



State negligence in clashes between Maidan supporters and opponents in Odesa in May 2014

Today's Chamber judgment¹ in the case of [Vyacheslavova and Others v. Ukraine](#) (application no. 39553/16 and 6 others) concerned violent clashes between Maidan supporters and opponents and the fire in the Trade Union Building in Odesa on 2 May 2014, which resulted in heavy casualties.

The seven applications were lodged by a total of 28 individuals. Twenty-five of the applicants lost their next of kin – either in the clashes or as a result of the fire – and three of the applicants survived the fire with various injuries.

Among the applicants' relatives who lost their lives on that day, were Maidan supporters and opponents and, possibly, simple passers-by. Respecting the applicants' choice, who often preferred not to mention their or their relatives' political views, the Court only indicated the political views of the individuals concerned where that was essential for establishing and understanding the events or where, in any event, the applicants themselves had made that information public.

In the case, the European Court of Human Rights Court held, unanimously, that there had been:

violations of Article 2 (right to life/investigation) of the European Convention on Human Rights, on account of the relevant authorities' failure to do everything that could reasonably be expected of them to prevent the violence in Odesa on 2 May 2014, to stop that violence after its outbreak, to ensure timely rescue measures for people trapped in the fire, and to institute and conduct an effective investigation into the events;

and a violation of Article 8 (right to respect for private and family life) in respect of one applicant (application no. 39553/16) concerning the delay in handing over her father's body for burial.

Principal facts

Between November 2013 and February 2014, a series of protests took place in Ukraine, first in Kyiv and then in other regions, including in Odesa, in response to the suspension of the preparations for the signing of the Ukraine-European Union Association Agreement and a strengthening of economic ties with Russia instead. Those protests, which became known as "Maidan", culminated in the ousting of the President of Ukraine and a series of political changes. That triggered, in turn, some pro-Russian protests. In eastern regions of Ukraine armed groups began to forcibly take control of administrative buildings across the Donetsk and Lugansk Regions, announcing the creation of self-proclaimed separatist entities which enjoyed military, economic and political support from the Russian Federation. The Russian Federation also started to exercise effective control over Crimea through the active involvement of its military personnel in the events leading to the so-called "referendum" and the subsequent purported integration of the peninsula into the Russian Federation.

By 2 May 2014, Odesa had been living through a period of several months of social tensions, including the violent dispersal of Maidan protests by the police in late November 2013, the attack on Maidan supporters on 19 February 2014 by an organised and well-equipped group of private individuals, with

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.

the police passively observing the events, and the unsuccessful attempt of pro-Russian protesters to storm the Odesa Regional Council building on 3 March 2014 to force through decisions in favour of federalisation and a local referendum. Both Maidan supporters and opponents had so-called self-defence units possessing some protective equipment and arms. While violent incidents had overall remained rare in Odesa, the situation was volatile and implied a constant risk of escalation.

In early March 2014 pro-Russian activists set up a tent camp at Kulykove Pole Square.

In late April 2014, fans of the Odesa Chornomorets and Kharkiv Metalist football clubs announced a rally "For a United Ukraine" on 2 May 2014 before the match that afternoon. The rally participants were to walk from Soborna Square to the stadium located 2.5 km east of the departure point (whereas the anti-Maidan activists' tent camp was about 3 km south). Shortly thereafter, anti-Maidan posts began to appear on social media describing the event as a Nazi march and calling for people to prevent it. Intelligence obtained by the Security Service showed signs of possible incitement to violence, clashes and disorder. The Ministry of the Interior's cybercrime unit also detected social media posts evoking mass riots.

On 2 May 2014 limited police forces were deployed to the city centre and the stadium, in accordance with a standard contingency plan for a football match. They did not intervene when anti-Maidan protesters started gathering not far from Soborna Square, supposedly to prevent the march participants from destroying the anti-Maidan activists' tents at Kulykove Pole.

As soon as the march began to make its way towards the stadium, anti-Maidan activists approached and attacked the demonstrators, some firing shots at them, still with no interference from the police. Both sides used pyrotechnic devices and airguns, and threw stones, stun grenades and Molotov cocktails. Some police officers and certain anti-Maidan protesters were wearing similar red adhesive tape on their arms.

At 4.10 p.m., the first victim, Mr Ivanov (application no. 59531/17), a pro-unity activist, was shot in the stomach. He was taken to hospital but died during surgery. There is video footage showing a pro-Russian activist wearing a balaclava standing by the police and firing numerous shots from a Kalashnikov-type assault rifle, with no reaction from the police. Other video footage shows that person with the rifle later leaving the scene alongside the deputy head of the regional police. At a certain point anti-Maidan activists drove back their opponents. It was then, at about 4.20 p.m., that Mr Biryukov (application no. 59531/17) was fatally injured. Shortly afterwards, a fire engine was hijacked by some pro-unity supporters but was released a few hours later. At around 5.45 p.m., numerous shots were fired towards anti-Maidan activists from a hunting gun by someone standing on a nearby balcony. It was around that time that Mr Zhulkov, Mr Yavorsky and Mr Petrov (application no. 76896/17) were killed.

The clashes in the city centre claimed six lives in total, including five relatives of nine of the applicants.

Pro-unity protesters eventually gained the upper hand in the clashes and charged to the pro-Russian tent camp at Kulykove Pole. Anti-Maidan protesters took refuge in the Trade Union Building, a five-storey building facing the square. They barricaded themselves inside the building using wooden pallets from the tent camp and wooden and plastic furniture found in the building. They took with them from the tent camp a fuel-powered electric generator, boxes containing Molotov cocktails and the products needed to make them.

Maidan activists started setting fire to the tents. A group of pro-Russian protesters on the roof of the Trade Union Building threw Molotov cocktails at the crowd below; pro-unity activists retaliated by throwing Molotov cocktails at the building. Gunshots were reportedly fired from both sides.

Despite numerous calls to the fire brigade, which was less than 1 km away, the fire service regional head instructed his staff not to send any fire engines to Kulykove Pole without his explicit order.

At 7.45 p.m., a fire broke out in the Trade Union Building. The fire extinguishers in the building did not

work. The police called the fire brigade, to no avail. Some of the people in the building – including Mr Dmitriyev (application no. 59339/17) – tried to escape by jumping from the upper windows. He survived the fall and was taken to an ambulance. A number of people fell to their deaths, including the son of Ms Radzykhovska (application no. 59339/17) and the son of Ms Nikitenko (application no. 47092/18). Video footage shows pro-unity protesters making makeshift ladders and platforms from a stage in the square and using them to rescue people trapped in the building. Other video footage shows pro-unity protesters attacking people who had jumped or had fallen.

The regional head of the fire service finally ordered fire engines to be sent to the scene. Fire ladders were used to rescue people from the upper-floor windows. Firefighters entered the building at around 8.30 p.m. and put out the fire. The police arrested 63 anti-Maidan activists who were still inside the building or on the roof. They were released two days later, when a group of several hundred anti-Maidan protesters stormed the local police station where they were being held.

The fire claimed 42 lives. Fourteen of the deceased were the next of kin of 16 of the applicants. Many people, including Mr Didenko, Mr Dmitriyev and Mr Gerasymov (application no. 59339/17), sustained burns and other injuries.

The domestic investigations, which were launched later on various dates, comprised numerous interrelated sets of criminal proceedings evolving over time. Depending on whether the investigations concerned private individuals, the police or the fire service, they were entrusted to different authorities, which apparently did not coordinate their efforts. Many of the suspects absconded. Several others were eventually released from criminal liability owing to the expiry of the ten-year limitation period. In some cases, the proceedings reached the trial stage, where they have remained pending for years. The only case completed by a final judicial decision was that in respect of the deputy head of the regional police who, having fled to Russia, was convicted *in absentia* for complicity in organising mass riots.

Complaints, procedure and composition of the Court

Relying mainly on Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment) and 13 (right to an effective remedy), the applicants complained that the State had failed to protect their lives or those of their relatives and that there had been no effective domestic investigation into the matter. Relying on Article 8 (right to respect for private and family life), Ms Vyacheslavova (application no. 39553/16) also complained about the delay in handing over her father's body for burial. Some applicants complained under Article 6 § 1 of the Convention that their civil claims in the criminal proceedings had not been dealt with within a reasonable timeframe.

The applications were lodged with the European Court of Human Rights between 27 June 2016 and 1 October 2018. The Court decided to examine the seven applications in a single judgment.

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

Mattias **Guyomar** (France), *President*,
María **Elósegui** (Spain),
Stéphanie **Mourou-Vikström** (Monaco),
Gilberto **Felici** (San Marino),
Andreas **Zünd** (Switzerland),
Kateřina **Šimáčková** (the Czech Republic),
Mykola **Gnatovskyy** (Ukraine),

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

Decision of the Court

The Court's role was to examine the applicants' complaints purely in relation to Ukraine's international responsibility under the Convention, regardless of the fact that some wrongdoings were attributable to specific former Ukrainian local officials who in the meantime had fled to the Russian Federation, had become Russian citizens and had even built a career there against the background of the Russian large-scale military invasion of Ukraine.

Article 2

The Court considered that disinformation and propaganda from Russia had had its part to play in the tragic events. The clashes had started with an attack by a group of anti-Maidan activists on the pro-unity march on the pretext that the latter had been planning to destroy the "Kulykove Pole" tent camp, even though they had not deviated from their planned route until they had been attacked. That unjustified wave of violence had been preceded by continued dissemination of aggressive and emotional disinformation and propaganda messages about the new Ukrainian government and Maidan supporters as voiced by Russian authorities and mass media.

In analysing the origin of the risk of violence and the extent to which it was susceptible to mitigation, the Court took note of the Ukrainian government's allegation about the possible threat of destabilisation of the situation in the southern regions of Ukraine in general and in Odesa in particular, coming from the Russian Federation. In view of the considerable strategic value of Odesa and the established heavy involvement of the Russian Federation in the events in Crimea and eastern Ukraine, the Court considered that that allegation was not devoid of any basis.

The Court also noted that the deputy head of the regional police who had been directly involved in the decision-making process before and during the events and who had fled to Russia afterwards, had, at the very least, been providing support to the anti-Maidan movement in Odesa, and perhaps conspiring with anti-Maidan activists in organising mass disorder. The risk of violent clashes might have stemmed, amongst other things, from the possible collusion between the police and anti-Maidan activists. The ability of the newly formed Ukrainian government to manage that risk was therefore considerably limited.

Bearing those things in mind, the Court noted that the authorities' basic duty was to do what could reasonably be expected of them to avert the risk of violence. The primary duty was to have regulatory and administrative frameworks in place to deter against violence, notably by providing appropriate and functional measures geared to ensuring public safety. While certain preventive measures had apparently been taken, the Court had not been provided with sufficient information to assess them.

The Court considered that, as soon as the authorities had been made aware of the intelligence and social media posts, they should have put in place enhanced security in the relevant areas, and proper measures to detect and stamp out any provocation as soon as possible and with minimal risk to life. However, nothing had been done. On the contrary, the Government admitted that the police authorities had ignored the available intelligence and the relevant warning signs and had prepared for an ordinary football match. No efforts whatsoever had been made to send in police reinforcements. Nor had there been any meaningful attempt to prevent the clashes.

The Court noted that local prosecutors, law enforcement, and military officers had met with the Deputy Prosecutor General on 2 May 2014 to discuss the existing challenges to public order in the region and had, apparently, not been contactable for a large part or all of time. The Court found the attitude and passivity of those officials inexplicable.

In sum, although the Ukrainian authorities' abilities to prevent the violent clashes had undoubtedly been limited, there was nothing to show that they had done everything that could reasonably be expected of them to avert them.

The passivity of the police during the clashes was an established fact. In the Court's opinion, the failure of the police to make any real attempt to stop the initial wave of violence against the pro-unity protesters, together with clear indications of possible collusion between the police and anti-Maidan activists, was one of the reasons, if not the main one, for the wave of violence in retaliation.

Furthermore, it appeared that no special contingency plan for mass riots had been activated once the clashes had started. As admitted by the Government, there had been a lack of coordination between the regional and city police.

The Court considered that the negligence attributable to State officials and authorities went beyond an error of judgment or carelessness.

As far as the fire was concerned, the Court had to determine whether the authorities had done what could reasonably be expected of them to save people's lives. By the Government's own admission, that was not the case. The deployment of fire engines to the site of the fire had been deliberately delayed for 40 minutes, and the police had not stepped in to help evacuate people from the building promptly and safely. Therefore, the State had failed to ensure timely rescue measures.

The Court concluded that the relevant authorities had not done everything they reasonably could to prevent the violence, to stop that violence after its outbreak, and to ensure timely rescue measures for those trapped in the fire in the Trade Union Building. There had therefore been violations of the substantive aspect of Article 2 of the Convention.

As regards the adequacy of the investigation, the Court considered that the investigating authorities had not made enough effort to properly secure, collect and assess all the evidence. For instance, instead of putting in place a police perimeter to secure the affected areas of the city centre, the first thing local authorities had done after the events was to send cleaning and maintenance services to those areas. The earliest on-site inspection there had been carried out only almost two weeks later and had produced no meaningful results. Likewise, the Trade Union Building had remained freely accessible to the public for 17 days after the events.

Serious omissions were also noted in the securing and processing of forensic evidence. Some essential evidence had never been examined, and some examination reports had only recently been issued or still remained pending eight years after the events.

Although there was extensive photographic and video evidence regarding both the clashes in the city centre and the fire in the Trade Union Building, the Court had not been provided with sufficient details as to how the investigation authorities had dealt with that evidence and whether they had made genuine efforts to identify all the perpetrators. No forensic identification had been carried out with regard to the photographic and video evidence showing particular individuals firing shots during the clashes and involved in assaulting the fire victims near the Trade Union Building.

The Court also noted serious defects in the investigations in respect of different individuals and their role in the events. For instance, the criminal investigation in respect of a pro-Maidan activist suspected of having shot at anti-Maidan activists was discontinued on four occasions on identical grounds, in disregard of the earlier criticism. As regards the investigation in respect of 19 anti-Maidan activists suspected of organising and participating in mass riots, it had been so flagrantly deficient that it raised issues of either manifest incompetence by the authorities or sabotage of the investigative work in favour of the accused. In its judgment acquitting those activists, the trial court had stated, in particular, that, because of the flagrant incompleteness and deficiencies of the investigation, it had been obliged to seek alternative sources of information and that the investigating authorities had persistently disregarded its requests and instructions.

Moreover, the Court considered that the investigation into the events of 2 May 2014 had neither been opened promptly nor pursued within a reasonable timeframe. The authorities had caused prohibitive delays and allowed significant periods of unexplained inactivity and stagnation. For instance, although

it had never been disputed that the fire service regional head had been responsible for the delayed deployment of fire engines to Kulykove Pole, no criminal investigation had been launched in respect of him for almost two years after the events. In the meantime, he had fled to the Russian Federation. Also, although the prosecution authorities had been informed within two months of the events that the contingency plan applicable in the event of mass disorder had not been implemented and that the documents relating to its alleged implementation had been forged, a notice of suspicion to the regional police head had been announced only almost a year later. Following the pre-trial investigation, the case had remained pending before the first-instance court for about eight years, after which the official in question had been released from criminal liability on the grounds that the charges against him had become time-barred.

While some investigations still remained pending, the expiry of the limitation period had already stripped them of any possible usefulness and therefore of any potential effectiveness.

Regarding involvement of the victims or their next of kin and public scrutiny, the Court emphasised that, due to the seriousness of the events, the right to the truth did not belong solely to the victims and their families, but also to the general public, who had the right to know what had happened.

The Government did not refute the applicants' arguments that they had not been duly informed of the progress of the investigations. Findings had been made on several occasions by the courts that the investigating authorities had wrongfully rejected the applicants' requests for procedural status of victims or had failed to deal with their requests at all.

The Court found that, considering the scale of violence and its death toll, the involvement of supporters of two opposing political camps in the context of considerable social and political tensions, and the threat of an overall destabilisation of the situation, the authorities should have done everything in their power to ensure transparency and meaningful public scrutiny of the investigations. Instead, there had been no effective communication policy in place, with the result that some of the information provided had been difficult to understand, inconsistent, and had been provided with insufficient regularity. The Court noted that distortion of the events in Odesa had eventually become a tool of Russian propaganda in respect of the war waged by the Russian Federation against Ukraine since February 2022. Enhanced transparency in the related investigative work by the Ukrainian authorities might have helped to prevent or counteract that propaganda effectively.

The Court also considered that the investigation had not been independent. Given the evidence of police complicity in the mass disorder of 2 May 2014, the investigation as a whole should have been carried out by an organ entirely independent from the police. That had not been the case. The investigation into the conduct of the fire service had also lacked institutional and practical independence.

The Court noted, however, that the allegation of a lack of impartiality in the investigation was unsubstantiated. The authorities had been no more diligent in investigating the deaths of pro-Maidan activists than investigating those of anti-Maidan activists. Also, the Court's extensive criticism of the investigations into the events of 2 May 2014 held true for all the applicants, regardless of their political views or those of their deceased relatives.

The Court concluded that the relevant authorities had failed to institute and conduct an effective investigation into the events in Odesa on 2 May 2014. There had therefore been a violation of the procedural aspect of Article 2 of the Convention.

Article 8

The Court examined Ms Vyacheslavova's complaint about the delay in handing over her father's body for burial solely under this Article. Although Ms Vyacheslavova had identified the body several times as her father, the investigator had continued to retain it for several months without any further identification measures being carried out. It was only thanks to the intervention of the Head of the

UN Monitoring Mission that the body of Ms Vyacheslavova's father had been released for burial. **The Court concluded that keeping the body for those additional months had been pointless and constituted a violation of Article 8 of the Convention in respect of Ms Vyacheslavova.**

Other articles

The applicants also complained that the way in which the authorities had handled the investigation had caused them profound mental suffering and had therefore amounted to their ill-treatment in breach of Article 3 of the Convention. The Court was mindful of their suffering. However, it did not consider that it exceeded the suffering inflicted following the wrongful death of a close family member and stemming from the absence of an effective investigation into the circumstances of that death. As the Court had already found several violations of Article 2 of the Convention, it dismissed the complaint under Article 3.

Furthermore, as it had already examined the main legal questions raised in the case, the Court did not consider that there was a need to give a separate ruling on the admissibility and merits of the complaint under Article 6 § 1.

Just satisfaction (Article 41)

The Court held that Ukraine was to pay the applicants varying amounts in respect of non-pecuniary damage and in respect of costs and expenses, as set out in the judgment.

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.