

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

FIFTH SECTION

CASE OF KOBYZKA v. UKRAINE

(Application no. 23633/20)

JUDGMENT

STRASBOURG

28 November 2024

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



In the case of Kobyzka v. Ukraine,

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

Diana Sârcu*, President*,
Kateřina Šimáčková,
Mykola Gnatovskyy*, judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 7 November 2024,

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 20 May 2020.

2. The Ukrainian Government ("the Government") were given notice of the application.

THE FACTS

3. 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

4. The applicant complained of the ineffective investigation into ill-treatment inflicted by private parties. She relied on Article 3 of the Convention.

5. 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).

6. 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)).

7. 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.

8. 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.

9. 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.

10. 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

11. Regard being had to the documents in its possession and to its case-law (see, in particular, *Pobokin v. Ukraine* [Committee], no. 30726/14, 6 April 2023), the Court considers it reasonable to award the sum indicated in the appended table.

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;

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.

Done in English, and notified in writing on 28 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina	Diana Sârcu
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 (in euros)[1]
23633/20 20/05/2020	**Nina Volodymyrivna KOBYZKA** 1949	On 27/06/2013 the applicant and her husband were beaten by their neighbours; they sustained bodily injuries. On the same day the police opened criminal investigation and the applicant was granted a victim status. On 19/12/2014 the criminal proceedings were discontinued due to the lack of evidence of a crime in the neighbours' actions. This decision was set aside by the court on 07/05/2015 due to the fact that the applicant's neighbours had not been notified of suspicion of commission of the crime, so it was impossible to terminate the criminal proceedings on the above ground. The applicant further lodged a number of complaints citing the breach of reasonable terms of the investigation and deterioration of evidence. In response, the investigative authorities informed her that the investigation was ongoing, and the necessary investigative steps were being performed; due to ineffective investigation, the criminal case was sent to another investigative authority and certain officials were held disciplinary liable. On 30/05/2018 the criminal case against the applicant's neighbours was transferred to the court for consideration on the merits. By the sentence of 22/06/2021, upheld on appeal on 09/09/2022, the applicants' neighbours were found guilty of infliction of light bodily injuries to the applicant and were discharged from criminal liability due to the expiration of the statutory limitation period. In the meantime, in January 2017, the applicant instituted proceedings against the investigative authorities seeking damages for the protracted criminal investigation against her neighbours. By the final decision of 23/03/2020 the applicant's claim was dismissed as she failed to prove any inactivity on the part of the investigative authorities, so she had no right to compensation.	Failure to take the necessary steps to investigate the case thoroughly (*Skorokhodov v. Ukraine*, no. 56697/09, §§ 34-35, 14 November 2013); shortcomings recognised by the national authorities themselves (*Muta v. Ukraine*, no. 37246/06, § 65, 31 July 2012); overall protracted character of the investigation and court proceedings (*Muta v. Ukraine*, no. 37246/06, § 65, 31 July 2012)	3,000

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