

FIFTH SECTION

DECISION

Application no. 12943/16
Ruslan Ivanovych BIRKOVYCH
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 27 March 2025 as a Committee composed of:

Gilberto Felici*, President*,
Diana Sârcu,
Mykola Gnatovskyy*, judges*,

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 12943/16) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 19 February 2016 by a Ukrainian national, Mr Ruslan Ivanovych Birkovych ("the applicant"), who was born in 1984 and lives in Bobovyshche and who was represented by Mr I. Shkorka, a lawyer practising in Uzhgorod;

the decision to give notice of the application to the Ukrainian Government ("the Government"), represented by their Agent, most recently Ms M. Sokorenko from the Ministry of Justice;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the alleged lack of an effective investigation into circumstances of a traffic accident of which the applicant was a victim, in breach of the State's positive obligations under Article 2 of the Convention.

2. On 31 August 2008 the applicant, while driving a car, was involved in a traffic accident with another car driven by K., a citizen of the Czech Republic, and sustained bodily injuries. On 9 September 2008 an investigator opened a criminal investigation into the incident. Three days later the Mukachevo District Prosecutor's Office cancelled that decision because not

all the necessary elements of a crime were present. It ordered the continuation of pre-investigation enquiries while a forensic medical examination established the severity of the applicant's injuries. On 15 October 2008 a medical report confirmed that the applicant had sustained moderate injuries and on 5 November 2008 the Mukachevo District Prosecutor's Office ordered the re-opening of the investigation. The applicant was granted victim status.

3. On 30 March 2009 the investigation was suspended because K. was put on the list of persons wanted by the police. Following inquiries with the Czech Public Prosecutor's Office, the Czech authorities provided information about K.'s whereabouts and interrogated him. K. admitted his guilt in full.

4. In February 2013 the Head Investigator of the Zakarpattya Regional Office of the Interior found numerous shortcomings in the investigation and established that the investigator had never attempted to initiate a transfer of the criminal case to the Czech Republic for the prosecution of K. and nor had he requested his extradition.

5. The investigation was restarted, and 27 January 2014 K. was notified via the Czech Public Prosecutor's Office that he was a suspect. On 25 June 2015 the investigator terminated the proceedings, but on the applicant's complaint that decision was reversed by the Uzhhorod Local Court of the Zakarpattya Region, which pointed out several deficiencies in the investigation and ordered the investigator to resume the investigation. Following another applicant's complaint about the inactivity of the investigator and the supervising prosecutor, on 29 September 2015 the Mukachevo Local Court of Zakarpattya Region established that the investigation had been unreasonably protracted.

6. On 11 November 2016 the Mukachevo Circuit Prosecutor terminated the criminal proceedings because of the death of K.

7. In February 2017 the applicant lodged a civil claim with the Mukachevo Local Court of the Zakarpattya Region seeking compensation for non-pecuniary damage caused by the ineffective investigation. The local court dismissed the claim, but on 16 February 2022 the Zakarpattya Regional Court of Appeal quashed that decision and granted the claim in part, awarding the applicant 300,000 Ukrainian hryvnas (UAH) (at the material time around 9,300 euros (EUR)). It found that at eight years the length of the investigation had been excessive and unreasonable, and that that had been caused by inactivity of the investigator. The decision became final, but, according to the applicant, as submitted in his observations of 21 August 2023, it remained unenforced.

THE COURT'S ASSESSMENT

8. The applicant complained that there had been no effective investigation into the circumstances of the traffic accident, relying on Articles 3, 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention. The

Court, which is master of the characterisation to be given in law to the facts of the case, finds that the complaint at issue falls to be examined under the procedural aspect of Article 2 of the Convention (see, for example, *Arskaya v. Ukraine*, no. 45076/05, §§ 57-58, 5 December 2013).

9. The Government submitted that the investigation had been effective and that there had been no violation of the applicant's rights under the Convention. They also submitted that, alternatively, the application should be declared inadmissible and rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention on the grounds that the applicant had lost his victim status as the civil courts had acknowledged the violation and awarded him the compensation.

10. The applicant maintained his complaint and argued that he had not lost his victim status as the award had not been paid to him by the State.

11. The Court reiterates that an applicant is deprived of his or her status as a victim if the national authorities have acknowledged, either expressly or in substance, and then afforded appropriate and sufficient redress for, a breach of the Convention (see, for example, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-193, ECHR 2006-V).

12. The Court observes that in the present case the domestic authorities carried out the criminal investigation into the circumstances of the traffic accident in question, but it appeared to be flawed by numerous deficiencies and excessively long. This was recognised by the domestic authorities themselves (see paragraphs 5 and 7 above). Considering that the alleged perpetrator had died in the course of the criminal proceedings, any further investigation would apparently not have been practically possible. It remains to be seen whether the compensation awarded by the civil court can be regarded as having provided appropriate and sufficient redress to the applicant and, *inter alia*, whether this compensation amounted to just satisfaction as provided for under Article 41 of the Convention.

13. In this connection, the Court notes that in recent judgments in comparable cases it has awarded applicants EUR 6,000 for non-pecuniary damage for a violation of their right to an effective investigation into deaths or life-threatening accidents without involvement of State agents (see, for example, *Mykhaylyk and Others v. Ukraine* [Committee], nos. 32972/20 and 4 others, 10 October 2024, *Mutyeva and Others v. Ukraine* [Committee], nos. 77217/17 and 4 others, 18 July 2024).

14. In the present case, the domestic courts awarded the applicant approximately EUR 9,300 (see paragraph 7 above), that is, an amount exceeding the Court's awards in comparable cases. The Court therefore considers the compensation awarded to the applicant by the domestic courts to have been reasonable and sufficient.

15. As regards the applicant's objection that the award has not been paid to him yet, the Court notes that the payment of domestic court awards is a separate issue relating to the enforcement of court decisions. In the present

case, the applicant did not raise any complaint as to the non-enforcement of the award, and it remains open to him to lodge a separate application with the Court in that regard.

16. In view of the foregoing and in the specific circumstances of the present case, the Court considers that the applicant's complaint had been resolved within the national system. Therefore, in accordance with the rule of subsidiarity, the applicant should be considered as having lost his victim status, and his application must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention (see, *mutatis mutandis, A.M. and Others v. the United Kingdom* (dec.), no. 52058/09, §§ 38-41, 15 October 2013).

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 2 May 2025.

Martina Keller Deputy Registrar	Gilberto Felici President