

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

FIFTH SECTION

CASE OF PAVLYSHYN v. UKRAINE

(Application no. 25093/17)

JUDGMENT

STRASBOURG

12 September 2024

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



In the case of Pavlyshyn 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. 25093/17) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 20 March 2017 by a Ukrainian national, Mr Yuriy Mykolayovych Pavlyshyn ("the applicant"), who was born in 1972, lives in Odesa, and was represented by Mr O.O. Zgoda, a lawyer practising in Odesa;

the decision to give notice of the complaint concerning the effectiveness of the investigation into the applicant's ill-treatment to the Ukrainian Government ("the Government"), represented by their acting Agent, most recently Ms A.-T. Pietukhova, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 11 July 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the alleged lack of an effective investigation into the applicant's allegations of ill-treatment inflicted on him by his neighbours, in front of his minor children. The applicant complained under Article 3 of the Convention.

2. In the evening of 17 February 2012, the applicant was outside watching his two minor children, who were sledging near the block of flats where they lived. Ms R., his neighbour, was walking her dog nearby, without a muzzle or a lead. The dog attacked the applicant's seven-year-old son and Ms R. and the applicant had a verbal altercation. Ms R. yelled obscenities at the applicant, who slapped her on the lips. Ms R. phoned her husband, Mr R., who arrived and hit the applicant from behind on his left thigh with a wooden stick. The applicant and Mr R. fell to the ground, fighting, and Ms R. hit the applicant on the head with a metal dog-collar. The applicant let go of Mr R. and the couple left.

3. On 17 February 2012 the applicant complained to the police, naming Mr and Ms R. as his attackers. On 10 June 2013, 13 February 2017, 3 July 2018, 15 July 2019, 10 February, 25 April, 17 October and 14 December 2022, 7 February, 10 May, 26 May and 31 July 2023, the applicant repeatedly

asked the police to question Mr and Ms R. He provided the police with their home and work addresses and the number plate of a car used by them.

4. The police ordered forensic medical examinations of the applicant, which were carried out on 19 March 2012, 18 February 2013 and 12 July 2013, and which recorded minor bodily injuries. The parties have not provided copies of the first and third record of those forensic medical examinations to the Court. According to the written reply from the director of Odesa City Hospital no. 11, dated 10 July 2023, to a request by the Ukrainian Ombudsperson, the applicant was examined at that hospital on 18 February 2012 at 12.05 a.m. and was diagnosed with concussion. His injuries included a bruise, abrasions and a cut on the head, and a bruise on the left thigh. According to the documents provided by the applicant, he received outpatient treatment for twenty-two days.

5. On 23 February, 13 March and 16 November 2012 the police refused to open criminal proceedings. On 5 March and 9 November 2012 respectively, the prosecutor's office quashed those first two decisions. On 21 December 2012 the Kyivskyi District Court of Odesa quashed the third decision.

6. On 23 January 2013 a criminal case was opened under Article 125 § 1 of the Criminal Code of Ukraine (infliction of minor bodily injuries).

7. As part of the investigation, the police took statements from seven people, five people being questioned as witnesses, including the applicant's wife and his two children. Mr and Ms R. were not questioned, as they had temporarily moved out of the block of flats. It is unknown whether the police traced their car or took any action to find them at their workplace.

8. Between May 2014 and December 2022 the criminal proceedings were terminated on three occasions – on 21 May 2014, 2 November 2018, and 27 July 2020. On 22 September 2016 the Kyivskyi District Court of Odesa quashed the first decision to terminate the proceedings. On 6 June 2014 and 7 August 2019 the criminal proceedings were resumed by the police of their own motion; without, however, any procedural steps being taken. On 1 March 2022 the Kyivskyi District Court of Odesa quashed the third decision to terminate the proceedings and resumed the pre-trial investigation.

9. On 12 December 2022 the proceedings were discontinued for lack of evidence.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

10. The applicant complained under Article 3 of the Convention of the lack of effective investigation into the ill-treatment inflicted on him by his neighbours.

11. 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.

12. 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* (no. 56697/09, § 32, 14 November 2013), *Aleksandr Nikonenko v. Ukraine* (no. 54755/08, § 43, 14 November 2013), and *Peleshok v. Ukraine* ([Committee], no. 10025/06, §§ 42-46, 8 December 2016).

13. In the present case, the applicant was assaulted by private individuals, allegedly Mr and Ms R., in front of his minor children. The police questioned seven people, including five witnesses, but they did not question Mr or Ms R., as shortly after the incident in question, they allegedly moved out of the flat in which they had been living (see paragraph 7 above). It remains unclear why the police were unable to find and question the couple, given that the applicant had provided additional information which could have been used to find them (see paragraph 3 above). The case file does not contain an answer to this question, nor have the Government provided any details on the matter.

14. Furthermore, the Court observes that the police refused to open criminal proceedings on three occasions (see paragraph 5 above). The proceedings were terminated on another three occasions and were then resumed. The Court finally notes that despite the considerable length of the whole proceedings of investigation, the case was closed without the police identifying the perpetrators, although the applicant having repeatedly named them.

15. Given the above, the Court finds that the authorities failed to discharge their obligations to conduct an effective investigation into the applicant's allegations of ill-treatment in the present case.

16. There has accordingly been a violation of Article 3 of the Convention under its procedural head.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. The applicant claimed 10,000 euros (EUR) in respect of nonpecuniary damage, EUR 880 in respect of legal services and 600 Ukrainian hryvnias ((UAH) – around EUR 15) in respect of postal expenses. The applicant provided copies of a contract for the provision of legal services, a delivery and acceptance certificate containing details of the work done, and copies of postal receipts. The contract stipulated that payment for the legal services provided was to be made within ten days following the execution of the judgment by the State.

18. The Government contested the applicant's claims as unsubstantiated. They left the claim for postal expenses in the amount of UAH 401.64 (around EUR 10) to the Court's discretion.

19. The Court awards the applicant EUR 4,500 in respect of nonpecuniary damage, plus any tax that may be chargeable. Having regard to the documents in its possession, it awards EUR 880 for legal services, plus any tax that may be chargeable to the applicant. Lastly, the Court awards EUR 10 for postal services, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *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 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 880 (eight hundred and eighty euros), plus any tax that may be chargeable to the applicant, in respect of legal costs before the Court;
      (iii) EUR 10 (ten euros), plus any tax that may be chargeable to the applicant, for postal costs and expenses;
   (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;

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

Done in English, and notified in writing on 12 September 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Lado Chanturia President