



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

FIFTH SECTION

CASE OF DOTSENKO v. UKRAINE

(Application no. 81496/17)

JUDGMENT

STRASBOURG

22 October 2026

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

In the case of Dotsenko v. Ukraine,

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

María Elósegui, *President*,

Andreas Zünd,

Mykola Gnatovskyy, *judges*,

and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 81496/17) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 23 November 2017 by a Ukrainian national, Mr Anton Mykolayovych Dotsenko (“the applicant”), who was born in 1980 and lives in Kharkiv;

the decision to give notice of the application to the Ukrainian Government (“the Government”), represented by their Agent, Ms M. Sokorenko;

the parties’ observations;

Having deliberated in private on 22 October 2026,

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

SUBJECT MATTER OF THE CASE

1. The applicant issued a power of attorney authorising Mr and Ms B. to sell his car. Mr and Ms B. subsequently issued a power of attorney authorising M. to drive the car.

2. On 30 December 2008 criminal proceedings were initiated into a fraud committed in respect of the applicant. According to that decision, M. had failed to return the car which Mr and Ms B. had entrusted to him.

3. The applicant lodged a civil claim within those proceedings. By a decision of 26 February 2009, he was recognised as a victim and a civil party in the criminal proceedings.

4. On 13 March 2009, in the framework of the criminal case, the police charged M. with having misappropriated the applicant’s car.

5. On an unspecified date Mr and Ms B. were questioned. They confirmed that M. had neither returned the car nor informed them of its whereabouts.

6. On an unspecified date M. was questioned and he said that he had handed the car over to a certain Y. who had paid him EUR 5,000 for it.

7. On 17 March 2009 the investigation into the theft of the car was joined to an investigation in respect of M. concerning the offence of hooliganism.

8. On 15 May 2009 the case was sent to the Leninskyy District Court of Kharkiv for examination.

9. On 27 December 2013 the court found M. guilty of hooliganism and ordered the prosecutors to conduct further investigation into the theft of the applicant’s car.

10. On 20 May 2014 the criminal proceedings against M. were discontinued, but that decision was overruled by a court on 16 January 2016 following the applicant's complaint.

11. In April 2016 the police informed the applicant's lawyer that the case file concerning the theft had been lost in December 2014 while being transferred from one police department to another.

12. In June 2017 the police informed the applicant's lawyer that an official inquiry had been carried out, but it was unable to establish the whereabouts of the case file.

13. In January 2025 the Main Directorate of the National Police in the Kharkiv Region sent a letter to the Kharkiv District Police Directorate No. 3 indicating that measures should be taken to restore the case file.

14. The criminal proceedings against M. for the theft of the car formally remain pending, however, no investigative measures are being carried out because the whereabouts of the case file remain unknown.

THE COURT'S ASSESSMENT

I. PRELIMINARY ISSUE

15. Relying on Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 (in substance), the applicant complained that the authorities had failed to comply with their obligations to ensure respect for his property rights and that the length of the proceedings in his case had been excessive.

16. The Court, being the master of characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia*, nos. 37685/10 and 22768/12, § 114, 20 March 2018), finds it appropriate to examine the applicants' complaint under Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

17. In their observations submitted on 29 September 2021 the Government stated that the applicant had used the available domestic remedy and "was entitled to receive compensation for material damage following identification of offenders and the decision of the domestic court". They further stated that "the possibility to have the applicant's complaints under Article 1 of Protocol No. 1 to be considered by domestic authorities is directly linked to the results of the relevant criminal case, which is under investigation at present". The Government stated, without developing further, that the applicant had not lodged any complaints concerning length and ineffectiveness of the investigation. The Government submitted that the authorities had discharged their positive obligations towards the applicant and that, since the applicant had not had a sufficiently established claim for

compensation for the purposes of Article 1 of Protocol No. 1, he could not argue that he had had a “legitimate expectation of obtaining any specific sums in the present case”.

18. In their additional observations submitted on 16 January 2025 together with the comments on just satisfaction claims, the Government maintained that the applicant had not submitted any evidence that he had lodged complaints concerning ineffectiveness of the investigation and the loss of the case file. They noted that they “continue to take measures to restore the criminal proceedings” (see paragraph 13 above). The Government argued that the applicant could have lodged a separate civil claim for compensation outside of criminal proceedings. They referred to a case where an individual had lodged a civil claim while consideration of his civil claim lodged within criminal proceedings had been ongoing and to another case where an individual had requested to leave his civil claim lodged within criminal proceedings without consideration and subsequently lodged a separate civil claim. The Government also referred to three cases where individuals had been awarded compensations for lengthy and ineffective investigations into deaths of their next of kin. They submitted that the applicant could have lodged a similar complaint and receive a compensation for the lengthy investigation.

19. The Court notes that any plea of inadmissibility must be raised by the respondent Contracting Party, in so far as the nature of the objection and the circumstances so allowed, in its written or oral observations on the admissibility of the application. The Court observes that the Government’s arguments concerning various remedies allegedly available to the applicant, accompanied by examples of the domestic practice, were not a part of the observations on the admissibility and merits submitted in 2021. They were raised only in their additional observations lodged in 2025. The Court finds no exceptional circumstance capable of exempting the Government from their obligation to raise an objection to admissibility in their initial observations on admissibility and merits. The Court thus finds that the Government are estopped from raising these arguments (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 52, 15 December 2016).

20. The Court considers that the Government’s arguments submitted on 29 September 2021 relate closely to the merits of the applicant’s complaint and it will, therefore, examine it in the framework of its analysis of the merits of this case below. It further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

21. The Court observes that the material before it contains sufficient evidence that the applicant was indeed the owner of the car in question and that a criminal investigation was instituted into the theft of that car.

22. The Court reiterates that in the context of Article 1 of Protocol No. 1, when an interference with the right to peaceful enjoyment of possessions is

perpetrated by a private individual, a positive obligation arises for the State to ensure in its domestic legal system that property rights are sufficiently protected by law and that adequate remedies are provided whereby the victim of an interference can seek to vindicate his rights, including, where appropriate, by claiming damages in respect of any loss sustained. Furthermore, where the interference is of a criminal nature, this obligation will in addition require that the authorities conduct an effective criminal investigation and, if appropriate, prosecution. In that respect, the obligation is one of means and not one of result; in other words, the obligation on the authorities to investigate and prosecute such acts cannot be absolute, as it is evident that many crimes remain unresolved or unpunished notwithstanding the reasonable efforts of the State authorities. Rather, the obligation incumbent on the State is to ensure that a proper and adequate criminal investigation is carried out and that the authorities involved act in a competent and efficient manner. Moreover, the Court is sensitive to the practical difficulties which the authorities may face in investigating crime and to the need to make operational choices and prioritise the investigation of the most serious crimes. Consequently, the obligation to investigate is less exacting with regard to less serious crimes, such as those involving property, than with regard to more serious ones, such as violent crimes, and in particular those which would fall within the scope of Articles 2 and 3 of the Convention. The Court thus considers that in cases involving less serious crimes the State will only fail to fulfil its positive obligation in that respect where flagrant and serious deficiencies in the criminal investigation or prosecution can be identified (see *Blumberga v. Latvia*, no. 70930/01, § 67, 14 October 2008).

23. The Court observes that the relevant investigation was instituted shortly after the theft of the applicant's car in December 2008 and has formally remained pending for 18 years so far. A suspect was quickly identified, questioned and charged (see paragraphs 2, 4 and 6). However, after the further investigation into the theft having been ordered by the court in December 2013, discontinued in May 2014 and resumed in January 2016 (see paragraphs 9-10 above), the applicant was informed, in April 2016, that the case file had actually been lost in December 2014 (see paragraph 11 above). The Court notes that in the latter respect there appears to be no evidence that the authorities took any meaningful steps to restore the case file and to resume the investigation (see paragraphs 12-14 above). The Court notes that as the authorities were aware of the loss of the case file, the applicant did not need to bring it to their attention by lodging further complaints in order to comply with the requirements of exhaustion of domestic remedies.

24. Having regard to the circumstances mentioned above, notably the loss of the case file, the Court finds it established that the failure to bring the criminal proceedings to a successful conclusion was the result of flagrant and serious deficiencies in the conduct of the authorities. The State therefore failed to fulfil its positive obligations in respect of the applicant's property.

There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. The applicant claimed 33,224 euros (EUR) in respect of pecuniary damage, EUR 23,000 in respect of non-pecuniary damage and EUR 3,000 in respect of the costs and expenses incurred before the Court.

26. The Government contested those claims.

27. The Court cannot speculate whether the authorities could have found the applicant's car had they taken all necessary investigative steps in a timely manner. Therefore, the Court thus does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

28. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 500 covering costs under all heads for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to 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 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 500 (five hundred 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;

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4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 October 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller
Deputy Registrar

María Elósegui
President