

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

FIFTH SECTION

CASE OF PRYNDA v. UKRAINE

(Application no. 10904/05)

JUDGMENT

STRASBOURG

31 July 2012

FINAL

31/10/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Prynda v. Ukraine,

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

Dean Spielmann, *President,*
Mark Villiger,
Karel Jungwiert,
Boštjan M. Zupančič,
Ann Power-Forde,
Ganna Yudkivska,
Angelika Nußberger, *judges,*
and Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 10 July 2012,

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

PROCEDURE

1. The case originated in an application (no. 10904/05) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Ukrainian nationals, Mrs Olga Prynda and Mr Myron Prynda ("the applicants"), on 7 March 2005. On 1 February 2010 the first applicant died and the second applicant expressed a wish to continue the proceedings on behalf of the first applicant, his wife.

2. The Ukrainian Government ("the Government") were represented by their Agent, Mr Y. Zaytsev, of the Ministry of Justice.

3. The applicants alleged, in particular, that the investigation into the death of their son had been lengthy, deficient and ineffective.

4. On 1 July 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1944 and 1942. The first applicant, Ms Olga Prynda, died on 1 February 2010. The second applicant lives in the town of Stryy, Ukraine.

6. On 6 October 2003, at around 9 p.m., the applicants' son was hit and killed by a car being driven by a German national, Mr F. The car belonged to a Polish national, Ms G.

7. The law-enforcement authorities examined the scene of the accident immediately after and prepared a vehicular accident scheme with the relevant measurements. The participants in the road traffic accident (Mr F. and Mr G., who was also in the car during the accident) gave their account of it.

8. On 7 October 2003 the Stryy Police Department instituted a criminal investigation into the road traffic accident and ordered a forensic medical examination of the victim.

9. On 8 October 2003 an on-site vehicular accident reconstruction was carried out with the participation of Mr F. and Mr G. and in the presence of attesting witnesses (Mr R. and Mr L.). On the same date two other persons were questioned as witnesses.

10. On 9 October 2003 the investigator ordered a technical vehicular examination, which was conducted on 13 October 2003 and established that the applicants' son had died of serious head trauma as a result of the road traffic accident.

11. The applicants learned on 13 October 2003 that their son was dead and his body was in the town morgue.

12. On 23 October 2003 the applicants applied to the Transport Insurance Company for compensation. On 3 November 2003 the applicants and their granddaughters were awarded compensation of UAH 8,500 as heirs of the victim. In the accompanying letter, the Insurance Company informed the applicants that the above amount was the maximum amount it could pay under the law without consent of the foreign insurance company and it was open to them to seek any further compensation by lodging a civil claim against a person or persons liable for the accident. The applicants and their grandchildren received the above amount in equal shares on 13 June 2005.

13. On 28 October 2003 the forensic medical examination ordered on 7 October 2003 was conducted. It concluded that the applicants' son had died as a result of the road traffic accident from open head trauma, and that he had been moderately drunk when the accident had occurred.

14. On 1 November 2003 the investigator ordered a forensic technical vehicular examination, which was conducted on 2 December 2003.

15. On 26 February 2004 the investigator ordered a vehicular trace examination, which was conducted on 26 April 2004.

16. Between December 2003 and December 2004 the applicants made numerous complaints to the different State authorities about delays in the investigation into the death of their son.

17. On 26 June 2004 the investigator stayed the proceedings on the ground that the only witnesses to the accident were the driver and the

passenger of the car which had hit the applicants' son, but they could not be questioned as they resided abroad and the police had no funds to arrange for them to travel to Ukraine.

18. On 14 July 2004 the Lviv Regional Prosecutor's Office ("the LRPO") quashed the decision of 26 June 2004 and instructed the police to continue the investigation.

19. On 30 December 2004 the investigator of the Lviv Regional Police Department decided to discontinue the criminal proceedings for lack of *corpus delicti* in the driver's actions. It was established that, given the darkness, the wet road and the headlights from an oncoming car, the driver had only seen the applicant's son, who had been walking on the road, at a distance at which he could not avoid hitting him.

20. On 10 January 2005 the LRPO quashed the decision of 30 December 2004 on account of the incompleteness of the investigation and gave instructions for further investigative actions.

21. By a letter of 25 January 2005, the Lviv Regional Police Department informed the applicants that the investigation of the case was complicated by the fact that the defendants resided abroad and the Department had no means available to cover the costs that would be incurred by them travelling to Ukraine.

22. On 31 January 2005 the investigator ordered an additional forensic technical vehicular examination, which was conducted on 25 February 2005.

23. On 4 April 2005 the investigator again decided to discontinue the criminal proceedings for lack of *corpus delicti* in the driver's actions.

24. On 13 May 2005 the LRPO quashed the decision of 4 April 2005 on account of the incompleteness of the investigation, and gave instructions for further investigative actions to be taken.

25. On 12 August 2005 the investigator discontinued the criminal proceedings. The decision noted that the investigation had followed all the instructions of the prosecutor but had found no new factual data capable of affecting its previous conclusions.

26. On 26 December 2005 the LRPO quashed the decision of 12 August 2005. It noted that the investigator had followed the instructions given on 10 January 2005 only in part, while the instructions given on 13 May 2005 had been ignored altogether.

27. By a letter of 5 January 2006 the LRPO informed the applicant that the investigation had been reopened and disciplinary proceedings had been instituted against the investigator in their son's case for having breached criminal procedure.

28. On 16 January 2006 the investigator refused to institute criminal proceedings against Mr F., Mr G. and Ms G.

29. On 30 January 2006 the investigator stayed the criminal proceedings concerning the death of the applicants' son, stating that the prosecutor had

instructed him to find other witnesses to the accident, which he had been unable to do so far.

30. On 5 May 2006 the investigation was resumed.

31. On 16 May 2006 the LRPO refused to institute criminal proceedings in connection with a complaint by the applicants in which they alleged that Mr. F, Mr. G. and Ms. G had bribed the police.

32. On 24 November 2006 the criminal proceedings were again discontinued. The investigator noted that he had summoned Mr G., who resided in Poland, to appear for participation in further investigative actions, but he had failed to appear. He also noted that Mr F. could not be summoned from Germany, as the investigation had no funds to pay for his travel expenses to Ukraine. It was further mentioned that there was no evidence that Mr F. had been the guilty party in the road traffic accident in question.

33. On 28 November 2006 the LRPO quashed the decision of 24 November 2006 on account of the incompleteness of the investigation.

34. On 4 November 2007 the investigation conducted an on-site reconstruction of the accident with the participation of Mr F., who was summoned from Germany.

35. On 17 November 2007 the investigator refused to institute criminal proceedings against Mr F. and discontinued the criminal proceedings into the road traffic accident that had led to the death of the applicants' son. This latter decision was quashed by the LRPO on 15 January 2008.

36. On 6 February 2008 the investigator ordered an additional forensic transport trasological examination, which was completed on 3 April 2008.

37. On 19 April 2008 the investigator discontinued the criminal proceedings once again. He noted that the additional examination had established that the driver could have avoided hitting the victim with the use of emergency breaking only if the victim had been running. Given that there was no confirmation that the victim had been running, the investigator discontinued the proceedings, noting that under Article 62 of the Constitution an accusation could not be based on assumptions.

38. On 4 July 2008 the LRPO quashed the decision of 19 April 2008, stating that it was necessary to conduct additional investigations.

39. On 22 November 2008 the investigator discontinued the criminal proceedings. That decision was quashed by the LRPO on 9 December 2008.

40. On 30 December 2008 the criminal proceedings were stayed by the investigator, who indicated in his decision that on 6 October 2003 Mr F. had hit an unknown person.

41. On 20 April 2010 the investigator resumed the criminal proceedings.

42. On 20 August 2010 the investigator refused to institute criminal proceedings against Mr F. for lack of *corpus delicti* in his actions. By another decision, of the same date, the investigator discontinued the criminal proceedings concerning the road traffic accident which had led to

the death of the applicants' son. That decision by the investigator had been examined and upheld by the General Prosecutor's Office.

II. RELEVANT DOMESTIC LAW

43. The relevant provisions of domestic law can be found in the judgments in the cases of *Muravskaya v. Ukraine* (no. 249/03, §§ 35-36, 13 November 2008), and *Igor Shevchenko v. Ukraine* (no. 22737/04, § 31, 12 January 2012).

THE LAW

I. AS TO THE *LOCUS STANDI* OF THE SECOND APPLICANT IN RESPECT OF THE COMPLAINTS OF THE FIRST APPLICANT

44. The first applicant died on 1 February 2010, while the case was pending before the Court. It has not been disputed that the second applicant (her husband) is entitled to pursue the application on her behalf and the Court sees no reason to hold otherwise (see, among other authorities, *Shastin and Shastina v. Ukraine*, no. 12381/04, § 12, 10 December 2009). However, reference will still be made to both applicants throughout the ensuing text.

II. THE ALLEGED INEFFECTIVENESS AND THE LENGTH OF THE INVESTIGATION INTO THE DEATH OF THE APPLICANT'S SON

45. The applicants complained that the investigation into the road traffic accident that caused their son's death had been lengthy and ineffective. They relied on Articles 2, 6 § 1 and 13 of the Convention.

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

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."

A. Admissibility

47. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established.

B. Merits

48. The applicants complained about the length and the alleged ineffectiveness of the investigation. They considered that the criminal case materials had been falsified and that the police had been bribed by Mr F., Mr G. and Ms G., who had been responsible for the death of their son. They noted that although initially the investigator had considered that there were sufficient reasons to institute criminal proceedings into the death of their son, he had later concluded that there had been no *corpus delicti* in the actions of Mr F. They also complained that they had not been sufficiently involved in the case, as the investigation had not conducted a single investigative action involving their participation, and as they had learned about some of the documents in the criminal case file only from the Government's submissions to this Court.

49. The Government maintained that the domestic authorities had acted with due diligence from the outset and that there had been no delays that could have affected the effectiveness of the investigation and the establishment of the facts of the case. They also noted that the number of investigative actions taken in the criminal case in question demonstrated the willingness of the authorities to conduct a thorough investigation of the case. They maintained that the referrals of the case for additional investigation did not mean the investigation was ineffective. According to them, the investigator had followed all the instructions of the higher prosecutors during the additional investigation of the case. They also noted that the majority of such instructions had been based on the applicants' complaints, which also demonstrated sufficient involvement of the applicants in the criminal proceedings in question. The law-enforcement authorities had also checked other allegations by the applicants, for example, that the investigator had been bribed by the defendants. The Government also noted that the fact that the investigation had not established any *corpus delicti* in the actions of Mr F. did not render the investigation ineffective.

50. The Court reiterates that Article 2 does not concern only deaths resulting from the use of force by agents of the State. In the first sentence of its first paragraph it lays down a positive obligation on the Contracting

States to take appropriate steps to safeguard the lives of those within their jurisdiction. That obligation applies in the context of any activity in which the right to life may be at stake, including deaths resulting from road traffic accidents, and calls for an effective judicial system which can determine the cause of death and bring those responsible to account (see *Anna Todorova v. Bulgaria*, no. 23302/03, § 72, 24 May 2011, with further references).

51. The State's obligation under Article 2 of the Convention will not be satisfied if the protection afforded by domestic law exists only in theory; above all, it must also operate effectively in practice and that requires a prompt examination of the case without unnecessary delays (see *Šilih v. Slovenia* [GC], no. 71463/01, § 195, ECHR 2009-...).

52. In line with the above, while the identification and punishment of those responsible for a death and the availability of compensatory remedies to the applicant are important criteria in the assessment of whether or not the State has discharged its Article 2 obligation (see, among other authorities, *Rajkowska v. Poland* (dec.), no. 37393/02, 27 November 2007, and *Fedina v. Ukraine*, cited above, §§ 66-67), in a number of recent cases before the Court the finding of a violation has largely been based on the existence of unreasonable delays and a lack of diligence on the part of the authorities in conducting the proceedings, regardless of their final outcome (see, for example, *Šilih v. Slovenia* [GC], cited above, § 211; *Dvořáček and Dvořáčková v. Slovakia*, no. 30754/04, § 70, 28 July 2009; and *Antonov v. Ukraine*, no. 28096/04, §§ 50-51, 3 November 2011).

53. The Court has stated on a number of occasions that, although the right to have third parties prosecuted or sentenced for a criminal offence cannot be asserted independently, an effective judicial system, as required by Article 2, may, and under certain circumstances must, include recourse to the criminal law (see, for example, *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-I). However, if the infringement of the right to life or to physical integrity was not caused intentionally, the positive obligation imposed by Article 2 to set up an effective judicial system does not necessarily require the provision of a criminal-law remedy in every case (see *Vo v. France* [GC], no. 53924/00, § 90, ECHR 2004-VIII).

54. The Court also underlines that it would be inappropriate and contrary to its subsidiary role under the Convention to attempt to establish the facts of this case on its own, duplicating the efforts of the domestic authorities, which are better placed and equipped for that purpose (see, for example, *McShane v. the United Kingdom*, no. 43290/98, § 103, 28 May 2002). Following its well-established practice, it will confine the examination of this application to an evaluation of the domestic investigation into the matter as regards its overall compliance with the aforementioned standards.

55. Turning to the facts of the present case, the Court notes that, having learned about the violent death of the applicants' son, the authorities instituted criminal proceedings and took a number of measures aimed at

discharging their positive obligation under Article 2 of the Convention. A number of investigative actions, including an on-site reconstruction of the events, questioning, and various forensic examinations, were conducted during the following months. The fact that the authorities did not establish any criminal liability on the part of the driver does not render the investigation ineffective.

56. At the same time, the Court observes that the road traffic accident and the death of the applicants' son occurred in October 2003, whereas the final decision was taken in August 2010 – almost seven years later. It notes that, despite the substantial number of investigative measures taken, the investigation was criticised by the national authorities themselves for a lack of efficiency (see paragraph 26 above). Furthermore, the criminal proceedings in question were marked by numerous referrals for additional investigation caused, *inter alia*, by the investigator's failure to follow the instructions of the supervisory authorities (ibid). The police also had been aware from the outset of the fact that the defendants in the case permanently resided abroad and their availability for the investigative actions at the later stage could be therefore problematic, which required from the investigators to act with particular diligence at the initial stage of the proceedings. The behaviour by the investigating authorities, however, was incompatible with the State's obligation under Article 2 of the Convention to carry out an effective investigation into suspicious deaths. Furthermore, the Court is reinforced in this view by the fact that the applicants were not involved, appropriately, in the investigation and only found out about some of the procedural decisions from reading the Government's submissions to this Court (see paragraph 48 above).

57. There has therefore been a violation of the procedural limb of Article 2 of the Convention in the present case.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

58. The applicants originally complained under Article 1 of Protocol No. 1 that they had not yet been paid the insurance sum for the death of their son, and that they had not been offered compensation for the damage suffered on account of his death.

59. Having considered the applicants' submissions in the light of all the material in its possession, the Court finds that, in so far as the matter complained of is within its competence, it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

60. It follows that this part of the application must be declared inadmissible as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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."

A. Damage

62. The applicants claimed 3,500 euros (EUR) in respect of pecuniary damage, and EUR 200,000 in respect of non-pecuniary damage.

63. The Government considered these amounts unreasonable and excessive.

64. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicants EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

65. The applicants also claimed 67.30 Ukrainian hryvnias (UAH) for the postal expenses incurred at the domestic level, UAH 117.70 for the indexation of the sum claimed above, and UAH 350.70 for the expenses incurred before this Court.

66. The Government considered the expenses incurred domestically to be unrelated to the present case. They also left the issue of awarding costs and expenses for the proceedings before the Court to the latter's discretion.

67. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court awards the applicants EUR 21 under all heads.

C. Default interest

68. The Court 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 complaint under Article 2 concerning the length and effectiveness of the investigation into the death of the applicants' son admissible and the remainder of the application inadmissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicants, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Ukrainian hryvnias at the rate applicable on the date of settlement:
      (i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 21 (twenty-one euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
   (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;

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

Done in English, and notified in writing on 31 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Dean Spielmann
Deputy Registrar	President