



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

FIFTH SECTION

CASE OF FEDINA v. UKRAINE

(Application no. 17185/02)

JUDGMENT

STRASBOURG

2 September 2010

FINAL

02/12/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Fedina v. Ukraine,

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

Peer Lorenzen, *President*,
Renate Jaeger,
Karel Jungwiert,
Mark Villiger,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva,
Ganna Yudkivska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 29 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 17185/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Ms Raisa Nikolayevna Fedina (“the applicant”), on 26 March 2002.

2. The applicant was represented by Mr A. V. Lesovoy, a lawyer practising in Simferopol. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs V. Lutkovska and Mrs I. Shevchuk, of the Ministry of Justice.

3. On 15 March 2005 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1950 and lives in the village of Tenistoye, Crimea, Ukraine.

A. The accident of 19 July 2001

5. On 19 July 2001 the applicant's son, Mr Fedin, who was born in 1969, was fishing in the River Karacha with a teenager, D. According to D.'s testimony in the subsequent proceedings, the water started to “bite” their feet when they reached Ayvove village. They saw a wire hanging from a wooden support pole for power lines, dangling in the water. Mr Fedin, saying that the wire was not dangerous and should be removed, stepped into the water and tried to pull the wire from the river. When he grasped the wire he cried out, fell into the water and died. D. tried to pull the wire out of Mr Fedin's hands. Unable to do so, he ran to the village for help.

B. The Network's internal inquiries

6. Mr Z., an engineer with the Bakhchisaray District Electricity Network (hereinafter “the Network”) – forming a part of the public company, Krymenergo, owned by the Ukrainian State – carried out an initial, immediate investigation into the accident. In his report of 26 July 2001, Mr Z. concluded that the applicant's son had died as a result of electrocution. This occurred because a live wire, which had been incorrectly fixed to a wooden support pole, had come loose during strong winds. He further concluded that the security trip switch had failed on account of an ineffective earth connection.

7. A further internal inquiry was subsequently carried out by a commission composed of six Network officials (hereinafter “the commission”). Its report, drawn up on 20 August 2001, states that the Network owned two wooden poles on opposite banks of the River Karacha, supporting a power line strung across the river. In addition to that power line, those two poles also supported a bare radio wire that had been attached to the poles – above the power line – by the local telecommunications service of the Ukrtelecom Company. Owing to stormy weather conditions, the hook with which the radio wire had been attached had come loose, the wire had snapped and one end had fallen into the river. The commission found that, although in principle it was not unlawful to attach a power line and a radio wire to a single pole, the local telecommunications service had failed to obtain the relevant consent from the Network.

C. The criminal investigation

8. On 6 August 2001 the applicant asked the Bakhchisaray District Prosecutor's Office (hereafter “the Prosecutor's Office”) to conduct an inquiry into the circumstances of her son's death, claiming that his death had been caused by negligence and carelessness on the part of the Network in

that it had failed to repair a broken power line, whereas the Ayvove villagers had already reported a power failure as early as 5 July 2001.

9. The autopsy report, issued on 20 August 2001 by an expert with the local Bureau of Forensic Medical Examinations at the request of the Prosecutor's Office, stated that Mr Fedin had suffered a sudden death as a result of an electric shock.

10. On 20 August 2001 the Prosecutor's Office asked the Network to make available documents relating to the accident, including the records of previous inspections and repairs of the power line. In its reply of 30 August 2001 the Network stated, *inter alia*, that it had not given its consent to the radio wire being attached to the pole, and that the manner in which it had been done contravened technical safety rules. It further stated that it had notified the telecommunications service several times of the potential danger of the installation and had unsuccessfully sought to have it comply with the relevant safety regulations.

11. On 3 September 2001 the Prosecutor's Office informed the applicant that there was no reason for the Office to take any criminal proceedings against the Network's management. None of the Ayvove villagers had called the Network between 5 and 19 July 2001 to report a power supply failure, and the required annual inspections and general revision of the power supply network had been conducted regularly and timely by the Network. The last annual inspection had taken place on 22 August 2000 and the last general overhaul in October 1995 which was within the prescribed six years' interval. Also taking into account the findings of the internal inquiry carried out by the Network's commission and statements given by various Ayvove villagers – according to whom the 0.4 Kilowatt radio wire had come loose on 18 July 2001 – the Prosecutor found no wrongdoing on the part of the Network's staff.

12. On 19 November 2001 the applicant asked the Prosecutor's Office to conduct an additional criminal investigation into the death of her son and to take criminal proceedings in accordance with Article 97 of the Code of Criminal Procedure.

13. In a decision of 23 November 2001, the investigator from the Prosecutor's Office decided against taking criminal proceedings against the Network's staff as there was no evidence of a criminal offence. That decision was based on statements taken by the investigator from the applicant, her son's widow, her son's friend D., two Ayvove villagers and Ms T., a nurse who had been called for help on 19 July 2001. The two villagers had stated that, although Ayvove had experienced certain power supply problems as early as 13 July 2001, it was only on 18 July 2001 that the radio wire had come loose from the pole, and that nobody had informed the Network about this. The investigator further noted that the applicant's claim that her son had died as a result of negligence and carelessness on the part of the Network in that it had failed to repair a power line broken on

5 July 2001 was not supported by the findings made by the Network's commission.

14. The applicant filed a complaint against that decision with the Prosecutor's Office of the Autonomous Republic of Crimea (hereafter "the POARC") as well as an appeal with the Bakhchisaray District Court (hereafter "the Bakhchisaray Court").

15. On 29 May 2002, the POARC quashed the decision of 23 November 2001, finding that further inquiries were called for. It instructed the investigator to question officials of Ukrtelecom, to question again the villagers as to when the radio wire had come loose and whether someone had informed the Network about this, and to attach a copy of the on-site inspection of the scene of the accident and the report on the forensic post-mortem examination of the body of the applicant's son. In view of that decision, the Bakhchisaray Court did not deal with the applicant's appeal against the decision of 23 November 2001.

16. On 17 June 2002 the investigator of the Prosecutor's Office, after having heard an Ukrtelecom employee – according to whom the radio wire had been attached to the pole in conformity with the relevant technical requirements – and after having heard the applicant, her son's friend D., the two Ayvove villagers already heard previously, and the nurse, Ms T., who gave the same testimonies as before, decided against taking any criminal proceedings because there was no evidence of a criminal offence.

17. On 20 December 2002, acting on an appeal filed by the applicant, the Bakhchisaray Court quashed the decision of 17 June 2002. It found that the inquiry carried out by the Prosecutor's Office was incomplete, in that the case file contained no record of an on-site inspection of the scene of the accident and no report on post-mortem examinations of the body of the applicant's son, and in that the investigation had failed to establish the reason why a dangerous live wire had been hanging in the river and who bore responsibility for this.

18. On 3 February 2003, after having added to the case file the report on the post-mortem examination of Mr Fedin's body and an undated statement taken from the local electrician, the Prosecutor's Office took a fresh decision not to initiate any criminal proceedings, which was based on essentially the same grounds as the decision of 17 June 2002. According to the statement given by the electrician, he had received no complaints or information about a wire hanging in the river. He did know that wires had come loose from their support, but did not know who was responsible for it.

19. On 27 March 2003, acting on a complaint filed by the applicant, the POARC quashed the decision of 3 February 2003 and remitted the case to the Prosecutor's Office for further inquiries in that, *inter alia*, the case file did not contain an internal investigation report from the company responsible for electricity network maintenance, and the investigation had

not made any findings about who was responsible for the network's maintenance.

20. In the course of the subsequent additional criminal investigation, the investigator of the Prosecutor's Office examined the internal regulations governing the duties and responsibilities of the Network's staff, and identified and questioned two officials responsible for the maintenance of power lines, as well as two Network employees who had repaired the power supply network after Mr Fedin's death. It further examined information about the meteorological conditions at the material time and concluded that the power cut had been caused by adverse weather conditions. On 16 April 2003, having found no evidence of negligence or involuntary manslaughter, the Prosecutor's Office decided not to bring any charges against the Network staff responsible for electricity network maintenance. According to the Prosecutor's Office, the wire network in the Ayvove village had been maintained in accordance with the relevant technical rules and regulations.

21. On 1 August 2004, acting on a complaint filed by the applicant, the POARC quashed the decision of 16 April 2003 and remitted the case once more for additional investigations. It found that the investigator had failed to question a number of Network employees and that, despite repeated instruction, no on-site inspection report had been drawn up.

22. Accordingly, the Prosecutor's Office conducted an on-site inspection at the scene of the incident. According to the inspection report, an unprotected radio wire, strung across the River Karacha, had been attached to a wooden support pole. That pole also had an electricity power line attached to it. The Prosecutor's Office concluded that such an installation was permissible under the relevant technical regulations. It further found that a storm had caused the radio wire to come loose and fall into the river.

23. On 27 August 2004 the Prosecutor's Office concluded that Mr Fedin's death had been the result of a tragic accident and decided not to institute any criminal proceedings. The applicant again filed a complaint against that decision. On 23 November 2004 the POARC accepted the applicant's complaint, quashed the decision of 27 August 2004 and ordered further inquiries to be made, including a forensic technical examination of the cause of the accident.

24. On 6 December 2004 the Prosecutor's Office again decided against bringing any charges, having found no evidence that any criminal offence had been committed by officials of the Network. The applicant challenged the decision of 6 December 2004 before the POARC. On 24 February 2005 the POARC quashed the decision of the Prosecutor's Office of 6 December 2004, finding that the criminal inquiry conducted had not been sufficiently thorough. It noted that, in the internal investigation into the incident carried out by the Network's commission in 2001, it had been found that the radio wire had been attached to the poles in a manner contrary to relevant technical regulations, whereas the Prosecutor's Office had found that the

relevant rules and regulations had been respected. The POARC further found it unacceptable that no documentary evidence had been obtained from the Network concerning inspections of the Ayvove village electricity supply network prior to the accident, and that the identity of the persons who were responsible for the maintenance of the Network wires had not been established.

25. In its subsequent decision of 23 March 2005 the Prosecutor's Office maintained its conclusion that there were no reasons for taking any criminal proceedings. As to the installation of wires and poles, the investigation found that they had originally been installed in 1968 and the relevant installation company no longer existed. It further stated that the forensic technical examination could be conducted by the Kharkiv Forensic Examinations Institute (*Харківський науково-дослідний інститут судових експертиз*), however, such examination would require pre-payment of fees and the Prosecutor's Office did not have funds available to cover those costs. The applicant was offered an opportunity to meet those costs.

26. On 19 July 2005 the Bakhchisaray Court quashed the decision of 23 March 2005 and ordered further investigation on the ground that technical expertise was required to establish whether there had been irregularities in the installation and use of wires that could have a causal link with the electrocution and death of the applicant's son.

27. On 28 July 2005 the Prosecutor's Office sent the case file material to the Kharkiv Forensic Examinations Institute, but the examination was not conducted owing to non-payment of fees.

28. On 31 March 2006 the Prosecutor's Office refused to institute criminal proceedings on the same grounds as in its decision of 23 March 2005. The Prosecutor's Office noted that it had no available funds to pay for the forensic examination and the interested parties were not willing to meet the costs either.

29. On 13 December 2006 the POARC quashed the decision of 31 March 2006 and remitted the case for additional investigation.

30. On 28 December 2006 the Prosecutor's Office refused to institute criminal proceedings on the same grounds as in its decisions of 23 March 2005 and 31 March 2006.

31. On 24 January 2007 the POARC quashed the decision of 28 December 2006 and remitted the case for additional investigation.

32. On 2 February 2007 the Prosecutor's Office refused to institute criminal proceedings against the Network officials under Article 367 of the Criminal Code. The Prosecutor's Office repeatedly noted that they had no funds available for forensic examination and the interested party refused to pay for it.

33. On 14 February 2007 the applicant complained about that decision to the POARC. She did not, however, provide information about any decision taken regarding her complaint.

D. Civil proceedings

34. On 6 September 2001 the applicant instituted civil proceedings before the Bakhchisaray Court against Krymenergo, the public company of which the Network formed a part. In those proceedings, the applicant claimed compensation for non-pecuniary damage caused by the death of her son.

35. On 14 September 2001 the Bakhchisaray Court, for reasons of territorial jurisdiction, remitted the case to the Kyivskyy District Court of Simferopil. On 25 March 2002, acting at the applicant's request, the Court of Appeal of the Autonomous Republic of Crimea (the "Court of Appeal of the ARC") ruled that the Bakhchisaray Court had jurisdiction over the case.

36. On 30 April 2002 the Bakhchisaray Court assumed jurisdiction over the case and scheduled a first hearing for 28 August 2002. On that day, it granted the applicant's request to stay those proceedings pending the criminal investigation into the death of her son. It did not fix any date for a future hearing.

37. On 14 May 2004, the Bakhchisaray Court granted another request to stay the proceedings filed by the applicant, who had expected to receive further information from the Prosecutor's Office.

38. On 18 March 2005, the Bakhchisaray Court considered the proceedings and asked the Prosecutor's Office for information about the state of proceedings in the criminal investigation. On 6 April 2005, after having received a copy of the decision taken by the Prosecutor's Office on 23 March 2005, the Bakhchisaray Court resumed its examination of the applicant's case.

39. On 4 June 2007 the Bakhchisaray Court found against the applicant.

40. On 27 August 2007 the Crimea Court of Appeal overruled the decision of the first-instance court, having held that under the law the owner of a source of the increased hazard could be exempted from liability in two conditions: force majeure or the intentional actions of the victim. Neither of the two had been established in the case. The court also noted that the prosecutor had refused to institute criminal proceedings owing to a lack of proof of a crime and not because there had been any doubt that the event had taken place. Therefore, the Network, regardless of guilt, bore liability and had to provide compensation for the death of the applicant's son. Therefore, it awarded 80,000 Ukrainian hryvnias (UAH) to the applicant, UAH 50,000 to her daughter-in-law and UAH 20,000 to her granddaughter.

41. On 4 December 2008 the Supreme Court of Ukraine upheld the decision of the court of appeal.

II. RELEVANT DOMESTIC LAW

A. Criminal Code, 1960, with amendments

42. Article 367 of the Criminal Code provides:

“Neglect of official duty, that is, failure to perform, or improper performance, by an official of his or her official duties due to negligence, where it causes any significant damage to the legally protected rights and interests of individual citizens, State and public interests or those of legal entities, shall be punishable by a sentence of two to five years' imprisonment ...”

B. Civil Code, 1963

43. Article 450 of the Civil Code, as in force until 1 January 2004, provided as follows:

“Organisations and persons, whose activities give rise to an increased hazard to their environment (transport organisations, industrial enterprises, buildings, car owners etc.) shall be obliged to compensate the damage caused by the source of that increased hazard unless they can prove that the damage has resulted from force majeure or from intentional actions on the part of the victim.”

C. Civil Code, 2004

44. The relevant provisions of the Civil Code, as in force since 1 January 2004), read:

Article 1187. Compensation of damage caused by a source of increased danger

...5. A [natural or legal] person involved in an activity constituting a source of increased hazard shall be responsible for the damage caused [by that activity] unless [he, she or it] can prove that the damage has resulted from force majeure or from intentional actions on the part of the victim”

D. Code of Civil Procedure

45. Article 221 of the Code of Civil Procedure provides:

“The court shall suspend its examination of a case if ... it cannot be examined prior to the outcome of another case pending in civil, criminal or administrative proceedings.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

46. The applicant complained that the authorities had failed to protect the life of her son and were responsible for his death. She also complained that the investigation into her son's death had not been adequate or effective, as required by the procedural obligation imposed by Article 2 of the Convention. This provision reads in its relevant part as follows:

“Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. ...”

A. Concerning the substantive aspect of Article 2

47. The Government, acknowledging their positive obligation under Article 2 of the Convention to take appropriate steps to safeguard the lives of those within their jurisdiction, submitted that – as radio and power lines constitute a source of increased danger – special instructions, rules and regulations regulate such installations in order to ensure adequate safety standards. The prescribed inspections and maintenance on the installation at issue in the present case were carried out within the defined intervals, and the necessary repairs were made. Before the incident of 19 July 2001, none of the users had complained of any power failures. However, an exceptional situation had arisen in that, some days before the incident, a severe thunderstorm had damaged numerous radio and power lines in the region. In this connection, the Government submitted – referring to the evidence given by a number of Ayvove villagers in the domestic proceedings – that the radio wire had broken on 18 July 2001 and not on 5 July 2001 as alleged by the applicant. As nobody had reported the damaged wire to the authorities or requested its repair, the Network had remained unaware of the problem at the material time.

48. The Government further submitted, referring to the evidence given by D. in the domestic proceedings, that the applicant's son and D. had seen the broken radio wire hanging in the river and that they had felt the water tingle. Instead of notifying the appropriate authorities of this dangerous situation, the applicant's son had decided to remove the wire from the water himself. The Government considered that, in the given circumstances, in which an adult of sound mind had decided to ignore a danger of which he was aware, they could not be held responsible for the fatal consequences of that decision and that they could not be regarded as having fallen short of their positive obligations under Article 2.

49. The applicant maintained that, had the relevant safety regulations been respected, her son would not have been killed.

50. The Court notes that the cause of death of the applicant's son, as established by the autopsy report which was prepared at the request of the Prosecutor's Office in August 2001, was death by electrocution. The circumstances of the death are not in doubt: the applicant's adult son had picked up a live, dangling cable which was lying in the water.

51. The Court reiterates in the first place that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (*L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III).

52. The positive obligation to take all appropriate steps to safeguard life for the purposes of Article 2 entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life. This obligation indisputably applies in the particular context of dangerous activities, where, in addition, special emphasis must be placed on regulations geared to the special features of the activity in question, particularly with regard to the level of the potential risk to human lives (see *Öneryıldız v. Turkey* [GC], no. 48939/99, §§ 89-90, ECHR 2004-XII).

53. The scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures which, judged reasonably, might have been expected to avoid that risk (*Keenan v. the United Kingdom*, no. 27229/95, § 90, ECHR 2001-III, and *Osman v. the United Kingdom*, cited above, § 116). In the present case, as in the case of *Keenan*, the Court has to consider to what extent this applies where the risk to a person derives from harm which is, in one way or another, self-inflicted.

54. There has been no discussion in the present about whether the construction and use of electricity networks call for regulation by responsible authorities, and the applicant does not contest the existence in Ukraine at the time of norms and regulations governing the installation and the safe operation of electricity networks. Furthermore, the applicant's allegations of negligence in repairing the wires after the storm were reviewed by the domestic authorities on numerous occasions. In the absence of any indication that the authorities had been aware of the broken line before the applicant's son pulled it out of the river and was electrocuted (and

regardless of whether the line broke in the storm or as a result of a breach of the relevant safety regulations), the Court considers that it cannot be said in the present case that the safety regulations were inadequate or not respected in a way which led to the applicant's son's death, or that the State otherwise failed to comply with its positive obligations to protect life under Article 2 of the Convention.

55. In view of the above-mentioned considerations, the Court finds that this complaint is manifestly ill-founded and rejects it in accordance with Article 35 §§ 1 and 4 of the Convention.

B. Concerning the procedural aspect of Article 2

1. Non-exhaustion of domestic remedies

56. The Government submitted that the applicant had failed to exhaust domestic remedies, in that she had not challenged the decision of the Prosecutor's Office of 23 March 2005, which she could have done under Article 236 (1) of the Code of Criminal Procedure.

57. The applicant contested the Government's submission, arguing that that remedy would have been ineffective in her case. She stated that the criminal proceedings had lasted too long and the authorities had shown reluctance to carry out a proper and impartial investigation into the circumstances of her son's death.

58. The Court notes that as it appears from the further developments in the case, the decision of 23 March 2005 was successfully challenged by the applicant and the inquiry continued until 2 February 2007. Furthermore, acting on a petition filed by the applicant, the Prosecutor's Office conducted a preliminary inquiry into the circumstances of Mr Fedin's death and that its successive decisions of 23 November 2001, 17 June 2002, 3 February and 16 April 2003, and 27 August and 6 December 2004 not to take any criminal proceedings were quashed, on the basis of complaints filed by the applicant, by either the POARC or the Bakhchisaray Court for procedural flaws. In the Court's opinion, the fact that the applicant stopped claiming criminal liability for the death of her son at the domestic level in 2007 does not prevent it from looking into the effectiveness of the investigation which lasted for more than five years. The Court therefore dismisses this objection of the Government.

2. Otherwise as to admissibility

59. The Government maintained that, at the applicant's request, the Prosecutor's Office had conducted an inquiry in which it had collected all available evidence – reports and other documents, and statements from individuals – in connection with the death of the applicant's son. According

to the Government, that inquiry complied with the requirements for an effective investigation under Article 2 of the Convention.

60. The applicant submitted that the inquiry conducted by the Prosecutor's Office could not be regarded as effective in that it had been carried out in a superficial and dilatory manner.

61. The Court reiterates that for the investigation to be effective, it is necessary for the persons responsible for carrying it out to be independent from those implicated in the death. They should not be hierarchically or institutionally subordinate to them but independent in practice. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence and, where appropriate, an autopsy (see, *Slimani v. France*, no. 57671/00, § 88, ECHR 2004-IX) especially when the relatives of the deceased themselves have no access to the relevant information (see *Pereira Henriques*, cited above, §§ 57 and 62). Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling foul of this standard (see, *McShane v. the United Kingdom*, no. 43290/98, § 96, 28 May 2002).

62. The Court further reiterates that, although the right to have third parties prosecuted or sentenced for a criminal offence cannot be asserted independently (see *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-I), the Court has stated on a number of occasions that an effective judicial system, as required by Article 2, may, and under certain circumstances must, include recourse to the criminal law. However, if the infringement of the right to life or to physical integrity is not caused intentionally, the positive obligation imposed by Article 2 to set up an effective judicial system does not necessarily require the provision of a criminal-law remedy in every case. In certain spheres, like medicine, "the obligation may for instance also be satisfied if the legal system affords victims a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts, enabling any liability of the doctors concerned to be established and any appropriate civil redress, such as an order for damages and for the publication of the decision, to be obtained. Disciplinary measures may also be envisaged" (see *Calvelli and Ciglio*, cited above, § 51; *Lazzarini and Ghiacci v. Italy* (dec.), no. 53749/00, 7 November 2002; and *Mastromatteo v. Italy* [GC], no. 37703/97, § 90, ECHR 2002-VIII).

63. The Court also underlines that it would be inappropriate and contrary to its subsidiary role under the Convention to attempt to establish the facts of this case on its own, duplicating efforts of the domestic authorities which are better placed and equipped for that purpose (see, for example, *McShane v. the United Kingdom*, referred to above § 103). Following its well-established practice, it will confine the examination of this application

to evaluation of the domestic investigation into the matter as regards its overall compliance with the aforementioned standards.

64. The Court notes, as has already been mentioned above, that the investigating authorities responded promptly to the applicant's allegations that they had failed to repair the broken wire, having established that the relevant authorities had not been aware of it and that the breakage had happened shortly before the lethal accident of the applicant's son.

65. Furthermore, it cannot be said with any certainty that any criminal offences were committed at all in the present case: the Prosecutor's Office on numerous occasions found that no criminal offence had been committed, and even if it had been established that the relevant electrical safety rules had been breached, such breach would not necessarily entail criminal responsibility. The Court also takes into account the fact that the applicant's late son bore a degree of responsibility for the accident having exposed himself to unjustified danger (see and compare *Bone v. France* (dec.), no. 69869/01, 1 March 2005).

66. On the other hand, the applicant could have had and did have recourse to a civil remedy, which was not dependent on the outcome of any criminal investigation. Although any relevant findings in the criminal proceedings could have influenced the outcome of the civil proceedings, the latter could have and did establish liability, even in the absence of any crime, and did award appropriate compensation (see paragraphs 40, 43, 44). Although it could be argued that the criminal inquiry delayed the course of civil proceedings, they were concluded by the decision awarding the applicant UAH 80,000 in compensation for the death of her son. Accordingly, the applicant can no longer claim to be a victim of the alleged violation.

67. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

68. The applicant complained that the delays in the inquiry of the Prosecutor's Office and the general attitude of the authorities towards the investigation into the death of her son caused her severe moral suffering. She relied in this respect on Article 3 of the Convention, which provides as follows:

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

69. The Court notes that, unlike the situation in other cases (see, for instance, *Kurt v. Turkey*, 25 May 1998, § 133, *Reports of Judgments and Decisions* 1998-III; *Orhan v. Turkey*, no. 25656/94, § 359, 18 June 2002;

and *Gongadze v. Ukraine*, no. 34056/02, § 185, ECHR 2005-), the present case does not concern a disappeared relative or any period of uncertainty as regards the circumstances in which the applicant's son died.

70. Although the Court accepts that the inadequacy and ineffectiveness of the investigation into the death of her son may have caused the applicant feelings of distress, it considers that – in so far as the applicant has substantiated this claim – it has not been established that there were special features which would justify finding a violation of Article 3 of the Convention (see *Ülkü Ekin v. Turkey*, no. 27602/95, § 151, 16 July 2002).

71. The Court is therefore of the opinion that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

72. The applicant complained that the dilatory manner in which the Prosecutor's Office conducted its inquiry affected the length of the civil proceedings taken by her. According to the applicant, the duration of these civil proceedings exceeded a “reasonable time” within the meaning of Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

73. The Government contested that argument, pointing out that, at the applicant's own request, these proceedings had been stayed twice, pending the outcome of the inquiry by the Prosecutor's Office.

74. The period to be taken into consideration began on 6 September 2001, when the applicant lodged her civil claim, and ended on 21 March 2009 with the Supreme Court decision. It thus lasted seven years and almost three months at three levels of jurisdiction.

A. Admissibility

75. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

76. The applicant complained that although the civil proceedings had been stayed at her request, she could not be responsible for the delays in the criminal inquiries into the death of her son.

77. The Government considered that they could not be held responsible for the period between the 28 August 2002 and 6 April 2005, because the proceedings had been stayed upon a request by the applicant.

78. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II)

79. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Pélissier and Sassi*, cited above).

80. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. In particular, the Court notes that the length of criminal inquiry is equally attributable to the domestic authorities which did not finalise it with due diligence. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement, even excluding the period of delay attributable to the applicant from the overall length of the proceedings.

81. There has accordingly been a breach of Article 6 § 1.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

83. The applicant claimed UAH 200,000 (the equivalent of 18,573 euros (EUR) in respect of non-pecuniary damage.

84. The Government considered this sum excessive.

85. Deciding on an equitable basis, and having regard to the sums awarded in similar cases and the violation which it has found in the present case, the Court awards the applicant EUR 1,200 in respect of non-pecuniary damage.

B. Costs and expenses

86. The applicant also claimed UAH 10,101.66 (the equivalent of EUR 938) for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

87. The Government argued that the applicant had failed to prove this claim except for UAH 101 of mailing expenses.

88. The Court reiterates that, in order for costs and expenses to be included in an award under Article 41, it must be established that they were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum (see *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII). While it is true that the applicant has produced receipts only for a minor part of the expenses, she has presented a contract with the lawyer for UAH 10,000, which sum she is liable to pay, even though the contract provides for payment in instalments because of her financial situation.

89. The Court, having regard to the information in its possession, finds it reasonable to award the sum of EUR 500 for costs and expenses.

C. Default interest

90. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the length of the civil proceedings under Article 6 § 1 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,200 (one thousand two hundred euros) in respect of non-pecuniary damage and EUR 500 (five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant, to be converted into Ukrainian hryvnias at the rate applicable on the date of settlement;

(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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 2 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President