



Freedom of expression of an eyewitness to a road accident protected by the European Convention

In today's **Chamber judgment**¹ in the case of [Udovychenko v. Ukraine](#) (application no. 46396/14) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned the consequences for an eyewitness to a road accident of telling a journalist that she had seen the son of B., a former member of parliament, getting out of the driver's side of the car. In the proceedings brought against her by B. and his son accusing her of making a false statement to the media, she was required to prove what she had said. In the absence of proof, the Ukrainian courts found that her statement had been untrue and had damaged the honour, dignity and reputation of B. and his son. She was ordered to retract her statement and to pay damages.

The Court found that for the applicant to prove what she believed she had seen with her own eyes, as required by the national courts, would have been very difficult, if not impossible, to do. There had never been any suggestion that she had failed to show due diligence and acted in bad faith when making her statement. The interference with her right to freedom of expression had therefore not been necessary in a democratic society.

Indeed, the consequences for the applicant had been severe – she had had to pay considerable damages as compared to her salary and had been banned from travelling abroad.

A legal summary of this case will be available in the Court's database HUDOC ([link](#))

Principal facts

The applicant, Alla Anatoliyivna Udovychenko, is a Ukrainian national who was born in 1977 and lives in Rivne (Ukraine).

On 2 December 2008 Ms Udovychenko witnessed a road accident in Rivne in which a pedestrian was severely injured.

The incident raised media interest at local level and, when visiting the victim in hospital, she told a journalist that she had seen the son of a former member of parliament B., getting out of the driver's side of the car involved in the accident.

In November 2009 B. and his son, M.B., lodged a civil claim against the applicant, accusing her of making a false statement to the media implying that M.B. had been guilty of causing the accident.

In the ensuing proceedings Ms Udovychenko was required to prove what she had said to the journalist (the so-called "presumption of falsity" under Article 277 of the Civil Code). In the absence of such proof, the Rivne City Court concluded that her statement was untrue and damaged the honour, dignity and reputation of the claimants. She was ordered to retract her statement and to pay damages amounting to approximately 9,790 euros (EUR).

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

All her challenges to this decision were ultimately unsuccessful.

She retracted her statement in February 2013. Payment of the damages was enforced between 2012 and 2018, during which time bailiffs seized her property and 20% of her salary was withheld each month to recover the debt. She was also banned from leaving Ukraine until she had paid the compensation in full.

Before the claim was lodged against the applicant, the police had established that it was a local businessman who had been driving the car involved in the accident. The criminal investigation against him was, however, terminated in June 2009 because he could not have avoided hitting the victim who had not been on a pedestrian crossing when crossing the road.

Complaints, procedure and composition of the Court

Relying in particular on Article 10 (freedom of expression), Ms Udovychenko complained about the proceedings against her, arguing that simply reporting what she had seen had not amounted to the harming of the claimants' reputation.

The application was lodged with the European Court of Human Rights on 17 June 2014.

Judgment was given by a Chamber of seven judges, composed as follows:

Georges **Ravarani** (Luxembourg), *President*,
 Carlo **Ranzoni** (Liechtenstein),
 Mārtiņš **Mits** (Latvia),
 Stéphanie **Mourou-Vikström** (Monaco),
 María **Elósegui** (Spain),
 Mattias **Guyomar** (France),
 Mykola **Gnatovskyy** (Ukraine),

and also Martina **Keller**, *Deputy Section Registrar*.

Decision of the Court

Firstly, the Court agreed with the Ukrainian courts that the applicant's comment about B.'s son getting out of the driver's side of the car involved in the accident could be seen as a statement of fact.

However, for the applicant to prove what she believed she had seen with her own eyes, as required by the national courts, would have been very difficult, if not impossible, to do. It was moreover inconsistent with the principles laid down in the Court's case-law.

Crucially, there had never been any suggestion that the applicant had failed to show due diligence or acted in bad faith.

In particular, neither the claimants nor the courts had suggested that the applicant had deliberately lied in order to harm M.B. and his father's reputation. She had not used any insulting or offensive remarks about the claimants, she had simply recounted what she had witnessed without taking a stance regarding anyone's guilt. Nor had the authorities instituted proceedings against the applicant for giving false evidence or suggested that she had revealed confidential information about the ongoing criminal investigation.

Indeed, the Court pointed out that allowing witnesses of events potentially involving criminal offences to convey publicly, in good faith, what they had directly observed – unless bound by the secrecy of an investigation – was an important aspect of the protection of freedom of expression.

It also found that there had been no justification for the severity of the consequences the applicant had had to bear. She had essentially been made to publicly declare that she had not seen what she believed that she had seen and had struggled to pay considerable damages – as compared to her salary – for more than five years, during which time she had been banned from travelling abroad.

In sum, the Court concluded that the authorities' reaction to the applicant's statement concerning the accident she had witnessed had been disproportionate to the legitimate aim pursued of protecting the good name of M.B. and his father. The interference with the applicant's freedom of expression had not therefore been necessary in a democratic society, in violation of Article 10.

Just satisfaction (Article 41)

The Court held that Ukraine was to pay the applicant EUR 14,300 euros (EUR) in respect of pecuniary and non-pecuniary damage, and EUR 3,450 in respect of costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.