

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

FIFTH SECTION

CASE OF LEONTYEV v. UKRAINE

(Application no. 9262/19)

JUDGMENT

STRASBOURG

6 October 2022

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



In the case of Leontyev v. Ukraine,

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

Stéphanie Mourou-Vikström, *President,*
Ivana Jelić,
Kateřina Šimáčková, *judges,*
and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 2 June 2022,

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 6 February 2019.

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

THE FACTS

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

4. The applicant complained of the ineffective investigation into the death of his daughter, who died in a traffic accident.

THE LAW

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

5. The applicant complained of the ineffective investigation into the death of his daughter, who died in a traffic accident. He relied on Article 2 and Article 6 § 1 of the Convention.

6. The Court, which is the master of the characterisation to be given in law to the facts of the case, finds that the complaints at issue fall to be examined under Article 2 of the Convention (see *Igor Shevchenko v. Ukraine*, no. 22737/04, § 38, 12 January 2012). This provision, in so far as relevant, reads as follows:

Article 2 § 1

"1. Everyone's right to life shall be protected by law."

7. 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).

8. 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).

9. 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 surrounding the death of the applicant's daughter, and who, if anyone, was responsible. The specific shortcomings are indicated in the appended table.

10. 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.

11. 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 and the materials before it, the Court considers that in the instant case the investigation failed to meet the criteria of effectiveness.

12. 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

13. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

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 sum indicated in the appended table.

15. The Court further considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

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 the death of the applicant's daughter;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the amount 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 amount 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 6 October 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina Acting Deputy Registrar	Stéphanie Mourou-Vikström President

APPENDIX

Application raising complaints under Article 2 § 1 of the Convention
(ineffective investigation into death, caused by private parties or in circumstances that exclude 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]
9262/19 06/02/2019	**Ivan Aleksandrovich LEONTYEV** 1936	On 08/10/2008 at around 12.45 a.m. the applicant's daughter E. sustained fatal injuries in a traffic accident. On the same day criminal proceedings were instituted against L. (the driver of the car in which the applicant's daughter had died) on account of a breach of traffic rules resulting in the death of two persons. On 28/10/2008 the applicant was declared a victim in the case. On 21/04/2009 he lodged a claim with the investigative authorities seeking compensation for non-pecuniary damage. On 12/03/2009 a technical examination of the vehicle showed that L. had breached the traffic rules, but that examination was conducted without considering L.'s statements. On 17/08/2009, after L. and a witness had given their statements, the second technical examination was performed. According to its results, L. had had no technical possibility to prevent the accident and he had not breached the traffic rules; thus, the criminal proceedings were terminated on 25/09/2009 for the lack of constituent elements of a crime. At the request of the applicant on 19/10/2009 the criminal proceedings were reopened, and the third technical examination was ordered. According to its results of 12/01/2010 two scenarios of the accident were possible: one, where L. had breached the traffic rules having caused the accident, and the second one, where he had not. The fourth technical examination of 17/08/2010 confirmed to some extent the first scenario. However, on 16/05/2011 the decision to terminate the proceedings was taken because it was impossible to identify a unique scenario of events. On 01/07/2011 the investigation was reopened as it was decided that its termination had been premature. In 2011 and 2013 two more technical examinations were performed; a decision of 28/06/2013 to terminate the proceedings for the lack of constituent elements of a crime was delivered. On 15/07/2013 that decision was quashed by the Prosecutor's Office of Kharkiv Region. On 10/09/2018 the proceedings were terminated for the same reasons as on 28/06/2013. The applicant appealed against that decision to a local court. On 04/10/2018 the court granted his claim; the proceedings were reopened due to the deficiencies of the investigation, such as a failure to perform all the necessary investigative actions ordered by the prosecutor. The proceedings are pending.	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; *Zubkova v. Ukraine*, no. 36660/08, § 40, 17 October 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) unusually high number of repeated forensic examinations (*Basyuk v. Ukraine*, no. 51151/10, § 68, 5 November 2015)	6,000

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