



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

FIFTH SECTION

CASE OF LYUBOV EFIMENKO v. UKRAINE

(Application no. 75726/01)

JUDGMENT

STRASBOURG

25 November 2010

FINAL

25/02/2011

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

In the case of Lyubov Efimenko v. Ukraine,

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

Peer Lorenzen, *President*,
Renate Jaeger,
Rait Maruste,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva,
Ganna Yudkivska, *judges*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 2 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 75726/01) 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 Lyubov Alekseyevna Efimenko (“the applicant”), on 5 June 2001.

2. The applicant, who had been granted legal aid, was represented by Mr A. Lesovoy, a lawyer practising in Simferopol. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev.

3. On 10 July 2003 the Court decided to communicate the applicant's complaints under Articles 2, 3 and 13 of the Convention to the Government. On 13 November 2004 the Court decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1 of the Convention).

THE FACTS

4. The applicant was born in 1941 and lives in Bakhchysaray (Бахчисарай; Bağçasaray), in the Crimea. The applicant is the mother of E., who died after having received serious bodily injury in private premises.

I. THE CIRCUMSTANCES OF THE CASE

A. Initial investigation

5. During the night of 5-6 June 1993 a group of several persons were present inside the director's room of the “Kardinal” bar (hereafter “the K. bar”) when E., who was in the room, received serious head injuries from which he fainted. He died in the early morning of 6 June 1993. E. also lost his golden jewellery as a result of an incident which occurred inside the room. Two other men, D. and S., were also in the director's room.

6. According to the applicant, the events had taken place in the presence of a number of identifiable witnesses and an officer of the local police department S-v. The witnesses included E.'s former girlfriend K-va, D.'s former fiancé K., and E.'s friends W. and G.

7. On 7 June 1993 the Bakhchysaray District Prosecutor (“the District Prosecutor”) transferred the file on the investigation into E.'s death to the Bakhchysaray Police Department of the Ministry of the Interior (“the Police Department”). It contained in particular twelve cigarette butts, two fragments of wallpaper with stains resembling blood, a bedcover, a tablecloth and a disassembled pneumatic rifle. It also stated that relevant photos were available from the forensic expert.

8. On the same date an expert from the Bakhchysaray Forensic Examination Department of the Ministry of Health found that E.'s death had occurred two or three hours after he had sustained the injuries, including concussion, bruises below both eyelids and on the chin, a broken nose, bruises and bleeding of the upper lip, numerous facial scratches on the right side of the forehead, subdural haematoma and brain contusion. He stated that E.'s death had resulted from multiple injuries (no less than seven blows to the right side of the forehead, the cheekbone, the bridge of the nose, the chin, the left cheek and the left parietal part of the head) and that he had suffered knees injuries and internal bleeding, apparently from a broken nose, which had caused him difficulties in respiration.

9. On 8 June 1993 the investigator of the Police Department initiated a criminal investigation into E.'s death.

10. On 30 June 1993 he instituted criminal proceedings into allegations of theft of jewellery from E. The two investigation files were joined under no. 76662 (hereafter “case no. 76662”).

11. In a resolution of 30 June 1993 the investigator decided that D. should be detained as a suspect in connection with the premeditated infliction of bodily injuries to E. He stated that the investigation had established that E. had been beaten in the director's room following a prior conspiracy between D. and S., and that D. had had personal motives (a hostile personal attitude to E.) to commit the crime.

12. On 30 July 1993 the investigator indicted D. and S. for inflicting bodily injuries leading to death, and issued a nationwide search warrant in respect of them as they absconded. Consequently, the investigation was suspended on 30 August 1993.

13. On 13 February 1997 the Russian General Prosecutor's Office informed its Ukrainian counterpart that S. had been arrested in Russia, but released a month later, the Ukrainian authorities having failed to ask his extradition in time. The nationwide search for S. was resumed.

B. Proceedings after their resumption

14. On 2 March 2000 D. was arrested in Russia. He was extradited to Ukraine on 11 July 2000 where he was kept in detention.

15. On 19 July 2000 the senior investigator of the Police Department resumed the investigation into case no. 76662. He stated that D. had inflicted multiple injuries on E. with premeditation, which had led to his death. He ordered D.'s detention in view of the gravity of the offence. D.'s detention was subsequently extended until 2 September 2000.

16. On 22 July 2000 D. was indicted for inflicting serious bodily injuries on E. He contested his guilt, stating that he had seen that E. had been beaten, having a bruise under his eye. He also said that he had left the town and gone to Russia for seven years without informing his relatives.

17. On 26 July 2000 the investigator questioned K. (see paragraph 6 above) about the events of the evening of 5-6 June 1993. She did not know whether D. and S. were involved in the death of E.

18. On 27 July 2000 D. was released from custody as he was not deemed a danger to society. On the next day he signed an obligation not to abscond.

19. On 28 July 2000 the supervising prosecutor of the Crimea Prosecutor's Office requested to complete the investigation by 2 September 2000. He mentioned that the acts of which the two suspects were accused were not classified correctly under criminal law and that the facts of the case had not been established with sufficient precision.

20. In a decision of 4 August 2000 the Police Department terminated the criminal proceedings against D. owing to the lack of evidence. The decision referred to statements by W. (see paragraph 6 above) and those by D.W. stated, *inter alia*, that together with G. (see paragraph 6 above), had carried unconscious E. out of the bar.

21. The applicant was informed of this decision on 18 September 2000.

22. On 8 August 2000 the Police Department charged D. with failure to report a crime against E. He was heard and delivered his version of the events. The investigation was terminated on the same day in view of the statute of limitations.

23. On 14 August 2000 the preliminary investigation in respect of S. on suspicion of his involvement in inflicting serious bodily injuries on E. was suspended as his whereabouts were not known.

24. On 4 September 2000 the Crimea Prosecutor's Office informed the applicant that the residential restriction imposed on D. by recognisance not to abscond (see paragraph 18 above) was lawful as the offence against E. had been committed with negligence. However, it found that there was enough evidence to conclude that serious bodily injuries had been inflicted on her son which had led to his death.

25. On 5 September 2000 she was informed that the criminal proceedings in respect of D. had been terminated owing to the lack of evidence corroborating his involvement in a crime and to the statute of limitations in respect of his failure to report the crime. As to the proceedings against S., they were suspended as his whereabouts were not known. Similar information was provided to her next day by the Police Department.

26. On 2 November 2000 the supervising prosecutor from the General Prosecutor's Office quashed the resolution of 4 August 2000 (see paragraph 20 above) on the ground that it had not taken into account all the relevant evidence confirming the suspicion against D. that was available in the case file. A reference was also made to inconsistencies in the evidence received from certain witnesses.

27. On 5 November 2000 the same supervising prosecutor quashed the resolution of 14 August 2000 (see paragraph 23 above) and ordered to continue the investigation. The case was remitted to the Dzhankoy District Prosecutor. On 8 November 2000 the supervising prosecutor advised the investigators to newly interview the persons who had witnessed the incident and whose statements were inconsistent, to identify any other witnesses and to establish some factual details.

28. On 21 February 2001 the Bakhchysaray District Court ("the District Court") quashed the resolution of 8 August 2000 (see paragraph 22 above), and re-opened the investigation into the suspicion of D.'s involvement in robbery as the period for calculating the statute of limitations should have begun to run from 3 March 2000, the day after his arrest in Russia.

29. From 4 December 2000 to 14 May 2001 the investigator was receiving information clarifying the events of the night of 5-6 June 1993.

30. On 20 May 2001 S. was extradited to Ukraine where he was subsequently detained on suspicion of being involved in inflicting serious injuries on E., leading to his death.

31. From 21 to 23 May 2001 the investigators questioned S. and some other witnesses who brought further clarifications into the incident in the bar K. Furthermore, they undertook a number of other procedural steps in order to complete the investigation. However, they could not question K-va who had resided in Turkey. On 23 May 2001 S. was released on a recognisance not to abscond. The resolution stated that it was V.B. who had

inflicted serious lethal injuries on E. and that he had initially left his place of residence in 1993 as he was afraid of persecution by V.B.

32. On 1 June 2001 the investigator of the Police Department terminated the criminal proceedings against S. for the offence of inflicting serious bodily injuries due to the lack of evidence. S. was immediately charged with failure to report a crime committed by V.B. Being interviewed on the same day, he pleaded guilty.

33. On 20 July 2001 the criminal proceedings against D. into suspicion of his involvement in causing lethal injury to E. were terminated owing to the lack of evidence. On the same date, the criminal proceedings against S. on suspicion of his involvement in failure to report a crime were also terminated in view of an amnesty. Proceedings against V.B. for his involvement in inflicting bodily injuries on E. were also discontinued because V.B. died. Later on the same day, the investigator issued a separate procedural resolution terminating proceedings in case no. 76662.

34. On 14 September 2001 the Crimea Prosecutor's Office quashed the aforesaid resolutions finding them unlawful and remitted the case to the District Prosecutor's Office for additional investigation referring, in particular, to procedural deficiencies in the investigation and stating that there was no investigation into the circumstances of the robbery against E.

35. In October 2001 the applicant complained to the Crimea Prosecutor's Office about the failure of the authorities to investigate the circumstances of her son's death. On 6 October 2001 the Police Department refused to give her access to the criminal case file.

36. On 5 November 2001 the Deputy Prosecutor of the Crimea again quashed as unlawful the resolutions of 1 June and 20 July 2001 (see paragraphs 32 and 33 above). He instructed the District Prosecutor to undergo complementary investigation including forensic medical examination and additional hearing of certain witnesses, including the police officer S-v.

On the same date he quashed resolution of 14 September 2001, stating that it did not comply with the law in failing to give instructions for further investigation and applying sanctions to those responsible for delays in investigating the case, including the District Prosecutor's Office, to which the case was nevertheless remitted for further investigation.

37. On 13 November 2001 the Crimea Prosecutor's Office informed the applicant that the investigation did not comply with the requirements of the national law as to the need to establish facts of the case fully, thoroughly and objectively. It also stated that the unlawful decisions had been quashed earlier and the case remitted with detailed instructions to the District Prosecutor for further investigation. The applicant was also informed of possible measures that would be applied if the investigation again failed to comply with previous investigative instructions.

38. On 4 December 2001 the Crimea Department of the Interior, following instructions by the Crimea Prosecutor's Office and District Prosecutor, instructed the Police Department in respect of further investigation into the case. Consequently, between 11 December 2001 and 25 January 2002 the investigator ordered a forensic examination which was conducted from 14 to 15 December 2001, and questioned two witnesses. The forensic examination confirmed multiple injuries on E.'s body and the cause of his death (see paragraph 8 above).

39. On 14 March 2002 the investigator drew up two resolutions terminating criminal investigation into suspicion of D.'s and S.'s involvement into infliction of serious bodily injury to E. and his robbery, as there was no corroborating evidence to prove their guilt.

40. On 26 March 2002 he remitted criminal case no. 76662 to the District Court in order to decide whether D. and S. should be exempted from criminal liability as the new Criminal Code which had entered into force on 1 October 2001 did not provide for liability for such an offence as failure to report a crime.

41. On 7 July 2002 the applicant complained to the District Prosecutor and the Crimea Prosecutor's Office that the resolutions of 14 March 2002 were unlawful.

42. On 10 July 2002 the District Court terminated the criminal investigation into the robbery allegations, as defined by the 1960 Criminal Code, against D. and S., owing to the change in the legislative situation. It remitted the case to the prosecution for further investigation insofar as it concerned charges under the provisions of the new Criminal Code, i.e. infliction of serious bodily injury and armed robbery. This ruling was not subject to appeal.

43. Subsequently, the senior investigator of the Police Department issued an undated information note in criminal case no. 76662 stating that owing to the lengthy period of time that had passed from the commission of the crime, some evidence had been lost and could no longer be recovered.

44. On 12 July and 19 August 2002 the Crimea Prosecutor's Office referred the applicant's complaints of the alleged unlawfulness and unreasonable length of the investigation to the District Prosecutor.

45. In the meantime, on 8 August 2002, the General Prosecutor's Office had remitted these complaints to the District Prosecutor for review.

46. On 8 September 2002 the latter quashed the resolution of 20 July 2001 that terminated the criminal proceedings in the case no. 76662 (see paragraph 33 above) and ordered additional investigation into the case. On 20 October 2002 he assumed responsibility over the investigation.

47. On 17 January 2003 the investigation regarding involvement of V.B. in death of E., after several investigative measures, including questioning of the police officer S-v, was again terminated, V.B. having died in 1994.

48. On the same date the District Court refused to examine the applicant's complaints against the resolution of 14 March 2002 on the charges against S., having been lodged outside the procedural time-limits. It also found that the resolution had been quashed on 10 July 2002 and the investigation into S.'s suspected involvement in a crime had been remitted to the prosecutor for additional investigation (see paragraph 42 above).

49. On 23 January 2003 the Crimea Prosecutor's Office quashed the resolution of 17 January 2003 and remitted the case to the District Prosecutor finding that the investigators had failed to comply with the investigative instructions given by the General Prosecutor's Office and the Crimea Prosecutor's Office (see paragraphs 27 and 36 above). In particular, contradictory evidence given by S. and D. had never been verified, and they had not been confronted with the witnesses. Moreover, certain witnesses had not been questioned on important matters relating to the identification of people who had been on the spot at the relevant time, including V.B.

50. On 30 January 2003 the District Prosecutor remitted the investigation to the Police Department fixing a deadline until 25 February 2003 for informing him of the investigation results.

51. On 19 March 2003 the Crimea Prosecutor's Office sent a copy of the forensic medical examination of V.B.'s body to the Crimea Police Department.

52. On 27 March 2003 the senior investigator of the Police Department ordered a further forensic examination the result of which, obtained on 2 April 2003, were to some extent imprecise.

53. On 13 May 2003 case no. 76662 was remitted to the District Court for examination of the applicant's complaints against the resolutions of 14 March 2002, closing the investigation against S. and D.

54. On 15 May 2003 the Crimea Court of Appeal quashed the resolution of 17 January 2003 (see paragraph 47 above) and remitted the applicant's complaints regarding D. for a rehearing by another judge. It found, in particular, that the applicant and her lawyer had not been informed of the time of the hearing, that the new judge hearing the case had not familiarised himself with the case file, that the applicant had lodged her complaints in time, contrary to the findings of the District Court, and that there had been serious infringements of the criminal procedural law.

55. On 26 September 2003 the District Court found that the investigation had not complied with the prosecutors' instructions (see paragraphs 36 and 38 above). It further referred to a number of procedural inaccuracies in the investigation. The court also quashed the resolution of 14 March 2002 and remitted the case to the District Prosecutor who had to identify and question the persons who had been present during the events in the bar and to identify additional witnesses in the case.

56. In a resolution of 5 July 2004 the senior investigator of the Police Department terminated the investigation in case no. 76662 finding, in

particular, that there was not enough evidence to conclude that V.B. had been involved in E.'s death, and no evidence of D.'s and S.'s involvement in the murder and the robbery had been found either. He had questioned several witnesses and conducted confrontations between them and the suspects. Moreover, the proceedings on the alleged failure to report a crime had been discontinued on 10 July 2002 by the District Court. Anyhow, as the main suspect had died, criminal proceedings could no longer be pursued.

57. While the Deputy Prosecutor of the District Prosecutor's Office found the above resolution well-founded on 7 July 2004, the District Court quashed it as unfounded on 20 October 2004 stating, in particular, that there was no evidence to suggest that V.B. was guilty of inflicting bodily injuries on E. Accordingly, case no. 76662 was again remitted to the District Prosecutor for additional investigation.

58. On 9 October 2007 and 6 January 2008 respectively, the applicant informed the Court that no measures had been taken to continue the investigation into the circumstances of her son's death.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

59. The applicant complained under Article 2 § 1 of the Convention of the lack of effective and adequate measures taken by the police and prosecutor's office to investigate her son's death. She maintained, in particular, that the Ukrainian authorities had failed to comply with their positive obligation to carry out a proper and comprehensive investigation into the circumstances in which E. had died. She alleged in this respect Article 2 of the Convention which reads, in so far as relevant, as follows:

“1. Everyone's right to life shall be protected by law ... ”

A. Admissibility

1. The Court's competence ratione temporis

60. The Government submitted that the Court's temporal competence is limited by the date of 11 September 1997, the day of the entry into force of the Convention in respect of Ukraine. Moreover, as the investigation into the case had been suspended until July 2000 in order to conduct the search for the suspects in Russia, the Ukrainian authorities could be held responsible for the investigation only after its reopening in July 2000.

61. The applicant stated that the Court had jurisdiction *ratione temporis* to deal with the complaint concerning the procedural limb of Article 2 from the moment when the Convention had been ratified in respect of Ukraine.

62. The Court observes that the parties did not dispute that the applicant's procedural complaint essentially related to the aforementioned proceedings conducted after 11 September 1997, and did not insist that the Court had to examine the events before that date.

63. It notes that its temporal jurisdiction as regards compliance with the procedural obligation of Article 2 in respect of deaths that occurred before the date of entry into force of the Convention in respect of a particular State extends no further than procedural acts and/or omissions occurring after that date. Moreover, for the Court to have temporal jurisdiction over these proceedings, a significant proportion of them will have been or ought to have been carried out after the critical date (see *Šilih v. Slovenia* [GC], no. 71463/01, §§ 160-163, 9 April 2009).

64. Turning to the present case, the Court notes that the applicant's son died on 6 June 1993. The criminal proceedings into the circumstances of his death and the robbery of which he was the victim were initiated on 8 and 30 June 1993 respectively (see paragraphs 9-10 above). They were suspended on 30 July 1993 owing to the search for the suspects (see paragraph 12 above). They were resumed only in March 2000 and formally reopened in July 2000 as one of the suspects was found by the Russian authorities and extradited to Ukraine (see paragraphs 14-15 above).

65. Applying the above principles to the circumstances of the present case, the Court notes that the death of the applicant's son occurred four years and three months before the entry into force of the Convention in respect of Ukraine. It further notes that, while – with the exception of a short preliminary investigation, which lasted from 6 June to 30 July 1993, as it was suspended on that date, all the major events of the investigation occurred after 11 September 1997, that is, after the Convention entered into force in respect of Ukraine. It observes that the proceedings were formally resumed on 19 July 2000 and continued until the case was referred back for additional investigation in October 2004 (see paragraphs 56-57 above), and the proceedings are still pending.

66. In view of the above, the Court finds that the alleged interference with Article 2 in its procedural aspect falls within its temporal jurisdiction.

2. Six months

67. The Government further objected that the applicant's complaints were inadmissible as they were lodged on 15 June 2001. In particular, the applicant had found out about the alleged violation of her rights in August 2000, when she had complained for the first time to the General Prosecutor's Office of the lack of an effective investigation into her son's death. However, she should have lodged this complaint within six months from the

moment at which she had found out about the ineffectiveness of the investigation into the case.

68. The applicant disagreed.

69. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies and does not apply as such to continuing situations; this is because, if there is a situation of an ongoing breach, the time-limit in effect starts afresh each day and it is only once the situation ceases that the final period of six months will run to its end (see *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 159, 18 September 2009).

70. Turning to the present case, the Court notes that the investigation was formally reopened on 19 July 2000 (see paragraph 15 above) and is still pending, after several remittals of the case for additional investigation, the last one dating 20 October 2004 (see paragraph 57 above). It notes that the applicant's situation was on-going when she applied to the Court, her complaint concerns therefore a continuing situation that is still ongoing and the six-month rule does not apply. In view of the above, and taking into account the date on which the application was lodged and the subsequent proceedings in the case, the Court finds that the applicant has complied with the six-month time-limit under Article 35 § 1 of the Convention. The Government's objection must be dismissed.

3. Conclusion

71. 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

1. Submissions of the parties

72. The applicant stated that the investigation after 11 September 1997 and until 20 October 2004 had been perfunctory and that no effective investigative measures had been taken after 20 October 2004 up to the present. She maintained that a number of witnesses had not been questioned as their whereabouts were unknown. There had been delays in the investigation, important items of evidence had been lost and could no longer be recovered. She found that the criminal proceedings had been belated and insufficient and she had thus lost all hope that the events surrounding her son's tragic death would ever be investigated.

73. The Government maintained that the law-enforcement bodies had taken all necessary procedural steps in order to effectively investigate the circumstances of the death of the applicant's son and identify the persons guilty of the crime. They noted that from the moment the investigation had resumed on 19 July 2000 (see paragraph 15 above), when one of the suspects had been extradited to Ukraine, until the moment when the case had been referred for examination by the first instance court on 13 May 2003 on the basis of the applicant's complaints (see paragraph 53 above), the authorities had conducted a comprehensive and thorough investigation into the circumstances of E.'s death. In particular, the investigators had held twelve questioning sessions and three confrontations and had presented photographs on two occasions. They further stated that the higher investigative authorities had carefully supervised the investigation and given their instructions on the case. They stated that the perpetrator, V.B., had been identified and the proceedings had been discontinued as he had been murdered in 1994. Moreover, some of the applicant's complaints had led to the prolongation of the investigation. In particular, they referred to her complaints against the resolutions of 8 August 2000, 14 March 2002 and 17 January 2003 filed with the District Court and the Crimea Prosecutor's Office. They concluded that there was nothing to suggest that the investigation into the offence of murder had been protracted or ineffective.

2. The Court's assessment

74. The Court notes that the major events surrounding the investigation into the circumstances of the applicant's son's death relate to the period from 11 September 1997 to 20 October 2004. It will therefore confine itself to examining whether the investigation during that period complied with the State's positive obligation arising from Article 2 § 1 of the Convention.

75. The Court reiterates that the essential purpose of an investigation into the circumstances of a death, undertaken in compliance with the positive obligation under Article 2 of the Convention, is to secure the effective implementation of the domestic laws which protect the right to life. What form of investigation will achieve this purpose may vary in different circumstances as this obligation is not an obligation of result, but of means. The authorities must have taken all reasonable steps to secure the evidence concerning the incident. Thus, any deficiency in the investigation which undermines its ability to establish the cause of death or the persons responsible will risk falling foul of this standard. The investigation must be prompt and reasonably expeditious, even though there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating the cause of death may generally be regarded as essential in ensuring public confidence in their maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see, in general,

Gongadze v. Ukraine, no. 34056/02, § 176, ECHR 2005-XI, and *Muravskaya v. Ukraine*, no. 249/03, §§ 41-42, 13 November 2008).

76. The Court observes that in the present case the expedition and adequacy of the investigation into the death of the applicant's son were seriously undermined from the very beginning of the investigation. Firstly, the proceedings were suspended or terminated on a further eight occasions for various reasons (see paragraphs 20, 22-23, 32-33, 39, 42, 47 and 56 above). These interruptions led to a series of delays, the total duration of which, in the period from 19 July 2000 until October 2004, is not reasonably justified. Meanwhile, the delays in the investigation significantly diminished the prospect of its success, led to the loss of existing evidence and created substantial obstacles to the completion of the investigation, at least as regards the proper establishment of the facts of the case, as was confirmed by the undated investigator's report submitted by the Government (see paragraph 43 above). Also, certain important items of the forensic medical evidence were examined with a substantial delay, even though they were available from the very beginning (see paragraph 8 above), and after the investigation was reopened in July 2000, yet the relevant results of the investigation were obtained only on 2 April 2003 (see paragraph 52 above).

77. Secondly, the criminal proceedings were referred back for additional investigation on account of a number of deficiencies found by the prosecution and the District Court on at least nine occasions (see paragraphs 26, 29, 37, 40, 50, 54 - 57 above). Moreover, as it has already been mentioned above, the detailed instructions given by the supervising prosecutor (see paragraph 19 above) and the General Prosecutor's Office (see paragraphs 26 - 27 above) had repeatedly been not complied with by the investigative authorities which had questioned witnesses and suspects insufficiently and had, therefore, repeated their interviews over the same factual details. This was pointed out by the authorities supervising investigation on various occasions (see, specifically, paragraphs 36, 38, 49 and 55 above), after numerous remittals of the case for additional investigation due to the lack of a thorough investigation. Certain witnesses who could have shed light on the events at issue and could have given witness statements useful for investigation were not questioned at all as they could not be found, no serious attempts being made by the authorities to identify their whereabouts (see paragraphs 31 and 43 above). The police investigation lacked important witness statements from S. girlfriend and D.'s fiancée (see paragraph 6 above). Also, the police officer S-v, who was present at the K. bar on the evening of Mr E.'s death, was questioned on 8 January 2003 only (see paragraph 47 above), even though the instructions on his questioning dated back to 5 November 2001 (see paragraph 36 above). Moreover, the authorities were unable to ascertain important factual elements of the case (see paragraphs 27, 38, 49 and 55 above).

78. Also, while the District Court's admitted in its judicial findings of 26 September 2003 and 20 October 2004 (see paragraphs 55 and 57 above), that the investigation into E.'s death had been carried out superficially, no disciplinary or other measures were undertaken in respect of the officials concerned, including the investigating officer and prosecution officers who had conducted or supervised the investigation. The hierarchically superior investigative authorities constantly remitted the case to the same investigator (see paragraphs 34, 39, 42, 44, 45, 51 and 57 above) who had conducted the initial investigation, being aware that his acts lacked the required expedition and adequacy. The supervising prosecution authorities failed to ensure effective supervision over the conduct of the investigation in order to ascertain that the instructions of the hierarchically superior investigators were complied with.

79. Thirdly, the Court notes that the investigator's failure to act promptly and to comply with the investigative instructions more than four years after the resumption of the proceedings (see paragraphs 15 and 57) resulted in the eventual devaluation of the evidence initially obtained as this evidence could not be reconfirmed. This initial evidence was considered sufficient to indict D. and S. for inflicting serious bodily injuries leading to the death of E. and to conduct a subsequent search for them as the persons accused of this crime (see paragraph 12 above). More specifically, the investigation, for unclear reasons that remained unexplained, disregarded the important forensic medical examination reports of 7 June 1993, from which it ensued that the applicant's son had been beaten. This was later confirmed in the initial investigation report and the further forensic examination, i.e. that he had sustained multiple injuries (see paragraphs 8 and 38 above).

80. Having regard to the elements examined above, the Court finds that the deficiencies enumerated above in the present investigation undermined its ability to establish the cause of E.'s death and to establish and punish those responsible for it. In the light of these circumstances, it concludes that the State authorities failed to carry out an effective investigation into the death of the applicant's son. There has accordingly been a violation of the procedural limb of Article 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

81. The applicant also complained of an infringement of Article 3 of the Convention, since the unreasonably long investigation, which had not produced any result, had caused her moral and physical suffering. She alleged that the further lack of investigation had made her despair of any effective outcome of the investigation. She stated that her complaints had been ignored. This provision reads as follows:

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

82. The Government raised no objection as to the admissibility of this complaint and accepted that the applicant had suffered as a result of her son's death, but disagreed that a breach of Article 3 of the Convention had been caused by the conduct of any State authority.

83. The Court considers that the question whether the authorities' failure to conduct an effective investigation amounted to treatment contrary to Article 3 of the Convention in respect of the applicant is a separate complaint from the one brought under Article 2 of the Convention which relates to procedural requirements and not to ill-treatment as understood by Article 3 of the Convention (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 237, 8 April 2004).

84. Although the inadequacy of the investigation into the killing of her son will obviously have caused the applicant feelings of anguish and mental suffering, the Court considers that it has not been established that there were special factors which would justify finding a separate violation of Article 3 of the Convention in relation to the applicant (*ibid*, at § 239, and the cases cited therein; see also *Dündar v. Turkey*, no. 26972/95, § 91, 20 September 2005; *Çelikkilek v. Turkey*, no. 27693/95, §§ 98-99, 31 May 2005 and the case cited therein).

85. It therefore concludes that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

86. The applicant complained under Article 13 of the Convention that no effective and accessible domestic remedies were available to her in respect of her complaints under Articles 2 and 3 of the Convention. This provision reads, in so far as relevant:

“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.”

A. Admissibility

87. The Government disagreed. They stated that the applicant's complaints under Article 13 should be rejected as being lodged out of time.

88. The Court considers that this objection should be dismissed for the same reasons as mentioned under Article 2 (see paragraph 70 above).

89. 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

90. The applicant stated, in particular, that throughout the proceedings she had not had adequate access to the criminal case file. She also stated, in a general manner, that investigation into the circumstances of her son's death was not effective as it led to no specific findings or convictions of persons involved in murder of her son. She concluded that she had no effective remedies for her complaints.

91. The Government, without referring to any domestic law or practice, stated that the applicant had had accessible and efficient remedies for her complaints. Namely, she could lodge complaints in the course of the criminal proceedings at issue. In particular, following her complaints, the investigators' resolutions were quashed on several occasions. Furthermore, the applicant could, but failed to use civil compensation remedies.

92. Having regard to the circumstances of the present case and its finding of a violation of Article 2 in its procedural limb, the Court considers that it is not necessary also to examine the case under Article 13 of the Convention (see, *mutatis mutandis*, *Šilih v. Slovenia* [GC], cited above, § 216).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

93. 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

94. The applicant claimed 200,000 Ukrainian hryvnias (UAH)¹ in respect of non-pecuniary damage.

95. The Government contested these claims.

96. The Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant EUR 12,000 in respect of non-pecuniary damage.

B. Costs and expenses

97. The applicant also claimed UAH 9,700² for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

1. Approximately 18,475 euros (EUR).

1. EUR 896.07.

98. The Government stated that this claim was unsubstantiated.

99. In the present case, regard being had to the information in its possession, lack of proof that these expenses were actually and necessarily incurred and the criteria established in its case-law, the Court dismisses the claim for costs and expenses.

C. Default interest

100. 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. *Dismisses* the Government's preliminary objections;
2. *Declares* the complaints concerning Article 2 § 1 and Article 13 of the Convention admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 2 § 1 of the Convention;
4. *Holds* that it is not necessary to examine the case under Article 13 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 12,000 (twelve thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the national currency of Ukraine at the rate applicable at 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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 November 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Peer Lorenzen
President