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

# FIFTH SECTION

# DECISION

Application no. 31064/16
Ivan Ivanovych GARKUSHA
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 2 October 2025 as a Committee composed of:

Gilberto Felici*, President*,
Diana Sârcu,
Sébastien Biancheri*, judges*,

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 31064/16) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 16 May 2016 by a Ukrainian national, Mr Ivan Ivanovych Garkusha ("the applicant"), who was born in 1951, lives in Doroshivka, Mykolaiv Region, and was represented by Mr I.D. Skalko, a lawyer practising in Mykolaiv;

the decision to give notice of the application to the Ukrainian Government ("the Government"), represented by their Agent, most recently Ms M. Sokorenko, from the Ministry of Justice;

the parties' observations;

Having deliberated, decides as follows:

## SUBJECT MATTER OF THE CASE

1. The present case concerns the applicant's allegation that the domestic investigation into the circumstances of his son's death, following medical treatment in a public hospital, had been ineffective, in breach of Article 2 of the Convention.

2. On 1 August 2008 the applicant's son sought medical help at the Voznesensk District Hospital in Mykolaiv Region ("the hospital"), complaining of stomach ache. He was prescribed anti-gastritis treatment by a

non-specialist doctor, whom he met for several follow-up consultations in 2008. On 5 January 2009 the applicant's son underwent a gastroscopy.

3. In May 2010 a neurologist at the same hospital diagnosed the applicant's son with acute chest osteochondrosis and prescribed medication, followed by inpatient treatment. As a result of further diagnostic tests, the applicant's son was referred to an oncologist and ultimately diagnosed with stage IV stomach cancer with multiple metastases.

4. On 4 August 2010 the applicant complained to the Voznesensk District Prosecutor's Office ("the Prosecutor's Office") of medical negligence on the part of the hospital's doctors while treating his son. At the prosecutor's request, the Health Department of the Mykolaiv Regional State Administration ordered an internal investigation into the matter.

5. On 17 August 2010 an anti-cancer commission set up by the hospital administration held a case-review meeting where several shortcomings in the applicant's son's treatment were identified. The commission established that the reasons for the errors were the latent nature of the illness and insufficient medical examination of the patient. It decided to cancel a scheduled pay rise for the non-specialist doctor who had initially treated the applicant's son.

6. On 18 August 2010 the Health Department of the Mykolaiv Regional State Administration set up a clinical expert commission. According to the commission's report of 25 August 2010, the examinations of the applicant's son by the non-specialist doctor and the neurologist had been insufficient, in breach of the official medical protocols.

7. On 29 August 2010 the applicant's son died. No autopsy was carried out. The Prosecutor's Office ordered a forensic medical examination based on the applicant's medical records, which was completed on 2 June 2011. The experts found the same shortcomings in the applicant's son's treatment by the hospital doctors as had previously been identified by the commissions (see paragraphs 5 and 6 above), but were unable to determine whether there had been a causal link between those shortcomings and the patient's death.

8. Having conducted pre-investigation inquiries and referring to the forensic report of 2 June 2011, the police refused to open a criminal investigation. That decision was set aside as premature by the Prosecutor's Office, following a complaint by the applicant. The police conducted additional inquiries and refused to open an investigation on three further occasions between July and November 2011, their last decision being dated 21 November 2011. In that decision, the police stated that another medical examination had been ordered in September 2011 and that an investigation would be opened if the experts found a causal link between the doctors' actions and the death of the applicant's son. The applicant did not appeal against that decision.

9. On 19 March 2012 the applicant lodged a civil claim against the hospital with the Voznesensk District Court of Mykolaiv Region, seeking compensation for the non-pecuniary damage caused by medical negligence

on the part of the hospital's doctors, which, he alleged, had resulted in his son's death.

10. The court ordered two additional forensic medical examinations, which found that the applicant's son's death had been caused by the disease itself rather than by its late diagnosis or the subsequent medical treatment. The experts stressed the aggressive and rapidly progressing nature of stomach cancer in general, which rendered prognosis somewhat unfavourable even when the disease was diagnosed in the early stages and treated correctly and in full. They also pointed to the fact that the applicant's son had not visited the hospital for more than a year, between 5 January 2009 and 14 May 2010, and that the gastroscopy results of 4 July 2008 and 5 January 2009 had shown no sign of cancer. According to the experts, it could not therefore be ruled out that the tumour had developed during the above period, when the applicant was not being treated at the hospital.

11. On 24 December 2014 the Voznesensk District Court of Mykolaiv Region allowed the applicant's civil claim, referring to the shortcomings in his son's treatment, as identified in the commission's report of 25 August 2010. However, on 20 August 2015 the Mykolaiv Regional Court of Appeal quashed that judgment and dismissed the claim. Referring to the results of the forensic medical examinations, the appellate court found that there had been no causal link between the medical treatment of the applicant's son and his death, so that the hospital could not be held liable for any damage. On 29 October 2015 the Higher Specialised Civil and Criminal Court dismissed a further cassation appeal lodged by the applicant.

## THE COURT'S ASSESSMENT

12. Relying on Articles 2 and 13 of the Convention, the applicant complained that there had been no effective investigation into the events which had led to his son's death. The Court, which is the 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 solely under the procedural aspect of Article 2 of the Convention (see *Igor Shevchenko v. Ukraine*, no. 22737/04, §§ 37-38, 12 January 2012).

13. The Government submitted that the domestic judicial system had afforded the applicant an effective remedy in the civil courts, and that there had been no violation of the applicant's rights under the Convention.

14. The applicant maintained his complaint.

15. The general principles concerning the State's procedural obligations under Article 2 of the Convention in the context of healthcare have been summarised in *Lopes de Sousa Fernandes v. Portugal* ([GC], no. 56080/13, §§ 214-21, 19 December 2017).

16. The Court reiterates that, if an infringement of the right to life is 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 the specific sphere of medical negligence, as alleged in the present case, the obligation may, for instance, also be satisfied if the legal system affords victims a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts, enabling the liability of the doctors concerned to be established and appropriate civil redress, such as an order for damages and for the publication of the decision, to be obtained (ibid., §§ 214-15). The Court will therefore examine both the criminal and civil-law remedies which were made available to the applicant, and which he pursued.

17. In this connection, the Court observes that the domestic authorities carried out pre-investigation inquiries in a timely manner and, since the forensic medical experts were unable to establish a direct causal link between the applicant's son's treatment and his death, refused to open an investigation in that regard (see paragraphs 4-8 above). At the same time, the Court does not lose sight of the fact that three of the four police decisions not to open an official investigation were set aside by the Prosecutor's Office, which would indicate a lack of thoroughness in the pre-investigation inquiries. It therefore remains to be seen whether the subsequent civil proceedings met the requirements of Article 2 of the Convention and were able to remedy the shortcomings in the preceding criminal inquiries.

18. The Court observes in that regard that the civil courts examined the applicant's claim on the merits and subjected his son's medical treatment to detailed scrutiny. They took their own fact-finding measures, which were independent of the conclusions of the police, and ordered two additional forensic medical examinations for that purpose (see paragraphs 9-11 above). On the basis of those expert reports, the civil courts ultimately found that there was no fault attributable to the healthcare professionals.

19. The Court notes that, except in cases of manifest arbitrariness or error, it is not the Court's function to call into question findings of fact made by the domestic authorities, particularly when it comes to scientific expert assessments, which by definition call for specific and detailed knowledge of the subject (see *Dumpe v. Latvia* (dec.), no. 71506/13, § 60, 16 October 2018).

20. Lastly, the Court reiterates that the procedural obligation to set up an effective judicial system is not an obligation of result but of means only. Thus, the mere fact that proceedings concerning medical negligence have ended unfavourably for the applicant does not in itself mean that the respondent State has failed in its positive obligation under Article 2 of the Convention (see *Lopes de Sousa Fernandes*, cited above, § 220-21). In the present case, the Court finds that the civil-law remedy constituted an effective fact-finding forum in relation to the death of the applicant's son and therefore satisfied the requirement of Article 2 to set up an effective judicial system.

21. In the light of the above, the present application must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention as manifestly ill-founded.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 23 October 2025.

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| Martina Keller<br>Deputy Registrar | Gilberto Felici<br>President |