

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

FIFTH SECTION

DECISION

Application no. 18773/05
Olga Sergeyevna TERLETSKAYA
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 3 November 2011 as a Chamber composed of:

Dean Spielmann, *President,*
Elisabet Fura,
Boštjan M. Zupančič,
Mark Villiger,
Ann Power-Forde,
Ganna Yudkivska,
Angelika Nußberger, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having regard to the above application lodged on 11 May 2005,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Olga Sergeyevna Terletskaya, is a Ukrainian national who was born in 1965 and lives in Nova Kakhovka. The Ukrainian Government ("the Government") were represented by their former Agent, Mr Y. Zaytsev, from the Ministry of Justice.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicant worked as an assistant in a shop belonging to Mr. F.

1. Events of 2 October 2003

On 2 October 2003 a tax police squad visited Mr F.'s shop in order to carry out an unscheduled inspection due to Mr F.'s failure to submit tax returns.

The inspection was not conducted, as Mr F., his relatives and his employees, including the applicant, prevented the officers from accessing the store's tax records. It led to a fracas.

As was later established by the investigation, at some point Mr F. switched off the light and the applicant screamed that she had been punched in her face by tax officer K. This escalated the scuffle and K. tried to leave the scene in his car. Mr F. and the applicant tried to prevent K. from leaving. Mr F. jumped on the hood of the car, then broke a side window and tried to pull officer K. out of the car, while the applicant blocked the rear of the car and jumped on it when the car tried to move. Tax officer L. tried to pull the applicant away from the car.

2. Investigation of the applicant's allegations of ill-treatment

Later the same day, the applicant lodged a complaint with the Nova Kakhovka police department against officer K. for punching her in her face.

Again on the same day, the members of the tax police squad that had conducted the inspection gave statements to the police.

At 10.20 p.m. the applicant was examined by a doctor, who found a bruise on her right arm.

On 3 October 2003 the applicant lodged a complaint against tax police officers K. and L. with the Nova Kakhovka Local State Tax Administration. She complained that officer K. had beaten her and that officer L. had "applied brutal physical force" to her.

On the same date the applicant was questioned and underwent a medical examination. The examination revealed the following injuries on her: one bruise of 2 x 1 cm on the inner side of the right forearm; one bruise of 6 x 4 cm just above the left buttock; and one bruise of 6 x 4 cm on the outer surface of the right thigh.

Again on the same date, the tax inspectorate transferred the applicant's complaint to the Nova Kakhovka Town Prosecutor's Office ("the NKPO"), which started an investigation.

On 6 October 2003 the Kherson Regional State Tax Administration conducted an internal query and concluded that the tax police had acted lawfully in conducting the tax inspection of Mr F.'s shop.

On 15 October 2003 the applicant underwent a forensic medical examination ordered by the investigator. The forensic expert concluded that the applicant's injuries certified by the medical examination of 3 October 2003 could have been caused by blunt hard objects, including by jumping on the car and grasping its metal parts and by having been pulled off the car by officer L.

On several occasions the investigation questioned the individuals involved in the scuffle and some by-passers who had witnessed the beginning of the scuffle.

On 27 October 2003 the NKPO refused to institute criminal proceedings against officers K. and L. The investigation established that on 2 October 2003 a squad of six officers had arrived at Mr F's shop in order to conduct a tax inspection. Mr F. had refused to give them access to financial documentation. The squad had called their supervisor, Mr K., who had arrived at the shop with a lawyer to draft a report recording that it had been impossible to conduct the inspection. At that time, the applicant had arrived at the shop to start her shift as an assistant. When the members of the squad had tried to read out the document, Mr F. had switched off the light, claiming that the shop's opening hours were over, and had started pushing the squad's officers out of the shop. When they were out in front of the shop, Mr F. had temporarily switched off the light in front of the shop and the applicant had then started shouting that Mr K. had punched her in her face. Following that, Mr F. and his relatives and other shop assistants that had been present had blocked K.'s car, preventing it from leaving. The applicant had been jumping on the back of the car. Meanwhile, Mr F. had jumped on the hood of the car and, kicking the wind shield, had broken it. Mr F. had then broken one of the car's side windows and, trying to pull Mr K. out of the car, had cut his hand on the broken glass. At the same time, officer L. had tried to pull the applicant away from the car but she had resisted.

The investigator further noted the results of the forensic medical examination of the applicant and its conclusions that the applicant could have caused the minor bodily harm established herself by jumping on the car or that her injuries could have been caused by officer L. when he had tried to pull her away from it. The investigator also noted that the applicant had not had any injuries on her face.

As it could not be established that the bodily harm ascertained had been caused to the applicant by the tax police officers, the investigator refused to institute criminal proceedings against officers K. and L. for a lack of *corpus delicti*.

On 28 November 2003 the Kherson Regional Prosecutor's Office quashed the decision of 27 October 2003 and instructed the NKPO to conduct additional investigation on the grounds that officers K. and L. had not been questioned and that the decision of 27 October 2003 had

mistakenly been taken within the criminal proceedings against Mr F. and not in connection with the preliminary examination of the applicant's complaint.

On 4 December 2003 officers K. and L. were questioned again.

On 5 December 2003 the NKPO refused to institute criminal proceedings.

On 8 December 2003 the applicant lodged a private prosecution with the Nova Kakhovka Town Court. On 15 December 2003 the court left the complaint without consideration for failure to comply with procedural formalities.

On 30 April 2004 the Nova Kakhovka Town Court quashed the NKPO's decision of 5 December 2003 and returned the case to the NKPO for further investigation. It noted that the decision of 5 December 2003 had mistakenly been taken within the criminal proceedings against Mr F. and not in connection with the preliminary examination of the applicant's complaint and that Mr F. and Ms R. had not been questioned as witnesses.

In June 2004 Mr F. and Ms R. were questioned.

On 7 June 2004 the NKPO refused to institute criminal proceedings. It was noted that there was no objective proof that officer K. had punched the applicant in her face at all, that the applicant's other injuries could have been caused by her jumping on the car and that it could not be established beyond reasonable doubt that officer L. had caused any of the minor injuries found on the applicant.

On 27 July 2004 the Nova Kakhovka Town Court rejected the applicant's subsequent appeal against the decision of 7 June 2004.

On 16 November 2004 the Kherson Regional Court of Appeal upheld the decision of the first-instance court.

On 19 April 2005 the Supreme Court of Ukraine upheld the decisions of the lower courts.

3. Administrative proceedings

The applicant lodged two administrative complaints against the Prosecutor General's Office for its alleged failure to act on her complaints.

On 17 February and 31 August 2005 the Pechersky Court found that the Prosecutor General's Office had failed to consider criminal complaints which the applicant had brought against the Kherson Regional Prosecutor. The court ordered the Prosecutor General's Office to consider the applicant's complaints and to take reasoned decisions on them.

The applicant maintained that the court decisions of 17 February and 31 August 2005 have remained unenforced.

COMPLAINTS

The applicant complained under Articles 6 and 13 of the Convention of the domestic authorities' failure to enforce the decisions of the Pechersky Court given in her favour against the Prosecutor's Office. She further complained that the domestic authorities had failed to prosecute the tax police officers for inflicting bodily harm on her.

THE LAW

The applicant complained that the bodily injuries inflicted on her by the tax police had not been properly investigated. She further complained that despite the courts' decisions, the prosecutors had failed to respond to her complaints. She cited Articles 6 and 13 of the Convention. In substance, her complaint could also be understood to raise an issue under Article 3 of the Convention.

The provisions of those Articles read insofar as relevant as follows:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 6

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...

....

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him..."

Article 13

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Government considered that the applicant had failed to exhaust domestic remedies. They noted that she had suffered minor bodily injuries and that she had therefore been required to initiate a private prosecution. The applicant had lodged such a complaint with the courts but had failed to correct the shortcomings indicated by the court. Therefore, her complaint had not been examined on the merits.

The Government further contended that the incident between the applicant and the tax police officers had been of a private nature, given that it had taken place after the said officers had finished their inspection work at the shop. In their opinion, the private nature of the incident was confirmed by the fact that the applicant had lodged a private prosecution with the domestic courts.

They noted that the reaction of the tax police officers had been provoked by the applicant's behaviour and, in any event, had not reached the minimum level of severity required for Article 3 to apply.

The Government also maintained that the law-enforcement authorities had taken all necessary steps to investigate the incident and the fact that the applicant had been unsuccessful in her complaints against the police officers did not render such investigation ineffective. They pointed to the fact that the remittals of the case for additional investigation had been caused by formal mistakes and not by serious shortcomings that could have compromised the effective and comprehensive nature of the investigation.

The applicant disagreed. She maintained that she had tried to lodge a private prosecution, but it had been returned unexamined. She further maintained that she had lodged numerous complaints with the prosecutor which had led to remittals of the case for additional investigation due to violations of the law. She considered that her attempts to prosecute the police officers had been unsuccessful due to corruption in State bodies.

She also contested the Government's argument that the incident with the police had been of a private nature, given that the officers had arrived at the shop in order to conduct an official inspection of financial records.

She also disagreed with the Government's assertions that the investigation had been effective and that the treatment alleged had not reached the minimal level of severity.

The Court considers that in the present case the first question for decision is the applicability of Article 3, in respect of which the question arises as to whether the State has procedural obligations under the said provision concerning the criminal proceedings in respect of the applicant's injuries. On this point, it observes that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The

assessment of this level depends on all the circumstances of the case. Factors such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim must all be taken into account (see, among many other authorities, *Costello-Roberts v. the United Kingdom*, 25 March 1993, § 30, Series A no. 247-C).

In the instant case, the Court observes that the available materials do not demonstrate any violent behaviour on the part of the tax police officers, given that the applicant's allegation of having been punched in her face was not confirmed by any independent evidence, including the medical examinations, which did not reveal any injuries on the applicant's face. It is important to note that the applicant did not try to explain such a discrepancy between her version of events and the results of a medical examination that was conducted within hours of the incident. Neither did the applicant allege that the medical examination had been incomplete or incorrect. Furthermore, the medical examination found three bruises on the applicant's body, which had appeared in circumstances which precluded a clear and definite cause of these minor injuries from being established. Based on the available materials the Court cannot conclude that either officer L. or any other person hit or punched the applicant. Likewise, it cannot exclude that the injuries she sustained were contributed to, if not caused, by the applicant's own behaviour.

Previous cases in which the Court has found that the State's obligations under Article 3 were engaged concerned far more serious instances of ill-treatment: beating with a garden cane applied with considerable force on more than one occasion (see *A. v. the United Kingdom*, 23 September 1998, § 21, *Reports of Judgments and Decisions* 1998-VI); very serious neglect and abuse for a number of years (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, §§ 11-36, 40 and 74, ECHR 2001-V); consistent sexual abuse over a period of years (see *D.P. and J.C. v. the United Kingdom*, no. 38719/97, §§ 66-74, 10 October 2002); extremely serious sexual and physical abuse over a long period of time (see *E. and Others v. the United Kingdom*, no. 33218/96, §§ 43 and 89, 26 November 2002); multiple rape (see *M.C. v. Bulgaria*, no. 39272/98, §§ 16-21, 30 and 153, ECHR 2003-XII); beating all over the body with wooden planks, leading to multiple rib fractures (see *Šečić v. Croatia*, no. 40116/02, § 8, 11 and 51, ECHR 2007-VI); and an anal fissure caused by several attackers in highly intimidating circumstances (see *Nikolay Dimitrov v. Bulgaria*, no. 72663/01, §§ 9 and 70, 27 September 2007). Even less serious injuries sustained by the person while under control of the authorities can be considered sufficient to conclude on a violation of Article 3 (see *Ribitsch v. Austria*, 4 December 1995, §§ 38 and 39, Series A no. 336). By contrast, in the circumstances of the present case, the Court is not persuaded that the

treatment to which the applicant was subjected attained the minimum level of severity to fall within the scope of Article 3.

In any event, even assuming that the injuries sustained by the applicant were as such sufficient to reach the threshold required for the applicability of Article 3 of the Convention, in light of the available information it is impossible to conclude that the State agents were responsible for their infliction or any other form of the applicant's ill-treatment. The present complaint must therefore be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

In so far as the applicant relies upon Article 6 of the Convention, the proceedings complained of do not appear to fall within the civil or criminal ambit of the said Article. This complaint therefore must be rejected as being incompatible *ratione materiae* with the provisions of the Convention, pursuant to Article 35 §§ 3 (a) and 4 of the Convention too.

As to the applicant's complaint under Article 13 of the Convention, in the absence of any arguable claim found in the application, the Court considers that this complaint is also incompatible *ratione materiae* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Claudia Westerdiek
Registrar

Dean Spielmann
President