



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

FIFTH SECTION

CASE OF KRIVOVA v. UKRAINE

(Application no. 25732/05)

JUDGMENT

STRASBOURG

9 November 2010

FINAL

11/04/2011

*This judgment has become final under Article 44 § 2 (c) of the Convention.
It may be subject to editorial revision.*

In the case of Krivova v. Ukraine,

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

Peer Lorenzen, *President*,
Karel Jungwiert,
Rait Maruste,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Ganna Yudkivska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 5 October 2010,

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

PROCEDURE

1. The case originated in an application (no. 25732/05) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Ms Mariya Mykhaylivna Krivova (“the applicant”), on 5 July 2005.

2. The applicant, who had been granted legal aid, was represented by Mr K.M. Buzadzhy, a lawyer practising in Kyiv. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev.

3. The applicant alleged, in particular, that the State had failed to comply with its positive obligations under Article 2 of the Convention and that the length of the proceedings in her case had been in breach of Article 6 § 1 of the Convention.

4. On 12 March 2009 the President of the Fifth Section decided to communicate the above complaints to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1961 and lives in Chervonograd, Lviv region, Ukraine.

A. Background to the case

6. On 30 November 1998 several schools organised a collective visit by pupils to a local cinema, which was owned by the municipal company E., for a film showing. The applicant's daughter, Ms Galyna Igorivna Krivova, born in 1985, was among the pupils who visited that cinema. While the first group of pupils was still watching the film, another group of pupils for the next showing entered the auditorium. As a result of a lack of control of entry to the auditorium during the film, there was a stampede in which four children were trampled to death and fourteen children, including the applicant's daughter, received varying degrees of injury. The applicant's daughter, in particular, was diagnosed with, *inter alia*, severe post-traumatic hypoxic damage to the central nervous system (*посттравматичне постгіпоксичне ураження центральної нервової системи важкого ступеню*), a right sided pneumothorax, and other injuries. According to the applicant, her daughter was in a coma for two months.

7. On 17 January 1999 the applicant's daughter was classified as temporarily Category 1 disabled. Three years later, on 17 January 2002, she was classified as permanently disabled.

8. The applicant's daughter underwent inpatient medical treatment at least until 18 February 1999, after which she periodically had medical treatment and rehabilitation therapy.

9. By a judgment of 13 March 2004 the Chervonograd Town Court ("the Town Court") declared the applicant's daughter incapacitated. Apparently that judgment became final and on 29 April 2004 the Chervonograd Town Council appointed the applicant as the legal guardian of her disabled daughter.

10. At the present time the applicant's daughter still suffers the consequences of post-traumatic consequences and needs medical assistance and nursing.

B. Investigation into the accident of 30 November 1998 and subsequent judicial proceedings

11. On 30 November 1998 the Prosecutor's Office instituted criminal proceedings and on an unspecified date indicted S., the head of the E. company (it appears from the submitted documents that criminal proceedings against other persons were also instituted but were subsequently abandoned for various reasons).

12. On 2 December 1998 a medical expert reported on the aforesaid injuries to the applicant's daughter and identified them as serious.

13. Meanwhile, on 1 December 1998 a special administrative committee composed of nine experts was set up to investigate the accident of 30 November 1998. On 10 December 1998 that committee drew up a report

which recommended that six persons be dismissed and five others subjected to disciplinary sanctions.

14. According to the applicant, the pre-trial investigation was completed by 22 September 2000 and the case was transferred to the Town Court.

15. On 20 March 2001 the applicant lodged a civil claim against S., seeking compensation for pecuniary and non-pecuniary damage. Five other claims were also lodged with the court by other victims.

16. On 10 October 2003 the Town Court found S. guilty of abuse of authority and forgery and sentenced him to seven years' imprisonment. The court also banned S. from holding managerial positions for one year. As to the civil claims, the court allowed them in part, awarding, in particular, the applicant 15,000 Ukrainian hryvnias (UAH; about 2,464.91 Euros (EUR) at the material time) in respect of non-pecuniary damage, to be paid by S.

17. On 27 April 2004 the Lviv Regional Court of Appeal ("the Court of Appeal") quashed that judgment because of procedural shortcomings of the trial before the first-instance court. On 1 July 2004, having held a re-trial, it found S. guilty of forgery in office (he had forged the documents stating that he had taken necessary accident prevention measures and instructed his subordinates) and negligence that had had serious consequences, finding that the cinema personnel had not been instructed and lacked relevant expertise, the auditorium had not been properly equipped and the cinema tickets had been sold without indication of time, row and seat. The court thus sentenced S. to five years' imprisonment and banned him from holding managerial positions for three years. However, in view of the Amnesty Act, the court exempted S. from these punishments. Finally, the court awarded the applicant UAH 143,556.69 (about EUR 22,771.80) in respect of pecuniary damage and UAH 12,000 (about EUR 1,903.51) in respect of non-pecuniary damage, to be paid by Chervonograd Town Council, as well as UAH 6,000 (about EUR 951.75) in respect of non-pecuniary damage, to be paid by S.

On the last-mentioned day the Court of Appeal issued a special ruling (*окрема постановова*) informing its head and the head of State Judges' Administration of the delays in the case caused by the first-instance court.

18. On 18 January 2005 the Supreme Court of Ukraine amended the judgment of 1 July 2004, replacing the amnesty with statutory limitation, as the reason for S.'s exemption from the punishment. The court also quashed the judgment in part related to the civil claims, casting doubts on the liability of Chervonograd Town Council. Accordingly, it remitted that matter for fresh consideration.

19. It appears from the documents submitted that, at this stage of the proceedings, the applicant and another civil claimant requested the Court of Appeal to join to the proceedings a number of legal persons (such as the schools which had organised the pupils' collective visit to the cinema, the E. company, the local department of education, etc.). For these reasons, on

31 March 2005 the Court of Appeal decided to remit the case to the Town Court.

20. Subsequently, a clinic which had treated the applicant's daughter brought its claim against the defendants and joined the proceedings; the other claimants (some other victims of the accident) withdrew their claims as being settled extra-judicially. In the course of the proceedings the claimants modified their claims on several occasions.

21. On 31 March 2008 the Town Court found in part for the applicant and other civil claimants. In particular, it ordered the Chervonograd Town Council, the education and culture departments of the Chervonograd Town Executive Committee and S. to pay the applicant, who was acting on her own behalf and on behalf of her daughter, in the specified proportions the total amount of UAH 85,411.97 (about EUR 11,033.40 at the material time) in respect of the care, medical, legal and other expenses she had incurred from the date of the accident to 1 April 2008 and 175% of the statutory minimum salary¹ after 1 April 2008, monthly. Additionally, the court awarded the applicant the total amount of UAH 58,500 (about EUR 7,556.96 at the material time) in respect of non-pecuniary damage to be paid by Chervonograd Town Council and the education and culture departments of the Chervonograd Town Executive Committee. The court also awarded damages to other victims of the accident, as well as to the clinic in reimbursement of medical and other expenses for treating the applicant's daughter.

22. On 4 March 2009 the Court of Appeal allowed the defendants' appeals in part and quashed the judgment in part concerning the reimbursement to the clinic of medical and other expenses for treating the applicant's daughter because it had been claimed by the applicant, not the clinic, and the applicant's legal expenses regarding the publication in a newspaper of details of the court's hearings; consequently, it remitted these parts of the case for fresh examination. It also reduced the awards to other victims of the accident and upheld the remainder of the judgment.

23. On 14 August 2009 the Supreme Court of Ukraine rejected the requests for leave to appeal in cassation lodged by the Chervonograd Town Council and the education and culture departments of the Chervonograd Town Executive Committee.

24. Apparently, the proceedings in the remitted part are still pending before the first-instance court.

¹ The minimum salary is regularly set forth by the relevant Budget Act. Since 1 April 2008, when it was at the amount of UAH 525 (about EUR 73.05), the minimum salary has been gradually increased to the current amount of UAH 884 (about EUR 83.18). By the end of 2010, it will be at the amount of UAH 922 (about EUR 86.76 under the current currency exchange rate).

C. Enforcement proceedings

25. On 6 July 2009 the State Bailiffs' Service instituted proceedings to enforce the judgment of 31 March 2008, as amended on 4 March 2009.

26. The Chervonograd Town Council and the education and culture departments of the Chervonograd Town Executive Committee requested adjournment of the enforcement for six months, referring to a lack of relevant funds. On 28 September 2009 the Town Court allowed these requests.

D. Other measures taken by the authorities to redress the consequences of the accident

27. On 1 December 1998 the victims of the accident were paid *ex gratia* by the local authorities the total amount of UAH 30,000, out of which the applicant was paid UAH 1,500 (about 394.74 United States Dollars at the material time). She was further paid:

- on 26 January 1999 – UAH 2,000 (about EUR 438.54);
- on 5 March 1999 – UAH 12,000 (about EUR 2,789.21);
- on 23 September 1999 – UAH 238 (about EUR 50.51);
- on 2 September 2004 – UAH 2,000 (about EUR 300.39).

II. RELEVANT DOMESTIC LAW

A. Constitution of Ukraine, 1996

28. Articles 27, 55, and 56 of the Constitution on the right to life and right to compensation for damage caused by authorities are set out in *Kats and Others v. Ukraine* (no. 29971/04, § 75, 18 December 2008).

B. Criminal Code of Ukraine, 2001

29. Article 366 (forgery in office) of the Code provides as follows:

“1. Forgery in office, that is putting any knowingly false information in official documents, any other fabrication of documents, and also making and issuing knowingly false documents, by an official, –

shall punishable by a fine of up to 50 tax-free minimum incomes, or restraint of liberty for a term of up to three years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term of up to three years. ...”

30. Article 367 (neglect of official duty) of the Code provides as follows:

“1. Neglect of official duty, that is the failure of an official to perform, or the improper performance of, his/her official duties due to negligence, where it caused significant damage to the legally protected rights and interests of individual citizens, or state and public interests, or interests of legal entities, –

shall be punishable by a fine of 50 to 150 tax-free minimum incomes, or correctional labour for a term of up to two years, or restraint of liberty for a term of up to three years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term of up to three years.

2. The same act that caused any grave consequences, –

shall be punishable by imprisonment for a term of two to five years with the deprivation of the right to occupy certain positions or engage in certain activities for a term of up to three years and with or without a fine of 100 to 250 tax-free minimum incomes.”

31. Under Articles 49 § 1 (3) and 74 § 5 of the Code, a person convicted for an offense of medium gravity can be exempted from the punishment if a period of five years has elapsed from the date of the criminal offense to the effective date of the judgment. An offense of medium gravity is punishable by imprisonment for a term of up to five years (Article 12 of the Code).

C. Civil Code, 1963 (in force at the material time)

32. Articles 440¹ (compensation for moral (non-pecuniary) damage) and 441 (liability of an organisation for damage caused through the fault of its employees) of the Code are set out in *Lovygina v. Ukraine* ((dec.), no. 16074/03, 22 September 2009).

THE LAW

I. PRELIMINARY CONSIDERATIONS: STANDING OF THE APPLICANT

33. The applicant named herself rather than her daughter as a party to the present proceedings. She stated in this regard that her daughter had been declared incapacitated and that since 29 April 2004 she had acted as her legal guardian. In addition, she claimed to have victim status (see paragraphs 55 and 69 below).

34. The Government maintained that the applicant could only claim to be the *de facto* authority of her daughter but not the indirect victim of the alleged violations.

35. The Court reiterates that in order to be able to lodge an application in pursuance of Article 34, a person, non-governmental organisation or group

of individuals must be able to claim “to be the victim of a violation ... of the rights set forth in the Convention ...”. In order to claim to be a victim of a violation, a person must be directly affected by the impugned measure (see, as the recent authority, *Micallef v. Malta* [GC], no. 17056/06, § 44, ECHR 2009-...; for recapitulation of relevant principles, see *loc. cit.*, §§ 45-48).

36. In the present case, Ms Galyna Igorivna Krivova was the immediate victim of the accident. The Court considers that it would generally be appropriate for an application to name the injured person as the applicant and for a letter of authority to be provided allowing another member of the family to act on his or her behalf. This would ensure that the application was brought with the consent of the victim of the alleged breach and would avoid *actio popularis* applications (see *İlhan v. Turkey* [GC], no. 22277/93, § 53, ECHR 2000-VII).

37. However, the Court observes that the domestic courts recognised Ms Galyna Igorivna Krivova as incapacitated and appointed Ms Mariya Mykhaylivna Krivova as her guardian (see paragraph 9 above). Accordingly, the Court does not see any abuse in the fact that the latter named herself as the applicant in the present proceedings. Nor does it discern any other grounds to turn down the complaints concerning the infringements of her daughter's rights because of this very fact (*ibid.*, §§ 54-55).

38. As to whether the applicant can claim herself to be a victim of the alleged violations, the Court notes that there was no infringement of her life in the present case and therefore she cannot be regarded as the victim of the alleged violation of Article 2 of the Convention. However, she can claim to be a victim of the remainder of the alleged violations, notably of Article 6 § 1 of the Convention, given that she took part in the domestic proceedings also on her own behalf (see paragraph 21 above).

39. Having regard therefore to the foregoing considerations, the Court finds that the applicant may be regarded as the *de facto* authority of her daughter and thus has standing to introduce the complaints concerning the infringements of her daughter's rights. She has also a separate standing with respect to the complaints concerning the length of proceedings (Article 6 § 1 of the Convention) and her right to work.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

40. The applicant complained that the State authorities were responsible for the accident of 30 November 1998 and had violated her daughter's right to life. She also complained that the State authorities had failed to investigate the accident of 30 November 1998 effectively and to punish those responsible for it. In this respect she relied on 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. ...”

A. Admissibility

1. Parties' submissions

41. The Government argued that the applicant had lost her victim status. In particular, they noted that following the accident of 30 November 1998, the criminal investigation had been carried out and the responsible persons had been identified, charged and convicted, whereas the other persons had been subjected to a disciplinary sanction. Additionally, the domestic courts, having found the local authorities liable, had awarded the applicant damages. Although that judgment had been partly quashed on appeal, the applicant's award had been upheld. Furthermore, neither the judgment nor the Court of Appeal's decision had been appealed against by the applicant who, on the other hand, sought their enforcement. In the Government's view, the above facts show that the domestic authorities had expressly acknowledged and afforded the applicant redress for the breach of Article 2 of the Convention.

42. The applicant challenged the Government's conclusions. In particular, she pleaded that there had been no acknowledgment by the State as the domestic courts had convicted S. for negligence and forgery, but not for unintentional murder as charged initially, and further had exempted him from the punishments in view of the statutory limitation, while her daughter had been “hanging between life and death”. The latter, in her view, proved that the investigation had not been effective. In addition, the authorities had failed to take any steps to remedy the after-effects of the accident (for example, further treatment, rehabilitation and re-socialisation for her daughter) and the domestic courts had dismissed her claim to that end. Lastly, she maintained that the award, after having become final, had still not been enforced.

43. As to the adequacy of the legal remedies, the applicant admitted that there had been relevant legal remedies at the time capable of establishing the facts, holding accountable those at fault and providing appropriate redress to a victim. However, in her view, those remedies had been inadequately implemented and, as stated above, S. had been exempted from the punishments.

2. Court's assessment

44. The Court reiterates that Article 2 does not solely concern deaths resulting from the use of force by agents of the State but also, in the first

sentence of its first paragraph, lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction (see, for example, *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III, and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 54, ECHR 2002-II). This positive obligation entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life. However, the obligations deriving from Article 2 do not end there. Where lives have been lost in circumstances potentially engaging the responsibility of the State, that provision entails a duty for the State to ensure, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished (see, for example, *Öneryıldız v. Turkey* [GC], no. 48939/99, §§ 89 and 91, ECHR 2004-XII and, more recently, *Budayeva and Others v. Russia*, nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, §§ 129 and 138, ECHR 2008-... (extracts)).

45. The Court begins by noting that although the applicant's daughter survived, given the number of casualties of the accident of 30 November 1998, the fatal outcome thereof, the seriousness of the injuries inflicted on the applicant's daughter and, in particular, that she was in a coma for two months, it takes the view that the life of the applicant's daughter was at serious risk and the fact that she survived is fortuitous. It is of the opinion that Article 2 of the Convention is applicable in the instant case (see, *mutatis mutandis*, *Makaratzis v. Greece* [GC], no. 50385/99, §§ 52-55, ECHR 2004-XI, and *Budayeva and Others v. Russia*, cited above, § 146).

46. The Court further observes that the parties to the present case did not analyse in their submissions whether at the time relevant legislative and administrative framework had existed and whether that framework was being implemented effectively. Accordingly, the Court sees no reason to dwell on the matter *proprio motu* (see *Kalender v. Turkey*, no. 4314/02, § 44, 15 December 2009) and moves to the question of whether there was an adequate response to the infringement of Article 2.

47. As seen from the facts of the present case (paragraphs 13, 17, 18 and 21), S. was eventually convicted but exempted from the punishment, whereas the other persons were subjected to disciplinary sanctions, the local authorities were held liable and the applicant was awarded compensation.

48. In this respect the Court reiterates that, according to its case law, the applicant may lose the status of “victim” in instances where “the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention” (see *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI). In the specific context of

establishing State liability for breaches of Article 2, it has previously found that successful civil or administrative proceedings were sufficient to deprive the applicant of his or her victim status (see *Caraher v. the United Kingdom* (dec.), no. 24520/94, ECHR 2000-I; *Murillo Saldias and Others v. Spain* (dec.), no. 76973/01, 28 November 2006; and more recently, *Salatkhanovy v. Russia*, no. 17945/03, §§ 75-78, 16 October 2008).

49. Contrary to the applicant's submissions that there had been no acknowledgment by the State, on the grounds that S. had got a lenient sentence and subsequently had been exempted from the punishments, the Court notes that Article 2 should not be interpreted as entailing the right for an applicant to have third parties prosecuted or sentenced for a criminal offence (see, *mutatis mutandis*, *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-I) or an absolute obligation for all prosecutions to result in conviction, or indeed in a particular sentence (see, *mutatis mutandis*, *Tanli v. Turkey*, no. 26129/95, § 111, ECHR 2001-III). Furthermore, in cases of unintentional infringement of the right to life or to physical integrity, the criminal proceedings are not necessarily required to be brought in every case; the availability of civil, administrative or even disciplinary remedies to the victims may suffice (see, for example, *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 51, ECHR 2002-I; *Vo v. France* [GC], no. 53924/00, § 90, ECHR 2004-VIII; and *Mastromatteo v. Italy* [GC], no. 37703/97, §§ 90 and 94-95, ECHR 2002-VIII).

50. It is not disputed in the present case that the accident of 30 November 1998 had taken place because of the negligent acts by the State authorities. It follows that criminal prosecution and punishment of those responsible were not required in the instant case for the purposes of Article 2 of the Convention. At the same time, having regard to the domestic courts' decisions holding the local authorities liable, the Court considers that the national authorities have acknowledged the breach at issue.

51. As to the adequacy of the awarded compensation the Court notes that the applicant did not appeal domestically against the judgments of 31 March 2008 and 4 March 2009 and therefore it is not open to her to challenge the amounts at the international level. It also notes the other uncontested *ex gratia* payments by the authorities to the applicant (see paragraph 27 above and, for example, *Lovygina v. Ukraine*, cited above).

52. With regard to the alleged non-enforcement of the judgment in the applicant's favour, the Court considers that the complaint must be addressed under Article 6 § 1 of the Convention (see paragraphs 61 and 62 below), rather than under Article 2.

53. The Court lastly notes that the applicant's submissions on the adequacy of the legal remedies are limited to leniency of sentence for S. and his exemption from the punishments, which are not sufficient in themselves

for finding a violation of Article 2 of the Convention, as stated above, and that she had not put forward any other relevant arguments.

54. In the light of the foregoing, the Court considers that the above complaints must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

55. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

A. Admissibility

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

B. Merits

1. Period to be considered

57. The Government submitted that the period in question had started on 20 March 2001 when the applicant had brought a civil action in the course of the criminal proceedings. They took a view that the period of criminal investigation preceding that date should not be taken into account.

58. The applicant disagreed, arguing that both criminal and civil limbs of the proceedings should be taken into account.

59. Although the right to institute criminal proceedings and to secure the conviction of a third party is not a right which is included among the rights and freedoms guaranteed by the Convention (see, for example, *Perez v. France*, cited above, § 70), Article 6 § 1 may nevertheless apply to those proceedings where the civil limb remains so closely linked to the criminal limb that the outcome of the criminal proceedings may be decisive for the civil claims (see, for example, *Calvelli and Ciglio v. Italy*, cited above, § 62).

60. Turning to the facts of the present case, the Court agrees that there was a certain nexus between the criminal investigation into the accident and the applicant's claim for damages. However, the applicant failed to put

forward any argument in support of her stance that the proceedings, including their criminal and civil limbs, should be taken into account in their entirety. There is no evidence that a criminal investigation into the events was necessary to enable the applicant to lodge a civil claim or that it was not possible for the applicant to bring her claim earlier (see, *a contrario*, *Koziy v. Ukraine*, no. 10426/02, § 25, 18 June 2009).

61. The Court further reiterates that the court proceedings and the enforcement proceedings are stages one and two in the total course of proceedings (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 197). Therefore, the enforcement proceedings should not be dissociated from the action and the proceedings are to be examined in their entirety (see *Estima Jorge v. Portugal*, 21 April 1998, § 35, *Reports of Judgments and Decisions* 1998-II, and *Sika v. Slovakia*, no. 2132/02, §§ 24-27, 13 June 2006).

62. Given that the enforcement of the judgment in the applicant's favour was adjourned till 28 March 2010 and the Government did not provide any information about any progress in that respect, the Court considers that the proceedings in question have not yet ended.

63. Accordingly, the Court concludes that the period to be taken into consideration began on 20 March 2001 and has not yet ended. It thus has thus lasted over nine years for three levels of jurisdiction.

2. Reasonableness of the length of proceedings

64. The Government, referring to the complexity of the case, number of participants and conduct of the parties to the proceedings, pleaded that the proceedings had been held within the reasonable time. In particular, they submitted that the authorities had carried out twenty-three forensic examinations and interrogated more than six hundred witnesses. The criminal limb of the proceedings had been also complicated by civil actions brought by the victims, numbering in total up to twelve persons. The civil limb of the proceedings had been complicated by the claimants, including the applicant, who had enjoyed their procedural rights (for example, modified their claims, *inter alia*, indicating new defendants to the case whose number on different stages of the proceedings ranged from four to eight, appealed against court decisions, lodged various requests, etc.). On several occasions the parties had requested the hearings be adjourned and had failed to appear before the courts, which according to the Government had delayed the progress of the proceedings for eleven months. The domestic authorities, on the other hand, had caused no delays and *a fortiori* had taken measures to speed up the proceedings. Accordingly, the Government concluded that there had been no violation of Article 6 of the Convention in the present case.

65. The applicant disagreed. In particular, she stated that the case had not been particularly complicated and that all necessary facts had been established by the very first judgment (that is by 10 October 2003), but that

the examination had been protracted for several years. She further averred that she had attended every court hearing to which she had been summoned and that the Government had failed to rebut that fact. She also contended that she had had to modify her claims because of the protracted examination and evolving circumstances of the case.

66. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities, and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). In cases concerning liability for negligent acts that resulted in loss of life or grave damage to health, the authorities are under a duty to exercise special diligence and conduct the proceedings with particular expedition (see, *mutatis mutandis*, *Silva Pontes v. Portugal*, 23 March 1994, § 39, Series A no. 286-A; *Dodov v. Bulgaria*, no. 59548/00, § 109, ECHR 2008-... and *Kalender v. Turkey*, cited above, § 65).

67. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see, for example, *Kalender v. Turkey*, cited above, § 67).

68. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

IV. OTHER ALLEGED VIOLATIONS

69. Lastly, the applicant complained without reference to any provision that she had been deprived of the right to work as she had to look after her disabled daughter.

70. Having carefully considered the applicant's submissions in the light of all the material in its possession, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

71. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

73. The applicant claimed the amounts awarded to her by the judgment of 31 March 2008 which had remained unenforced in respect of pecuniary damage and EUR 100,000 in respect of non-pecuniary damage.

74. The Government contested these claims. They argued, *inter alia*, that the issue of the lengthy non-enforcement of the judgment in the applicant's favour was not the subject-matter of the present proceedings before the Court.

75. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects that claim. On the other hand, it considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 3,500 under that head.

B. Costs and expenses

76. The applicant also claimed UAH 3,087.15 (about EUR 300) for travel and postal expenses, out of which UAH 79.46 (about EUR 7.70) had been incurred before the Court. In support she provided copies of relevant receipts.

77. The Government contested the claims in respect of travel expenses, but left the matter of postal expenses to the Court's discretion.

78. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the legal aid already given to the applicant, the violation found, the documents in its possession and the above criteria, the Court makes no award under this head.

C. Default interest

79. The Court considers it appropriate that the default interest 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

1. *Declares* by a majority the complaint under Article 6 § 1 of the Convention concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;
3. *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, EUR 3,500 (three thousand and five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 November 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following partially dissenting opinion of Judge Yudkivska is annexed to this judgment.

P.L.
C.W.

PARTIALLY DISSENTING OPINION OF JUDGE YUDKIVSKA

Whilst I voted with the majority for finding a violation of Article 6 of the Convention, I am far from considering this issue to be the central one in the present case.

The school administration organised a cultural outing to the cinema, which ended with four pupils never coming back and sixteen, including the applicant's daughter, becoming invalids. In the twelve years since the tragedy the compensation granted by the domestic judicial authorities has not been received. Thus, the core problem of the case, in my view, involves the State's positive obligation under Article 2 of the Convention.

Firstly, it concerns the duty to safeguard the lives of those under its jurisdiction.

The Court has already stated, albeit in a different context of a major international event, that a State “must take the appropriate security measures and deploy every effort to ensure that order is maintained. Hence, it is incumbent upon it to prevent disturbances which could lead to violent incidents”¹. Similar reasoning could be applicable in the present case, as the tragedy appears to have been a consequence of improper planning of the event. Educational authorities organized a mass event – an excursion to the cinema – for a large number of teenagers. The second group of teenagers was let into the auditorium before the previous showing ended, they wanted to choose better places while the first group wanted to finish watching a movie, and that is how a scuffle ensued and a peaceful cultural event degenerated into violence. The role of the school authorities - organisers of the event - who were responsible for the children and had the duty to prevent the riot or at least to react immediately to its first signs, went uninvestigated, as well as appropriate regulatory framework and its effective functioning. The conviction of the cinema's director for negligence does not cast full light upon the planning and conduct of the mass event, which resulted in a loss of lives.

Apparently, this dangerous accumulation could have been prevented. It is true that in general panic is hardly foreseeable or predictable, being a mass psychological phenomenon, and that all mass events entail certain risk (consider the recent “Love Parade disaster” in Duisburg in July 2010 or the “Bagdad bridge stampede” in 2005). But in the present case we are talking about teenagers who were very excited to see the famous blockbuster in a poorly equipped and secured cinema with fewer seats than expected (as was shown in the domestic proceedings) and whose behaviour was quite predictable. In these circumstances the tragedy was foreseeable and

¹ *Giuliani and Gaggio v. Italy*, no. 23458/02, § 231, 25 August 2009 [currently pending before the Grand Chamber].

avoidable; and I regret that the majority refused to examine if there had been failure on the part of the authorities to safeguard the right to life of the applicant's daughter in consequence of lack of adequate planning of the event.

Secondly, according to the Court's case-law, even where the infringement of the right to life or to personal integrity is not caused intentionally, the States are nevertheless required to set up an *effective independent judicial system* so that the cause of death can be determined and those responsible made accountable. "Effective" means, *inter alia*, that it must be conducted with reasonable expedition. In the context of medical negligence, the Court repeatedly stated that "the requirements of Article 2 of the Convention will not be satisfied if the protection afforded by domestic law exists only in theory. It must also operate effectively in practice, which requires a prompt examination of the case without unnecessary delay"¹.

Applying this principle, the Court found a violation of Article 2 in *Oyal v. Turkey* on the ground that administrative court proceedings that lasted for about nine years did not meet the requirements of promptness and reasonable expedition. In another case involving medical negligence, *Dvořáček and Dvořáčková v. Slovakia* (no. 30754/04, 28 July 2009), a failure to respect the requirement of promptness and reasonable expedition in dealing with the case also led to a finding of a violation of Article 2 of the Convention. Likewise, in *G.N. and Others v. Italy* (no. 43134/05, 1 December 2009), the Court held that proceedings on compensation claims brought by persons infected following blood transfusions that had lasted from three and a half years to over ten years failed to meet the requirements of Article 2 of the Convention.

In the present case the criminal proceedings lasted for more than six years, the proceedings with respect to damages lasted for about nine years, and the final judgment in the applicant's and other victims' favour was never enforced.

Needless to say, given that the applicant's daughter required urgent and, most probably, expensive medical treatment, the tragic circumstances of the present case called for its prompt examination and grant of appropriate redress. It is true that, as stated in paragraph 51, the applicant received some *ex gratia* payments from the local authorities; however the framework for these spontaneous payments remained unclear and, in any event, they have no bearing on the Article 2 requirement of an effective judicial system.

Moreover, the determination of all circumstances of the disaster and the measure of the responsibility of those involved appears to be essential to enable the relevant authorities to adopt strategies in order to prevent such tragic events in future. (see, *mutatis mutandis*, *Šilih v. Slovenia* [GC],

¹ See *Oyal v. Turkey*, no. 4864/05, § 74, 23 March 2010 with further references.

no. 71463/01, § 196, 9 April 2009). The prompt examination of the case was thus of crucial importance from the standpoint of Article 2.

Thus, I remain convinced that in the circumstances of the present case it is not simply the excessive length of the proceedings which was in issue, but the question of whether the State can be said to have complied with its positive obligations under Article 2 of the Convention. In view of the foregoing considerations I am unable to agree with the majority that the complaint under Article 2 is manifestly ill-founded. In line with above-mentioned case-law, I find that this complaint is well-founded, and this provision was violated. If this approach had been approved, no separate issue would have arisen under Article 6.