



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

FIFTH SECTION

CASE OF MYRONENKO v. UKRAINE

(Application no. 15938/02)

*This judgment was rectified on 29 March 2010
under Rule 81 of the Rules of the Court.*

JUDGMENT

STRASBOURG

18 February 2010

FINAL

18/05/2010

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

In the case of Myronenko 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,

Isabelle Berro-Lefèvre, *judges*,

Mykhaylo Buromenskiy, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 26 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 15938/02) 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 Kateryna Stepanivna Myronenko (“the applicant”), on 3 April 2001.

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

3. On 13 December 2005 the Court 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 1938 and lives in Lozova, Kharkiv region.

5. The facts of the case, as submitted by the parties, may be summarised as follows.

6. On 10 July 1998 the applicant's son, Mr Y. M., was found dead in his house, in which he lived alone.

7. On 10 and 11 July 1998 the police questioned relatives, neighbours and friends of Mr Y. M. They were informed that the late Mr Y. M. lived

alone and was not known to have been on bad terms with anyone. According to the applicant no on-site inspection was conducted.

8. On 11 July 1998 an autopsy was conducted. The forensic expert concluded that Mr Y. M. died of cerebral trauma caused by being hit on the head with a hard object and that the trauma could have been the result of a fall from his own height. No other bodily injuries were identified. The expert further noted that at the time of death Mr Y. M. was sober.

9. On 17 July 1998 investigator S. refused to institute criminal proceedings into the death of the applicant's son on the basis of the above autopsy report.

10. On 5 October 1998, however, criminal proceedings were instituted following information received by the police from the applicant, her other son and several other individuals, that on the eve of Mr Y. M.'s death he had had a drinking party in his house with several of his acquaintances and that two of them, Mr Z. and Mr K., had severely beaten him.

11. Mr Z. and Mr K. were arrested. Police questioned the persons who had provided this information or were eyewitnesses to the fight. The investigator also requested additional forensic examination as to the time and cause of death of Mr Y. M.

12. On 29 December 1998 the forensic medical examination confirmed the conclusions of the first autopsy report. It also noted that the head trauma did not have any traces which could identify the object which had caused this trauma.

13. During additional questioning of the witnesses to the events of 8 July 1998 they retracted their statements.

14. Following this, Mr Z. and Mr K. were released and the criminal proceedings were terminated on 26 March 1999 for lack of proof of crime, given that there were no signs of a fight on the body of Mr Y. M. and that participants in the party had denied that any conflict took place during the party.

15. By a letter of 19 April 1999 the Kharkiv Regional Prosecutor's Office informed the applicant that the investigation had been conducted by officer S., who had failed to establish comprehensively, fully and objectively all the circumstances of the crime and to identify all those involved.

16. By a letter of 30 June 1999 the Kharkiv Regional Prosecutor's Office informed the applicant that they had established that the investigation was incomplete and that disciplinary proceedings had been instituted against investigator S.

17. By a letter of 29 September 1999 the deputy head of the Kharkiv Regional Police Department informed the applicant, among other things, that they had established that there had been delays in the investigation, which had not been completed, and that for these reasons investigator S. had been disciplined.

18. On 29 October 1999 the forensic expert examination repeated the same conclusions and stated that with this trauma Mr M. would still have been able to move for up to several hours.

19. On 30 October 1999 the investigator terminated the proceedings again. He established that the forensic examination did not confirm any signs of a fight or self-defence on the body of Mr Y. M. Furthermore, Mr V. M. retracted his statement about the beating, maintaining that he had made it in fear of the police. This version was also confirmed by the fact that people who had visited Mr Y. M.'s house had not seen any signs of a fight there.

20. On 1 November 1999 the decision to terminate the criminal proceedings was quashed following the applicant's complaint that the police officers who had arrived first at Mr Y. M.'s house had not been questioned concerning the site. The investigator was also instructed to conduct an on-site reconstruction of events with Mr K., who was the last to see Mr Y. M. alive.

21. On 11 February 2000 an additional forensic examination concluded that the trauma could not have been caused by a fall from his own height.

22. By a letter of 14 March 2000 the applicant was informed by the Kharkiv Regional Police Department about the results of the latest forensic examination and informed again that investigator S. had been found liable for the delays in the investigation.

23. On 30 May 2000 the investigator suspended the criminal proceedings on the ground that the identity of the person or persons responsible for the death of the applicant's son had not been established.

24. On 27 February 2001 another forensic examination noted that the trauma could have been caused by several blows with a smooth hard object.

25. On 13 December 2001 the further forensic examination concluded that the trauma could have been caused by a singular blow or several blows to the head by a hard object and not by a fall from his own height or blows with fists.

26. By a letter of 17 November 2003 the head of the Investigation Unit of the Kharkiv Police Department informed the applicant that investigators S. and D., who had dealt with the case had been disciplined for premature decisions to terminate and suspend criminal proceedings and for delays in the conduct of all necessary investigative actions.

27. On 9 September 2005 the investigator appointed an additional investigation. The proceedings are still pending.

II. RELEVANT DOMESTIC LAW

28. The relevant provisions of the Constitution provide:

Article 3

“The human being, his or her life and health, honour and dignity, inviolability and security are recognised in Ukraine as having the highest social value. ...”

Article 27

“Every person has the inalienable right to life.

No one shall be arbitrarily deprived of life. The duty of the State is to protect human life. ...”

29. The relevant provisions of the Code of Criminal Procedure read as follows:

Article 4**The obligation to institute criminal proceedings and investigate a crime**

“The court, prosecutor or investigator must, to the extent that it is within their power to do so, institute criminal proceedings in every case where evidence of a crime has been discovered, take all necessary measures provided by law to establish whether a crime has been committed and the identity of the perpetrators and punish them.”

Article 94**Grounds for instituting criminal proceedings**

“Criminal proceedings shall be instituted on the following grounds:

(1) applications or communications from ... individuals;

...

(5) direct detection of signs of a crime by a body of inquiry or investigation, a prosecutor or a court.

A case may be instituted only when there is sufficient evidence that a crime has been committed.”

THE LAW**I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION**

30. The applicant complained that the State authorities had failed to conduct an effective investigation into the death of her son, referring, in substance, to 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

31. The Court notes that the application 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

32. The applicant complained that the investigation was not comprehensive and had been conducted with substantial delays, which had been recognised by the domestic authorities. She considered that the State authorities had demonstrated unwillingness to find those responsible for the death of her son. She also maintained that the results of the forensic examinations had been falsified and that she had no access to the criminal case materials.

33. The Government maintained that the domestic authorities took all necessary measures to establish the circumstances of the applicant's son's death. The fact that the investigation was not successful could be explained by the difficulties in establishing the exact time of the applicant's death, giving that he lived alone and could have been alive for several hours after the injury and could have behaved normally without raising anyone's suspicion.

34. 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*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 324, § 86). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life. The form of investigation which 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).

35. There is also a requirement of promptness and reasonable speediness implicit in this context (see *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, pp. 2439-40, §§ 102-04, 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 an investigation from making progress 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, *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).

36. The Court observes that in the present case the efficiency of the investigation into the death of the applicant's son was seriously undermined at the initial stage. It appears that the domestic authorities were quick to assume that the trauma of the applicant's son was self-inflicted and refused to institute criminal proceedings on this basis. It does not appear from the case-file materials that a thorough on-site inspection and appropriate forensic examinations, apart from an autopsy, had been conducted initially. The police officers that arrived on site first had not been questioned for more than a year and no on-site reconstruction of events had been conducted (see paragraphs 7 and 20 above). The Government did not demonstrate that at the initial stage of investigation any other possible cause of the death of the applicant's son had been thoroughly eliminated. Although three months later the investigator looked into the involvement of Mr Z. and Mr K. in the murder of the applicant's son, no other scenarios seem to have been pursued prior to the results of the forensic examination of 11 February 2000, which concluded that the previous examinations were incorrect and the lethal trauma suffered by the applicant's son could not have been self-inflicted.

37. The Court further observes that the investigators' refusal to institute criminal proceedings had been quashed several times as unlawful and that there was a series of delays in the investigation, the total duration of which cannot reasonably be justified. Meanwhile, the delays in the investigation significantly diminished the prospect of its success and completion.

38. Finally, the Court notes that the above deficiencies were acknowledged by the domestic authorities on several occasions (see paragraphs 15, 16, 17, 22 and 26 above).

39. In the light of these circumstances the Court concludes that the State authorities failed to carry out an effective investigation into the¹ death of the applicant's son. There has accordingly been a violation of the procedural limb of Article 2 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

42. The Government considered the amount claimed exorbitant.

43. The Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant EUR 8,000 in respect of non-pecuniary damage.

B. Costs and expenses

44. The applicant did not submit a claim under this head. Accordingly, the Court considers that there is no call to award her any sum on that account.

C. Default interest

45. 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 application admissible;
2. *Holds* that there has been a violation of Article 2 of the Convention under its procedural limb;

¹ Rectified on 29 March 2010: “disappearance and” has been deleted.

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 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Ukrainian hryvnias 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 amount 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 18 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President