



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF DUDNYK v. UKRAINE

(Application no. 17985/04)

JUDGMENT

STRASBOURG

10 December 2009

FINAL

10/03/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Dudnyk v. Ukraine,

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

Peer Lorenzen, *President*,
Renate Jaeger,
Karel Jungwiert,
Rait Maruste,
Mark Villiger,
Mirjana Lazarova Trajkovska, *judges*,
Mykhaylo Buromenskiy, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 17 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 17985/04) 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 Kateryna Vasylivna Dudnyk (“the applicant”), on 8 May 2004.

2. The Ukrainian Government (“the Government”) were represented by the Deputy Minister of Justice, Mrs V. Lutkovska.

3. The applicant alleged, in particular, that the investigation into the circumstances leading to the death of her son had been ineffective.

4. On 10 November 2008 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***1. Investigation into the applicant's son's death*

5. The applicant was born in 1959 and lives in Chapayivka.

6. On 30 May 2000 an unidentified individual broke the skull of I.D., the applicant's son, in the corridor of a dormitory at Cherkasy Technological University.

7. On 7 June 2000 the Prydniprovsky district police department of Cherkasy initiated criminal proceedings into a suspected offence of inflicting grievous bodily harm.

8. On 8 June 2000 I.D. died without regaining consciousness. Subsequently the investigation amended the characterisation of the suspected offence to inflicting grievous bodily harm resulting in death.

9. On 25 July and 15 August 2000 the Prydniprovsky district prosecutor's office advised the investigation as to various procedural steps to be taken.

10. As no leads concerning the perpetrator had been picked up by 25 September 2000, the police suspended the investigation.

11. On 1 February 2001, following complaints by the applicant's family, the Prydniprovsky district prosecutor's office annulled the decision to suspend the proceedings, finding that the police had not fully complied with the requirements of the applicable procedural law and had also failed to comply with the instructions issued by the prosecutor's office on 25 July and 15 August 2000.

12. On 5 April 2001 the applicant was granted leave to join the proceedings as an injured party and a civil claimant.

13. On 15 June 2001 the Cherkasy regional prosecutor's office acknowledged to the applicant's family that the investigation had been beset by unnecessary delays for which it could not provide a plausible explanation. Moreover, the investigator in charge of the case had been subjected to disciplinary action on account of serious procedural omissions. The prosecutor's office also informed the applicant's family that progress in the case had twice been discussed at recent staff meetings and assured her that the investigation would be closely monitored.

14. On 20 September and 27 November 2001 the applicant's family received further similar acknowledgments from the Cherkasy regional prosecutors' office and the Ministry of the Interior.

15. By a letter of 5 December 2001 the General Prosecutor's Office acknowledged to the applicant's family that the investigation into the circumstances leading to I.D.'s death had been perfunctory as the instructions given by the prosecutor's office had not been carried out in full. They further informed the applicant's family that they had instructed the Cherkasy regional prosecutor's office as to the specific steps to be taken and had advised that the case should be transferred to an experienced investigator.

16. On 14 December 2001 the case was transferred for investigation to the Cherkasy regional police department.

17. On several occasions (on 19 May and 6 December 2002, 17 March 2003 and 23 October 2004) the investigation was suspended on account of a failure to pick up any leads as to the perpetrator's identity.

18. These decisions were annulled by the supervising prosecutors (on 22 November and 20 December 2002, 18 April 2003 and 12 January 2009 respectively), with reference to the inadequacy of the measures taken.

19. On several occasions (in particular, on 7 May and 1 July 2003 and 20 October 2004) the prosecutor's office and the Ministry of the Interior acknowledged to the applicant's family that the investigative work aimed at identifying the person responsible for I.D.'s wounding had been inadequate. In October 2004 the Prydniprovsky district prosecutor's office further proposed that the police department carry out an official internal investigation into the reasons for the inadequate performance. No information regarding the outcome of this internal investigation has been provided by the parties.

20. On 20 September 2005 and 25 December 2008 the Cherkasy Regional Department of the Ministry of Interior studied the case-file and gave additional instructions to the investigative authorities. On 12 January 2009 the Prosecutor of the Prydniprovskyy District of Cherkasy quashed the investigator's order of 23 October 2004 to suspend the investigation and formal proceedings were resumed.

21. Overall, in the course of the investigation the law-enforcement authorities carried out forty-seven interviews, one confrontation and two line-ups. They further ordered two medical expert assessments.

22. The criminal proceedings are currently pending.

2. Civil proceedings

23. On 25 May 2003 the applicant's family instituted civil proceedings in the Prydniprovsky District Court of Cherkasy seeking damages from Cherkasy Technological University for failure to ensure security in its dormitory, thus leading to I.D.'s wounding and death.

24. On 1 October 2003 the Prydniprovsky District Court dismissed this claim, having found that I.D. had been injured through no fault of the University. On 20 November 2003 and 17 August 2004 the Cherkasy Regional Court of Appeal and the Supreme Court of Ukraine respectively upheld this judgment.

II. RELEVANT DOMESTIC LAW

25. The relevant provisions of the Constitution and the Code of Criminal Procedure can be found in the judgment in the case of *Sergey Shevchenko v. Ukraine* (no. 32478/02, §§ 36-39, 4 April 2006).

THE LAW

I. ALLEGED INEFFECTIVENESS OF THE INVESTIGATION

26. The applicant complained that the investigation into her son's fatal wounding had not been effective. She invoked Articles 2, 6 § 1, 8 and 13 of the Convention.

27. The Court, which is master of the characterisation to be given in law to the facts of the case (see, as a recent authority, *Castravet v. Moldova*, no. 23393/05, § 23, 13 March 2007) considers that the complaints at issue fall to be examined under Article 2 of the Convention, which is the relevant provision and reads as follows:

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

A. Admissibility

28. The Government submitted no observations concerning the admissibility of the above complaint.

29. 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. The parties' submissions

30. The applicant alleged that the authorities had failed to take the actions necessary to identify the perpetrator and to bring him to justice.

31. The Government contested that argument. They noted that the investigation had entailed a number of procedural measures, including questioning of witnesses, a confrontation, line-ups and ordering of medical expert assessments. They further noted that the proceedings were still pending and that a number of measures were still under way.

2. General principles

32. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, also requires by implication that there should be some form of

effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, *Kaya v. Turkey*, 19 February 1998, § 86, *Reports of Judgments and Decisions* 1998-I). The essential purpose of such an investigation 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. However, whatever mode is employed, the authorities must act of their own motion once the matter has come to their attention. They cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigatory procedure (see, for example, *mutatis mutandis*, *İlhan v. Turkey* [GC], no. 22277/93, § 63, ECHR 2000-VII). This is not an obligation of result, but of means. The authorities must have taken all reasonable steps to secure the evidence concerning the incident. 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 (see *Gongadze v. Ukraine*, no. 34056/02, § 176, ECHR 2005-XI).

33. There is also a requirement of promptness and reasonable expedition implicit in this context (see *Yaşa v. Turkey*, 2 September 1998, §§ 102-04, *Reports* 1998-VI, and *Çakıcı v. Turkey* [GC], no. 23657/94, §§ 80, 87 and 106, ECHR 1999-IV). It must be accepted that 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 use of lethal force or a disappearance 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 terms, *McKerr v. the United Kingdom*, no. 28883/95, §§ 108-15, ECHR 2001-III, and *Avşar v. Turkey*, no. 25657/94, §§ 390-95, ECHR 2001-VII).

3. Application of these principles to the present case

34. The Court observes that the investigation at issue in the present case, initiated in June 2000, is still pending, as the identity of the perpetrator and the circumstances surrounding the fatal wounding of the applicant's son have not been established.

35. Confining their submissions to reporting the number of interviews, line-ups and expert assessments, the Government did not provide any pertinent documents or any detailed information as to who was questioned, what versions of the incident were explored and what information was received as a result of the measures taken. Based on the available materials the Court cannot conclude that the measures reported were comprehensive and exhaustive.

36. In the meantime, the Court notes that while the investigators attempted on numerous occasions to suspend the proceedings on account of

the failure to pick up any leads, these decisions were repeatedly quashed by the supervising authorities, who referred to additional measures which could reasonably be taken. As is clear from the case file materials, these instructions were not always followed and the delays in the investigation significantly diminished the prospect of its success and completion. Furthermore, the domestic authorities themselves acknowledged to the applicant's family on a number of occasions that the measures taken within the framework of the proceedings had not been comprehensive and that the investigation had been seriously flawed.

37. In the light of these circumstances the Court concludes that the State authorities did not take all the measures which could be reasonably expected of them to carry out an effective investigation into the facts surrounding the wounding and death of the applicant's son.

38. There has accordingly been a violation of the procedural limb of Article 2 of the Convention.

II. ALLEGED UNFAIRNESS OF THE CIVIL PROCEEDINGS

39. The applicant further complained under Article 6 § 1 of the Convention that the civil proceedings she brought against Cherkasy Technological University had been unfair, in particular because the domestic judicial authorities had erred in their assessment of the facts and their application of the law.

40. Having carefully examined the applicant's submissions in the light of all the material in its possession and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention. In particular, the Court reiterates that the applicant enjoyed the right to adversarial proceedings involving the interested parties. Within the framework of the proceedings she was able to adduce all the necessary arguments in order to defend her interests, and the judicial authorities gave them due consideration.

41. It follows that this part of the application should be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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.”

43. The applicant did not submit a claim for just satisfaction within the time-limit allotted to her for this purpose. Accordingly, the Court considers that there is no call to award her any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the effectiveness of the investigation into the applicant's son's fatal wounding admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 2 of the Convention.

Done in English, and notified in writing on 10 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President