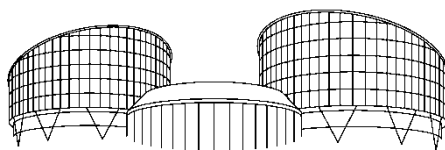


## La Corte Edu sulle restrizioni imposte alla libertà di riunione (CEDU, sez. V, sent. 13 marzo 2025, ric. n. 59884/13)

Nella questione sottoposta al giudizio della Corte Edu, concernente la presunta violazione dell'art. 11 della Convenzione, i giudici hanno ribadito alcuni dei principi ormai consolidatisi nella propria evoluzione giurisprudenziale in tema di libertà di riunione.

In particolare, la Corte ha ricordato come le ingerenze nell'esercizio di tale diritto possano essere legittimate soltanto se previste da una norma di legge (principio di legalità) e purché siano necessarie, in una società democratica, alla tutela di uno o più beni menzionati nell'art. 11; requisiti che nel caso di specie sarebbero mancati poiché la base giuridica delle restrizioni imposte ai ricorrenti per l'esercizio della libertà di riunione non poteva ritenersi sufficiente.

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

FIFTH SECTION

**CASE OF XXX v. UKRAINE**

*(Application no. 59884/13)*

JUDGMENT

STRASBOURG

13 March 2025

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

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

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

Andreas Zünd, *President,*

Kateřina Šimáčková,

Mykola Gnatovskyy, *judges,*

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 59884/13) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 12 September 2013 by two Ukrainian nationals whose details are listed in the appended table (“the applicants”) and who were 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 Ms Marharyta Sokorenko, of the Ministry of Justice, the parties’ observations;  
Having deliberated in private on 13 February 2025,  
Delivers the following judgment, which was adopted on that date:

## **SUBJECT MATTER OF THE CASE**

### **I. The Background to the case**

1. On 17 September 2012 the Kyiv District Administrative Court granted a request of the City Administration and prohibited all demonstrations in front of the Prosecutors General’s Office (“the Office”) from 17 September to 31 December 2012.
2. On 28 February 2013 the same court prohibited all demonstrations in front of the Office from 1 March to 30 April 2013 pursuant to Article 39 of the Constitution and Article 182 of the Code of Administrative Justice.

### **II. the first applicant**

3. According to Mr “omissis” (hereinafter “the first applicant”), on 27 December 2012 he arrived at the Office intending to hold a demonstration near it planning to protest against charges which had been brought against a certain F. He was approached by a bailiff, who informed him about the court decision of 17 September 2012 (see paragraph 1 above). The first applicant left. The Government submitted that “there is no information as to the [first] applicant’s attempts to hold the mentioned peaceful assembly in close vicinity of the Prosecutor General’s Office in Kyiv or at other places”.
4. On 4 January 2013 the first applicant appealed against the decision of 17 September 2012, but his appeal was rejected as unsubstantiated on 14 March 2013. He appealed in cassation.
5. On 9 March 2013 the first applicant informed the State Administration that he was going to organise a demonstration in front of the Office on 14 March 2013 to protest against extradition of a group of persons.
6. On 13 March 2013 a police officer telephoned to him that the court decision of 28 February 2013 had prohibited all demonstrations in front of the Office from 1 March to 30 April 2013 (see paragraph 2 above).
7. The first applicant did not hold the demonstration planned for 14 March 2013.
8. On 20 June 2013 the Court of Appeal dismissed his appeal against the court decision of 28 February 2013 finding that his rights had not been violated because he had not been prevented from holding demonstrations in other places at other times. On 20 November 2013 the Higher Administrative Court dismissed the first applicant’s appeal in cassation.
9. On 11 March 2014 the City Administration withdrew their original application for the prohibition of all demonstrations (see paragraph 1 above). On 1 April 2014 the court of cassation quashed the

decisions of 17 September 2012 and 14 March 2013 (see paragraphs 1 and 4 above) and discontinued the proceedings.

### III. The second applicant

10. On 16 March 2013 Ms “omissis” (hereinafter “the second applicant”) informed the City Administration that on 18 March 2013 from 10 a.m. to 1 p.m. she, together with 25 other persons, intended to hold a demonstration in front of the Office protesting against the institution by prosecutors of criminal proceedings against a human rights lawyer, D.

11. On 18 March 2013 the second applicant arrived at the Office. She was approached by the police, who explained that demonstrating in this location had been prohibited by the court decision of 28 February 2013 (see paragraph 2 above). The second applicant was taken to the police station from where she was released three hours later. While at the police station, she had made a written statement about what had happened in front of the Office. In the statement, a copy of which is contained in the case file, she indicated that it was the police who had asked her to provide the written statement in the framework of criminal proceedings instituted against her under Article 382-1 of the Criminal Code (“Failure to comply with a court decision”). She further observed that the police had breached Article 340 of the Criminal Code (“Illegal interference with organisation or holding of assemblies and demonstrations” - “Article 340”) by preventing her from conducting a demonstration, and she asked them to institute a criminal investigation into that matter.

12. On the same day the police served to the second applicant a summons ordering her to arrive to the police station on 21 March 2013 to be questioned in her capacity as a witness.

13. On 20 March 2013 the police telephoned her that there was no need to arrive to the police station because the police were considering closing the criminal case against her.

14. The second applicant lodged a written request with the police asking to inform her about the fate of the criminal case against her. On 25 March 2013 the police informed her that on 19 March 2013 they closed the criminal case for lack of *corpus delicti*.

15. The second applicant appealed against the court decision of 28 February 2013. Her appeal was rejected on 20 June 2013 as unsubstantiated. On 20 November 2013 the Higher Administrative Court rejected her appeal in cassation.

16. In the meantime, on 30 August 2013, the second applicant had written to the Pecherskyi District Prosecutors’ Office complaining that her detention had been contrary to Article 5 of the Convention. The case file contains a slip acknowledging receipt with a stamp attesting that the complaint had been received by the addressee. Further procedure regarding the complaint remains unknown.

17. According to the information provided by the Government, the investigation into the second applicant’s complaint of 18 March 2013 under Article 340 (see paragraph 11 above) remained pending as of 10 March 2023.

## THE COURT’S ASSESSMENT

### I. ALLEGED VIOLATION OF ARTICLE 11 of the convention

18. The applicants complained, invoking Articles 10 and 11 of the Convention, that the authorities had prevented them from holding the public events which they had planned for 27 December 2012, 14 and 18 March 2013, respectively.

19. The Court, being the master of characterisation to be given in law to the facts of the case, considers that this complaint falls to be examined solely under Article 11 of the Convention, interpreted where appropriate in the light of Article 10 (see *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, §§ 363-65, 7 February 2017), as Article 10 being regarded, in the circumstances of the present case, as a *lex generalis* in relation to Article 11, a *lex specialis* (see *Ezelin v. France*, 26 April 1991, § 35, Series A no. 202, and *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 91, ECHR 2015).

#### A. Admissibility

##### 1. *Demonstration of 27 December 2012*

20. The Government stated that the complaint of the first applicant regarding the event on 27 December 2012 should have been lodged with the Court within six months after that date because no domestic remedy for this complaint was available.

21. The Court observes that the first applicant's appeal against the court decision of 17 September 2012, lodged on 4 January 2013 (see paragraph 4 above), could not concern the demonstration of 27 December 2012 going ahead as originally planned, and cannot therefore be considered an effective remedy in the first applicant's case (see *Bączkowski and Others v. Poland*, no. 1543/06, §§ 83-84, 3 May 2007). Similarly, the annulment of the court decision of 17 September 2012 (see paragraph 9 above) cannot be considered an effective remedy either.

22. Therefore, since the present application was submitted to the Court on 12 September 2013, the complaint concerning the demonstration of 27 December 2012 have been introduced outside the six-month time limit.

23. It follows that that this part of the application is inadmissible under Article 35 § 1 of the Convention and must be rejected pursuant to Article 35 § 4 of the Convention.

##### 2. *Demonstrations of 14 and 18 March 2013*

24. The Court consider that this part of the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

#### B. Merits

25. As regards the restrictions imposed on the applicants' demonstrations planned for 14 and 18 March 2013, the Government noted that they were lawful, pursued a legitimate aim and were necessary in a democratic society. In addition, the Government noted that there was no proof that the first applicant had attempted to hold his demonstration on 14 March 2013. The applicants maintained their complaints.

26. It was not in dispute between the parties that the applicants had been prevented from holding demonstrations on 14 and 18 March 2013 (see paragraphs 6 and 11 above), and that this constituted an interference with their right to freedom of assembly. The Court will therefore assess whether that interference was justified, in particular, whether the court decision of 28 February 2013, which constituted the legal basis for the interference (see paragraph 2 above), was compatible with the requirements of Article 11 of the Convention.

27. The Court observes that when the authorities prevented the applicants from holding the demonstrations on 14 and 18 March 2013 respectively, they indeed referred to the court decision of 28 February 2013 (see paragraphs 2, 6 and 11 above). The Court notes that it examined in detail the

legislative provisions on which that decision was based and found that they did not meet the Convention requirements of quality of the law (see *Cheremskyy v. Ukraine*, no. 20981/13, §§ 29-40, 7 December 2023). In particular, Article 39 of the Constitution and Article 182 of the Code of Administrative Justice, taken separately or cumulatively, do not constitute a sufficient legal grounds for imposing restrictions on the right to freedom of assembly (see *Cheremskyy*, §§ 29-40, cited above). The Court sees no reason to depart from its findings in the present case. Therefore, there is no need to verify whether the other two requirements (legitimate aim and necessity of the interference) set forth in Article 11 § 2 have been complied with.

28. Accordingly, there has been a violation of Article 11 of the Convention in respect of both applicants.

## II. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLE 11 OF THE CONVENTION

29. The applicants complained that they did not have an effective remedy in respect of their complaints under Articles 10 and 11 of the Convention.

30. The Government asserted that as there was no violation of the applicants' rights under Articles 10 and 11 of the Convention, Article 13 of the Convention was inapplicable to this case. The applicants maintained their complaints.

31. In view of its findings under Article 11 of the Convention, the Court concludes that the applicants had an arguable claim concerning their rights under Article 13 of the Convention.

32. The Court notes that the appeals lodged by the applicants after the dates for which their demonstrations were planned could not have remedied the situation and for this reason could not be considered an effective remedy (see *Bączkowski and Others v. Poland*, cited above, §§ 83-84). The Court also observes that the applicants learned about the existence of the court decision of 28 February 2013 on 13 and 18 March 2013, respectively (see paragraphs 6 and 11 above). It follows that they were not effectively able to appeal against that decision before the planned demonstrations. Moreover, given that the investigation into the second applicant's complaint under Article 340 has been pending for about 10 years (see paragraph 17 above), that remedy also cannot be considered effective.

33. In the light of the above, the Court considers that the applicants did not have an effective remedy in respect of their complaints under Article 11 of the Convention. Accordingly, there has been a violation of Article 13 of the Convention in respect of both applicants.

## III. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

34. The second applicant further complained that her detention on 18 March 2013 was not justified under Article 5 § 1 (c) of the Convention.

### A. Admissibility

35. The Government submitted that the second applicant had not exhausted domestic remedies in respect of this complaint because she had lodged the complaint under Article 340 concerning the obstruction of her demonstration, but did not raise a complaint that her detention as such was unlawful. The second applicant maintained her complaint.

36. The Court admits that in her complaint under Article 340 the second applicant did not explicitly refer to her detention as unlawful. However, it appears from the material in the case file that she lodged a complaint in this respect with the prosecutors (see paragraph 16 above), but that it was not

followed up on. The Court thus dismisses the Government's objection and considers that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

#### B. Merits

37. The Court notes that the parties did not dispute that the second applicant's retention in the police station amounted to a deprivation of liberty within the meaning of Article 5 of the Convention. The Court observes that at the police station, the second applicant was explained that the criminal investigation had been instituted against her under Article 382-1 of the Criminal Code. However, the existence of a criminal case against the applicant alone could not justify her detention. The Court observes that the Government did not indicate the legal basis and the reasons for her detention and did not submit to the Court any records in this respect.

38. In the light of these circumstances, the Court finds that the applicant's detention did not have a legal basis. Accordingly, there has been a violation of this provision.

#### IV. OTHER COMPLAINTS

39. The second applicant also complained under Article 13 of the Convention that she did not have an effective domestic remedy for her complaint under Article 5 § 1 (c) of the Convention.

40. Having regard to the facts of the case, the submissions of the parties, and its findings above, the Court considers that there is no need to give a separate ruling on the admissibility and merits of this complaint (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

41. The first applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage. The second applicant claimed EUR 25,000 in respect of non-pecuniary damage and EUR 3,200 in respect of costs and expenses incurred in the domestic courts and before the Court.

42. The Government contested these claims.

43. The Court awards the first applicant EUR 5,800 and the second applicant EUR 9,800 in respect of non-pecuniary damage, plus any tax that may be chargeable.

44. Having regard to the documents in its possession, the Court considers it reasonable to award the second applicant EUR 2,400 for costs and expenses for the proceedings before the Court, plus any tax that may be chargeable to the second applicant.

#### FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints of both applicants under Articles 11 and 13 of the Convention concerning the demonstrations of 14 and 18 March 2013 respectively, and the complaint of the second applicant under Article 5 § 1 (c) of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 11 of the Convention in respect of both applicants;
3. *Holds* that there has been a violation of Article 13 in conjunction with Article 11 of the Convention in respect of both applicants;

4. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention in respect of the second applicant;
5. *Holds* that there is no need to examine the admissibility and merits of the complaint of the second applicant under Article 13 of the Convention concerning the lack of effective remedy for her complaint under Article 5 § 1 (c) of the Convention;

6. *Holds*

(a) that the respondent State is to pay the applicants, 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) to the first applicant - EUR 5,900 (five thousand nine hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) to the second applicant – EUR 9,800 (nine thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) to the second applicant - EUR 2,400 (two thousand four hundred euros) for costs and expenses for representation before the Court, plus any tax that may be chargeable to her;

(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;

7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 13 March 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar

Andreas Zünd President