

APPENDIX

Application raising complaints under Article 3 of the Convention (ineffective investigation into ill-treatment inflicted by private parties or in circumstances that exclude involvement of State agents)

Application no. Date of introduction	Applicant's name Year of birth	Background to the case and domestic proceedings	Key issues	Amount awarded for non-pecuniary damage per applicant (in euros)[1]
20212/13 14/03/2013	**Sergiy Mykolayovych KHOMENKO** 1966	On 17/05/2011 the applicant was beaten by five neighbours near his home. According to a forensic medical examination of 20/07/2011, he sustained injuries of medium severity. Between May 2011 and January 2013, the applicant repeatedly asked to launch a criminal investigation against his neighbours to established who had injured him and to secure the perpetrators' conviction. The Oktyabrskyy District Police Station of Poltava (the police) on six occasions refused to institute criminal proceedings as there was no evidence of a crime in their actions. All these refusals were set aside by the prosecutors and the courts as premature since the police had failed to question eyewitnesses and ambulance doctors, as well as to examine other relevant evidence. On 22/01/2013 the criminal investigation was launched on account of the alleged infliction of medium severity bodily injuries; the applicant was granted victim status. On 11/11/2014 a police investigator terminated the criminal proceedings due to the lack of evidence of a crime. On 06/02/2015 an investigating judge of the Oktyabrskyy District Court of Poltava upheld the above resolution. On 24/02/2015 the Poltava Regional Court of Appeal set that decision aside and ordered an additional investigation because all the significant circumstances of the case had not been properly checked. According to the Government, as of August 2016, the criminal proceedings were ongoing. The parties failed to inform the Court about any subsequent developments in the case.	Failure to take the necessary steps to investigate the case thoroughly (*Skorokhodov v. Ukraine*, no. 56697/09, §§ 34-35, 14 November 2013); repeated groundless refusal to institute criminal proceedings/to register the complaint in the Unified Register of Criminal Proceedings (*Skorokhodov v. Ukraine*, no. 56697/09, § 34, 14 November 2013); shortcomings recognised by the national authorities themselves (*Muta v. Ukraine*, no. 37246/06, § 65, 31 July 2012); groundless decisions to close or suspend the case (*Aleksandr Nikonenko v. Ukraine*, no. 54755/08, § 45, 14 November 2013)	3,000

[1] Plus any tax that may be chargeable to the applicant.