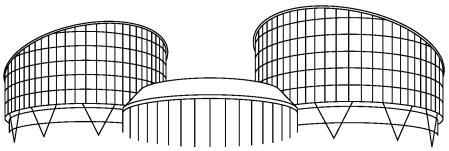

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF SERDYUK v. UKRAINE

(Application no. 61876/08)

JUDGMENT

STRASBOURG

12 March 2015

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

In the case of Serdyuk v. Ukraine,

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

Boštjan M. Zupančič, *President*,
Helena Jäderblom,
Aleš Pejchal, *judges*,
and Milan Blaško, *Deputy Section Registrar*,

Having deliberated in private on 17 February 2015,

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

PROCEDURE

1. The case originated in an application (no. 61876/08) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Ms Nina Yosypivna Serdyuk ("the applicant"), on 26 November 2008.

2. The Ukrainian Government ("the Government") were represented by their Agent, then Mrs Valeriya Lutkovska.

3. On 9 November 2011 the application was communicated to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1942 and lives in Sudiyivka.

5. On 13 March 2002 the body of Eduard Kryvonis, the applicant's adult son, with numerous injuries, was found lying on a village street. According to a subsequent forensic assessment, he died between 2 and 4 a.m. on that date.

6. On the same date the Novosanzharsky district police examined the site and questioned some potential witnesses. They discovered, in particular, that the night before his death, Eduard Kryvonis had been visiting friends and had left for home with his bicycle that had gone missing.

7. On 11 April 2002 the prosecutor's office ordered a criminal investigation into the applicant's son's death.

8. On 17 April 2002 the police drew up an investigation action plan.

9. On 23 April 2002 the applicant was admitted to the proceedings as an injured party. During a questioning on an unspecified date she alleged, inter alia, that her son could have been killed by M.

10. On 11 June 2002 the police stayed the proceedings as they could not find any useful leads.

11. On 13 June 2002 the district prosecutor's office quashed this decision as premature. It instructed the police, among other actions, to take comprehensive measures in searching for the victim's bicycle and to question some local residents known as prone to violence, including M. and K.

12. In October 2002 Z. and L. confessed that in the company of K. they had encountered Eduard Kryvonis on his way home late at night on 12 March 2002 and beaten him up.

13. On 28 October 2002 Z. and L. retracted their confessions, alleging that they had been extracted from them under duress.

14. On 10 November 2002 the proceedings were discontinued in view of absence of any useful leads.

15. On 14 March 2003 the prosecutor's office quashed this decision, ordering further investigative steps to be taken. They noted that the investigation had already been suspended on similar grounds without appropriate action having been taken.

16. On 27 May 2003, 10 September 2003, 29 April and 15 July and 16 December 2004 five further decisions to stay the proceedings were taken.

17. On 10 July and 24 October 2003, 12 May, 30 September 2004 and 31 March 2005 respectively those decisions were quashed by the prosecutor's office, which found that not all of its previous instructions had been duly complied with.

18. On 23 August 2005 D. confessed that late at night on 12 March 2002 M., V. and himself had engaged in a fight with Eduard Kryvonis and had beaten him.

19. On 24 August 2005 a confrontation between D. and M. was organized, during which the former confirmed his confessions, while the latter denied any accusations. V. had died by the time D. confessed.

20. On 16 January 2006, responding to the applicant's complaint, the Deputy Head of the Chief Investigative Department of the Ministry of Interior stated that the investigation had been "patchy, passive", "conducted at a low professional level and not in conformity with the methodology of investigating this category of offences"; and marked by "loss of time and sources of evidence". He noted, in particular, that the case-file featured no documents explaining a one-month delay after the discovery of the body and before the initiation of the criminal proceedings; that no meaningful and prompt action had been taken to locate the purportedly missing bicycle; that no comprehensive measures had been taken to verify whether M. could be involved in the crime, notwithstanding the applicant's suspicions

corroborated by some other evidence; and that the alibis of M., D. and K. had not been verified. The officer further regretted that the police had thought of sending Eduard Kryvonis' clothes for a forensic assessment only two years after his death and that at that time it was discovered that the clothes were missing. In addition, the officer pointed to a number of shortcomings in drafting and filing procedural documents and regretted that on numerous occasions the proceedings had been unjustifiably stayed without the instructions of the prosecutor's office having been properly complied with.

21. On 16 June 2006 the police searched M.'s household and seized a bicycle, which the applicant identified as her son's. M. disagreed and argued that he had bought the bicycle from Dm., who had confirmed M.'s submissions.

22. On 25 March 2008 the police took a fresh decision to stay the proceedings, referring to insufficiency of objective evidence to indict M. or D. and absence of any other leads.

23. On 23 July 2008 the prosecutor's office quashed this decision on the grounds similar to those mentioned above.

24. In January 2009, following the death of D., the police requested the Novosanzharsky District Court to close the proceedings in view of the death of D. and V., whom they considered the principal suspects.

25. The applicant objected to the police's proposal, submitting, inter alia, that charges should be pressed against M., implicated by late D. in her son's beating.

26. On 2 April 2009 the court rejected the police's request as not based on law.

27. On numerous occasions the applicant complained to various authorities about the protracted nature of the investigation and its various procedural shortcomings. On various dates the prosecutor's office (in particular, on 2 July and 15 August 2003, 19 February 2004, 15 June 2005, 23 April 2007 and 26 September 2008) and the department of Interior (in particular, on 29 March 2007, 26 May and 13 November 2008 and 21 October 2010) acknowledged that the investigation had featured unnecessary delays and instances of procedural inactivity. They also notified the applicant that four police officers were subjected to disciplinary sanctions on account of their failure to ensure the adequacy of the investigation.

28. On 15 November 2011 the deputy chief of the investigative unit of the Poltava Regional Department of Interior informed the applicant, in response to her complaint, that on 29 September 2011 an investigator in charge of her case had been reprimanded by way of a disciplinary sanction for poor organization of the investigation and the case was transferred to another officer. It appears that the investigation is still pending.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

29. The applicant complained that the investigation of the circumstances of her son's death had been lengthy and ineffective. She referred to Article 6 of the Convention.

30. 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, e.g., *Dudnyk v. Ukraine*, no. 17985/04, § 27, 10 December 2009). This provision, in so far as relevant, reads as follows:

> "1. Everyone's right to life shall be protected by law..."

A. Admissibility

31. The Government did not comment on the admissibility of the present complaint.

32. The Court notes that the complaint at issue is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

33. The applicant alleged that the State authorities had fallen short of their obligation to protect Eduard Kryvonis' right to life. In particular, the proceedings aimed at identifying those responsible for his violent death were unreasonably delayed and marked by numerous deliberate omissions of unprofessional and corrupt investigative authorities.

34. The Government alleged that they had duly discharged their Convention duties in the applicant's case. The very fact that the persons responsible for her son's death had not been found could not as such be held against them. In particular, the investigation was thorough and the police had employed an ample array of means to collect the necessary evidence.

35. Examining the facts of the present case in light of its established case law, the Court recalls, in particular, that Article 2 of the Convention obliges the authorities to take all reasonable steps to secure the evidence concerning the circumstances of suspicious deaths. While this is an obligation of means rather than that of a result, a requirement of promptness and reasonable expedition is implicit in it (see, e.g., *Gongadze v. Ukraine*, no. 34056/02, §§ 175-177, ECHR 2005; *Merkulova v. Ukraine*, no. 21454/04, §§ 49-51,

March 2011 and *Yuriy Slyusar v. Ukraine*, no. 39797/05, §§ 76-78 and 82, 17 January 2013 with further references).

36. The Court observes that in the present case the police authorities were informed of the incident on 13 March 2002, within hours of the applicant's son's violent death. It took them about one month to initiate criminal proceedings and to develop the relevant action plan (see paragraphs 7-8 above). According to the findings of the national authorities, this delay was unjustified and led to the deterioration of evidence (see paragraph 20 above). It has also been recognised at the domestic level that, notwithstanding the plurality of actions taken, the entire proceedings were marked by protractions, poor record-keeping, repeated failures of the police officers to abide by the instructions of their supervisors and patchy approach towards the collection of evidence (see paragraphs 15, 17, 20, 27 and 28 above). Based on the information available to the Court, the investigation is still pending after over ten years and without foreseeable progress.

37. The Court has already found violations of Article 2 of the Convention in other cases against Ukraine based on similar facts (see, e.g., *Muravskaya v. Ukraine*, no. 249/03, §§ 46-49, 13 November 2008; *Dudnyk v. Ukraine*, cited above, § 36 and *Yuriy Slyusar v. Ukraine*, cited above, §§ 83-89). Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

38. The Court therefore concludes that in the present case the competent authorities failed to provide an effective and timely investigation of the circumstances of the applicant's son's violent death as required by Article 2 of the Convention.

39. There has accordingly been a breach of Article 2 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed UAH 3,424 hryvnias in respect of burial expenses by way of pecuniary damage and 500,000 euros (EUR) in respect of non-pecuniary damage.

42. The Government submitted that this claim was exorbitant and unsubstantiated.

43. The Court recalls that it has found a violation of Article 2 of the Convention with regard to failure of the authorities to conduct an effective investigation into the circumstances of the applicant's son's violent death. It does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, ruling on an equitable basis, it awards the applicant EUR 8,000 in respect of non-pecuniary damage.

B. Costs and expenses

44. The applicant also claimed UAH 195.70 hryvnias in postal expenses incurred in connection with her correspondence with the Court. She presented copies of postal receipts for the total amount of UAH 141.63.

45. The Government submitted that only the expenses supported by documentary evidence should be taken into account.

46. 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 considers it reasonable to award the sum of EUR 15 for the postal expenses.

C. Default interest

47. 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 application admissible;

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 applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage and
      (ii) EUR 15 (fifteen euros), plus any tax that may be chargeable to the applicant, in respect of postal 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 March 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Boštjan M. Zupančič
President