

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

FIFTH SECTION

CASE OF UZU v. UKRAINE

(Application no. 7164/18)

JUDGMENT

STRASBOURG

21 November 2024

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



In the case of Uzu v. Ukraine,

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

Lado Chanturia*, President*,
Mykola Gnatovskyy,
Úna Ní Raifeartaigh*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 7164/18) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 24 January 2018 by a Ukrainian national, Mr Devid Kharrison Uzu ("the applicant"), who was born in 1998, lives in Kyiv, and was represented by Ms Y.V. Naumenko, a lawyer practising in Kyiv;

the decision to give notice of the application to the Ukrainian Government ("the Government"), represented by their Agent, most recently Ms M. Sokorenko;

the parties' observations;

Having deliberated in private on 24 October 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns an alleged racially motivated attack on the applicant by private individuals. The applicant is of Afro-Ukrainian descent and was 16 years old at the time of the events in question. He complained under Articles 3 and 8 of the Convention read in conjunction with Article 14, under Article 13 read in conjunction with Articles 3, 8 and 14, and under Article 1 of Protocol No. 12.

2. On 19 August 2015 at around 7 p.m., a group of around twenty young people shouted and whistled at the applicant as they were all travelling down an escalator at a metro station in Kyiv. The group followed the applicant into the station and onto the train into the same carriage. They mocked the applicant's skin colour and asked him: "monkey, do you want bananas?" Around ten young people from the group followed the applicant as he alighted the train at his station. Once on the metro station platform, they approached the applicant and started to assault him, pushing him and hitting him on different parts of his body. Nobody intervened. Some elderly women started to shout, at which point the attackers left. The applicant's mother complained to the police the same day.

3. The applicant provided the Court with medical certificates from two hospitals showing that he had been concussed and had sustained soft tissue contusions on the left side of the face, lower jaw, the torso and the limbs.

4. On 20 August 2015 the police opened a criminal case under Article 125 of the Criminal Code (infliction of minor bodily injuries). On 8 September 2015 the criminal case was reclassified under Article 296 (hooliganism committed in a group) and on 15 September 2015 it was reclassified again under Article 161 of the Criminal Code (violation of equality on the grounds of race, nationality, religious belief, disability, or other grounds).

5. In September 2015 the police took various procedural steps to find the perpetrators. They developed a procedural action plan, made two photofit pictures of the alleged perpetrators, and questioned twenty-seven metro employees and one witness, who confirmed that he had seen the applicant being assaulted, but had not intervened as he had feared for his life. The police conducted two reconstructions of events and interviewed the applicant's mother, the driver of the bus which the applicant had taken on exiting the metro station, and a metro station police officer, who had been on duty on the night in question. The police officer stated that he had not witnessed the assault and that nobody had complained to him about it at the time of the events.

6. Between 3 September and 2 October 2015, a forensic medical examination was carried out. The forensic doctor was provided with copies of the two medical certificates, the record of the applicant's interview as a victim, and the record of one of the reconstructions of events. However, the doctor was unable to determine the extent of the applicant's injuries, as the medical certificates did not contain a sufficiently detailed description of them.

7. According to the applicant, in September 2015 he saw one of his attackers on Khreshchatyk Street in Kyiv and called the police. It was established that that person had been among the group of people who had ill-treated the applicant and had been the person who had insulted him by calling him a "monkey". The police questioned the person as a witness and released him on the grounds that he had not inflicted bodily injuries on the applicant. The Government did not comment on the applicant's statement in this regard.

8. On 12 November 2015 the applicant was given photographs of four of the alleged perpetrators. He recognised the third photograph as showing the person who had insulted him.

9. Between 19 and 22 April and on 29 April 2016, 112 police officers, working at different metro stations on those dates, reported to the Head of the Metro Police Department that while on duty, they had not seen anyone matching the description of the alleged perpetrator in the wanted persons' notice.

10. On 4 July 2018 a forensic linguistic examination was ordered to determine whether the phrase "monkey, do you want bananas?" amounted to incitement to violence. On 24 September 2018 the forensic linguistic examination was carried out. The instructed expert concluded that the above-mentioned phrase was insulting, debased human dignity and created a

negative image of black people in the eyes of the representatives of other races, and was thus humiliating. The phrase was aimed at the incitement of enmity between people of black and other races. The expert also concluded, however, that the above-mentioned phrase did not contain a threat of negative consequences for anyone or an incitement to violence based on national, racial or religious hatred.

11. On 12 December 2019, on the basis of the above conclusion, the criminal case was reclassified from Article 161 to Article 125 of the Criminal Code (see paragraph 4 above).

12. On 11 March 2020 the case was closed for lack of evidence.

13. On 18 September 2023 the Podilskyy District Court of Kyiv quashed the decision to close the case on the grounds that the police had failed to establish all the circumstances of the events or to take all the necessary procedural action. The court sent the case for additional investigation.

14. On 11 October 2023 the investigation was resumed and, apparently, have not been completed to date.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

15. The applicant complained under Article 3 of the Convention taken in conjunction with Article 14 of the Convention that the State had failed to effectively investigate the alleged racially motivated attack on him.

16. The Government acknowledged that the applicant had sustained minor bodily injuries and that he had been attacked by a group of ten people who had called him a "monkey". However, they raised objections that Article 3 of the Convention was not applicable to the present case in view of the nature of the applicant's injuries and that the applicant had failed to exhaust domestic remedies.

17. The Court observes that the applicant was a minor at the time of the events and was attacked by a group of people who had insulted him on the basis of his skin colour. He was hit on different parts of his body and sustained several injuries (see paragraph 3 above). The Court considers that the applicant's physical suffering, compounded by his age and the ostensible racist motive for the violence, were serious enough as to fall withing the ambit of Article 3 of the Convention (see *Abdu v. Bulgaria*, no. 26827/08, § 39, 11 March 2014).

18. The Court further considers that the issue of exhaustion of domestic remedies is closely linked to the substance of the applicant's complaint concerning the alleged lack of an effective investigation and must therefore

be joined to the merits of that complaint (see, for instance, *Molokov v Ukraine* [Committee], no. 60865/16, § 21, 12 October 2023).

19. 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.

20. The general principles concerning ill-treatment inflicted by private individuals and the obligation of the State authorities to unmask any possible racist motives have been summarised in *Burlya and Others v. Ukraine* (no. 3289/10, §§ 124-28, 6 November 2018).

21. The Court notes at the outset that the domestic investigation, despite having been active in September 2015, quickly became dormant following two events: firstly, the failure of the medical expert to determine the extent of the applicant's injuries (see paragraph 6 above) and, secondly, the applicant's identification, in November 2015, of the person who had shouted insults at him (see paragraph 8 above).

22. In relation to the former event, the Court reiterates that an investigation into ill-treatment must be prompt and thorough and that the authorities must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, forensic evidence (see, for instance, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 183, ECHR 2012). In the present case, the forensic medical examination started on 3 September 2015 and finished on 2 October 2015, with the conclusion that it was not possible to determine the level of injuries, as the medical certificates did not contain enough detail. By that time, a month and a half had passed from the date of the events in question and the possibility of recording the applicant's injuries in detail had already been lost.

23. In relation to the latter event, the Court observes that the Government did not provide any additional information about what investigative steps had been taken by the police after the applicant had recognised the photograph of the person who had insulted him (see paragraph 8 above). It is unclear whether the police questioned that person or whether they took any additional steps to try and find other members of the group, apart from questioning police officers who, by chance, might have seen the alleged perpetrators (see paragraph 9 above). In this connection, the Court notes a lapse of almost six months between the recognition of the person pictured in the photograph and the questioning of the police officers, which added to the overall length of the investigation.

24. Moreover, it took almost three years to order the linguistic examination (see paragraph 10 above). It cannot escape the Court's attention that the conclusion of the linguistic examination report contained two contradictory statements, and that in reclassifying the criminal case from Article 161 to Article 125 of the Criminal Code (see paragraph 11 above), the police officer relied on the statement that there had been "no threat of negative

consequences", but ignored the statement that the phrase "monkey, do you want bananas?" had been "aimed at the incitement of enmity between people of black and other races". The Court reiterates that where any evidence of racist verbal abuse comes to light in an investigation, it must be verified, and, if confirmed, a thorough examination of all the facts should be undertaken in order to uncover any possible racist motives (see, for instance, *Balázs v. Hungary*, no. 15529/12, § 61, 20 October 2015). The initial efforts of the police to unveil racist motives had thus been cancelled out in the final phase of the investigation before its closure in 2020. Despite the fact that the national courts quashed the closure decision and sent the case for additional investigation (see paragraph 13 above), a number of serious procedural defects, which prevented evidence from being secured, impeded the effectiveness of any future investigation.

25. Accordingly, the Court finds that the national authorities failed to abide by their obligation to carry out an effective investigation and to unveil any racist motive behind the incident.

26. There has accordingly been a violation of Article 3 in conjunction with Article 14 of the Convention. The Court therefore dismisses the Government's objection as to the exhaustion of domestic remedies that it previously joined to the merits (see paragraph 18 above).

II. OTHER COMPLAINTS

27. The applicant also complained under Articles 8 and 13 of the Convention as well as under Article 1 of Protocol No. 12. Having regard to the facts of the case, the submissions of the parties, and its findings above, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage, EUR 1,000 in respect of costs and expenses incurred before the domestic courts and EUR 2,400 for those incurred before the Court. The applicant provided a copy of a contract for legal services and a receipt containing an account of work done by his representative.

29. The Government argued that the claim for non-pecuniary damage was unsubstantiated and that the claim for costs and expenses was excessive.

30. The Court awards the applicant EUR 4,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

31. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 1,200, covering costs under all heads, plus any

tax that may be chargeable to the applicant, to be paid directly into the bank account of his representative, Ms Y.V. Naumenko.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning Article 3 and Article 14 of the Convention admissible;

2. *Holds* that there has been a violation of the procedural limb of Article 3 taken in conjunction with Article 14 of the Convention;

3. *Holds* that there is no need to examine the admissibility and merits of the remaining complaints;

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 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,200 (one thousand two hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly into the bank account indicated by Ms Y.V. Naumenko;
   (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 21 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Lado Chanturia President