

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

FIFTH SECTION

CASE OF TRACHUK v. UKRAINE

(Application no. 24413/13)

JUDGMENT

STRASBOURG

2 March 2023

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



In the case of Trachuk v. Ukraine,

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

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

Having regard to:

the application (no. 24413/13) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 29 March 2013 by a Ukrainian national, Ms Zinaida Viktorovna Trachuk ("the applicant"), born in 1951 and residing in Ivanivka, who, having been granted legal aid, was represented before the Court by Ms N.G. Okhotnikova, a lawyer practising in Kyiv;

the decision to give notice of the complaints set out below (see paragraph 1 below) to the Ukrainian Government ("the Government"), represented most recently by their Agent, Mrs M. Sokorenko, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 2 February 2023,

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

SUBJECT MATTER OF THE CASE

1. The case concerns allegations, under Article 3 and Article 6 § 1 of the Convention, that the applicant was ill-treated by officers of the Kramatorsk police, that her relevant complaint was not properly investigated and that her testimony given as a result of the ill-treatment was used to substantiate her criminal conviction.

2. In October 2010 the police informed A.T., the applicant's ex-husband, that a certain A.Sh. had notified them that the applicant had asked him to arrange A.T.'s murder. A.T. then accepted the police's proposal to be photographed with make-up simulating his violent death so that A.Sh. could provide the photographs to the applicant and obtain payment, in order to help police collect the evidence of her criminal intent.

3. At about noon on 29 October 2010 the applicant was arrested and taken into police custody after having handed a sum of money to A.Sh. A crumpled photograph of A.T.'s staged death was collected from a nearby lawn.

4. From 8.50 to 9.40 p.m. that same evening, the applicant, questioned in the presence of V.P., her chosen lawyer, stated, in particular, that her ex-husband was trying to sell their common property to finance his alcohol dependence. In order to protect her own and her children's interests, she had requested A.Sh. to have a "man-to-man talk" with him in order to "bring him

to his senses". A.Sh. had told her that it would cost her 10,000 Ukrainian hryvnas (UAH), which she had agreed to pay. She further noted that in mid-October 2010 A.Sh. had approached her, claiming that her ex-husband had been killed and that she owed him UAH 20,000 for arranging his death. When she had refused, he had started stalking and threatening her and her daughter. Fearing for her and her children's well-being, the applicant had agreed to give him UAH 20,000 in exchange for him leaving her family alone.

5. At 10.50 p.m. on the same evening the applicant was taken to the Kramatorsk hospital, where she was diagnosed with soft tissue contusions on her face[1], which, according to her, she had sustained earlier that day as a result of a fall in the street. Later the same day the applicant, after having been taken to the Kramatorsk temporary detention facility ("the ITT"), changed her account of the events and explained to the ITT paramedics that she had been beaten during her arrest. The ITT forwarded that explanation to the Kramatorsk police for follow-up. At some point the case was further forwarded to the Donetsk regional prosecutor's office and the applicant, questioned within the framework of the relevant inquiry, amended her account of the events, indicating that she had been kicked and punched during her arrest and then repeatedly hit on the head and slapped in the face at the police station while the police officers demanded that she confess to the murder.

6. On 18 December 2010 the Donetsk regional prosecutor's office decided that there was no need to institute criminal proceedings concerning the applicant's injuries, as it appeared from the statements of the police officers working on her case and those of the attesting witnesses to the arrest operation that no physical force or psychological pressure had been applied in its course. It was noted in that decision, in particular, that the two officers who had effected the arrest had suggested that when they had taken the applicant by her hands, she had become hysterical and might have hit her head against the wall. Those officers also reported that they had seen some "insignificant redness" on the applicant's face shortly after the arrest but had not paid it much attention. As regards the two attesting witnesses to the arrest, they denied seeing any injuries on the applicant's face.

7. On 20 December 2010 and on numerous other occasions the applicant, who was committed to stand trial on charges of attempted murder, complained to the Kramatorsk Court that she had been set up and that on 29 October 2010 she had been ill-treated physically and psychologically by the police officers, who had wanted her to plead guilty to the attempted murder or to pay them to close the case. The court forwarded those complaints to the Donetsk regional prosecutor's office. On 1 November 2012 the latter took a new decision not to institute criminal proceedings, referring,

[1] According to the relevant certificate, the injuries clinically manifested as "insignificant oedema, hyperaemia and haemorrhages in the area of the right cheek and left cheekbone".

essentially, to fresh statements by the police officers in which they had reiterated their previous factual submissions and denied having committed any ill-treatment or extortion.

8. On 9 November 2012 the court found the applicant guilty of an attempt to murder A.T. and sentenced her to ten years' imprisonment. It referred to an ample array of evidence, including, in particular, A.Sh.'s testimony; covert video- and audio-recordings made by him of his meetings with the applicant; and a forensic report indicating that the crumpled photograph seized from the lawn had contained epithelial cells possibly belonging to the applicant. The court also referred to the applicant's testimony of 29 October 2010, in which she had acknowledged that she had solicited A.Sh. to put pressure on A.T. and had agreed to pay him for that service. It noted that her subsequently modified submissions during the trial, in which she had alleged that the money given by her to A.Sh. was unrelated to her request to "talk to her ex-husband" were inconsistent with other evidence. The court also dismissed the applicant's allegations of ill-treatment as unsubstantiated, referring to the fact that the prosecutor's office had conducted an inquiry in that connection.

9. On 22 February 2013 the Donetsk Court of Appeal dismissed an appeal by the applicant against that judgment, in which she had alleged that the case had been fabricated by the police and challenged the authenticity of the recordings and the probative value of other evidence, and decided that there was no reason to uphold her allegations of ill-treatment. A further appeal on points of law lodged by the applicant was likewise dismissed by the Higher Specialised Court (on 26 August 2014), which, however, reclassified her actions as "preparation" of an offence and reduced her sentence to seven-and-a-half years' imprisonment.

10. In the meantime, the applicant also appealed against the decision of the prosecutor's office of 1 November 2012 not to institute criminal proceedings in respect of her alleged ill-treatment and extortion. Her appeal was dismissed by the Voroshylovskyi Court on 19 February 2013. That decision was quashed by the Court of Appeal, which noted that it had never been established how the applicant's documented injuries had been sustained, and remitted the case back to the Voroshylovskyi Court. That court again dismissed the applicant's appeal on 13 June 2013.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

11. The applicant complained under Article 3 of the Convention that on 29 October 2010 police officers had ill-treated her during her arrest and while she had been in custody and that her relevant allegations had not been properly investigated.

12. The Government did not raise any objections to admissibility and argued that there had not been any breach of Article 3, as the domestic inquiries, which had been prompt and effective, had found no evidence that the applicant's injuries could have been inflicted by the police.

13. The Court considers that the present complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

14. Considering the case in the light of the general principles developed in its case-law (see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 81-90 and 114-23, ECHR 2015), the Court notes that, notwithstanding certain variations in the applicant's own accounts of the alleged ill-treatment, which, as pointed out by the Government, evolved over time, it remains a fact that she was first diagnosed as suffering from soft tissue injuries to the face some twelve hours after having been arrested and placed in police custody (see paragraph 5 above). Although, as emphasised by the Government, the applicant did not initially lodge any formal complaints, the competent authorities were immediately notified of those injuries by the ITT administration and were therefore under an obligation to conduct an effective investigation with a view to establishing their origin.

15. This obligation has not been fulfilled. In particular, the initial inquiry lacked thoroughness, as the allegations of police ill-treatment were rejected, essentially with reference to the statements by the police officers and attesting witnesses to the arrest, without any attempts to reconcile them with each other and with those of the applicant and without soliciting an opinion of a forensic expert as to the nature and timing of the injuries or the possible manner of their infliction (see paragraph 6 above). No actions with a view to rectifying those shortcomings were taken during the subsequent inquiry, which was also protracted. These findings are sufficient for the Court to conclude that no genuine effort was made to establish the veracity of the applicant's allegations.

16. In so far as the Government alleged that the applicant's documented injuries could have predated the arrest or have been self-inflicted during its course, the Court is unable to take these allegations into consideration, since there is no expert opinion or any other objective corroborative evidence deriving from the domestic inquiry. In this connection, the Court reiterates that where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. The burden of proof is on the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the victim (see *Bouyid*, cited above, § 83 with ensuing references).

17. The Court concludes, therefore, on the basis of its extensive case-law, that the respondent State's responsibility is engaged under both the substantive and procedural limbs of Article 3 and that the applicant's allegations that she had suffered from psychological and physical ill-treatment during arrest and in police custody have not been convincingly rebutted. She was therefore subjected to inhuman and degrading treatment (see *Teslenko v. Ukraine*, no. 55528/08, §§ 87-90, 20 December 2011; *Kaverzin v. Ukraine*, no. 23893/03, §§ 173-80, 15 May 2012; and *Sadkov v. Ukraine*, no. 21987/05, § 101, 6 July 2017).

18. There has accordingly been a violation of Article 3 of the Convention under its substantive and procedural limbs.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 UNDER WELL-ESTABLISHED CASE-LAW

19. The applicant also complained under Article 6 § 1 of the Convention that her testimony, given on 29 October 2010 shortly after having been physically and psychologically ill-treated by the police, had been used to substantiate her conviction.

20. The Government argued that this complaint was manifestly ill-founded.

21. The Court takes note of the Government's argument that the impugned testimony was given in the presence of the applicant's chosen lawyer and that she did not in fact plead guilty to the alleged murder. At the same time, it observes that the testimony contained numerous factual details which might have affected the way the further investigation was conducted and the manner in which other evidence was taken and interpreted (see paragraph 4 above). While, as pointed out by the Government, the domestic courts referred to an ample array of other evidence in convicting the applicant, her testimony, which was given on the very same day on which she was taken in custody and found to be suffering from unexplained facial injuries, was also referred to in their reasoning. In dismissing as unfounded the applicant's allegations of duress, the courts relied exclusively on the conclusions of the domestic investigation, which, as found above, was perfunctory (compare and contrast *Utvenko and Borisov v. Russia*, nos. 45767/09 and 40452/10, §§ 172-73, 5 February 2019, and *Antonyuk v. Ukraine* [Committee], no.48040/09, §§ 67-68, 7 May 2020).

22. Having examined all the material before it, the Court concludes that the present complaint is neither manifestly ill-founded nor inadmissible on any other grounds and that it must be declared admissible. It further reiterates that the admission of statements, obtained as a result of ill-treatment proscribed by Article 3, as evidence to establish the relevant facts in criminal proceedings renders the proceedings, as a whole, unfair. This finding applies irrespective of the probative value of the statements and irrespective of

whether their use was decisive in securing the defendant's conviction (see, among others, *Gäfgen v. Germany* [GC], no. 22978/05, § 166, ECHR 2010 and *Zamferesko v. Ukraine*, no. 30075/06, §§ 70-72, 15 November 2012).

23. In light of its settled caselaw, the Court finds that the present complaint discloses a violation of Article 6 § 1 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage and EUR 850 in respect of legal fees incurred before the Court.

25. The Government argued that the applicant's claim in respect of non-pecuniary damage was exorbitant and unsubstantiated, and left the matter of legal fees to the Court's discretion.

26. The Court considers it reasonable to award the applicant EUR 15,000, plus any tax that may be chargeable on that amount.

27. The Court further notes that the applicant was granted legal aid equal to the amount claimed in legal fees. It therefore makes no award under this head.

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 both its substantive and procedural limbs;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 15,000 (fifteen thousand euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (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;

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

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

Martina Keller Deputy Registrar	Stéphanie Mourou-Vikström President