

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

FIFTH SECTION

CASE OF KOZLOVSKA v. UKRAINE

(Application no. 52212/13)

JUDGMENT

STRASBOURG

5 October 2023

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



In the case of Kozlovska v. Ukraine,

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

Lado Chanturia*, President*,
Stéphanie Mourou-Vikström,
Mykola Gnatovskyy*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 52212/13) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 10 August 2013 by an Ukrainian national, Ms Nina Ivanivna Kozlovska, born in 1962 and living in Kryvyi Rih ("the applicant") who was represented by Mr M.I. Panchenko, a lawyer practising in Kryvyi Rih;

the decision to give notice of the complaints under Articles 3, 5 §§ 1 and 5 of the Convention to the Ukrainian Government ("the Government"), represented by their Acting Agent, Ms Olga Davydchuk, of the Ministry of Justice and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 14 September 2023,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the applicant's allegations of unlawful detention and ill-treatment (Article 5 § 1 of the Convention and substantive limb of Article 3 of the Convention, respectively). It also concerns her allegations that the investigation into her complaints of ill-treatment was not thorough (procedural limb of Article 3 of the Convention) and that she could not receive compensation for her allegedly unlawful detention (Article 5 § 5 of the Convention).

2. Prior to 30 April 2010 the applicant had been the chief accountant of the Y. company. On 30 April 2010 the applicant was dismissed.

3. The parties' accounts of the relevant events differ.

I. EVENTS ON 8, 9 AND 12 MAY 2010 ACCORDING TO THE APPLICANT

4. At around 7 p.m. on 8 May 2010, the applicant, her two bodyguards, her husband and daughter were apprehended by the police in a café and taken to the Kryvyi Rih police station. During the night she was questioned without interruption, she was not allowed to sleep, eat or drink, and she was not provided with medicine for her asthma. The police pressurised her into giving

incriminating statements against former managers of the Y. company. Around midnight a police officer gave her water, which contained drugs.

5. After drinking it, the applicant, who could not fully understand or control her actions, signed a statement that on 1 May 2010 unknown persons had started following her. The same persons had kidnapped her and forced her to sign a number of financial documents in her capacity as an accountant of the Y. company. The same persons had forced her to sign a fake contract with a company providing bodyguard services. On 8 May 2010 the applicant, her family and the persons who had been following the applicant since 1 May 2010 arrived at the café where the unknown persons were apprehended by the police, and the applicant and her family had gone to the police station to provide explanations concerning the unlawful actions of the persons who had been following the applicant. Based on the applicant's written statement, the police instituted criminal investigations nos. 58101032 (into the applicant being forced to sign financial documents) and 58101033 (into the applicant's kidnapping).

6. In the morning of 9 May 2010, around 7 a.m., the applicant and her family were allowed to leave the police station.

7. On 12 May 2010, when the applicant was at the police station again, she fainted, fell on the ground and broke her tooth. The police called an ambulance, and the applicant was hospitalised. According to the documents in the case file, the reasons for the applicant's hospitalisation was her hypertonia, asthma and bronchitis. There is no evidence in the case file confirming that the applicant broke a tooth or had other injuries ensuring from her alleged fall. The applicant did not provide further details about the events at the police station on 12 May 2010.

8. According to the applicant, criminal investigations nos. 58101032 and 58101033 (see paragraph 5 above) were terminated on 10 June 2011 for lack of *corpus delicti*. However, the case file does not contain documentary evidence that these investigations were closed.

II. EVENTS ON 8, 9 AND 12 MAY 2010 ACCORDING TO THE GOVERNMENT

9. The Government supported the findings of the domestic authorities as to the sequence of events on 8, 9, and 12 May 2010 (see paragraphs 20-24 below).

III. DOMESTIC PROCEEDINGS

10. During the summer of 2010 the applicant was hospitalised several times owing to her high blood pressure, asthma, and depression. The applicant mentioned to the doctors that her depression was caused by her work, but she did not mention the events of 8, 9 and 12 May 2010.

A. FIRST ROUND OF PROCEEDINGS

11. On an unspecified date the applicant's husband complained to a member of parliament, O., that the applicant had been unlawfully detained and pressurized into giving false statements.

12. On 29 June 2010, O. transferred the complaint to the regional prosecutor's office ("the DRPO"). The DRPO instructed the Kryvyi Rih prosecutor's office ("the KRPO") to conduct an inquiry into the matter.

13. On 16 July 2010 the prosecutors closed the inquiry for lack of *corpus delicti*. They noted that at around 12.10 a.m. on 9 May 2010 the applicant had made a written statement stating that she had been a victim of a crime (see paragraph 5 above). In the course of her night-time interview, to which she had voluntarily consented, the applicant had not indicated that she had needed to take any medicine, she had been given water on request, and had not been pressurised in any way.

14. On 27 July 2010 the above decision was quashed by the DRPO and the KRPO resumed the inquiry.

15. On 7 August 2010 the KRPO again terminated the inquiry for the same reasons as those given in its decision of 16 July 2010.

16. Before 20 January 2011 the applicant and her husband refused to give statements to the prosecutors.

B. SECOND ROUND OF PROCEEDINGS

17. On 20 January 2011 the applicant herself lodged a complaint with the prosecutors asking for a criminal investigation to be instituted into the events of 8, 9 and 12 May 2010. The applicant's account of events presented in that complaint was similar to that which the applicant presented before the Court (see paragraphs 4-7 above). The applicant also appealed against the KRPO's decision of 7 August 2010.

18. The applicant's husband was questioned on the same day, 20 January 2011, and confirmed her statements (see paragraph 17 above).

19. On 1 February 2011 the bodyguards were questioned and explained that they had been hired by the applicant to ensure her security. They also said that they and the applicant had been apprehended by the police at the café on 8 May 2010.

20. The investigators from the Kryvyi Rih police station told the prosecutors that the applicant and her family members had voluntarily walked into their respective offices. Investigator Ts. said that in his office the applicant had made a written statement based on which a criminal investigation had been immediately instituted and the applicant had been questioned until the morning of 9 May 2010 in her capacity as a victim of a crime. She left on 7 a.m. on 9 May 2010 and the investigator had not seen her

after. The investigator did not know how the applicant had arrived to the police station.

21. On 24 March 2011 a district court quashed the decision of 7 August 2010, holding that, in so far as the events on 8 and 9 May 2010 are concerned, the prosecutors had failed to examine the police station's entry log, to establish exactly when and where the applicant had been interviewed and whether her rights had been explained to her.

22. On 16 April 2011, 2 December 2011, 9 September 2012, 15 February 2013 and 2 September 2013, the KRPO discontinued the inquiry, again stating that the applicant had been interviewed on the police station premises, as a victim, concerning the unlawful actions of unknown persons, who had been following her and who had forced her to sign financial documents. The interviews had been carried out in accordance with the relevant legislation. It was impossible to establish who had taken the applicant to the police station on 8 May 2010, but the grounds on which she had been taken there had been set out in her own written statement made at the police station during the night of 8 May 2010. On 12 May 2010 the applicant fainted at the police station, however this was not caused by her interaction with the police.

23. On 20 September 2011, 25 June 2012, 25 January 2013, 18 July 2013 and 8 July 2014 respectively, the above-mentioned decisions of the KRPO (see paragraph 22 above) were quashed the Tsentralno-Miskyy Court of Kryvyy Rih, who stated that the prosecutors had failed to establish the grounds on which the applicant had been taken to and kept at the police station on 8 May 2010, and had failed to question the applicant, her daughter and her husband. The courts also noted that the prosecutors had failed to establish who had brought the applicant to the police station on 8 May 2010.

24. On 17 June 2015 the prosecutors once again terminated the investigation. That decision was not appealed against. The prosecutors stated, without providing any further details, that "it [had not been possible] to question the applicant and her family, or to question them together with [police officers from the Kryvyy Rih police station], as the courts had ordered".

25. While investigating the applicant's complaints, the prosecutors noted that they could not examine the case file relating to that investigation because it had been sent to the Dnipropetrovsk prosecutor's office.

THE COURT'S ASSESSMENT

26. The applicant complained under Article 3 of the Convention that she had been subjected to ill-treatment in police custody and that her complaints in this regard had not been duly investigated. She also complained under Article 5 § 1 that she had been taken to and kept at the police station unlawfully. With reference to the same facts the applicant alleged violation of Article 5 § 5.

I. ALLEGED VIOLATION OF ARTICLES 5 §§ 1 AND 5 OF THE CONVENTION

27. The Government did not contest the admissibility of this complaint. They acknowledged that the applicant exhausted domestic remedies in respect of 5 § 1 of the Convention. 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.

28. Relying on the findings of the domestic authorities and the applicant's written statement (see paragraph 5 above), the Government submitted that the applicant had gone to and stayed at the police station of her own volition. Her complaint was thus unsubstantiated. The Government stated that the national legislation contained provisions which allowed persons to receive compensation in cases where a court established that their detention was unlawful.

29. The applicant maintained her complaints.

30. The relevant general principles are summarized in *Korban v. Ukraine*, no. 26744/16, § 145, 4 July 2019.

31. The Court considers that the authorities' investigative response to the applicant's allegations of unlawful detention was unsatisfactory. In particular, the domestic courts on several occasions instructed the prosecutors to establish who and in which manner brought the applicant to the police station. However, the police officers who transported the applicant from the café to the police station were not identified and the entry log of the police station was not examined. Moreover, the prosecutors based their conclusions on the witness statements of the police officers and did not provide any reasons for disregarding the statements of the two bodyguards, who confirmed the applicant's version of events (see paragraph 19 above).

32. Under such circumstances, the Court finds the applicant's account of events more persuasive. It therefore considers it established that the police apprehended the applicant in the evening of 8 May 2010 at the café and brought her to the police station against her will. The case file does not contain any proof that this apprehension and the applicant's detention at the police station until at least 12.10 a.m. on 9 May 2010, when she made the written statement, had any legal ground.

33. The Court considers that the applicant's written statement cannot be considered to have been given voluntarily. In particular, by the time when she made it, the applicant had been unlawfully kept at the police station for several hours. She therefore found herself in a situation of vulnerability. The Court thus considers that after making that statement she did not stay at the police station of her own volition. There is nothing in the case file to suggest that the applicant's detention at the police station from at least 12.10 a.m. to

7 a.m. on 9 May 2010 had any legal grounds. This is sufficient for the Court to find that there has been a violation of Article 5 § 1 of the Convention.

34. The Court also notes that neither the domestic courts nor other competent authorities established that the applicant's detention was unlawful. For this reason, she was not able to claim compensation under the domestic legislation to which the Government refers (see paragraph 28 above). This is sufficient for the Court to find that there was also a violation of Article 5 § 5 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. EVENTS DURING THE NIGHT OF 8 MAY 2010

35. The applicant complained under Article 3 of the Convention that the treatment to which she had been subjected at the police station (night-time questioning, psychological pressure, failure of the police to provide her with water, food and medicines) amounted to a violation of Article 3 of the Convention and that her complaints in this regard had not been duly investigated.

1. Substantive limb

(a) Admissibility

36. The Government submitted that the applicant submitted her application to the Court more than six months after her alleged ill-treatment took place.

37. The Court notes that the applicant raised her complaint before the national authorities and considers it reasonable that she did not apply to the Court before their investigation was completed. For this reason, this argument must be rejected.

38. 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.

(b) Merits

39. Relying on the findings of the domestic authorities and the applicant's written statement (see paragraph 5 above), the Government submitted that this complaint was unsubstantiated. They added that during the night of 8 May 2010 the applicant stayed at the police station out of her own volition. The applicant was offered water and she did not inform the police that she required medicines.

40. The applicant maintained her complaint.

41. The Court notes that the applicant spent approximately 11 hours in unrecorded detention (see paragraph 33 above), and without any indication

as to when she would be allowed to leave. She was questioned the whole night, without being given an opportunity to sleep or eat. These circumstances undoubtfully arouse in her a feeling of inferiority and anguish and amounted to a degrading treatment (see *Soare and Others v. Romania*, no. 24329/02, §§ 220-223, 22 February 2011).

42. The Government did not dispute that the applicant spent the whole night at the police station, however, they claimed that she did so of her own free volition. The Court has already established that the applicant's stay at the police station was not voluntary, the Court thus considers that the Government had failed to refute the applicant's assertions that she was subjected to a degrading treatment.

43. In the light of the above, the Court finds that there has therefore been a violation of Article 3 of the Convention.

2. Procedural limb

(a) Admissibility

44. The Government did not raise objections as to the admissibility of this complaint.

45. 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.

(b) Merits

46. The Government submitted that the investigation into the applicant's complaint of ill-treatment was thorough, and no evidence of ill-treatment or unlawful detention was found.

47. The applicant maintained her complaint.

48. The Court has already found that the applicant's stay at the police station was not voluntary and that the treatment the applicant sustained was contrary to Article 3 (see paragraph 43 above). The domestic authorities had failed to establish these facts. It follows that the investigation into the applicant's complaint under Article 3 on the domestic level was not sufficiently thorough. The Court also notes that the criminal investigation into the applicant's complaints was on several occasions terminated and then resumed following the applicant's appeals (see paragraphs 22-23 above). The repetition of such remittal orders within one set of proceedings discloses a serious deficiency by itself (see, for example, *Spinov v. Ukraine*, no. 34331/03, § 56, 27 November 2008).

49. In the light of the above findings, the Court considers that there was also violation of the procedural limb of Article 3.

B. EVENTS ON 12 MAY 2010

50. The Court notes that the applicant did not submit any prima facia evidence that her fainting was caused by her interaction with the police. She also did not provide a sufficiently detailed account of events on 12 May 2010. The Court thus considers 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

51. The applicant claimed 16,500 euros (EUR) in respect of non-pecuniary damage and 2,149.36 EUR in respect of legal aid before the Court.

52. The Government contested these claims.

53. Ruling on an equitable basis, as required by Article 41 of the Convention, the Court decides to award the applicant EUR 9,750 in respect of non-pecuniary damage. Having regard to the documents in its possession, the Court considers it reasonable to award the applicant EUR 2,149.36 for legal representation before the Court.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 3 in respect of the events on 8-9 May 2010 and the complaint under Articles 5 §§ 1 and 5 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of the substantive and procedural limbs of Article 3 of the Convention;

3. *Holds* that there has been a violation of Articles 5 §§ 1 and 5 of the Convention;

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 9,750 (nine thousand seven hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,149.36 (two thousand one hundred forty-nine euros and thirty-six eurocents), plus any tax that may be chargeable, in respect of expenses for legal aid;
   (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 5 October 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Lado Chanturia President