



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

FIFTH SECTION

CASE OF MASNEVA v. UKRAINE

(Application no. 5952/07)

JUDGMENT

STRASBOURG

20 December 2011

FINAL

20/03/2012

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

In the case of Masneva v. Ukraine,

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

Dean Spielmann, *President*,

Elisabet Fura,

Karel Jungwiert,

Mark Villiger,

Ann Power-Forde,

Ganna Yudkivska,

André Potocki, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 29 November 2011,

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

PROCEDURE

1. The case originated in an application (no. 5952/07) 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 Lesya Ulyanivna Masneva (“the applicant”), on 20 January 2007.

2. The applicant was represented by Mr V. Yelov, a lawyer practising in Lutsk. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Yuriy Zaytsev.

3. The applicant alleged that there was no effective investigation into the circumstances of her son’s death, a situation that was humiliating and caused her psychological suffering.

4. On 5 October 2009 the President of the Fifth Section decided to give notice of the application 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 1943 and lives in Lutsk.

A. The circumstances surrounding the death of the applicant's son

6. In October 2003 the applicant's only son, Oleg Masnev (hereinafter Mr Masnev), who served with the Volyn Regional Police Department ("the Police Department"), was temporarily assigned to the Kovel Town Police Station which was subordinate to the Police Department. At that time he was a senior police detective (*старший оперуповноважений*) with the rank of major. According to the applicant, his assignment was to investigate corruption among the police of Kovel. According to the Government, Mr Masnev's duties included the installation of phone-tapping devices.

7. On 9 October 2003 he arrived in Kovel and resumed his duties in restricted-access room 505 on the premises of the police station. He initially occupied the room together with police officer B. There was an arrangement that one of the officers on duty in the room would phone the Police Organised Crime Unit of Kovel ("the Unit") daily at about 9 a.m. On 15 October 2003 B. was given another assignment and left Kovel.

8. At the expected time on 17 October 2003 Mr Masnev did not phone the Unit, having been seen for the last time by one of the Unit's officers at about 1.30 p.m. on 16 October 2003. Since the door was locked and there was no reply from within, the commander of the police station ordered the door of room no. 505 to be forced open. At about 2.45 p.m. the door was forced and Mr Masnev was found dead. On the same day the site was examined by an investigator of the Kovel Prosecutor's Office, who described in his report the body and its position, and the objects present in the room, including a knife covered with a brownish substance, three cups, two empty bottles of alcohol and cigarette butts. The investigator also took pictures of the site, collected fingerprints, samples of the brownish substance, and several objects from the room, including the knife. According to the report, there were traces of brownish substance in different parts of the room, the door and the door lock were not damaged, and there was no damaged furniture or equipment in the room. The investigator also ordered a post-mortem examination of the body.

9. The next day a forensic expert performed an autopsy of Mr Masnev and found, *inter alia*, a cut on his left forearm and several bruises on his forehead. The expert concluded that Mr Masnev had died of a haemorrhage caused by the wound on his forearm; the wound might have been self-inflicted; after having been wounded, he had retained the ability to make further movements for a certain period of time; the bruises on his forehead were not serious injuries and had been caused while he was still alive; it was impossible to establish whether the bruises on his forehead had preceded the wound on his forearm.

10. On 23 October 2003 an expert from the police station examined the fingerprints taken from the room and concluded that some of them belonged

to Mr Masnev, some could not be identified and two did not belong to Mr Masnev.

11. Two examinations of Mr Masnev's blood samples conducted in November 2003 did not reveal the presence of alcohol or drugs.

12. An additional medical examination of his body ordered on 23 January 2004 and concluded on 11 February 2004 did not rule out the possibility that he might have inflicted the incision wound himself.

13. An examination of the knife ordered on 8 August 2008 and concluded on 10 October 2008 found that the blood on it might have been that of Mr Masnev.

14. A post-mortem psychological and psychiatric report ordered on 29 September 2008 and concluded on 20 March 2009 found that in 2000 P., a colleague of Mr Masnev, had wounded him in the leg with a knife and that Mr Masnev had had to call an ambulance, but no investigation had ensued. In June 2001 Mr Masnev's supervisors had referred him to a psychiatrist, who had diagnosed a personality disorder "without particular concern", similar to a diagnosis made in 1999, but had not recommended follow-up treatment. Afterwards Mr Masnev had not requested any psychological or psychiatric help himself. Moreover, on 24 June 2008 the expert who had conducted the initial post-mortem examination found traces of alcohol in Mr Masnev's stomach. It was concluded that Mr Masnev had experienced a mental breakdown exacerbated by work-related stress and, in part, by tense family relations, and that before his death he could have fallen into an acute affective state and considered his situation to be hopeless.

15. A medical report ordered on 24 March 2009 and concluded on 23 April 2009 found that the wound on Mr Masnev's forearm was a severe bodily injury that might have been self-inflicted with the knife, whereas the other injuries were minor and had been caused by blunt objects, not excluding a fall caused by convulsions experienced while in pain before his death. It also found that all the injuries had been sustained around 17 October 2003.

16. Another medical report ordered on 30 June 2009 and concluded on 24 July 2009 found it impossible to state the exact time of Mr Masnev's death.

17. A combined fingerprint and traces examination ordered on 10 July 2009 and carried out by the Police Department's expert on 1 October 2009, established that the fingerprints on the bottles, the knife and other objects and surfaces of the room either belonged to Mr Masnev or could not be identified and that two fingerprints from the doorframe were fit for identification but did not belong to Mr Masnev.

18. A forensic examination ordered on 27 July 2009 and concluded on 16 December 2009, during which the cups, fork, spoon and shoes taken from the room were studied, did not rule out that the traces on them had been left by Mr Masnev.

19. A combined medical and forensic report ordered on 8 February 2010 and concluded on an unknown date established that Mr Masnev had moved unaided after sustaining the injuries and that the wound on his left forearm might have been self inflicted.

20. An additional medical report by a panel of experts ordered on 3 March 2010 and concluded on an unknown date found that there had been no injuries on Mr Masnev which he could have sustained as a result of a fight, nor did it find evidence of anyone other than Mr Masnev inflicting the left forearm wound.

21. A cytological examination ordered on 29 March 2010 did not rule out that the organic matter found on Mr Masnev's fingers belonged to him. An immunologic examination ordered on 31 March 2010 found that blood found on wallpaper in the room might have been that of Mr Masnev.

B. The internal investigation into the death of the applicant's son

22. Shortly after the event, two officers of the Police Department were ordered to conduct an internal investigation into the death of Mr Masnev. On 21 October 2003 they concluded, pending the outcome of the investigation by the prosecutors, that Mr Masnev had committed suicide.

C. The inquiry and investigation into the death of the applicant's son

23. On 27 October 2003 the investigator of the Kovel Prosecutor's Office found no elements of a crime in the death of Mr Masnev, considering that the latter had committed suicide, and refused to open a criminal investigation. From that date until July 2008 the investigators of the Prosecutor's Offices of Kovel, Lutsk and Gorohiv adopted twenty-one similar conclusions in twelve of which, among other things, they relied on the conclusions of the internal investigation.

24. Upon the applicant's complaints those resolutions were all quashed by the higher prosecutors or by the courts, who found that the inquiry had fallen short of the requirements of a full, objective and detailed examination of the case. They noted, *inter alia*, that the investigators had limited their inquiry to only one version of the event, that they had failed to establish whether there had been other persons in the room before Mr Masnev's death, that they had not identified the person or persons to whom the fingerprints found in the room belonged, that they had not established the origin of certain objects found in the room, that they had not identified the nature of Mr Masnev's assignment, and, with no basis in the case file, had concluded that Mr Masnev had committed suicide due to family problems.

25. The materials concerning Mr Masnev's death were classified and remained confidential until 18 August 2005. On that date the Commission on State Secrets (*експертна комісія з питань державної таємниці*) of

the Volyn Regional Prosecutor's Office ("the Regional Prosecutor's Office") withdrew a report drawn up upon the examination of the special equipment in the room from the case file and declassified the remainder of the materials. It stated that the materials had been classified on the ground that they had contained the report concerned.

26. On 4 July 2008 the Regional Prosecutor's Office opened a criminal investigation, finding that there were grounds for a reasonable suspicion that Mr Masnev had been driven to suicide.

27. On 20 October 2009, following a number of refusals, the applicant was recognised as a victim in the criminal proceedings.

28. On 28 May 2010 the prosecutors refused to open a criminal investigation in respect of the alleged premeditated murder of Mr Masnev, concluding that he had committed suicide. On 31 May 2010 they terminated the criminal proceedings, finding no evidence that Mr Masnev had been driven to suicide either. These decisions were based on the information obtained during about thirty interviews, including those of the experts and Mr Masnev's relatives, two crime scene examinations, one crime-scene reconstruction, and thirteen examinations, including those carried out by the experts from the police station and Police Department.

29. From the statements of a duty officer and the carpenter who had forced the door to the room it was established that the door had been locked from the inside when it was forced. When the prosecutors questioned two direct supervisors of Mr Masnev, they found out that nobody, including his colleagues, had threatened Mr Masnev as late as 15 October 2003. Another colleague made a similar statement and specified that nobody could enter the room without Mr Masnev's permission and the entrance to the police station was always guarded. Even if Mr Masnev had had any sensitive information he had not had to hold it, rather, he would have passed it on to the person who had ordered the surveillance, so there had been no reason to kill him.

30. Other two direct supervisors stated that B. had been seconded from Kovel to support operations in another town. When questioned, B. stated that he had not noticed anything unusual about Mr Masnev before he left Kovel. One of the supervisors added that only detectives on duty and those who had ordered the surveillance could enter room no. 505. When the equipment in the room and the information obtained by Mr Masnev had been examined, no information posing a threat to the latter's life had been found.

31. An additional crime-scene examination conducted on an unspecified date found no suspicious damage to the room's window. The only two fingerprints that were fit for identification and did not belong to Mr Masnev, found on the internal part of the door frame, were checked in the regional database with no positive results.

32. Twelve police officers, who had occupied offices adjacent to room no. 505, indicated that they had not heard any suspicious noises coming from the room on or around 17 October 2003. Five officers who knew Mr Masnev stated that they were not aware of any conflicts involving him or threats to his life. Some of Mr Masnev's supervisors and colleagues indicated that he had had a strained relationship with his wife, yet the prosecutors concluded that that relationship was not the cause of the suicide. The decisions did not mention whether or not Mr Masnev had been sober before dying or the origin of the two bottles of alcohol and cigarette butts in the room, nor did they make any reference to the incident between P. and Mr Masnev in 2000. They contained no conclusion as to whether there had been anyone else in the room before Mr Masnev's death and no finding establishing who his assignment had been directed against either.

33. According to the Government, Mr Masnev had never reported that his life had been in danger.

34. According to the applicant's last submissions dated 7 July 2010, she did not challenge the decisions of the prosecutors of 28 and 31 May 2010 before the domestic authorities.

II. RELEVANT DOMESTIC LAW

Criminal Code

35. Article 345 provides that the threats of death or violence in respect of a law enforcement officer or the infliction of intentional injuries on him is punishable by imprisonment for up to fourteen years. Article 348 provides that the attempted murder or murder of a law enforcement officer is punishable by imprisonment for up to fifteen years or for life.

Code of Criminal Procedure

36. Article 28 entitles anyone who has suffered material damage as a result of a crime to lodge a civil claim against the accused or those who are liable for his actions, which shall be considered by the court at the same time as the criminal case.

Article 49 defines an aggrieved party as a person who has suffered damage as the result of a crime. It further establishes that an aggrieved party has the right to testify, adduce evidence, file requests, study all the materials of the case file when the pre-trial investigation has been completed, and lodge complaints against the actions of the inquirer, investigator, and prosecutor. In cases where the crime has caused the death of the victim, the deceased's next of kin has the rights of an aggrieved party.

37. Under Article 190, the examination of a crime scene may be conducted before the criminal investigation is opened, but the latter is to be opened immediately after the examination if there are grounds for doing so.

Protection of law enforcement officers

38. Section 21 the Police Act (*Про міліцію*) of 20 December 1990 provided at the material time that personal security of police officers was ensured by the State. The Protection of Court and Law Enforcement Personnel Act (*Про державний захист працівників суду і правоохоронних органів*) of 2 March 1994 specified at the material time that the personnel of courts and law enforcement bodies, including police, had the right to use martial arts and arms to protect themselves or demand and obtain assistance or protection consisting of a number of special measures. The special measures included assignment of bodyguards, distribution of firearms or special equipment, secret surveillance, temporary relocation to a safe haven, assignment to another job, or resettlement in another place. These measures could be applied on a concerned person's or his next of kin's request. The agency that received the request had to decide on it within three days and give a reasoned decision.

The Search and Seizure Activities Act (Про оперативно-розшукову діяльність) of 18 February 1992, as amended

39. Under section 1, search and seizure activities are undertaken to find and record information about the unlawful actions of certain individuals or groups for which responsibility is established by the Criminal Code.

40. Section 5 provides that the police detectives are allowed to perform search and seizure activities.

41. Section 10 specifies that material gathered in search and seizure activities may be used as grounds for opening a criminal investigation.

42. Section 12 provides that if there is information indicating a threat to the life of a detective originating in his search and seizure activities, his unit shall take special measures to ensure his safety, such as changing his personal data, changing his place of residence, work and study, *inter alia*.

43. Further relevant domestic law is quoted and summarised in the judgments of *Gongadze v. Ukraine* (no. 34056/02, §§ 147-149, ECHR 2005-XI) and *Sergey Shevchenko v. Ukraine* (no. 32478/02, §§ 36-39, 4 April 2006).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

44. The applicant complained that the authorities had failed to protect the life of her son and to conduct an effective investigation into his death as provided in Article 2 of the Convention, which, insofar as relevant, reads as follows:

“1. Everyone’s right to life shall be protected by law ... ”

A. Concerning the procedural aspect of Article 2 of the Convention

1. Admissibility

45. The Government contended that the applicant had not challenged the prosecutor’s decision of 31 May 2010 (see paragraph 34 above).

46. The Court considers that the Government’s objection raises issues concerning the effectiveness of the investigation which are closely linked to the merits of the applicant’s complaints. Thus, it decides to join this objection to the merits of the case and considers that the issue falls to be examined below.

2. Merits

47. The applicant argued that the police and prosecutors had conducted a one-sided and perfunctory investigation into her son’s death. In particular, the authorities had failed to investigate the possibility that he had died a violent death and failed to secure unspecified evidence that had been lost. The investigation that was terminated on 31 May 2010 again failed to account for the fact that her son had been sober before his death. According to her, the repeated reopening of the investigation was another indication of its ineffectiveness and lack of promptness.

48. The Government stated that the repeated pre-investigation inquiry had resulted in refusals to institute criminal proceedings as it had been found that Mr Masnev had committed suicide. According to them, it had been impossible to establish all the circumstances of his suicide, the prosecutors having instituted criminal proceedings in July 2008 and closed them in May 2010. A great number of measures had been undertaken during the investigation in order to establish the circumstances of Mr Masnev’s suicide. The Government concluded that the state authorities had taken all necessary measures in order to establish the circumstances of the death.

49. The Court reiterates that where lives have been lost in circumstances potentially engaging the responsibility of the State, Article 2 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 *Öneryıldız*, § 91, and *Sergey Shevchenko*, § 63, both cited above). The procedural obligation imposed by Article 2 is not an obligation of result, but of means (see *McKerr v. the United Kingdom*, no. 28883/95, § 113, ECHR 2001-III). An investigation will not be effective unless all the evidence is properly analysed and the conclusions are consistent and reasoned (see *Nachova and Others v. Bulgaria*, nos. 43577/98 and 43579/98, § 131, 26 February 2004).

50. Other relevant principles determined by the Court in its case-law as regards the procedural aspect of Article 2 are summarised in the cases of *Sergey Shevchenko* (cited above, §§ 64-65); *Mikhalkova and Others v. Ukraine* (no. 10919/05, §§ 42-43, 13 January 2011); and *Merkulova v. Ukraine* (no. 21454/04, § 51, 3 March 2011).

51. The Court also underlines that it would be inappropriate and contrary to its subsidiary role under the Convention to attempt to establish the facts of this case on its own, duplicating the efforts of the domestic authorities which are better placed and equipped for that purpose (see *McShane v. the United Kingdom*, no. 43290/98, § 103, 28 May 2002). Following its well-established practice, it will confine the examination of this application to an evaluation of the domestic investigation into the matter as regards its overall compliance with the aforementioned standards (see *Fedina v. Ukraine*, no. 17185/02, § 63, 2 September 2010).

52. The Court finds that in the present case the authorities were under a procedural obligation to investigate the circumstances of Mr Masnev's death, in particular to establish whether there had been a suicide or murder.

53. It observes that the inquiry into the circumstances of Mr Masnev's death was opened on 17 October 2003 and was carried out promptly. However, it was subsequently on twenty-two occasions re-opened and finally closed on 31 May 2010 (see paragraphs 23, 24, and 28 above). The same number of times the authorities themselves acknowledged that the inquiry fell short of the requirements of a full, objective and detailed examination of the circumstances of the case (see paragraph 24 above). Thus, the overall period of the investigation, which did not establish the cause of the death of the applicant's son, lasted about six years and seven months without due justification. Hence, the Court considers that the inquiry completely lacked initiative and did not constitute an "effective investigation" within the meaning of its case-law.

54. Moreover, the criminal investigation was opened on 4 July 2008, that is, about four years and eight months after Mr Masnev's death. Having regard to the pertinent domestic legislation, the Court finds that for that

rather long period of time the prosecutors had disregarded the controversial circumstances of the death and the domestic legal requirement to promptly start an investigation in such a case (see paragraph 37 above). What is more, they had limited the variety of the investigative tools at their disposal to an examination of the crime scene (see paragraph 37 above).

55. Having regard to the decisions taken by the prosecutors on 28 and 31 May 2010, the findings of which the applicant disagreed with, the Court observes that the prosecutors had endeavoured to deal with certain flaws in the preceding inquiry by examining other possible versions of Mr Masnev's death and analysing various evidence, among which, and in the absence of specifics on the applicant's part, the Court finds no indication of any lost evidence. However, even the investigation and the last part of the inquiry continued to ignore such issues as whether there had been other persons in the room before Mr Masnev's death, the origin of the bottles of alcohol and cigarette butts in the room, and the nature of Mr Masnev's assignment (see paragraph 32 above). Moreover, the last decisions of the prosecutors contained no reference to the incident between P. and Mr Masnev in 2000 whatsoever (see paragraph 32 above). These issues, hardly irrelevant to the applicant's perception of the thoroughness of the authorities' response to the death of Mr Masnev, were repeatedly raised by her, yet remained unaddressed.

56. The Court further observes that the materials of the inquiry were classified for about twenty-two months and the applicant was only recognised as an aggrieved party in the criminal proceedings about six years after Mr Masnev's death (see paragraphs 26 and 28 above). She does not deny that during those periods she was served with the investigator's refusals to institute criminal proceedings, which she duly appealed against. However, under domestic law she was not allowed to study the materials of the investigation (see paragraph 36 above) until after the investigation had been terminated on 31 May 2010. The Court has already found that such a situation impairs opportunities for effective participation in the proceedings (see *Oleksiy Mykhaylovych Zakharkin v. Ukraine*, no. 1727/04, §§ 71-73 24 June 2010). Thus the delayed recognition of the applicant's procedural status and the lack in domestic law of a procedure for the victim to access the case file at the pre-trial stages limited the element of public scrutiny of the investigation and inquiry.

57. As regards the evidence collected by the prosecutors, the Court notes that at least fourteen examinations were ordered and conducted, which might, in other circumstances, indicate that there was an attempt on the part of the authorities to conduct a thorough investigation. However, nine of those examinations were ordered and carried out as late as five or six years after the event (see paragraphs 14-21 above), while the examination of the knife, supposedly the weapon which caused Mr Masnev's death, was ordered about five years late (see paragraph 13 above). Without any

indication why those measures were ordered that late, the Court cannot but note the lack of promptness in this respect. Moreover, two of the examinations (see paragraphs 10 and 17 above) were conducted by experts of either the police station or the Police Department, who cannot be considered impartial in respect of their conclusions. Yet the conclusions of these examinations were relied on in the final decisions of the prosecutors (see paragraph 28 above), thus undermining the validity of the outcome of the investigation and inquiry. The Court discerns a similar problem in respect of the inquiry, which, albeit conducted by an independent body, partially relied on the conclusions of an internal investigation on twelve occasions (see paragraph 24 above). The requisite independence of the investigation was therefore undermined once more.

58. Regard being had to all of the above, the State failed to assure its obligation to carry out an effective investigation of the death of the applicant's son.

59. There has therefore been a violation of the procedural limb of Article 2 of the Convention in the present case.

B. Concerning the substantive aspect of Article 2 of the Convention

1. Admissibility

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

2. Merits

61. The applicant argued that her son had been a police officer entrusted with strictly confidential tasks and had lost his life as the result of the Government's failure to ensure his safety when on duty. According to her, he had been investigating corruption within the police force when he died. Accordingly, his life should have been effectively protected by the relevant laws and mechanisms, including the protection of the room where he was found dead. The applicant, disagreeing with the findings of the inquiry and investigation, deduced that the presence of unknown persons in the room at the time of her son's death, as could be inferred from the fact that someone had brought in objects from outside, and the injuries those persons had inflicted on him, had been the causes of his violent death.

62. The Government contended that the nature of the duties performed by Mr Masnev had been technical and that his assignments would not have exposed him to a threat to his life on the part of third parties. Furthermore, he had never indicated that his life could be in danger. Although it had been

established in 2001 that he had had certain mental health problems, they had disappeared during the following years. The Government were therefore convinced that Mr Masnev's superiors could not have foreseen that his personality would have compounded, in the context of the specific nature of his work, his motives to commit suicide. It had been equally impossible for them to foresee any effect that his strained family relationships might have had on his conduct, as they had learnt about those relationships only after his death. In sum, the authorities could not have taken any steps to avert a threat to Mr Masnev's life and the present case did not give rise to a positive duty on the part of the State to have protected the life of Mr Masnev.

63. The Court reiterates that the first sentence of Article 2 § 1 of the Convention enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports* 1998-III).

64. The positive obligation to take all appropriate steps to safeguard life for the purposes of Article 2 entails above all a primary duty on the part of the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life. This obligation indisputably applies in the particular context of dangerous activities, where, in addition, special emphasis must be placed on regulations geared to the special features of the activity in question, particularly with regard to the level of the potential risk to human lives (see *Öneryıldız v. Turkey* [GC], no. 48939/99, §§ 89-90, ECHR 2004-XII). Additionally, the authorities' positive obligation, in appropriate circumstances, includes taking preventive operational measures to protect an individual or individuals whose lives are at risk from the criminal acts of another individual (see *Gongadze*, cited above, § 164).

65. However, the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures which, judged reasonably, might have been expected to avoid that risk (see *Keenan v. the United Kingdom*, no. 27229/95, § 90, ECHR 2001-III, and *Osman v. the United Kingdom*, 28 October 1998, § 116, *Reports* 1998-VIII).

66. The required evidentiary standard of proof for the purposes of the Convention is that of proof "beyond reasonable doubt"; such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact (see *Ireland*

v. the United Kingdom, 18 January 1978, § 161, Series A no. 25). Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see *Klaas v. Germany*, 22 September 1993, § 29, Series A no. 269).

67. From the outset the Court notes that even if the applicant did not appeal against the last decisions of the prosecutors, she has consistently disagreed before the Court with the findings of all the investigations undertaken by the authorities.

68. In respect of the tasks that Mr Masnev had performed before his death, the Government did not suggest any, even in general terms, which would allow a legitimate assumption that his tasks may have been directed against someone involved in criminal activities (see paragraph 39 above), including the officers of the police station. However, the fact that he had been undertaking confidential policing tasks (see paragraphs 6, 40 and 41 above) that may have been directed against the police officers who had been in close proximity to him could justify a hypothesis that he had been involved in dangerous activities.

69. As to protecting Mr Masnev from threats to his life, the Government did not specify if there had been any regulations implementing the authorities' obligations under Article 2 of the Convention and geared to the special features of the confidential policing work in which he had been involved. Nevertheless, having regard to the legal framework in place at the time (see paragraphs 35, 38 and 42 above), the Court is satisfied that there were legal provisions and an administrative framework providing for an effective deterrent against threats to his life which would have enabled him to request protection from a threat originating in his duties.

70. In respect of the possible suicide of Mr Masnev, the Court has no evidence that would indicate that the authorities ought to have acted in anticipation of such a risk (compare and contrast, *Jasińska v. Poland*, no. 28326/05, §§ 77-78, 1 June 2010, and *Lütfi Demirci and Others v. Turkey*, no. 28809/05, § 35, 2 March 2010). Thus, in finding no coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact that the State failed to protect life of Mr Masnev, the Court, in the absence of any domestic decision that establishes, conclusively, the cause and circumstances of his death (see paragraphs 53-58 above), is not able to conclude, beyond reasonable doubt, that the authorities are responsible for the death of Mr Masnev under this provision of the Convention.

71. Accordingly, the Court holds that there has been no violation of the substantive aspect of Article 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

72. The applicant complained that the police and prosecutors, by failing to investigate her son's death properly and disregarding her procedural rights, caused her suffering in breach of Article 3 of the Convention, which provides:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

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

B. Merits

74. The applicant maintained that the response of the investigative authorities to the death of her son constituted degrading treatment on account of the one-sided and perfunctory nature of the investigations. In particular, the unwillingness of the authorities to start a criminal investigation had been groundless, as the courts' and prosecutors' decisions indicated. Furthermore, she was appalled by the unfounded conclusion that her son had committed suicide because of his family problems, which discredited the applicant and her family. Additionally, the prosecutors, depriving her of any possibility to defend her rights, had unlawfully made the materials of the inquiry confidential. Hence, the applicant despaired of ever finding the circumstances of her son's death and suffered from inhuman treatment as an aggrieved party in the proceedings.

75. The Government maintained that the present case was essentially different from the cases of *Kurt v. Turkey* (25 May 1998, *Reports* 1998-III); *Orhan v. Turkey* (no. 25656/94, 18 June 2002); *Gongadze* (cited above) and *Imakayeva v. Russia* (no. 7615/02, ECHR 2006-XIII (extracts)). In particular, unlike in the cases of *Imakayeva* and *Gongadze*, the applicant's son did not disappear. Moreover, the investigators did not conceal in any way the results of their work, promptly dealt with the requests and complaints of the applicant, and provided her with clear information about their investigation into her son's death.

76. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Labita*

v. Italy [GC], no. 26772/95, § 119, ECHR 2000-IV). Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Ireland v. the United Kingdom*, cited above, § 162). The suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI).

77. The Court accepts that the length of the investigation and the attitude of the investigating authorities towards the applicant, together with the publication of a finding of suicide when, having regard to the inadequate investigation, such a finding was inappropriate, may have caused the applicant anguish and considerable suffering. However, it cannot conclude that this reached the threshold of “degrading treatment” within the meaning of Article 3 of the Convention. It finds, therefore, that there has been no violation of this provision.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

78. The applicant complained under Article 13 of the Convention of the lack of an effective remedy in respect of her complaint under Article 2 of the Convention. Article 13 of the Convention provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Submissions of the parties

79. The Government observed that the investigation and criminal proceedings had constituted an effective domestic remedy for the applicant’s complaints under Article 2 of the Convention. If she found them to be inadequate, she was able to, and did, lodge respective complaints with the prosecutors or a domestic court. Following such repeated complaints, the prosecutors and courts had overturned the impugned decisions. Therefore, the Government asserted that the applicant had had at her disposal accessible and effective domestic remedies for her complaints under the substantive and procedural aspects of Article 2 of the Convention and that she had successfully availed herself of such remedies.

80. The applicant argued that whenever she had pointed out deficiencies in the investigations, the authorities’ response had been inadequate. Instead of opening a criminal case in order to conduct a thorough investigation, the

authorities had limited themselves to numerous preliminary inquiries. Furthermore she had unlawfully been deprived, for almost two years, of the possibility to get acquainted with the investigation materials. She also alleged that the failure of the authorities to identify the perpetrator or perpetrators prevented her from raising, at the domestic level, a claim for compensation for damage caused to her by the violent death of her son.

B. Admissibility

81. The parties did not comment on the admissibility of this complaint.

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

C. Merits

83. The Court has already found, within the ambit of Article 2 of the Convention, that the authorities failed their obligation to carry out an effective investigation into the circumstances of the death of the applicant's son. In view of this finding and in circumstances where the applicant cannot successfully claim compensation in tort, the Court considers that no separate issue arises in respect of Article 13 of the Convention, read in conjunction with Article 2 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. 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, costs and expenses

85. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage and 9,193 hryvnias (UAH) in respect of pecuniary damage. She specified that the non-pecuniary damage was caused by the loss of her only son and by the apathy of the State agents and their unlawful actions during the investigations, while the domestic remedies had proved to be ineffective and inaccessible. The pecuniary damage originated in expenses for her son's gravestone. She did not submit any claim for costs and expenses.

86. The Government found the non-pecuniary claim unmeritorious, in any case excessive, and a possible basis for unjustified enrichment. As to the pecuniary damage claim, they found no causal link between it and the alleged violations. They also found no indication that such expenses had actually been incurred.

87. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. Since the applicant did not submit any claim for costs and expenses, the Court makes no such award either. On the other hand, it considers that the applicant suffered anguish and distress on account of the events leading to the finding of the violation in the present case. Ruling on an equitable basis, it awards the applicant EUR 20,000 in respect of non-pecuniary damage.

B. Default interest

88. 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 UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of the procedural aspect of Article 2 of the Convention;
3. *Holds* that there has been no violation of the substantive aspect of Article 2 of the Convention;
4. *Holds* that there has been no violation of Article 3 of the Convention;
5. *Holds* that no separate issue arise under Article 13 of the Convention in respect of the alleged violation of Article 2;
6. *Holds*
 - (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 20,000 (twenty thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable on the date of settlement, plus any tax that may be chargeable;

(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;

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

Done in English, and notified in writing on 20 December 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President