



Death at an Ukrainian sobering-up centre and no effective investigation into it

In today's Chamber judgment in the case [Mikhalkova and Others v. Ukraine](#) (application no. 10919/05), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

Two violations of Article 2 (right to life) of the European Convention on Human Rights;

Violation of Article 3 (prohibition of torture or inhuman or degrading treatment).

The case concerned the applicants' relative's death in a sobering-up facility as a result of police ill-treatment and the lack of effective investigation into it.

Principal facts

The applicants, Mrs Olga Mikhalkova, Mr Sergey Mikhalkov and Mrs Natalya Bikbulatova, are Ukrainian nationals who were born in 1938, 1968 and 1978, respectively, and who live in Maryivka, Ukraine. They are the mother and siblings of Vasiliy Mikhalkov, born in 1963, who died on 29 April 2003.

Vasiliy Mikhalkov's mother called the district police on 29 April 2003 asking them to take him to a sobering-up facility because of his severe alcohol intoxication. According to her, upon arrival, the police officers mocked and kicked Vasiliy despite her protests, dragged him into their police car and took him to the police station. When she went to the police station on the following day, she discovered that he was dead.

Criminal proceedings were opened into the circumstances of Vasiliy's death and the investigation is currently ongoing.

According to the applicants, they have been denied access to the investigation file and had not had any meaningful opportunity to take part in the proceedings regardless of their numerous complaints to various authorities, including the prosecuting service.

The Government provided no documents to the Court concerning the investigation, referring to the confidentiality of documents related to a pending investigation.

A number of expertises were carried out into the possible death of Vasiliy. Several of them concluded that the injuries found on his body may have been the result of many kicks, possibly by feet in boots and under the circumstances described by Vasiliy's mother who witnessed the events.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Complaints, procedure and composition of the Court

Relying on Articles 2 and 3, the applicants complained that their relative had died in a sobering-up facility as a result of police ill-treatment and that there had been no effective investigation into it.

The application was lodged with the European Court of Human Rights on 16 March 2005.

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

Peer **Lorenzen** (Denmark), *President*,
Renate **Jaeger** (Germany),
Karel **Jungwiert** (the Czech Republic),
Mark **Villiger** (Liechtenstein),
Mirjana **Lazarova Trajkovska** ("the Former Yugoslav Republic of Macedonia"),
Zdravka **Kalaydjieva** (Bulgaria),
Ganna **Yudkivska** (Ukraine), *Judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 2

Death

The Court observed that Vasiliy had died on 29 April 2003 in a sobering-up facility run by the Ukrainian authorities. Both parties agreed that his death had been the result of an abdominal injury sustained on that date.

According to Vasiliy's relatives, including his mother who had eye-witnessed the events, two police officers had been kicking Vasiliy before taking him to the sobering-up facility while he was intoxicated and helpless. That version had been consistent with the forensic expertises' conclusions, which had found that Vasiliy had been hit strongly, possibly several times by feet in boots, and that his injury could not have been caused by an accidental single fall.

The Government had not provided any plausible alternative explanation to Vasiliy's injuries; neither had they shown that they had not mistreated him upon taking him in custody. In addition, no information had been provided about whether Vasiliy had been medically assisted or supervised with a view to preventing his death.

Accordingly, the Court found that the Ukrainian authorities had been responsible for Vasiliy's death, in breach of Article 2.

Investigation

The Court noted that the investigation into Vasiliy's death had been pending for more than seven years without any conclusion about how he had died or who had been responsible for it. Despite their submission that a number of investigative actions had been taken, the Ukrainian Government had refused to provide any related documents. The Court therefore could not infer that seven years had been necessary for those actions to be taken. In addition, the applicants had been repeatedly denied access to the case file and the opportunity to participate meaningfully in the proceedings. Consequently, the Court found that the Ukrainian investigative authorities had not carried out an effective investigation, in breach of Article 2.

Article 3

The Court found that as no plausible explanation had been provided by the Government for the lethal abdominal trauma and other injuries found on Vasiliy's body, or at least any documents disproving the version of the applicants, the Ukrainian authorities had been responsible for treating him in breach of Article 3. Accordingly, there had been a violation of Article 3.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Ukraine was to pay 50,000 euros (EUR) to Vasiliy's mother and EUR 20,000 to each of his siblings in respect of non-pecuniary damage and EUR 3,300 to the applicants jointly in respect of costs and expenses.

The judgment is available only in English.

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Press contacts

echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

Emma Hellyer (tel: + 33 3 90 21 42 15)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

Frédéric Dolt (tel: + 33 3 90 21 53 39)

Nina Salomon (tel: + 33 3 90 21 49 79)

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.