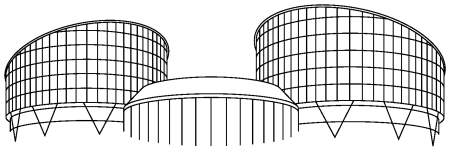

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF SVYSTORUK v. UKRAINE

(Application no. 50067/13)

JUDGMENT

STRASBOURG

24 November 2016

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Svystoruk v. Ukraine,

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

Khanlar Hajiyev, *President,*
Faris Vehabović,
Carlo Ranzoni, *judges,*
and Anne-Marie Dougin, *Acting Deputy Section Registrar,*

Having deliberated in private on 3 November 2016,

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

PROCEDURE

1. The case originated in an application (no. 50067/13) 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, Mr Viktor Petrovych Svystoruk ("the applicant"), on 26 July 2013.

2. The applicant, who had been granted legal aid, was represented by Mr M.O. Tarakhkalo, a lawyer practising in Kyiv. The Ukrainian Government ("the Government") were represented by their Agents, most recently Mr I. Lishchyna.

3. On 29 October 2015 the application was communicated to the Government.

THE FACTS

4. The applicant was born in 1944 and lives in Kremenchuk.

5. On 11 August 2007 Inna Puzyr, the applicant's daughter, was found stabbed to death in bushes by the roadside.

6. On the same date the Poltava Regional Police instituted criminal proceedings into the suspected murder.

7. On an unspecified date the applicant was called to testify as a witness in connection with the above investigation, and for this reason his subsequent request to join the proceedings as an aggrieved party was refused.

8. On 18 August 2007 V.K., the applicant's other daughter, joined the proceedings as an aggrieved party.

9. On 25 August 2007 O.T., a resident of a village close to the place of where the applicant's daughter was stabbed, was arrested on suspicion of having committed this crime. Having initially pleaded guilty, O.T.

subsequently retracted his confession, denying any involvement with the crime and complaining that the police had subjected him to ill-treatment.

10. On an unspecified date the criminal proceedings against O.T. were discontinued as no evidence had been collected to corroborate his confessional statements, which were inconsistent with other evidence on file.

11. On 7 September 2007 V.K. complained to the Chief of the local police department that the investigation into the case had been ineffective. She also complained that she had not been able to participate in it in a meaningful way, as she had not been allowed to consult the case file and had been very poorly informed about the measures undertaken by the authorities with a view to identifying her sister's murderer.

12. On 12 September 2007 the Acting Chief of the Poltava Regional Police informed V.K. that he had detected no irregularities in the manner in which the investigation had been conducted and that – according to the applicable law – aggrieved parties were not entitled to consult case files until completion of the pre-trial investigation, that is to say, until the likely perpetrator has been identified and committed for trial.

13. On 10 October 2007 the investigation was suspended as no leads had been identified.

14. On 30 October 2007 the District Prosecutor's Office quashed the decision to suspend the proceedings and ordered a further inquiry, noting that the investigation had been carried out in a perfunctory manner.

15. On 20 November 2007 V.K. again complained to the Kremenchuk prosecutor's office that the renewed investigation had, in her view, been perfunctory and ineffective. She submitted that she suspected R.P., her sister's husband, of having murdered her and referred to numerous delays in carrying out the investigative activities, which – in her view – had resulted in the loss of important evidence.

16. On 23 January 2008 the Chief of the Poltava Regional Department of the Interior acknowledged to V.K. that there had been many inadequacies in the investigation of her sister's violent death and notified her that the chief and deputy chief of the investigative department had been reprimanded for poor planning of their department's work and supervision of their subordinates. Investigator S.Y., who had worked on the case, had been replaced by V.N., who had extensive expertise in investigating homicide and other violent crimes.

17. On 5 March 2008 R.P. was arrested and confessed to having killed the applicant's daughter because she had refused to give him a divorce.

18. On 6 March 2008 a reconstruction of the crime scene was organised, at which R.P. demonstrated how he had committed the murder.

19. On an unspecified date R.P. retracted his confession, claiming it had been given under duress from the police.

20. On 15 August 2008 the proceedings in respect of R.P. were discontinued in the light of irreconcilable discrepancies between his retracted confessional statements and other evidence on file. As there were no further leads pointing to a potential perpetrator, the proceedings were suspended.

21. On 26 March 2009 the Poltava Regional Prosecutor's Office notified V.K. – in response to an enquiry from her concerning progress in the case – that unspecified operative and inquisitorial activities had been underway, but that no leads had been uncovered.

22. Following a new complaint by V.K. concerning the inadequacy of the investigation, on 20 May 2009 the Deputy Minister of Interior ordered a renewal of proceedings. Having consulted the case file, he noted that leads to at least two potential perpetrators had not been properly followed up and identified some twenty-five investigative steps which could have been taken. He also stated that, in his view, virtually no action aimed at identifying the murderer had been taken in 2008, that the operative officers had carried out the instructions received from the investigative officers in a perfunctory manner, and that the investigative and operative departments needed to streamline their methods of communication.

23. On 28 December 2009 S.J., a new investigator assigned to the case, suspended the proceedings, having uncovered no new leads after completion of further investigative steps.

24. The proceedings were renewed and then suspended on several further occasions, reference being made to the insufficiency of the measures taken (specifically, on 11 May 2010, 2 April and 22 October 2011).

25. On 15 April 2013, following the entry into force of the new Code of Criminal Procedure, the applicant was admitted into the proceedings as an aggrieved party and given an opportunity to consult the case file.

26. On 19 August 2013 the applicant complained to the Minister of Interior that, having studied the file, he found that the entire investigation had been marred by prohibitive delays and inactivity. In his view the competent authorities had, for an extensive period of time, focused predominantly on investigating the probability that his daughter had been stabbed by her husband rather than organising a prompt and comprehensive examination of the objective evidence. A lot of time had been lost. The applicant also gave several suggestions as to further potential witnesses to be questioned, the specific type of the knife which could have been used to stab his daughter, and the circle of persons who might possess such a weapon.

27. On 2 October 2013 the Deputy Chief of the investigative department of the Poltava Police informed the applicant that no new leads had been uncovered, but his suggestions would be taken into account in further investigation.

28. On several subsequent occasions the police authorities provided similar answers to further complaints and suggestions made by the applicant and V.K. concerning investigative steps that could be taken.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

29. The applicant complained that the investigation into the circumstances of his daughter's violent death had been ineffective. He relied on Article 2 of the Convention, which, insofar as relevant, reads as follows:

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

A. Admissibility

30. The Government did not comment on the admissibility of the present application.

31. The Court notes that the application 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

32. The applicant alleged that the State authorities had fallen short of their obligation to identify those responsible for his daughter's violent death. In particular, the relevant investigation had been marred by unjustifiable protractions and repeated suspensions of the proceedings leading to the deterioration of evidence and by the failure of the authorities to investigate various leads concurrently and comprehensively. Moreover, the applicant had not been able to participate in the investigation effectively because of the substantial delay in his being admitted into the proceedings and difficulties in obtaining meaningful access to relevant case file material and information concerning progress in the case, amongst other factors.

33. The Government disagreed. They alleged that they had duly discharged their Convention duty to investigate the murder of the applicant's daughter. In particular, the investigation had been thorough and the police authorities had taken all possible measures to collect the necessary evidence. The fact that the perpetrator had not been identified could not as such be held against them.

34. Examining the facts of the present case in light of its established case-law, the Court reiterates, in particular, that Article 2 of the Convention obliges the authorities to investigate violent deaths by taking all reasonable steps to secure the evidence concerning the incident. Any deficiency in the investigation which undermines its ability to establish the cause of death or the persons responsible will risk falling foul of this standard (see, among many other authorities, *Muravskaya v. Ukraine*, no. 249/03, § 41, 13 November 2008).

35. It is apparent from the evidential material on file that the investigation seeking to identify the murderer of the applicant's daughter, initiated in August 2007, has been ongoing for over nine years without foreseeable progress. The Court reiterates that a substantial delay in an investigation concerning a violent death can in and of itself undermine public confidence in the maintenance of the rule of law and raise an issue under Article 2 of the Convention, unless it is justified by objective circumstances (see, for example, *Merkulova v. Ukraine*, no. 21454/04, §§ 50-51 and 61, 3 March 2011).

36. This is all the more pertinent where the investigation is characterised, as in the present case, by repeated suspensions and resumptions of the investigation with reference to the insufficiency of the measures taken by the inquiring officers (see, for instance, *Dudnyk v. Ukraine*, no. 17985/04, § 36, 10 December 2009 and *Pozhyvotko v. Ukraine*, no. 42752/08, § 40, 17 October 2013) leading to the progressive deterioration of evidence (see, for instance, *Khaylo v. Ukraine*, no. 39964/02, § 68, 13 November 2008, and *Antonov v. Ukraine*, no. 28096/04, § 50, 3 November 2011). The Court also notes that it has been recognised at the domestic level that, notwithstanding the numerous actions taken, the proceedings were consistently marred by protractions in the collection of evidence and repeated failures of the police officers to abide by the instructions of their supervisors (see paragraphs 14, 16, 22 and 24 above).

37. The Court also takes note of the applicant's complaints concerning the difficulties encountered by him and his surviving daughter in obtaining information on the progress of the case and involvement in the decision-making process. In this regard the Court reiterates that an effective investigation requires that the actions of the authorities be subject to public scrutiny, and that the deceased person's next-of-kin must be able to take an active part in it, not least by being granted prompt access to relevant evidential material and decisions (see, for example, *Sergey Shevchenko v. Ukraine*, no. 32478/02, §§ 74-75, 4 April 2006; *Kachurka*, cited above, § 51; and *Mikhalkova and Others v. Ukraine*, no. 10919/05, § 48, 13 January 2011).

38. Overall, based on the evidential material on file, the Court cannot reach the conclusion that the authorities did everything in their power to ensure prompt and comprehensive action in collecting evidence with the

aim of identifying and bringing to justice the persons responsible for the murder of the applicant's daughter.

39. There has accordingly been a violation 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 30,000 euros (EUR) in respect of non-pecuniary damage.

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

43. The Court considers that the applicant must have suffered anguish and distress on account of the events leading to the finding of the violation in the present case which cannot be compensated for by the finding of a violation alone. Ruling on an equitable basis, it awards the applicant EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

44. The applicant also claimed EUR 2,553.60 in legal fees and administrative and postal expenses incurred by his legal counsel, Mr M.O. Tarakhkalo, in connection with his representation before the Court.

45. The Government submitted that this sum was exorbitant.

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 fact that the applicant has already been granted legal aid, the Court considers it reasonable to award the applicant the sum of EUR 650 for legal fees.

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 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 650 (six hundred and fifty euros), plus any tax that may be chargeable to the applicant, 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 November 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Anne-Marie Dougin	Khanlar Hajiyev
Acting Deputy Registrar	President