



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

FIFTH SECTION

**CASE OF IVASHKIV v. UKRAINE**

*(Application no. 59670/14)*

JUDGMENT

STRASBOURG

22 September 2022

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



**In the case of Ivashkiv v. Ukraine,**

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

Lado Chanturia, *President*,

Ganna Yudkivska,

Mattias Guyomar, *judges*,

and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 59670/14) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 22 August 2014 by a Ukrainian national, Ms Ivanna Ivanivna Ivashkiv, born in 1963 and living in Lviv (“the applicant”), who was represented before the Court by Ms K.I. Kit, a lawyer practising in Lviv;

the decision to give notice of the application to the Ukrainian Government (“the Government”), represented by their then acting Agent, Ms O. Davydchuk, of the Ministry of Justice;

the parties’ observations;

Having deliberated in private on 28 April 2022,

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

## SUBJECT MATTER OF THE CASE

1. The application concerns an issue of domestic violence raised under Articles 3 and 13 of the Convention, as well as under Article 14 of the Convention and Protocol No. 12 to the Convention, taken in conjunction with Articles 3 and 8 of the Convention.

2. From 2007 to 2013 the applicant’s former husband, I.V., inflicted bodily injuries on the applicant on five occasions. Those injuries were recorded and classified as minor in the relevant forensic reports. The police and the prosecutor’s office repeatedly refused to open criminal proceedings for lack of *corpus delicti*. Two out of the five incidents were examined in the domestic courts. The list of the dates of the incidents, forensic reports and refusals to open proceedings are set out in the appended table.

### I. CONVICTION OF I.V.

3. Following a second complaint lodged by the applicant with the Shevchenkivskyi District Court of Lviv (“the District Court”) on 2 February 2011, on 11 May 2011 it opened proceedings in relation to incidents which had occurred on 14 January and 15 August 2010. In her application, the applicant stated that she had submitted the same complaint to the court in May 2010, but the court had referred the case to the prosecutor’s

office, as it contained elements of another criminal offence, namely threatening murder. The prosecutor's office sent her case to the police, which, in turn, refused to open proceedings for lack of *corpus delicti*. The applicant stressed that over many years her former husband had engaged in unlawful conduct against her, such as inflicting injuries on her, bullying her and uttering obscenities at her, and that her numerous complaints to the police had had no effect, despite the fact that under Articles 3 and 8 of the Convention, the State had a positive obligation to protect her from inhuman and degrading treatment inflicted by a private party.

4. I.V. stated before the District Court that on 14 January 2010 he had slapped the applicant across her face once because she had slashed the tyres of his car. Moreover, she had continuously made the conditions of their cohabitation unbearable, for instance by stealing his documents and personal belongings, spoiling his food or complaining to the police without any reason.

5. On 27 June 2012 the District Court found I.V. guilty of inflicting minor bodily harm on the applicant in respect of the incident of 14 January 2010 and sentenced him to one hundred hours of community service, but released him from serving the sentence under the 2011 Amnesty Act in view of his dependent mother's advanced age. That decision was not appealed against.

## II. CIVIL PROCEEDINGS AGAINST I.V.

6. Following the above-mentioned criminal sentence, the applicant brought a civil claim against I.V. seeking compensation for non-pecuniary damage.

7. On 8 August 2013 the District Court awarded the applicant 5,000 Ukrainian hryvnias (UAH) in respect of non-pecuniary damage.

8. On 17 December 2013 the Lviv Regional Court of Appeal reduced the amount of the award to UAH 2,000 (at the material time around 180 euros) on the grounds that I.V. had only been found guilty in respect of the incident of 14 January 2010 and that the applicant had not produced evidence of her medical treatment, only her forensic examination report. The appellate court "took into consideration the reason for the conflict between the parties to the case – which was provoked by the victim [the applicant] herself and her actions – the impairment of the applicant's ability to carry out her daily activities and her discomfort, suffering and pain".

9. On 5 February 2014 the Higher Specialised Civil and Criminal Court of Ukraine refused to open cassation proceedings.

## THE COURT'S ASSESSMENT

### I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

10. The applicant complained that the investigation into her continuous ill-treatment had been ineffective and that the criminal sentence of 27 June 2012 could not be considered an adequate response, as it had produced no effect in preventing further violations by I.V.

11. The Court dismisses the Government's objection that the applicant submitted her complaint in relation to the incidents of 17 April 2007, 9 August 2010 and 28 May 2011 outside the six-month time-limit. The acts of violence must be considered together as a chain of connected events (see *Opuz v. Turkey*, no. 33401/02, § 111, ECHR 2009).

12. The Court joins to the merits the Government's objection of non-exhaustion of domestic remedies regarding the above-mentioned three incidents (*ibid.*, § 116).

13. 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.

14. The general principles concerning the positive obligations of the State to afford protection from domestic violence were summarised in *Volodina v. Russia* (no. 41261/17, § 77, 9 July 2019).

15. In connection with the obligation to establish a legal framework, the Court notes that in 2017 Ukraine enacted special legislation addressing violence within the family context (see *Levchuk v. Ukraine*, no. 17496/19, §§ 50-51, 3 September 2020). Until that time, the prosecution of alleged offences of "minor bodily harm" caused by private individuals was at the victim's initiative (see *Zagubnaya and Tabachkova v. Ukraine* [Committee], no. 60977/14, §§ 35 and 37, 12 November 2020). The Court has already found that this legal instrument was not sufficient within the context of domestic violence (see *Volodina*, cited above § 82). There is no reason to depart from that conclusion in the present case.

16. The Court notes, in relation to the State's obligation to prevent a known risk of ill-treatment, that the applicant reported her ill-treatment to the police, who refused to open proceedings following most of her complaints (see the appended table). In May 2010 the applicant complained to the court about the incident of 14 January 2010, but her complaint was transferred to the prosecutor's office. Following her second complaint of 2 February 2011, the national court opened proceedings only on 11 May 2011. The initiation of proceedings in court had no preventive effect, as the applicant was beaten again on 28 May 2011 (see the appended table). Likewise, I.V.'s conviction had no preventive effect, as the applicant was beaten again on 2 September 2013 (see the appended table). It thus appears that the applicant

reported her ill-treatment by her former husband to the authorities through various channels, but to no avail. In this connection, the Court turns to the Government's objection of non-exhaustion of domestic remedies – that is, that the applicant had not instituted private prosecution proceedings before a national court regarding the incidents of 17 April and 9 August 2010 and 28 May 2011 – and dismisses that objection on the grounds of ineffectiveness of the suggested remedy (see *Bevacqua and S. v. Bulgaria*, no. 71127/01, § 83, 12 June 2008, and *Volodina*, cited above § 82). Furthermore, the Court concludes that the inaction of the police, together with the inadequate response from the court, allowed I.V. to continue his abusive behaviour towards the applicant. The State therefore did not prevent the known risk of ill-treatment of the applicant.

17. Regarding the obligation to carry out an effective investigation into allegations of the applicant's ill-treatment, the Court notes that the police questioned I.V. about his version of events, and he consistently denied beating the applicant and/or explained that she had very sensitive skin and any touch would leave a mark; they also questioned neighbours, who stated that they had heard no noise. Those statements were the basis for the refusals to open, or the decision to close, a criminal case, despite the forensic reports describing the applicant's injuries, which included a broken nose; concussion; a neck sprain; bruises on her face, arms, legs and torso; abrasions; scratch marks; and pulled hair (see the appended table). The Court has previously found that, in the context of domestic violence, the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation (see *Volodina*, cited above, § 98). It appears that the police did not investigate seriously and rigorously the applicant's complaints of ill-treatment, which leads the Court to conclude that the State has failed to discharge its duty to effectively investigate the ill-treatment that the applicant had suffered.

18. The Court finds a violation of Article 3 of the Convention and, given this finding, considers that it is not necessary to examine the same complaint under Article 13 (see *Opuz*, cited above, §§ 203-05).

## II. ALLEGED VIOLATIONS OF ARTICLE 14 OF THE CONVENTION AND OF PROTOCOL No. 12 TO THE CONVENTION, TAKEN IN CONJUNCTION WITH ARTICLES 3 AND 8 OF THE CONVENTION

19. The applicant complained that the amount of compensation in her civil case had been inadequate and that the national courts had discriminated against her on the basis of her gender in blaming her for provoking I.V.

20. 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.

21. The general principles relating to issues under Article 14 were summarised in *Carvalho Pinto de Sousa Morais v. Portugal* (no. 17484/15, §§ 44-47, 25 July 2017).

22. In the present case, the Court notes that the District Court awarded the applicant the amount of UAH 5,000 in respect of non-pecuniary damage. The Lviv Regional Court of Appeal reduced the above amount to UAH 2,000, finding that the applicant had provoked I.V. with her actions. The appellate court *de facto* blamed the applicant for being beaten by her husband, reflecting a discriminatory attitude towards the applicant as a woman and indicating prejudice existing within the judiciary.

23. In this connection, the Court points to the statistics appearing in the United Kingdom Home Office’s Country Policy and Information Note on Ukraine concerning gender-based violence (May 2018), which stated that “10% of prosecutors, 11% of judges and 12% of police officers justify some cases of family violence” (see *Levchuk*, cited above, § 61). The reasons which the appellate court gave for its decision to reduce the award in respect of non-pecuniary damage only serve to support the impression that the authorities do not take seriously the problem of domestic violence.

24. Consequently, the Court finds that there has been a violation of Article 14 read in conjunction with Article 3 of the Convention.

25. The Court considers that there is no need to examine the complaint under Article 8 taken in conjunction with Article 14 of the Convention and Article 1 of Protocol No. 12 (see, *mutatis mutandis*, *Eremia v. the Republic of Moldova*, no. 3564/11, § 91, 28 May 2013) or the complaint under Article 3 taken in conjunction with Article 1 of Protocol No. 12 (see, *mutatis mutandis*, *Jurčić v. Croatia*, no. 54711/15, § 88, 4 February 2021).

## APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award her any sum on that account.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Dismisses* the Government’s preliminary objection concerning the alleged failure to observe the six-month rule;
2. *Joins* to the merits of the complaint under Article 3 of the Convention the Government’s preliminary objection of non-exhaustion of domestic remedies and *dismisses* it;
3. *Declares* the application admissible;

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4. *Holds* that there has been a violation of Article 3 of the Convention;
5. *Holds* that there has been a violation of Article 14 of the Convention read in conjunction with Article 3.

Done in English, and notified in writing on 22 September 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller  
Deputy Registrar

Lado Chanturia  
President

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**APPENDIX**

List of dates of incidents, dates of forensic reports, dates of refusals to open proceedings, the body which refused and reasons for the refusals

No.	Date of incident	Date of forensic report recording minor bodily harm	Date of refusal to initiate/closure of proceedings	Body which issued document / reasons
1.	17 April 2007	19 April 2007 (wounds on head; bruises on head, back and hands; abrasions on hands)	19 April 2007	The police refused to open proceedings for lack of <i>corpus delicti</i> .
2.	14 January 2010	15 January 2010 (bruises on left and right lower back, left hand and face; abrasion on the nose) 9 February 2010 (broken nose; concussion; neck sprain; abrasion on the nose; bruises on left and right lower back, left hand and face) 29 March 2010 (broken nose; concussion; neck sprain; abrasion on the nose; bruises on left and right lower back, left hand and face) 6 March 2012 (broken nose; concussion; neck sprain; abrasion on the nose; bruises on left and right lower back, left hand and face)	23 January 2010	The police refused to open proceedings for lack of <i>corpus delicti</i> .
			17 February 2010	The police refused to open proceedings for lack of <i>corpus delicti</i> .
			4 June 2010	The District Court transferred the case to the prosecutor's office, as the offence had to be reclassified under Article 129 of Criminal Code.
			Unspecified date	The prosecutor's office refused to open proceedings for lack of <i>corpus delicti</i> . The parties did not provide the relevant document.

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No.	Date of incident	Date of forensic report recording minor bodily harm	Date of refusal to initiate/closure of proceedings	Body which issued document / reasons
3.	15 August 2010	18 August 2010 (bruises on hands and right leg; scratch mark on left leg) 6 March 2012 (bruises on hands and right leg; scratch mark on left leg)	18 August 2010	The police refused to open proceedings for lack of <i>corpus delicti</i> .
4.	28 May 2011	1 June 2011 (bruises on hands, torso and legs; abrasions on left wrist; no hair/broken hair on 1.5x2 cm of parietal area of skull)	11 August 2011	The police refused to open proceedings for lack of <i>corpus delicti</i> .
5.	2 September 2013	4 September 2013 (bruises on face, arms and legs)	26 September 2013	The police closed proceedings for lack of <i>corpus delicti</i> .