

Press release issued by the Registrar

**CHAMBER JUDGMENT
GONGADZE v. UKRAINE**

The European Court of Human Rights has today notified in writing a judgment¹ in the case of *Gongadze v. Ukraine* (application no. 34056/02).

The Court held, unanimously, that there had been:

- **a violation of Article 2** (right to life) of the European Convention on Human Rights, concerning the Ukrainian authorities' failure to protect the life of the applicant's husband, Georgiy Gongadze;
- **a violation of Article 2**, concerning the inadequate investigation into Mr Gongadze's death;
- **a violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention concerning the applicant;
- **a violation of Article 13** (right to an effective remedy).

Under Article 41 (just satisfaction), the Court awarded the applicant 100,000 euros (EUR) in respect of pecuniary and non-pecuniary damages. (The judgment is available only in English.)

1. Principal facts

The applicant, Myroslava Gongadze, is a Ukrainian national, who was born in 1972 and lives in Arlington (United States of America).

Her late husband, Georgiy Gongadze, was a political journalist and editor-in-chief of the "Ukrainskaya Pravda" Internet journal. He was actively involved, both nationally and internationally, in raising awareness about the lack of freedom of speech in Ukraine. He reported on, for example, corruption among high-level State officials.

For months prior to his disappearance, Mr Gongadze had complained about receiving threats and being under surveillance. On 14 July 2000 he wrote an open letter to the Prosecutor General complaining that his relatives, friends and colleagues were being questioned about him by law enforcement officers concerning an incident he knew nothing about and that he was being followed by people who had not been identified driving a car with the number plate 07309 KB. He asked the Prosecutor General to protect him and to find and punish those involved.

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

Mr Gongadze disappeared on 16 September 2000 and, the following day, the applicant notified the Moskovskiy District Police Department of Kyiv.

On 2 November 2000 the decapitated body of an unknown person was discovered in the vicinity of the town of Tarashcha, in the Kyiv Region. On 15 November 2000 relatives examining the body found jewellery belonging to Mr Gongadze and marks of an old injury.

On 28 November 2000 the Chairman of the Ukrainian Socialist Party, Mr Moroz, publicly announced the existence of audiotapes (the “Melnychenko tapes”), secretly made in the office of the President, implicating President Kuchma and other high-level State officials in the disappearance of Mr Gongadze. In one of the recorded conversations, allegedly between the President and Minister of the Interior Yuriy Kravchenko, the President asked that Mr Gongadze be threatened. The Minister had then proposed certain people whom he called “real eagles”, capable of anything, to do the job.

In December 2000 the Prosecutor General announced that the Tarashcha corpse was not Mr Gongadze. Then, on 10 January 2001, he publicly announced that it was highly probable that the corpse was Mr Gongadze while, at the same time, announcing that there were witnesses who had seen Mr Gongadze alive after his disappearance. Three days later, the General Prosecutor’s Office (GPO) informed the applicant that there was no evidence that the corpse was Mr Gongadze. A fortnight later, the applicant was recognised as an aggrieved party because there was enough evidence to believe that the corpse was her late husband.

On 15 January 2001, the editor-in-chief of the *Grani* newspaper made public the names of four police officers who had allegedly been involved in the surveillance of Mr Gongadze.

On 11 March 2003 Reporters Sans Frontières announced that, following a DNA test, the body had been identified as Mr Gongadze.

On 22 October 2003 Lieutenant-General Pukach, an official of the Ministry of the Interior, was arrested on suspicion of involvement in the disappearance of Mr Gongadze. He was accused of ordering the destruction of important documents in the case. On 29 October 2003 the Prosecutor General, Mr Piskun, was dismissed by the President. On 6 November 2003 Kyiv City Court released Mr Pukach on his undertaking not to abscond.

After Viktor Yushchenko was elected President of Ukraine on 26 December 2004, he promised to re-open the investigation into the Gongadze case. It was reported in the press on 2 March 2005 that the Prosecutor General had announced the arrest of three police officers in connection with the applicant’s case before the European Court of Human Rights. On 4 March 2005, the death by purported suicide of Yuriy Kravchenko was announced. He had been due to be interviewed by the GPO that morning.

In August 2005 the applicant was allowed access to the file. In September 2005 the GPO announced that the latest DNA test conducted in Germany proved that the body found in Tarashcha was Mr Gongadze.

On 15 September 2005 Mr Turchinov, dismissed from his post as Head of the Security Service, informed journalists, among other things, that the interim results of the laboratory examination of the “Melnychenko tapes” had not established any sign of tampering, and had identified voices recorded on the tapes.

On 20 September 2005 the Parliament of Ukraine heard the report of the chairman of its *ad hoc* investigating committee on the murder of Mr Gongadze, which concluded that the kidnap and murder of Mr Gongadze had been organised by former President Kuchma and Mr Kravchenko and that the current speaker of Parliament, Mr V. Lytvyn, and a member of parliament, Mr L. Derkach, were involved in the crimes. The report finally noted that the GPO had failed to take any action or to react to the conclusions of the *ad hoc* committee.

The GPO has recently announced that the criminal investigation concerning the offenders is complete and that it will be sent to the Court.

2. Procedure and composition of the Court

The application was lodged on 16 September 2002 and declared admissible on 22 March 2005.

Judgment was given by a Chamber of seven judges, composed as follows:

Jean-Paul **Costa** (French), *President*,
András **Baka** (Hungarian),
Ireneu **Cabral Barreto** (Portuguese),
Karel **Jungwiert** (Czech),
Volodymyr **Butkevych** (Ukrainian),
Antonella **Mularoni** (San Marinese),
Danute **Jočienė** (Lithuanian), *judges*,

and also Sally **Dollé**, *Section Registrar*.

3. Summary of the judgment¹

Complaints

The applicant complained that the State authorities failed to protect the life of her husband and to investigate his disappearance and death, which caused her serious moral suffering. She relied on Articles 2, 3 and 13. She also submitted that the latest information provided by the Ukrainian Government confirmed the direct involvement of State agents in the murder of her husband, but that the investigation seemed to limit the case to the prosecution of direct offenders, and not those who ordered and organised it.

Decision of the Court

Article 2

Alleged failure to protect right to life

The Court noted that recent developments in the applicant's case demonstrated with a high degree of probability that police officers were involved in the disappearance and murder of Mr. Gongadze. The question to be determined was whether the authorities failed to comply with their positive obligation to protect Mr Gongadze from a known risk to his life.

¹ This summary by the Registry does not bind the Court.

The Court first noted that the applicant's husband, in his open letter of 14 July 2000, had provided the GPO with information both about the interrogation of his relatives and colleagues by police officers and his surveillance. He had also called for an investigation to be undertaken and for measures be taken for his protection. Secondly, the authorities, primarily prosecutors, ought to have been aware of the vulnerable position of a journalist who covered politically-sensitive topics; at that time, 18 journalists had been killed in Ukraine since 1991. Thirdly, the GPO was entitled and obliged to supervise the activities of the police and investigate the lawfulness of any action taken by them. Despite clear indications in the letter of Mr Gongadze about the inexplicable interest in him shown by law-enforcement officers, the response of the GPO was not only formalistic, but also blatantly negligent. A fortnight later Mr Gongadze had disappeared.

The Court found that the complaints from the late Mr. Gongadze and subsequent events, revealing the possible involvement of State officials in his disappearance and death, were neglected or simply denied without proper investigation for a considerable period of time. There was no reaction to the alleged involvement of the police in his disappearance, when information about such a possibility was disseminated publicly, by the editor-in-chief of the *Grani* newspaper. The fact that the alleged offenders, two of them active police officers, were identified and charged with the kidnap and murder of the journalist just a few days after the change in the country's leadership, raised serious doubts as to the genuine wish of the authorities under the previous Government to investigate the case thoroughly.

The Court therefore found that there had been a violation of Article 2 concerning the authorities' failure to protect the life of the applicant's husband.

Failure to investigate the case

The Court considered that, during the investigation, until December 2004, the State authorities were more preoccupied with proving the lack of involvement of high-level State officials in the case than discovering the truth about the circumstances of the disappearance and death of the applicant's husband. The Court therefore concluded that there had been a violation of Article 2 concerning the failure to conduct an effective investigation into the case.

Article 3

The Court noted that the applicant's husband disappeared in September 2000 but that, according to the applicant, only in March 2003 did she receive convincing information that the decapitated body, which had been found in Tarashcha in November 2000, was that of her husband. In the meantime, she had received numerous contradictory statements from the authorities about his fate. That uncertain situation continued so that, having raised doubts as to the identity of the Tarashcha corpse, and therefore the fate of her husband, the State authorities, at the same time, constantly refused to grant her full access to the relevant materials in the case file. Only in August 2005 was she allowed access to the file. In September 2005 the GPO announced that the latest DNA test conducted in Germany proved that the body found in Tarashcha was that of the applicant's husband.

The Court therefore found that the attitude of the investigation authorities to the applicant and her family clearly caused her serious suffering which amounted to degrading treatment, in violation of Article 3.

Article 13

The Court recalled that it was not in dispute that the authorities had an obligation to carry out an effective investigation into the circumstances of the killing of the applicant's husband. However, for more than four years, no effective criminal investigation could be considered to have been conducted in accordance with Article 13. The Court therefore found that the applicant was denied an effective remedy in respect of the death of her husband.

Furthermore, the absence of any outcome concerning the main criminal proceedings also prevented the applicant from receiving compensation, since in practice a civil claim for compensation would not be examined prior to a final determination of the facts in pending criminal proceedings. There had therefore also been a violation of Article 13.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of seven judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court's judgments.