

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

FIFTH SECTION

CASE OF MANDRYKA v. UKRAINE

(Application no. 12991/10)

JUDGMENT

STRASBOURG

13 January 2022

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



In the case of Mandryka v. Ukraine,

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

Lətif Hüseynov, *President,*
Lado Chanturia,
Arnfinn Bårdsen, *judges,*
and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 9 December 2021,

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 17 February 2010.

2. The applicant was represented by Mr E. Markov, a lawyer practising in Geneva.

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.

5. The applicant complained of the ineffective investigation into the death of her son, who died in a road traffic accident.

THE LAW

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

6. The applicant complained of the ineffective investigation into the death of her son in a traffic accident. She relied on Articles 2, 3 and 13 of the Convention.

7. 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."

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. 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 has 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. Reviewing the facts of the present case in the light of these principles established in its case-law (see paragraphs 7-9 above), and despite the Government's objection as to the difficulty to obtain the full case-file from the applicant's case, the Court considers that the documents submitted by the applicant are sufficient for it to conclude 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 son, and who, if anyone, was responsible. The specific shortcomings are indicated in the appended table. 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. REMAINING COMPLAINTS

13. The applicant also raised other complaints under the Convention.

14. The Court has examined the application and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, these complaints either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

15. 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."

16. 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.

17. 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 complaints concerning the ineffective investigation into the death of the applicant's son admissible and the remainder of the application inadmissible;

2. *Holds* that these complaints disclose a breach of Article 2 § 1 of the Convention;

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 13 January 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina	Lətif Hüseynov
Acting Deputy Registrar	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]	Amount awarded for costs and expenses per application (in euros)[2]
12991/10 17/02/2010	**Yekaterina Yakovlevna MANDRYKA** 1951	**1. The circumstances of the death** On 22/11/2005 a car driven by the applicant's son, K., collided with a lorry. K. and the passengers of his car died, while the lorry driver, A., survived. **2. The course of the investigation and its findings** (i) the police examined the scene of the incident immediately after the event; (ii) on 29/12/2005 an investigator refused to institute criminal proceedings, since according to the expert examination of the vehicle of 12/12/2005 K. had caused the collision. On 10/01/2006 the Donetsk Regional Prosecutor's Office ("the DRPO") quashed this decision and remitted the materials to the police for further examination; (iii) on 05/05/2006 the applicant was informed that the investigator was subjected to a disciplinary sanction for breaching criminal procedural law, i.e. he had conducted the examination of the bodies of victims in the absence of a forensic-medical expert, and he had also seized personal belongings of the victims without recording it in the official record; (iv) on 10/06/2006 the police again refused to institute proceedings on the same grounds, taking into account the conclusion of the expert examination of the vehicle that was conducted on 26/04/2006. On 17/08/2006 the DRPO quashed the decision and instituted criminal proceedings on suspicion of a	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), decisions refusing to institute proceedings issued without the circumstances of the case having been properly examined (*Oleynikova v. Ukraine*, no. 38765/05, §§ 80-81, 15 December 2011, with further references), insufficient measures during the preliminary stage of the investigation (*Kachurka v. Ukraine*, no. 4737/06, § 52, 15 September 2011), 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), lack of thoroughness and promptness which undermined the authorities' ability to	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]
		breach of traffic rules which had caused death. It found that the police investigator had not taken all the steps available to establish the mechanism through which the collision had occurred, and that the reconstruction of the events should be carried out; (v) on 20/09/2006 the police rejected the applicant lawyer's request for a copy of the decision to institute criminal proceedings on the ground that the applicant had not been assigned the status of a victim; (vi) on 02/06/2007 the investigator ordered, at the applicant's insistence, an opinion of a commission of forensic experts concerning the causes of the collision. On 30/07/2009 the experts produced their report, concluding that K. had caused the accident. In total five expert examinations of the vehicle were conducted. On 25/08/2009 the investigator, having regard, in particular, to the expert reports, found it established that the collision had been caused by K. and refused to pursue the criminal proceedings with respect to the lorry driver, A., for the lack of evidence of the crime; (vii) on 27/11/2009 the investigator discontinued the criminal proceedings on the ground that K., the likely perpetrator, had died. On 01/12/2009 the DRPO quashed this decision as premature and ill-founded; (viii) on 14/06/2010 the DRPO informed the applicant that the disciplinary proceedings had been instituted against the investigator in charge of her case for breaching the criminal procedural law; (ix) on 15/10/2010 the criminal proceedings were again discontinued on the same grounds as on 27/11/2009; (x) on 27/02/2012 the police rejected the applicant's request for copies of the reports of the expert examinations because the applicant had not been	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), unusually high number of repeated forensic examinations (*Basyuk v. Ukraine*, no. 51151/10, § 68, 5 November 2015).		

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		assigned the status of the victim in the proceedings. The police went on to state that the applicant could learn the conclusions of those examinations from a copy of the decision of 15/10/2010 which had been sent to her; (xi) on 16/03/2012 the DRPO quashed the decision of 15/10/2010. On 19/03/2013 the investigator discontinued the criminal proceedings for lack of evidence of crime. On 21/03/2013 the DRPO informed the applicant that on 20/03/2013 it had quashed the decision of 19/03/2013 as premature and unsubstantiated. By the same letter the applicant was informed that there were no reasons to grant her a victim status; she was a witness in the proceedings and had no right to access the casefile. According to the Government, the proceedings were terminated on 17/06/2013.			

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