



## Roma who were forced to flee homes by angry mob suffered degrading treatment under the Convention

The case of [Burliya and Others v. Ukraine](#) (application no. 3289/10) concerned allegations made against the Government of Ukraine by a group of Roma following an anti-Roma attack in a Ukrainian village in 2002. They argued in particular that the State was responsible for the invasion and ransacking of their homes, since the local authorities had at worst been complicit in the attack and at best done nothing to prevent it.

In today's **Chamber judgment**,<sup>1</sup> the European Court of Human Rights held, unanimously, that there had been a **violation of Article 8 (right to respect for home)** of the European Convention on Human Rights, taken in conjunction with **Article 14 (prohibition of discrimination)**.

The Court also held, with respect to the applicants who had been at home as events unfolded, that there had been **two violations of Article 3 (prohibition of inhuman or degrading treatment/lack of effective investigation)** of the Convention, taken in conjunction with **Article 14**.

The Court rejected the Ukrainian Government's arguments that the authorities had not played any role in the "pogrom", but had in fact acted to diffuse the situation. The Court found in particular that the decision taken by the police not to protect this group of applicants, with no apparent good reason, but rather to advise them to leave before the "pogrom", had constituted a sufficiently serious affront to the applicants' dignity to count as "degrading" treatment. Furthermore, the subsequent investigation into the events had been inadequate and characterised by an absence of thoroughness and independence.

### Principal facts

The applicants are 19 Ukrainian nationals of Roma ethnicity who live in the Odessa Region.

On 7 September 2002, a 17-year-old ethnic Ukrainian was murdered in the village of Petrivka, in the Odessa Region of Ukraine, allegedly by a Romany man. In response, a crowd of residents demanded the expulsion of all Roma from the village. At a meeting the following day, the local council agreed with this approach. Following an intervention by the District Administration and District Police Department, the council, meeting again on 9 September, decided to ask law enforcement authorities to expel "socially dangerous individuals, regardless of ethnic origin".

That evening, the village mayor advised Roma residents to leave ahead of an impending "pogrom". That same night, a mob estimated at several hundred people ransacked the applicants' homes and destroyed belongings. Police officers were present during the attack but did not try to prevent the looting and apparently concentrated solely on preventing human casualties.

Most of the applicants were in the village during the build up to the attack, between 7 and 9 September, although a small group had left beforehand and did not discover what had happened until their return afterwards.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

Criminal proceedings were initiated immediately, on 10 September, for suspicion of disorderly conduct committed in a group. The investigation, led by a regional police investigator but also involving local police, was suspended and reopened on a number of occasions before its definitive suspension in March 2009.

The applicants are Boris Trofimovich Burlya, Anatoliy Georgiyevich Burlya, Artur Leonidovich Burlya, Ivan Makarovich Burlya, Natalya Yakovlevna Burlya, Valentina Ivanovna Burlya, Yekaterina Tromifovna Burlya, Ivan Ivanovich Chubey, Valentina Yakovlevna Chubey, Fedor Fedorovich Lupashchenko, Ivan Georgiyevich Lupashchenko, Ivan Ivanovich Lupaschchenko, Nikolay Fedorovich Lupashchenko, Snezhana Fedorovna Lupashchenko, Vladimir Ivanovich Lupashchenko, Natalya Vladimirovna Tsykolan, Fedor Yakovlevich Tsynya, Ivan Yakovlevich Tsynya and Yakov Fedorovich Tsynya.

## Complaints, procedure and composition of the Court

The applicants petitioned the Court on various counts.

Relying on Article 3, the applicants complained that the attack on their houses and the poor living conditions they experienced afterwards had amounted to inhuman and degrading treatment. They argued that the State was responsible since, among other things, the authorities were complicit in the attack, failed to protect them from it, and failed to investigate it effectively.

Relying on Article 8, the applicants complained that they had had their homes destroyed and were forced to live in intolerable conditions.

Relying on Article 14, taken in conjunction with both Article 3 and Article 8, they complained that they had suffered discrimination owing to their ethnic origin.

Relying on Article 1 of Protocol 1, the applicants complained that they had been deprived of their possessions, both as a result of the damage to the contents of their homes and as a result of the damage to the properties themselves.

Relying on Article 13, the applicants complained that they had no effective remedy in respect of their other complaints.

The application was lodged with the European Court of Human Rights on 11 January 2010.

Judgment was given by a Chamber of seven judges, composed as follows:

**Paulo Pinto de Albuquerque** (Portugal), *President*,  
**Ganna Yudkivska** (Ukraine),  
**Faris Vehabović** (Bosnia and Herzegovina),  
**Egidijus Kūris** (Lithuania),  
**Iulia Antoanella Motoc** (Romania),  
**Marko Bošnjak** (Slovenia),  
**Péter Paczolay** (Hungary),

and also **Marialena Tsirli**, *Section Registrar*.

## Decision of the Court

The Court declared inadmissible the part of the application brought by Natalya Vladimirovna, since there was no evidence to support her involvement in the events. Another applicant, Fedor Yakovlevich Tsynya, died after the application had been lodged. The individuals wishing to pursue the application on his behalf failed to show that they had requisite standing to pursue the proceedings on his behalf. That part of the application was struck out from the Court's list.

### Article 8 taken in conjunction with Article 14

The Court found that the role the authorities had played prior to and in the course of the attack on the applicants' homes, and their subsequent failure to conduct an effective investigation, had amounted to a breach of all 17 remaining applicants' right to respect for their home, under Article 8 of the Convention. The Court noted that the events had been driven by anti-Roma prejudice and thus the violation of Article 8 involved a breach of Article 14.

### Article 3 taken in conjunction with Article 14

As concerned the 12 applicants who were present between 7 and 9 September 2002, the Court rejected the Government's arguments that the severity of the incident did not meet the required threshold for a violation of Article 3 and that, in any case, there was no evidence to suggest that the State was responsible.

Instead, the Court found that this group of applicants must have felt fear, anguish, helplessness and inferiority at having to flee their homes, which would in turn have been exacerbated by the knowledge that these would likely be ransacked. This had grossly diminished their dignity and had amounted to degrading treatment, in violation of Article 3 of the Convention. This was despite the fact that no person was injured in the events. The Court also noted, once again, that the attack on the applicants' homes had been motivated by anti-Roma sentiment, thus bringing Article 14 into play.

In addition, the Court found that the Ukrainian authorities bore responsibility for this treatment. The police had failed to take any measures to protect the applicants' homes and had given no objective reason for this. Indeed, the police presence and passivity during the attack, combined with the village council resolution, had created an appearance of official endorsement.

The Court also held, with respect to those 12 applicants, that there had been a violation of Ukraine's procedural obligations under Article 3 of the Convention. The Court noted that the domestic investigation into the attack was characterised by a number of serious omissions. For example, members of the local police played an active role in the investigation despite being accused of involvement in the attack. Similarly, the Court found no evidence that the authorities had conducted any investigation into the ethnically motivated nature of the crime, which they instead investigated as an ordinary disturbance.

### Other articles

The Court thought it unnecessary to explore separately the applicants' complaints that their post-displacement living conditions were inadequate. Similarly, the Court did not find it necessary to examine the applicants' complaints of a violation of Article 13, since these were subsumed by their complaints under Articles 3 and 8, for which violations had been found.

The Court rejected the applicants' claims concerning a violation of Article 1 of Protocol 1, which guarantees the protection of property, as lacking substantiation and as manifestly ill-founded.

### Just satisfaction (Article 41)

The Court held that Ukraine was to pay 11,000 euros (EUR) in respect of non-pecuniary damages to each of the 12 applicants for whom a violation of Articles 3 and 14 was found, and EUR 9,000 in respect of non-pecuniary damages to each of the five applicants for whom only a violation of Article 8 and 14 was found.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.