

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

FIFTH SECTION

CASE OF KOSTENKO v. UKRAINE

(Application no. 45800/21)

JUDGMENT

STRASBOURG

11 December 2025

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



In the case of Kostenko v. Ukraine,

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

Andreas Zünd*, President*,
Diana Sârcu,
Mykola Gnatovskyy*, judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 20 November 2025,

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 8 September 2021.

2. The applicants were represented by Mr Y. L. Boychenko, a lawyer practising in Strasbourg.

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

THE FACTS

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

5. The applicants complained of the ineffective investigation into the disappearance of their father, who was later declared dead.

THE LAW

I. THE *LOCUS STANDI* OF MRS OLENA PETRIVNA KOSTENKO

6. The Court notes that the present application was submitted by two brothers, one of whom, the first applicant, Oleksandr Fedorovych Kostenko, went missing in March 2022 after joining the Territorial Defence Forces of Kyiv. On 16 February 2024, his mother, Mrs Olena Petrivna Kostenko, has expressed her intention to pursue the application on his behalf. The Court notes that in various cases, where applicants have died in the course of the proceedings, it has taken into account the wishes of their heirs or close members of their families to pursue the proceedings before the Court (see, for example, *X. v. France*, Series A no. 234-C, p. 89, § 26, and *Jama v. Slovenia*, no. 48163/08, § 28, 19 July 2012). It sees no reason to reach a different conclusion in the present case where the disappearance occurred in life-threatening circumstances over three years ago, and the first applicant had not been heard or seen since (see, among many judgments, *Varnava and*

Others v. Turkey [GC], nos. 16064/90 and 8 others, § 143, ECHR 2009) and, therefore, accepts that the first applicant's mother, Mrs Olena Petrivna Kostenko, can pursue the application initially brought by him. However, reference will still be made to the first applicant throughout the present judgment.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

7. The applicants complained of the ineffective investigation into the disappearance of their father, who was later declared dead. They relied on Article 2 § 1 of the Convention.

8. 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).

9. 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).

10. 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 disappearance, and who, if anyone, was responsible. The specific shortcomings are indicated in the appended table.

11. 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 a violation in respect of issues similar to those in the present case.

12. 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 (see also *Yuriy Slyusar v. Ukraine*, no. 39797/05, 17 January 2013), the Court considers that in the instant case the investigation failed to meet the criteria of effectiveness.

13. These complaints are therefore admissible and disclose a breach of Article 2 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

14. 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. *Decides* that Mrs Olena Petrivna Kostenko, the mother of the applicants, has *locus standi* in the proceedings;

2. *Declares* the application admissible;

3. *Holds* that this application discloses a breach of Article 2 of the Convention concerning the ineffective investigation into the disappearance of the applicants' father;

4. *Holds*
   (a) that the respondent State is to pay the applicants, 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 11 December 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina	Andreas Zünd
Acting Deputy Registrar	President

APPENDIX

Application raising complaints under Article 2 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	Representative's name and location	Background to the case and domestic proceedings	Key issues	Amount awarded for non-pecuniary damage per applicant/household (in euros)[1]	Amount awarded for costs and expenses per application (in euros)[2]
45800/21 08/09/2021	**Household** **Oleksandr Fedorovych KOSTENKO** 1986 **Yevgen Fedorovych KOSTENKO** 1988	Boychenko Yegor Leonidovych Strasbourg	On 03/03/2015 the applicants' father went missing while travelling from Kyiv to the Crimea, where he lived. On 29/05/2015 the investigating authorities opened criminal proceedings on the grounds of a committed criminal offence under Article 115 § 1 of the Criminal Code (premeditated murder). The first investigative action was conducted on 12/08/2015. This and subsequent investigative actions, which were rare and of repetitive nature, aimed to establish the whereabouts of the missing person, verify his identity and movements across the state border, check missing persons and unidentified corpses records, and interrogate relatives, witnesses and eyewitnesses of the criminal offence. They resulted in the consideration of the involvement of certain individuals, also persecuted for terrorism and intentional murders, in the disappearance of the applicants' father, but no suspicion was served due to insufficient evidence. On 02/04/2021, after several transfers, the case ended in the Main Investigation Department of the National Police of Ukraine. Several month later in a separate set of civil proceedings the	Insufficient measures during the preliminary stage of the investigation (*Kachurka v. Ukraine*, no. 4737/06, § 52, 15 September 2011), lack of thoroughness and promptness which undermined the authorities' ability to establish the circumstances of the case (*Igor Shevchenko v. Ukraine*, no. 22737/04, § 60, 12 January 2012; *Yuriy Slyusar v. Ukraine*, no. 39797/05, §§ 84-88, 17 January 2013; *Zubkova v. Ukraine*, no. 36660/08, § 40, 17 October 2013)	6,000	250

Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Background to the case and domestic proceedings	Key issues	Amount awarded for non-pecuniary damage per applicant/household (in euros)[1]	Amount awarded for costs and expenses per application (in euros)[2]
			applicants' father was declared dead by a court decision. Additional investigative actions were conducted, including interrogation of witnesses, verification of missing persons' movements across the state border, checking of morgues, medical institutions and monasteries, and one expert examination, but they did not result in a different outcome. The pre-trial investigation is ongoing, and the last investigative action dated 22/10/2021.			

Heir in application no. 45800/21

Decedent	Heir
Oleksandr Fedorovych KOSTENKO Missing in life-threatening circumstances	Olena Petrivna KOSTENKO Born in 1960

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