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La Corte EDU sulla protezione del diritto alla vita
(CEDU, sez. V, sent. 17 dicembre 2020, ric. n. 11464/12)

Il ricorso sul quale si è pronunciata la Corte EDU è stato presentato da un cittadino ucraino contro il suo Paese adducendo la violazione dell'art. 2 della Convenzione sia sotto il suo profilo sostanziale che procedurale. Riguardo al primo profilo, il ricorrente ha denunciato l'avvenuto decesso del figlio che, sospettato di far parte di un'organizzazione criminale, veniva - intenzionalmente e senza giustificato motivo - colpito a morte da un agente di polizia nel corso di "una imboscata". Come sostenuto nel ricorso, la condotta della vittima - al momento della sparatoria - non aveva integrato nessuna delle fattispecie che ai sensi dell'art. 2 par. 2 CEDU legittimano il ricorso all'uso della forza. Quanto poi al profilo procedurale il ricorrente contestava le modalità di svolgimento delle indagini condotte, ritenendole contraddittorie, lacunose e inidonee a rappresentare le reali circostanze della morte del figlio e, soprattutto, ne eccepiva l'inutilità a dimostrare se questi fosse o meno armato.
Di contro, il Governo deduceva - sulla base delle testimonianze acquisite e delle azioni investigative svolte - che la vittima fosse armata; che la condotta dell'agente di polizia risultasse lecita e giustificata ai sensi dell'art. 2, par. 2 CEDU, e che l'evento letale fosse scaturito da uno scontro armato avvenuto tra la vittima e la polizia a seguito del suo tentativo di eludere l'arresto.
La Corte EDU nello scrutinare il ricorso ha dato preliminarmente rilievo a due questioni di ordine più generale: la prima, se l'uso della forza da parte della polizia fosse giustificato; la seconda, se le indagini svolte fossero adeguate ed efficaci all'accertamento della verità processuale. Con riferimento a quest'ultimo profilo la Corte ha ribadito, in via di principio, che la protezione del diritto alla vita ai sensi dell'art. 2 CEDU implica di per sé l'espletamento di indagini tempestive e adeguate ad accertare la sussistenza dei presunti delitti denunciati. Di tal guisa, i giudici di Strasburgo hanno precisato che affinché esse siano efficaci è necessario che siano condotte da persone indipendenti rispetto a quelle implicate negli eventi e che siano accessibili alla famiglia della vittima. L'attività inquisitiva deve essere altresì strumentale a dimostrare se la forza usata sia o meno giustificata e, a tal fine, le autorità devono fornire un quadro probatorio quanto più possibile completo, avvalendosi – se del caso – di ogni prova utile (testimonianze oculari, autopsia, registrazioni etc.) a dimostrare la causa della morte. Poste queste precisazioni e, passando al caso di specie, la Corte EDU ha considerato le indagini svolte dagli inquirenti insufficienti, inefficienti e intempestive, in quanto caratterizzate da numerose interruzioni, ritardi e carenze tali da violare il disposto dell'art. 2 della CEDU sotto il suo profilo procedurale. La stessa disposizione è stata altresì giudicata violata sotto il suo profilo sostanziale, in quanto l'uso della forza da cui ne è derivato l'evento mortale non è apparso strettamente proporzionale al raggiungimento di uno degli scopi previsti dalla norma stessa. Più in particolare, ha osservato la Corte, il Governo non ha

non ha fornito una spiegazione soddisfacente e convincente circa la necessarietà e la proporzionalità della forza esercitata e ha concluso che l'operazione non fosse stata adeguatamente pianificata e condotta in modo tale da ridurre al minimo il ricorso all'uso della forza letale.

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

FIFTH SECTION

CASE OF YUKHYMOVYCH v. UKRAINE

(Application no. 11464/12)

JUDGMENT

STRASBOURG

17 December 2020

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Yukhymovych v. Ukraine,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:
Síofra O'Leary, *President,*
Mārtiņš Mits,
Ganna Yudkivska,
Stéphanie Mourou-Vikström,
Jovan Ilievski,
Lado Chanturia,
Ivana Jelić, *judges,*
and Victor Soloveytchik, *Section Registrar,*
Having regard to:
the application (no. 11464/12) 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 Leontiy Ivanovych Yukhymovych ("the applicant"), on 6 January 2012;
the decision to give notice of the application to the Ukrainian Government ("the Government");
the parties' observations;
Having deliberated in private on 24 November 2020,
Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the death of the applicant's son during an arrest attempt and the domestic authorities' failure to conduct a prompt and effective investigation into the matter in breach of Article 2 of the Convention.

THE FACTS

2. The applicant was born in 1949 and lives in Lviv.
3. The applicant was initially represented by Mr A. Buryy, a lawyer practising in Lviv, and subsequently represented himself. The Government were represented by their Agent, most recently Mr I. Lishchyna from the Ministry of Justice.
4. The facts of the case, as submitted by the parties, may be summarised as follows.

BACKGROUND TO THE CASE AND EVENTS OF 4 MARCH 1999

5. On 25 February 1999 B. complained to the Lviv Regional Department for Combatting Organised Crime of the Ministry of Internal Affairs ("the DCOC") that unknown persons had threatened her and extorted the sum of 25,000 United States dollars (USD).
6. According to the Government, an inquiry into B.'s allegations was conducted and it was established that the unknown persons were the applicant's son, Ruslan Yukhymovych, and his friend Z., both alleged members of an organised criminal group which had been extorting money and property from residents of Mykolayiv with the use of weapons.
7. On 1 March 1999 the DCOC approved an operation plan to arrest the alleged extortionists by the "Sokil" special police unit of the DCOC, which was composed of senior police detective Zar., detective M., and assistant detectives O. and G.
8. On 2 March 1999 the above-mentioned police officers, who were wearing civilian clothes, commenced an operation to ambush the alleged extortionists in B.'s house. B.'s 22-year-old daughter and 16-year-old son were with B. at home.
9. On 3 March 1999 criminal proceedings were instituted in respect of the financial extortion from B.
10. According to the parties' submissions, it appears that at around 2 p.m. on 4 March 1999 a private taxi driver Tz. drove the applicant's son and Z. to B.'s house. The two men approached the house and the driver stayed in the car. B.'s daughter opened the door. Z. was the first to enter, and the applicant's son followed him. Police officer M. yelled "Freeze, police!" and officers Zar., M. and G. arrested Z. The applicant's son, who was at the entrance to the hallway at the time, disobeyed the order and started to flee. Officers M. and O. ran after him to the garden gate to arrest him. In the course of the operation, the applicant's son was shot twice by O. He died from his injuries.

CRIMINAL INVESTIGATION INTO THE DEATH OF THE APPLICANT'S SON

11. Between 3.40 and 8.20 p.m. on 4 March 1999 an investigator from the Mykolayiv district prosecutor's office, in the presence of two witnesses, F. and Mar., conducted an on-site inspection at the scene of the incident. Two partial video recordings of the inspection were made.
12. On 15 March 1999 experts from the Lviv Bureau of Forensic Medical Examinations examined the body of the applicant's son and drew up a report stating that his death had been caused by a gunshot wound to the chest. The injuries found on his left side turned out to be a perforating

gunshot wound. The experts also discovered other injuries on his body, such as a bruise on his forehead and superficial wounds and subcutaneous haemorrhages on the occipital part of the head and the lower lip.

13. On 24 March 1999 the internal inquiry conducted by the DCOC established that O. had used his service gun lawfully and in compliance with the requirements of the Police Act. The report noted that during the on-site inspection a "Valtro" gas gun had been found near the applicant's son's body.

14. On 25 March 1999 the Mykolayiv district prosecutor's office, after conducting a pre-investigation inquiry, refused to institute a criminal investigation into the death of the applicant's son. The relevant decision referred to the results of the forensic examination of the body, witness statements and the results of the internal inquiry and stated that the police officers' actions had disclosed no indication of an offence, since they had acted in an appropriate manner.

15. On 31 March 1999 the Lviv regional prosecutor's office set aside the decision of 25 March 1999 and opened criminal proceedings into alleged abuse of power by the police causing serious harm, reasoning that it had been impossible to establish the circumstances of the use of the weapon in the course of the pre-investigation inquiry and that an investigation was required.

16. On 15 April and 23 September 1999 forensic fingerprint examinations found a fingerprint on the left side of the "Valtro" gun belonging to the same group as the left thumbprint of the applicant's son. Three more of his fingerprints were found on the side of the gun's magazine.

17. On 16 April 1999 the prosecutor questioned the police officers who had participated in the operation.

18. B. and her daughter testified that from 1996 the applicant's son and Z. had been extorting money from their family by force. This had led B. to lodge a complaint with the police. On 2 March 1999 four police officers had organised an ambush at B.'s house. On 3 March 1999 they had seen the extortionists driving past in their car checking if there was anyone at home. At around 2 p.m. on 4 March 1999 they had heard knocking at the door and Z. calling for B.'s daughter to open the door. As she had been scared, B. had escaped into the bathroom and her daughter had opened the door. The latter further testified that Z. had grabbed her arm and tried to pull her out of the house, and that the applicant's son had been standing behind him on the steps. She had managed to break away and run inside the house into one of the rooms. The women further stated that after the extortionists had entered the house, they had heard one of the police officers shouting "Freeze, police!" followed by the sounds of fighting and a gunshot. They had then heard another gunshot outside the house. When the police officers had returned to the house, they had told B. to calm down because they had "gunned down" one of the extortionists.

19. Police officer M. testified that the ambush had been planned by an officer of the DCOC, K. He stated, inter alia, that K. had not informed them whether or not the alleged racketeers were armed. On 2 or 3 March 1999, while M. and his colleagues had been lying in wait at B.'s house, the latter had told them the names of the racketeers and that one of them had a gun. On 4 March 1999, while they had all been having lunch, someone had knocked on the door. B., who had had a recording device on her to record the extortion, had been too scared to open the door, and they had convinced her daughter to do it. M. stated that he and his colleagues had spontaneously spread out around the house since they had not had time to think, and M. had stayed in the kitchen. He

further testified that on being noticed by Z., who had entered the house, he had jumped out and yelled "Freeze, police!" Z. had not complied, so he had hit him in the chest. Immediately after this he had heard a shot in the hallway. He had turned around and seen the back of someone escaping from the house. He had yelled "Don't shoot!" and run after the person. At the gate, the absconder, who later turned out to be the applicant's son, had tried to open it. At that time M., who had caught up with the applicant's son and tried to arrest him, had kicked him in the back with his right foot. The applicant's son had then started to turn towards M. and the latter had noticed a gun in his hand, pointed at him. At the same moment, M. had heard a shot and seen O. with his service gun in his hand. After the shot, the applicant's son had fallen onto the concrete pavement of the yard and started to convulse, with the gun on his left side. Afterwards, police detective Zar. had left to call an ambulance and inform the police authorities of the incident. In order to save the physical evidence, as a crowd had been gathering at the scene, M. had taken the gun to B.'s house, put it in a plastic bag and left it on the coffee table in the living room.

In further statements given on unspecified dates M. changed his testimony and stated that in the course of the operation he and O. had stayed in the kitchen in accordance with the agreed operation plan.

20. Police officer O. testified that when Z. had entered the house he had been hiding in the kitchen with M. When the latter had yelled "Freeze, police!" he had jumped out into the hallway with his weapon ready to shoot and had tried to arrest the second man, who had taken out his gun and pointed it at him. O., after assessing the situation as one entitling a police officer to use firearms, had shot at the applicant's son, who had ducked behind the door to try to avoid the bullet. After being wounded, the applicant's son had run out into the yard. M. and O. had run after the applicant's son to the gate to arrest him. M. had reached the applicant's son first and kicked him in the back. At that point O. had seen a gun in the applicant's son's hand pointed at M. and, to defend his colleague, he had run towards the applicant's son and shot him in the back almost at point-blank range. After the applicant's son had fallen down, he had pushed the gun away from him. He had wanted to turn the applicant's son onto his back, but he had heard rattling noises from him and had decided to leave him in the same position.

21. Police officer Zar. testified that after the second shot he had run out to the yard and had seen the applicant's son lying face down on the ground. He did not remember seeing a gun near the body. After he had called the ambulance and returned to the house he had seen a big black gun in a plastic bag in the living room. Police officer G. provided a similar testimony.

22. When questioned on 3 May 1999 Tz., the taxi driver, testified that he had seen a gun in the applicant's son's hand both during his struggle with the police officers and later near his body.

23. When questioned on 4 June 1999 Z., the alleged accomplice, testified that the applicant's son had not had a weapon, since he had left his gun in his car before going to B.'s house. After the applicant's son had been shot, the police officers had forced him to tell them about the gun and its whereabouts. Z. further stated that when he had been escorted out of the building, he had noticed a gun in a plastic bag on a coffee table, but that it had not been the applicant's son's gun.

He later changed his testimony, stating that he did not know if the applicant's son had had a gun during the shooting.

24. According to results of forensic medical examinations dated 30 June and 6 October 1999, two gunshot wounds were inflicted on the applicant's son: one to the back of his right shoulder fired from a certain distance, which was impossible to establish since the bullet had gone through an obstacle – the door – before entering his body, and another to the back fired at point-blank range or from a distance of no more than two centimetres. The death of the applicant's son was caused by the first wound to the back of his right shoulder. The experts also stated that the applicant's son could have carried out certain actions after receiving the first wound, that is, he could have run a distance of about sixteen metres, fought back and pointed a gun.

25. On 20 August 1999 the case was transferred to the Lviv regional prosecutor's office.

26. On 19 and 21 October 1999 the witnesses to the on-site inspection were questioned. F. testified that he had not seen a gun at the scene of the incident, but that he could not rule out the possibility of one being there. Another witness to the on-site inspection, Mar., stated that he could not remember if he had seen a gun.

27. On 28 December 1999 a forensic examination of metallic residues found that the jacket and trousers of the applicant's son had traces of such residues, caused by contact with a steel object, possibly the "Valtro" gun allegedly found at the scene of the incident.

28. On 28 January 2000 the investigator of the Lviv regional prosecutor's office terminated the proceedings for lack of any evidence of a crime. His decision referred to the statements of Tz., B., B.'s daughter, police officers who had participated in the operation (see paragraphs 19-21 above) and law enforcement agents who had arrived at the scene of the incident. The witnesses testified unanimously that the applicant's son had had a gun during his arrest.

29. On 25 December 2000 the Regional Court of Lviv set aside the above-mentioned decision and ordered the proceedings to be reopened. The court noted, inter alia, that the evidence as to whether the applicant's son had been in possession of a gun at the time of the shooting was controversial; in particular, on 21 April 2000 Tz. had made a statement virtually withdrawing his previous testimony and submitting that the applicant's son had not had a weapon when he had been shot. The court instructed the investigator to question the witnesses further in the light of the above discrepancies.

30. On 19 April 2001 the Prosecutor General's Office transferred the case to the Zakarpattya regional prosecutor's office.

31. On 27 December 2001 the proceedings were again terminated, but on 12 February 2002 they were reopened as the investigator had failed to establish all the circumstances of the case.

32. The proceedings were again terminated on 19 August 2002. This decision was set aside on 9 December 2002 by the Uzhgorod Local Court of the Zakarpattya Region. The court reasoned that when terminating the proceedings the investigator had relied on the conclusion of the internal inquiry conducted by the DCOC (see paragraph 13 above), breaching the principle of the objective evaluation of evidence, the DCOC being an interested party. The court again pointed out the importance of establishing whether or not the applicant's son had had a gun during the shooting, and listed a number of investigative actions which had to be taken, such as a repeated reconstruction of events with the participation of Tz.

33. On 10 March 2004 the Zakarpattya Regional Court of Appeal set aside the decision to terminate the proceedings of 30 September 2003. The court noted that the investigative authority

had failed to comply with instructions issued by higher prosecutors and to answer the applicant's complaints. The court further noted that the investigator had failed to demonstrate the existence of any evidence which would unequivocally prove that O. had used his weapon against the applicant's son in compliance with the law. The court also pointed out procedural shortcomings in the investigation, such as the failure of the police officers to secure the scene of the incident and the towing of the applicant's son's car without the investigator's permission. In particular, it had to be checked whether police officers had access to the car as, according to Z., the applicant's son had left his gun in it. The court further referred to the inconsistencies in the witness statements, in particular concerning F.'s statement that he had not seen a gun at the scene of the incident (see paragraph 26 above). Lastly, the court questioned the manner in which B.'s statement concerning the alleged racketeering had been dealt with and ordered the investigator to ascertain why the identities of the alleged racketeers had not been established and why they had not been questioned by the police once B. had given her statement.

34. On 28 May 2004 the Prosecutor General's Office transferred the case to the Ivano-Frankivsk regional prosecutor's office.

35. On 31 August 2004 a forensic examination of the video recordings of the on-site inspection was conducted, which found no signs that the examined parts of the video recording had been manually or electronically edited. Furthermore, video recordings on video cassettes from the Lviv regional prosecutor's office and the DCOC showed a gun on a table inside the house similar to the "Valtro" gun given for examination, in terms of its brand, size and manufacturing characteristics. However, the expert noted that it had been impossible to establish if the gun on the recording was identical to the "Valtro" gun due to the poor quality of the recordings.

36. On 8 November 2004 the proceedings were again terminated. On 7 October 2005 this decision was set aside by the Ivano-Frankivsk Local Court, which reasoned that the investigator had failed to reconcile the inconsistencies in the witness statements and once again raised the question of the manner in which B.'s statement had been dealt with concerning the alleged racketeering. The court also noted that the reconstruction of events with the participation of Tz. had been carried out in a superficial manner and that the applicant's complaints had not been answered.

37. On 30 December 2005, after further questioning of the witnesses F. and Mar., the investigator again terminated the proceedings. On several occasions the Ivano-Frankivsk Local Court ruled on complaints by the applicant challenging the termination, but its rulings were quashed by the Ivano-Frankivsk Regional Court of Appeal. On 17 December 2007 that court, by a final decision, upheld the ruling of the Ivano-Frankivsk Local Court of 25 October 2007 setting aside that decision to terminate the criminal proceedings, reasoning that the investigator had failed to address the shortcomings outlined in the decision of the Ivano-Frankivsk Local Court of 7 October 2005.

38. On 15 January 2008 the investigator terminated the proceedings without any additional investigative measures. On 12 March 2008 the Ivano-Frankivsk regional prosecutor's office set aside this decision as premature and reopened the proceedings.

39. On 7 April 2008 the case was transferred to the Rogatyn district prosecutor's office and on 23 December 2008 to the Pustomyty district prosecutor's office.

40. On 6 August 2009, following a forensic medical examination, a report was drawn up stating that the applicant's son had sustained two gunshot wounds: one to his back and another to the

back of his right shoulder. According to the results of the examination, it had been impossible to definitively establish the order of the shots.

41. According to the results of a forensic ballistic examination of 19 August 2009, the first gunshot wound was inflicted on the applicant's son's back at point-blank range in the hallway of the house; after leaving the body the bullet went through the door. The second wound, to the back of the right shoulder, which caused the applicant's son's death, was inflicted in the front yard near the gate from a distance of no less than two metres.

42. On 13 February 2010 the case was transferred to the Lviv regional prosecutor's office.

43. In order to reconcile the contradictions between the results of the examinations concerning the way and order in which the injuries had been inflicted on the applicant's son (see paragraphs 24, 40 and 41 above) another forensic examination was ordered, but it was not conducted since the applicant's son's clothes had been returned to his father and he had destroyed them.

44. On 17 February 2012 the proceedings were terminated. On 25 October 2012 the Galytskyy District Court of Lviv set aside this decision, reasoning that an additional investigation after the reopening of the proceedings in 2008 had been conducted with a formalistic approach and that a number of investigative actions and forensic examinations had not been carried out. The court also pointed out that some evidence had been lost and that its location had not been established. On 23 November 2012 the Lviv Regional Court of Appeal dismissed a prosecutor's appeal against that decision.

45. On 28 February 2014 a follow-up ballistic and forensic medical examination was conducted. It confirmed the findings of the examinations of 30 June and 6 October 1999 (see paragraph 24 above). The experts further noted that there were no forensic signs enabling the order of the shots to be determined.

46. On 28 March 2014 the proceedings were again terminated. That decision was upheld on 24 December 2014 by the Galytskyy District Court; however, on 21 January 2015 the Lviv Regional Court of Appeal set aside this decision as unsubstantiated.

47. On 26 March 2015 the investigator of the Lviv regional prosecutor's office terminated the proceedings for lack of any evidence of a crime. His decision referred to, among other evidence, the statements of Tz., B., B.'s daughter, police officers who had participated in the operation (see paragraphs 18-22 above) and the law enforcement agents who had arrived at the scene of the incident. The witnesses had testified either that the applicant's son had had a gun during his arrest or that they had seen a gun in B.'s house afterwards. The investigator further reasoned that the witness statements were supported by the crime scene reconstructions and results of the forensic examinations conducted.

48. On 18 June 2015 the Galytskyy District Court of Lviv set aside this decision, reasoning that the investigator had failed to resolve the contradictions between the statements of Tz., Zar. and other witnesses (the police officers) concerning the applicant's son having a gun at the time he had been shot and the presence of the gun near his body (see paragraphs 21 and 29 above). The court further noted that the investigation had not established the circumstances in which the applicant's son had received the additional injuries indicated on 15 March 1999 by the experts of the Lviv Bureau of Forensic Medical Examinations (see paragraph 12 above).

49. The proceedings were again terminated on 30 September 2015 and 29 July 2017. On 16 May and 31 August 2017 the Galytskyy District Court of Lviv set aside the decisions to terminate the criminal proceedings, reasoning that the investigator had failed to address the shortcomings outlined in the decision of the Galytskyy District Court of Lviv of 18 June 2015.

50. As at 13 March 2018, the proceedings were still pending. No further information has been provided.

RELEVANT LEGAL FRAMEWORK

CODE OF CRIMINAL PROCEDURE OF 28 DECEMBER 1960

51. The relevant provisions, as in force at the material time, provided:

Article 4

Obligation to institute criminal proceedings and investigate a crime

"A court, prosecutor, investigator or body of inquiry shall, to the extent that it is within their power to do so, institute criminal proceedings in every case where signs of a crime have been discovered, take all necessary measures provided by law to establish the circumstances surrounding the crime, identify those guilty of the crime and punish them."

Article 97

Obligation to accept allegations or notifications of crimes
and the procedure for their examination

"A prosecutor, investigator, body of inquiry or judge shall accept allegations or notifications of crimes [which have been] committed or [are] being prepared, including in cases that are outside their jurisdiction.

Upon receipt of an allegation or notification of a crime, the prosecutor, investigator, body of inquiry or judge shall adopt, within three days, one of the following decisions:

(1) to institute criminal proceedings;

(2) to refuse to institute criminal proceedings;

(3) to remit the allegation or notification for examination in accordance with [the rules of] jurisdiction.

Simultaneously, all possible measures shall be applied to prevent the further commission of the crime or to put an end to it ...

Before instituting criminal proceedings, the prosecutor, investigator or body of inquiry shall conduct an inquiry, if it is necessary to verify [information contained in] an allegation or notification of a crime. [The inquiry] shall be completed within ten days by means of collecting explanations from individual citizens or officials or by means of obtaining necessary documents.

[Information contained in] an allegation or notification of a crime may be verified before instituting criminal proceedings by means of operational-search activities..."

POLICE ACT OF 20 DECEMBER 1990

52. The relevant provisions, as in force at the material time, read as follows:

Article 15

Use of firearms

"Police officers shall have the right to use firearms as a last resort in the following cases:

(1) to protect citizens from an attack that threatens their life and health, as well as for the release of hostages;

(2) to hold off an attack on a police officer or his family members if their life or health are endangered.

(3) to hold off attacks on secured facilities, convoys, residential premises of citizens, premises of State and public enterprises, institutions and organisations, and their release in the event of a takeover;
(4) to apprehend a person caught committing a serious criminal offence and trying to escape;
(5) to apprehend a person putting up armed resistance, trying to escape from custody, as well as an armed person who threatens to use weapons and other life-threatening items that threaten the life and health of police officers;
(6) to stop the vehicle by damaging it, if the driver poses a threat to the life or health of citizens or police officers ..."

THE LAW

ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION
53. The applicant complained that his son, Ruslan Yukhymovych, had been killed by State agents, and that the domestic authorities had failed to carry out an effective investigation into the circumstances of his death. He relied on Article 2, Article 6 § 1 and Article 13 of the Convention.
54. The Court, which is master of the characterisation to be given in law to the facts of the case (see Igor Shevchenko v. Ukraine, no. 22737/04, § 38 12 January 2012), finds that the complaints at issue fall to be examined under Article 2 of the Convention, which 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.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
(a) in defence of any person from unlawful violence;
(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
(c) in action lawfully taken for the purpose of quelling a riot or insurrection."
Admissibility
55. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.
Merits
The parties' submissions
56. The applicant stated that the State was responsible for the death of his son since his shooting had not been warranted by the circumstances. He maintained that at the time of the shooting his son had posed no danger, irrespective of whether he had been in possession of the gun, since he had been shot twice in the back while fleeing the scene of the incident.

57. The applicant also pointed out that the documents and witness statements as regards his son having a gun had been contradictory, and that these contradictions had not been resolved in the course of the investigation.

58. Lastly, the applicant submitted that the investigation into the circumstances of his son's death had been excessively lengthy and ineffective, in violation of Article 2 of the Convention.

59. The Government submitted that the actions of the police officers had been lawful and that O. had shot the applicant's son to defend another police officer, M., at whom the applicant's son had been pointing a gun.

60. In justifying the use of force by the police, the Government relied on the findings of the investigation into the applicant's son's killing and on the conclusion of the internal inquiry conducted by the DCOC. In particular, they argued that the witness testimony and results of the investigative actions conducted gave reasons to assume that the applicant's son had been armed and had posed a threat to the lives and health of the police officers.

61. The Government further contended that the circumstances of the killing of the applicant's son had been thoroughly investigated; the applicant had been granted the opportunity to be involved in the proceedings, and a significant number of investigative actions had been carried out.

The Court's assessment

62. The Court notes that it is common ground between the parties that the death of the applicant's son resulted from the use of lethal force by the police. The matters in dispute are whether the use of force against him was justified in the circumstances of the case and whether the investigation was effective. The Court will firstly assess the adequacy of the investigation into the death of the applicant's son. It will then review the planning and control of the actions under examination. Lastly, it will turn to assessing the actions of the State agents who actually used lethal force.

(a) Procedural limb

63. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention requires that there should be some form of effective official investigation when an individual has been killed as a result of the use of force.

64. For an investigation into alleged unlawful killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events. In addition, the investigation must be accessible to the victim's family to the extent necessary to safeguard their legitimate interests. There must also be a sufficient element of public scrutiny of the investigation, the degree of which may vary from case to case (see Giuliani and Gaggio v. Italy [GC], no. 23458/02, §§ 300 and 303, ECHR 2011 (extracts), and Armani Da Silva v. the United Kingdom [GC], no. 5878/08, §§ 232 and 235, 30 March 2016, with further references).

65. The investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used was or was not justified in the circumstances and of identifying and – if appropriate – punishing those responsible. This is not an obligation of result, but of means. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, inter alia, eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of the clinical findings, including the cause of death. Any deficiency in the investigation

which undermines its ability to establish the cause of death or the person responsible will risk falling foul of this standard (see Giuliani and Gaggio, cited above, § 301, and Armani Da Silva, cited above, § 233, with further references).

66. A requirement of promptness and reasonable expedition is implicit in this context. It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating a use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see Giuliani and Gaggio, cited above, § 305, and Armani Da Silva, cited above, § 237, with further references).

67. Turning to the present case, the Court notes that a number of investigative steps (see paragraphs 11-12 above) were taken immediately after the incident. However, they did not lead to the opening of criminal proceedings until 31 March 1999, twenty-seven days after the fatal shooting when the Lviv regional prosecutor's office set aside the earlier decision of the Mykolayiv district prosecutor's office refusing to institute such proceedings (see paragraphs 14-15 above).

For nearly a month, the circumstances of the applicant's son's death were examined exclusively in a pre-investigation inquiry. The Court has already held that such investigative procedures do not comply with the principles of an effective remedy because the inquiring officer may only take a limited number of steps and the victim has no formal status, meaning his or her effective participation in the procedure is excluded (see, mutatis mutandis, Strogan v. Ukraine, no. 30198/11, § 53, 6 October 2016, with further references). This stage would appear to have been insufficient to address the situation, as also recognised by the national authorities (see paragraph 15 above), particularly since it unnecessarily delayed the opening of a criminal investigation, which constituted the best, if not only, tool for meeting the Convention requirements of an effective investigation in such circumstances.

68. Furthermore, the Court observes that once opened, the subsequent investigation was characterised by repeated discontinuations and reopenings as a result of the insufficiency of the measures taken by the inquiring officers, and not following the instructions given at the reopening of the investigation (see paragraphs 29-33, 36-38 and 44 above). The Court has already held on a number of occasions that the repetition of remittal orders discloses a serious deficiency in criminal proceedings (see, mutatis mutandis, Zubkova v. Ukraine, no. 36660/08, § 40, 17 October 2013).

The Court also notes that substantial shortcomings in the investigation significantly undermined any further possibility of establishing the circumstances surrounding the death of the applicant's son. In this connection, the Court refers, in particular, to the domestic courts' decisions, which noted the failure of the investigating authorities to secure the scene of the incident and the failure to establish whether the applicant's son had been armed (see paragraphs 32 and 33 above).

69. Lastly, the Court notes that the investigation into the death of the applicant's son has been pending for more than nineteen years and that, according to the materials submitted to the Court, its outcome remains unclear. Such a delay in itself raises serious concerns as to the domestic authorities' compliance with the requirement of promptness and reasonable expedition (see Starčević v. Croatia, no. 80909/12, § 58, 13 November 2014 with further references).

70. In the light of the overall length of the criminal investigation and the shortcomings described above, in particular, the consistent failure of the investigative authorities to clarify the key question of the investigation as to whether the applicant's son posed a threat that could have justified the use of force, the Court concludes that the investigation into the circumstances surrounding the death of the applicant's son was not effective. There has accordingly been a violation of the procedural limb of Article 2 of the Convention.

(b) Substantive limb

71. The Court reiterates that Article 2, read as a whole, demonstrates that it covers not only intentional killing but also situations where it is permitted to "use force" which may result, as an unintended outcome, in the deprivation of life. Any use of force must be no more than "absolutely necessary" for – and strictly proportionate to – the achievement of one or more of the purposes set out in sub-paragraphs (a) to (c) (see Nachova and Others v. Bulgaria [GC], nos. 43577/98 and 43579/98, §§ 94-95, ECHR 2005-VII and Wasilewska and Kałucka v. Poland, nos. 28975/04 and 33406/04, § 42, 23 February 2010 with further references).

72. The use of force by agents of the State in pursuit of one of the aims delineated in paragraph 2 of Article 2 of the Convention may be justified under this provision where it is based on an honest belief which is perceived, for good reasons, to be valid at the time but subsequently turns out to be mistaken (see Wasilewska and Kałucka, § 42 and Giuliani and Gaggio, § 178, both cited above). In addressing this question, the Court will have to consider whether the belief was subjectively reasonable, having full regard to the circumstances that pertained at the relevant time. If the belief was not subjectively reasonable, it is likely that the Court would have difficulty accepting that it was honestly and genuinely held (see Armani Da Silva, cited above, § 248; Chebab v. France, no. 542/13, §§ 76 and 83, 23 May 2019).

73. Where deliberate lethal force is used, not only the actions of the agents of the State who actually administer the force should be taken into consideration but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination (see Wasilewska and Kałucka, cited above, §§ 45-46). Thus, in determining whether the force used is compatible with Article 2, it may be relevant whether a law enforcement operation has been planned and controlled so as to minimise, to the greatest extent possible, recourse to lethal force or incidental loss of life (see Bubbins v. the United Kingdom, no. 50196/99, § 136, ECHR 2005-II (extracts)).

74. To assess the factual evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see Giuliani and Gaggio, cited above, § 181). The Court further reiterates in this connection that, in all cases where it is unable to establish the exact circumstances of a case for reasons objectively attributable to the State authorities, it is for the respondent Government to explain, in a satisfactory and convincing manner, the sequence of events and to exhibit solid evidence that can refute the applicant's allegations. If the Government fail to do so, the Court may then draw strong inferences (see Mansuroğlu v. Turkey, no. 43443/98, § 80, 26 February 2008, with further references).

75. The Government also bear the burden of proving that the force used by the police officers was justified; that it did not go beyond what was absolutely necessary and was strictly proportionate to

the achievement of one or more of the purposes specified in Article 2 § 2 of the Convention. In examining whether the Government have discharged their burden, the Court will not only examine the use of lethal force by the police officers, but also, as stated above, whether the operation was regulated and organised in such a way as to minimise, to the greatest extent possible, any risk to life (see Makaratzis v. Greece [GC], no. 50385/99, § 60, ECHR 2004-XI; Bubbins, cited above, § 141; and Giuliani and Gaggio, cited above, § 249).

(i) Assessment of the planning and control of the operation

76. Turning to the facts of the present case, the Court notes that the applicant's son was not killed in the course of an unplanned operation which gave rise to developments to which the police were called upon to react (contrast Makaratzis, cited above, § 69).

77. In assessing the planning of the police operation, the Court has been hampered by the absence of any documents regarding its planning and conduct. As such, it is unable to establish how exactly the police officers were instructed by their superiors to arrest the suspects. Nevertheless, it will assess the operation on the basis of the material available. It appears, however, that this material contains a number of contradictions as to the preparation of the operation and the purpose of the ambush.

78. The Court notes that the domestic courts questioned the manner in which B.'s statement concerning the alleged racketeering had been dealt with, in particular, that the identities of the suspects had not been established and that they had not been questioned (see paragraphs 33 and 36 above).

79. Furthermore, according to the Government, the identities of the suspects and the possibility of their being armed were established before planning the ambush in order to apprehend them (see paragraph 6 above).

At the same time, as it appears from M.'s earlier testimony, when planning the operation the police did not have such information; it was only while lying in wait that they were informed by B. of the identities of the suspects and that one of the alleged racketeers had a gun (see paragraph 19 above). Furthermore, it can be understood from M.'s statement that the ambush was planned in order to record the extortion. M. further stated that when the suspects had arrived, he and his colleagues had spontaneously spread out around the house since they "did not have time to think" (ibid.). Thus, although the ambush was planned, the policemen were obviously surprised by the arrival of the suspects and they were not provided with important information relating to the suspects to be apprehended. Lastly, it is unclear why B.'s son and daughter were in the house, where a police operation to arrest potentially dangerous suspects was taking place.

80. The Court further notes that the subsequent proceedings cast doubt on whether the officers were clearly identifiable as police officers as they were wearing civilian clothes (see, for instance, Haász and Szabó v. Hungary, nos. 11327/14 and 11613/14, § 63, 13 October 2015).

81. In the light of the above, the Court cannot conclude that the operation was planned and conducted in such a way as to reduce to a minimum recourse to lethal force (see, for example, Wasilewska and Kałucka v. Poland, cited above, § 57; and contrast Bubbins, cited above, § 151).

(ii) Assessment of the use of force

82. As to the use of force, the Court notes that it is confronted with fundamentally different accounts of how the applicant's son died. While the applicant maintained that his son had been

killed by police officers as a result of disproportionate use of force, the Government asserted that he had died as a result of an armed clash which had taken place between him and the police, following his attempt to evade arrest.

83. The factual circumstances surrounding the death of the applicant's son are not clear. The domestic courts, in the course of setting aside the decisions to terminate the proceedings, repeatedly pointed out the discrepancies in the evidence as regards whether or not the applicant's son was actually in possession of a gun (see paragraphs 32 and 33 above). Moreover, it appears from the documents available to the Court that the only two witnesses that had consistently maintained that the applicant's son had been armed and had posed a threat were the police officers M. and O. (see paragraphs 19 and 20 above); other witnesses had either changed their testimony during the course of the investigation (see paragraphs 22, 23 and 29 above) or could not testify to this having been the case (see, for example, paragraphs 21 and 26 above).

The Court further notes other omissions and shortcomings in the authorities' investigation, in particular contradictions between the results of the forensic examinations concerning the way and order in which the injuries had been inflicted on the applicant's son (see paragraph 43 above). Lastly, the Court observes that both gunshot wounds sustained by the applicant's son were to his back (compare with Mansuroğlu, cited above, § 98).

84. Against this background the Court consequently has serious doubts as to how the shooting took place, in particular, whether the applicant's son was armed and whether he posed a threat to the police officers, largely due to the manner in which the investigation has been conducted.

85. In view of the above, the Court concludes that the Government have not provided a satisfactory and convincing explanation of how the events in question occurred or presented solid evidence to refute the applicant's allegations that the use of the lethal force against his son was not justified.

(iii) Conclusion

86. Having regard to the circumstances analysed above, the Government have not convinced the Court that the operation was planned and conducted in such a way as to minimise to the greatest extent possible recourse to lethal force and any risk to the life of the applicant's son. The Government have not discharged the burden of proving that the force used by the police officers was justified; that it did not go beyond what was absolutely necessary and was strictly proportionate to the achievement of one or more of the purposes specified in Article 2 § 2 of the Convention.

87. In such circumstances, the Court finds that there has been a violation of Article 2 of the Convention under its substantive limb.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

88. 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."

Damage

89. The applicant claimed 426,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

90. The Government contended that the claim was groundless and that there was no causal connection between the alleged violation of the Convention rights and the non-pecuniary loss sustained.
91. Ruling on an equitable basis, the Court awards the applicant EUR 39,000 in respect of non-pecuniary damage.
Costs and expenses
92. The applicant also claimed EUR 6,000 for the costs and expenses incurred before the domestic courts and the Court.
93. The Government noted that only part of the applicant's claim was supported by documents.
94. 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 were 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 70 covering costs under all heads, plus any tax that may be chargeable to the applicant.
Default interest
95. 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,

Declares the application admissible;
Holds that there has been a violation of Article 2 of the Convention under its procedural limb;
Holds that there has been a violation of Article 2 of the Convention under its substantive limb;
Holds, unanimously,
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
(i) EUR 39,000 (thirty-nine thousands euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 70 (seventy 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;
5.Dismisses the remainder of the applicant's claim for just satisfaction.
Done in English, and notified in writing on 17 December 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar
Síofra O'Leary President