

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

FIFTH SECTION

CASE OF ORLOV v. UKRAINE

(Application no. 10993/18)

JUDGMENT

STRASBOURG

21 November 2024

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



In the case of Orlov v. Ukraine,

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

Lado Chanturia*, President*,
Mykola Gnatovskyy,
Úna Ní Raifeartaigh*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 10993/18) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 24 February 2018 by a Ukrainian national, Mr Andriy Vasylyovych Orlov ("the applicant"), who was born in 1969 and lives in Paris;

the decision to give notice of the complaint concerning an allegedly ineffective investigation into the applicant's ill-treatment to the Ukrainian Government ("the Government"), represented by their Agent, Ms Marharyta Sokorenko, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 24 October 2024,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the lack of an effective investigation into the applicant's ill-treatment, inflicted on him by private individuals, which resulted in his partial disability. He complained under Articles 6 and 13 of the Convention.

2. On the night of 13 to 14 August 2009 at around 1 a.m., the applicant was beaten on the head and in his right knee by P., and allegedly by Sh. and K., near a café in Dnipro following a disagreement about P.'s behaviour towards a young woman with whom the applicant was spending time in the café. The applicant complained to the police that same night. P. was detained and was made to undergo an alcohol test, which revealed 1.42‰ of alcohol in his blood.

3. On 22 August 2009 and 21 January 2010, the police refused to open a criminal case under Article 296 (hooliganism) of the Criminal Code of Ukraine. A prosecutor quashed those decisions on 12 January 2010 and 14 October 2011 respectively.

4. On 11 November 2011 the police opened a criminal case under Article 122 (infliction of bodily injuries of medium severity) of the Criminal Code. Following the investigations conducted into the case, the case file was sent to a court, P. being charged under Article 121 (infliction of grave injuries) of the Criminal Code.

5. In September 2013 Judge Ch., sitting in a single-judge formation, began the examination of the criminal case.

6. On 30 September 2015 Judge Ch. held a final hearing. He retired to the deliberation room, but did not return to the hearing room to deliver a verdict.

7. The Government submitted a copy of a note signed by P., merely confirming that on 30 September 2015 he had received a copy of a verdict in a criminal case without any further detail.

8. According to the applicant, he had had a conversation after the hearing with Judge Ch., who had informed him that the verdict would be ready in two or three weeks. However, the applicant had not received a copy of the verdict, nor did the case file contain one.

9. On 16 February 2016 Judge Ch. was dismissed by a presidential order.

10. According to letters from the then acting President of the Babushkinskyi District Court of Dnipropetrovsk of 10 November 2016 and 19 February 2018, and a letter from the State Court Administration of 26 July 2017, Judge Ch. had examined the case and had delivered a verdict, but the case file did not contain a printed or electronic copy of it. Neither the reallocation of the case, nor its re-examination nor any other solution was possible under the relevant Rules on the Automated Document Circulation System.

11. On 4 November 2016 the applicant lodged a civil claim against P. with the Babushkinskyi District Court of Dnipropetrovsk, seeking compensation for his medical expenses for treatment of the injuries sustained in August 2009.

12. On 10 August 2018 the registry of the Babushkinskyi District Court of Dnipropetrovsk sent an email to the applicant, attaching a copy of the verdict dated 30 September 2015 – signed by Judge Ch. – and a cover letter from the President of the Babushkinskyi District Court of Dnipropetrovsk stating that the same court had sent a copy of the verdict to the applicant, for his information. The applicant appealed.

13. On 14 November 2018 the Dnipro Court of Appeal quashed the verdict dated 30 September 2015 and remitted the case to the first-instance court for re-examination. The Court of Appeal found that the Babushkinskyi District Court of Dnipropetrovsk had failed to abide by the procedural rules, in that it had not announced the verdict publicly and immediately following the deliberations or informed the parties of the possibility of lodging an appeal. As appears from the hearing record, the verdict was not announced following the deliberations and the case file did not contain any document in support of the statement that the verdict had been announced by the judge following the deliberations.

14. On 24 September 2019 the Babushkinskyi District Court of Dnipropetrovsk examined the case in the applicant's absence, closed the criminal case and released P. from criminal responsibility, given that the ten-year limitation period had expired. The court did not consider the applicant's

civil claim against P. The applicant submitted that he had not been present at the hearing of 24 September 2019, had not received a copy of the decision of that same date and had learned of its existence only from the Government's observations.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

15. The applicant complained under Articles 6 and 13 of the Convention that the investigation into his ill-treatment had been ineffective and that the first-instance court had unjustifiably protracted the proceedings and had not delivered a verdict in the criminal case in which the applicant had had victim status.

16. The Court considers that the applicant's complaints fall to be examined under Article 3 of the Convention (see, *mutatis mutandis*, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018).

17. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

18. The general principles concerning the effectiveness of investigations into ill-treatment, extending to the trial stage, have been summarised in, for instance, *Kosteckas v. Lithuania* (no. 960/13, §§ 40-41, 13 June 2017).

19. The Court notes that in the present case, the criminal proceedings were opened almost two years following the incident (see paragraphs 2 and 4 above); such a delay cannot be justified in the circumstances of the case. The pre-trial investigation lasted two years, which cannot in principle be said to be unreasonable. However, the first-instance court took two more years to examine the case, without a verdict being delivered after the deliberations. It is unclear how P. could have received a copy of the verdict on 30 September 2015, when the case file did not contain any verdict, either in hard copy or in electronic format (see paragraphs 7 and 10 above), all the more so given that the applicant waited almost three more years until August 2018, when the president of the first-instance court sent him a copy of the verdict (see paragraph 12 above). In this regards the Court observes that the note submitted by the Government, allegedly confirming the receipt of the verdict by P. on 30 September 2015 (see paragraph 7 above), does not contain any reference to a case number or other specific feature of the criminal case in question. It is thus not possible to identify in which exactly criminal case P. had received a copy of a verdict. Be that as it may, the delays in the opening of the criminal case, the delays in the examination of the case and the delivery of the verdict by the Babushkinskyi District Court in breach of procedural rules (see paragraph 13 above) resulted in the expiry of the limitation period

and the discontinuance of the prosecution (see paragraph 14 above). The Court reiterates that the purpose of providing effective protection against acts of ill-treatment cannot be achieved where the criminal proceedings are discontinued owing to the fact that the prosecution has become time-barred where this has occurred as a result of flaws in the actions of the relevant State authorities (see, for instance, *Dimitar Shopov v. Bulgaria*, no. 17253/07, § 52, 16 April 2013).

20. The Court finds that the failure of the police to open a criminal case in a timely manner and the failure of the Babushkinskyi District Court to examine the case in accordance with the applicable procedural rules fell short of the State's positive obligations under Article 3 of the Convention.

21. There has accordingly been a violation of the procedural limb of Article 3 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. The applicant claimed 31,672.50 Swiss francs and 875 euros (EUR) in respect of pecuniary damage and EUR 40,000 in respect of non-pecuniary damage. He did not submit any claim in respect of costs and expenses.

23. The Government objected, arguing that those claims were unsubstantiated and excessive.

24. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects the claim under that head. However, it awards the applicant EUR 4,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of the procedural limb of Article 3 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Lado Chanturia President