

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

FIFTH SECTION

CASE OF BEREZOVSKYY v. UKRAINE

(Application no. 2083/24)

JUDGMENT

STRASBOURG

23 January 2025

This judgment is final but it may be subject to editorial revision.



In the case of Berezovskyy v. Ukraine,

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

Diana Sârcu*, President*,
Kateřina Šimáčková,
Mykola Gnatovskyy*, judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 19 December 2024,

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

PROCEDURE

1. The case originated in an application against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 3 January 2024.

2. The applicant was represented by Mr M.Y. Samulyak, a lawyer practising in Ternopil.

3. The Ukrainian Government ("the Government") were given notice of the application.

THE FACTS

4. The applicant's details and information relevant to the application are set out in the appended table.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 § 1 OF THE CONVENTION

5. The applicant complained of the ineffective investigation into a life-threatening accident without involvement of State agents. He relied on Article 2 § 1 of the Convention.

6. The Court notes at the outset that the present case falls to be examined from the perspective of the State's obligation to conduct an effective investigation under the procedural limb of Article 2 of the Convention. The relevant general principles concerning the effectiveness of the investigation were summarised in *Mustafa Tunç and Fecire Tunç v. Turkey* [GC] (no. 24014/05, §§ 169-82, 14 April 2015). In particular, once the investigative obligation is triggered, compliance with the procedural requirement of Article 2 is assessed on the basis of several essential parameters: the adequacy of the investigative measures, the promptness of the investigation, the involvement of the deceased person's family, and the independence of the investigation. These elements are inter-related and each of them, taken separately, does not amount to an end in itself (ibid., § 225).

7. Moreover, this is not an obligation of results to be achieved but of means to be employed. The Court accepts that not every investigation is necessarily successful or comes to a conclusion coinciding with the claimant's account of events. However, it should, in principle, be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II).

8. Reviewing the facts of the present case in the light of those principles, the Court considers that the investigation was marked by various shortcomings, which had undermined the ability of the investigating authorities to establish the circumstances of the life-threatening accident, and who, if anyone, was responsible. The specific shortcomings are indicated in the appended table.

9. In the leading cases of *Kachurka v. Ukraine* (no. 4737/06, 15 September 2011), *Pozhyvotko v. Ukraine* (no. 42752/08, 17 October 2013), and *Basyuk v. Ukraine* (no. 51151/10, 5 November 2015), the Court already found violations in respect of issues similar to those in the present case.

10. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. Having regard to its case-law on the subject, the Court considers that in the instant case the investigation failed to meet the criteria of effectiveness.

11. These complaints are therefore admissible and disclose a breach of Article 2 of the Convention under its procedural limb.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

12. Regard being had to the documents in its possession and to its case-law (see, in particular, *Basyuk*, cited above, §§ 74-80), the Court considers it reasonable to award the sums indicated in the appended table.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that this application discloses a breach of Article 2 § 1 of the Convention concerning the ineffective investigation into life-threatening accident without involvement of State agents;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months, the amounts indicated in the appended table, to be converted into the currency of the respondent State 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 23 January 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina	Diana Sârcu
Acting Deputy Registrar	President

APPENDIX

Application raising complaints under Article 2 § 1 of the Convention
(ineffective investigation into deaths or life-threatening accidents without involvement of State agents)

Application no. Date of introduction	Applicant's name Year of birth	Background to the case and domestic proceedings	Key issues	Amount awarded for non-pecuniary damage per applicant (in euros)[1]	Amount awarded for costs and expenses per application (in euros)[2]
2083/24 03/01/2024	**Yuriy Romanovych BEREZOVSKYY** 1970	On 03/09/2013 the applicant sustained severe bodily injuries in a traffic accident. On 03-04/09/2013 he underwent inpatient treatment for injuries to the stomach, chest, hip, and head, which involved stomach and hip surgery, as well as spleen removal. Criminal proceedings were initiated on 03/09/2013 in relation to the accident. On 17/09/2013 the applicant was granted victim status. Throughout the criminal proceedings, the police conducted inquiries, questioned the applicant and witnesses, and performed various forensic examinations, including medical, auto technical and traceology examinations. On 14/11/2013 a forensic medical examination had established that the injuries from the road accident were severe, and the applicant was subsequently granted disability. On 27/12/2013 an investigator terminated the proceedings citing lack of evidence of a crime, without informing the applicant. On 06/10/2014 a prosecutor overturned this decision as premature and unsubstantiated, remitting the case for further investigation. Instructions were given to additionally question witnesses, examine a video recording from the applicant's car, and conduct another auto technical examination. On 22/12/2014 the investigator again terminated the proceedings for the same reason as on 27/12/2013, without informing the applicant. On 05/02/2016 the prosecutor once again overturned this decision, stating that it was premature and unsubstantiated, and issued the same instructions. On 23/08/2018 the investigator discontinued the proceedings for the same reason as on 27/12/2013. The applicant was informed about it in July 2019 and received a copy of the decision on 28/10/2019 following several inquiries. On 23/12/2019 an investigating judge annulled the decision of 23/08/2019 as unsubstantiated and remitted the case for further investigation. Despite inquiries by the applicant's lawyer on 22/02/2022, 26/07/2022, and 09/11/2023, there has been no response.	Applicant's rights as a victim were not properly safeguarded (*Sergey Shevchenko v. Ukraine*, no. 32478/02, § 74, 4 April 2006*; Masneva v. Ukraine*, no. 5952/07, § 56, 20 December 2011; *Prynda v. Ukraine*, no. 10904/05, § 56, 31 July 2012), investigation criticised by the national authorities themselves for lack of efficiency (*Prynda v. Ukraine*, no. 10904/05, § 56, 31 July 2012; *Pozhyvotko v. Ukraine*, no. 42752/08, § 40, 17 October 2013), no genuine attempt by the investigating authorities to carry out a thorough investigation (*Lyubov Efimenko v. Ukraine*, no. 75726/01, §§ 76-80, 25 November 2010; *Yuriy Slyusar v. Ukraine*, no. 39797/05, §§ 84-88, 17 January 2013), repeated remittals of the case for additional investigation owing to the insufficiency of the measures taken by the investigators (*Antonov v. Ukraine*, no. 28096/04, § 50, 3 November 2011)	6,000	250

Application no. Date of introduction	Applicant's name Year of birth	Background to the case and domestic proceedings	Key issues	Amount awarded for non-pecuniary damage per applicant (in euros)[1]	Amount awarded for costs and expenses per application (in euros)[2]
		On 28/08/2023 the criminal proceedings had been discontinued due to the lack of evidence of crime. The applicant challenged this decision and on 07/10/2024 the local court opened the proceedings, which are currently ongoing.			

[1] Plus any tax that may be chargeable to the applicant.
[2] Plus any tax that may be chargeable to the applicant.