



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

FIFTH SECTION

CASE OF MUTA v. UKRAINE

(Application no. 37246/06)

JUDGMENT

STRASBOURG

31 July 2012

FINAL

31/10/2012

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

In the case of Muta v. Ukraine,

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

Dean Spielmann, *President*,

Mark Villiger,

Karel Jungwiert,

Boštjan M. Zupančič,

Ann Power-Forde,

Ganna Yudkivska,

André Potocki, *judges*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 10 July 2012,

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

PROCEDURE

1. The case originated in an application (no. 37246/06) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Ivan Viktorovich Muta (“the applicant”), on 30 August 2006.

2. The applicant, who had been granted legal aid, was represented by Ms N.O. Bordunova, a lawyer practising in Kyiv, Ukraine. The Ukrainian Government (“the Government”) were represented by their Agent, Mrs V. Lutkovska, of the Ministry of Justice of Ukraine.

3. The applicant alleged, in particular, that the investigation into his complaints of ill-treatment by a private individual, K., had been ineffective.

4. On 17 January 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1988 and lives in the village of Aleksandrovka, Ukraine.

A. Events of 14 June 2000

6. On 14 June 2000 the applicant, who was 11 years old, was playing football with his friends. Two 15 year-old boys took their ball. The applicant tried to get the ball back and he and his friends started to throw chestnuts at the other boys. One of the boys, K., threw a stone in retaliation, which hit the applicant in the left eye. As a result the applicant was diagnosed with concussion. Subsequently, he became blind in his left eye.

B. Criminal proceedings against K.

7. On 20 June 2000 Sverdlovsk District Hospital, which the applicant attended after the incident, informed the Sverdlovskiy police office (*Свердловський МВ УМВС України в Луганській області*) that the applicant had been injured by a third person.

8. The Government submitted that on the same date the applicant's father had complained to the police office about the injuries received by his son. However, according to the Government, on the same date the applicant's father requested all investigations to be discontinued because he "had no complaints and refused to give any written explanations or to have a forensic medical examination". The Government submitted a copy of a written statement allegedly signed by the applicant's father. The applicant stated that his father had never made such a statement.

9. On 24 June 2000 the police refused to institute criminal proceedings on account of lack of evidence of a crime.

10. On 10 July 2000 the applicant's father requested the police office to institute criminal proceedings against K.

11. On 13 July 2000 the police rejected his request on account of lack of evidence of a crime.

12. On 21 August 2000 the Sverdlovsk prosecutor (*прокурор м. Свердловськ*) quashed the decision of 24 June 2000 and remitted the case to the police for additional checks.

13. On 29 August 2000 the Sverdlovsk Department of Forensic Medical Examinations (*Свердловське відділення судмедекспертизи*) concluded that the applicant had sustained bodily injuries of medium severity, but that it would only be possible to finally establish the seriousness of the injuries in six months' time.

14. On 30 October 2000 criminal proceedings were instituted against K. for intentional infliction of bodily injuries of medium severity.

15. On 31 October 2000 the applicant's father was recognised as a victim and a civil claimant in the case since the applicant was a minor at the time.

16. Between 9 November 2000 and 5 June 2001 the criminal proceedings were suspended “since it was impossible to identify the aggressor”.

17. On 18 January 2001 the Lugansk Regional Bureau of Forensic Medical Examinations (*Луганське обласне бюро судово-медичних експертиз*) reached the conclusion that the applicant had sustained bodily injuries of medium severity.

18. On 5 June 2001 the criminal proceedings were resumed.

19. On 20 June 2001 K.’s actions were reclassified as “unintentional infliction of grievous bodily harm”. This crime was not punishable under criminal law if the aggressor had not reached the age of majority (16 years).

20. On 25 June 2001 the criminal proceedings against K. were terminated and the case was transferred to the court for compulsory measures of an educational nature (*примусові заходи виховного характеру*) to be applied to K.

21. On 14 August 2001 the Sverdlovskiy Town Court ordered a forensic medical examination of the applicant.

22. On 13 December 2001 the Lugansk Regional Bureau of Forensic Medical Examinations classified the injury as grievous bodily harm.

23. On 27 February 2002 the Sverdlovskiy Town Court ordered a reconstruction of the events with the participation of all the persons involved, their representatives and a forensic expert. The reconstruction was carried out in March 2002.

24. On 29 July 2002 the Sverdlovsk prosecutor informed the applicant’s father that disciplinary proceedings had been instituted against the investigating officer for protracting the investigation.

25. On 18 November 2002 the Sverdlovskiy Town Court remitted the case for additional investigation. The applicant appealed and requested that K.’s actions be redefined as intentional infliction of grievous bodily harm.

26. On 28 January 2003 the Lugansk Regional Court of Appeal upheld the decision of 18 November 2002.

27. On 20 March 2003 K.’s actions were again qualified as unintentional infliction of grievous bodily harm and the case was remitted to the Sverdlovskiy Town Court for the ordering of compulsory measures of an educational nature in respect of K.

28. On 30 January 2004 the court remitted the case for additional investigation since K. was no longer a minor and so the court could not order compulsory measures of an educational nature in respect of him.

29. On 30 March 2004 the Lugansk Regional Court of Appeal remitted the case for fresh consideration.

30. On 13 July 2004 the Sverdlovskiy Town Court again remitted the case for additional investigation. It noted that it was unclear whether the applicant had received injuries of medium severity or grievous bodily injuries, and whether K. had intentionally inflicted such injuries.

31. On 21 September 2004 the Lugansk Regional Court of Appeal upheld that decision.

32. On 25 October 2004 the investigating officer at the Sverdlovsk police department (*слідчий Свердловського МВ УМВС України в Луганській області*) refused to institute criminal proceedings against K. for intentional infliction of grievous bodily harm on the applicant. On the next day he remitted the case against K. in respect of unintentional infliction of bodily harm to the court to be closed, as the time-limit for prosecution had expired.

33. On 3 November 2004 the Sverdlovskiy Town Court quashed the decision of 25 October 2004.

34. On 7 December 2004 the Lugansk Regional Court of Appeal changed the decision of 3 November 2004 and remitted the case for additional investigation.

35. In January 2005 the case was transferred for investigation to the Krasnodon investigation authorities (*слідчий відділ Краснодонського МВ УМВС України в Луганській області*).

36. On 11 April 2005 K. was charged with intentional infliction of grievous bodily harm and the case was transferred to the Krasnodonskiy Local Court.

37. On 14 October 2005, at K.'s request, the court ordered an additional forensic medical examination.

38. On 19 December 2005 the Donetsk Regional Bureau of Forensic Medical Examinations (*Донецьке обласне бюро судово-медичної експертизи*) reached the conclusion that the applicant had sustained bodily injuries of medium severity.

39. On 3 April 2006 the court rejected the applicant father's request for a third forensic examination to be carried out to reconcile the contradictory conclusions of the previous examinations of 2001 and 2005.

40. On 26 May 2006 the court rejected a similar request by the prosecutor.

41. On 3 July 2006 the court finally decided to allow the applicant's father's request and ordered an additional forensic medical examination to be carried out in Kyiv.

42. On 8 August 2006 the Main Bureau of Forensic Medical Examinations (*Головне бюро судово-медичної експертизи*) informed the court that such an examination would not be possible before 2008.

43. On 27 November 2006 the applicant was recognised as falling into the third category of disability (the mildest).

44. On 4 July 2008 a commission of four experts concluded that the applicant had sustained grievous bodily harm: an injury to his left eye and concussion.

45. On 9 October 2008 the Krasnodonskiy Local Court imposed on K. a suspended sentence of three years' imprisonment, with a one-year probation

period, for infliction of grievous bodily harm. At the court hearing K. pleaded guilty.

46. On 23 December 2008 the Lugansk Regional Court of Appeal terminated the proceedings in the case as the time-limit for prosecution had expired.

47. On the same date the court adopted a special ruling informing the Lugansk Regional Council of Judges that the proceedings in the case had taken too long.

C. Civil proceedings

48. In September 2009 the applicant and his father instituted civil proceedings for damages. They claimed 23,399 Ukrainian hryvnas (UAH) in compensation for pecuniary damage, and UAH 700,000 in compensation for non-pecuniary damage.

49. On 26 April 2011 the Sverdlovskiy Town Court of the Lugansk Region awarded the applicant UAH 15,000 (at the material time the equivalent of 1,270.65 euros (EUR)), to be paid by K., in respect of non-pecuniary damage. The court also awarded the applicant's father UAH 15,067.16 in respect of pecuniary and non-pecuniary damage.

50. On 19 September and 20 October 2011 the Lugansk Regional Court of Appeal and the Higher Specialised Civil and Criminal Court of Ukraine, respectively, upheld this decision.

II. RELEVANT DOMESTIC LAW

A. Criminal Code of Ukraine (in force before 1 September 2001)

“Article 10. Responsibility of minors

1. Persons who have reached the age of 16 years before the commission of a criminal offence shall be criminally liable.

2. Persons aged between 14 and 16 who have committed criminal offences shall be criminally liable only for ... intentional infliction of bodily injuries resulting in damage to health

Article 101. Intentional grievous bodily injury

1. Intentional grievous bodily injury, that is, wilful bodily injury which endangers life at the time of infliction, or results in the loss of any organ or its functions, or causes mental illness or any other health disorder together with a persisting loss of not less than one-third of working capability, or the interruption of pregnancy, or permanent facial disfigurement, shall be punishable by imprisonment for a term of two to eight years.

...

Article 102. Intentional bodily injury of medium severity

Intentional bodily injury of medium severity, that is, wilful bodily injury which does not endanger life and does not result in the consequences listed in Article 101 of this Code, but which causes the lasting dysfunction of a body organ, or another lasting health disorder, shall be punishable by imprisonment for a term of up to four years or correctional labour for up to two years ...

Article 105. Negligent grievous bodily injury or negligent bodily injury of medium severity

Negligent grievous bodily injury or negligent bodily injury of medium severity, -

shall be punishable by imprisonment for one year, or by correctional labour for one year.

B. Criminal Code of Ukraine (in force from 1 September 2001)

“Article 22. Age of criminal liability

1. Persons who have reached the age of 16 years before the commission of a criminal offence shall be criminally liable.

2. Persons aged between 14 and 16 who have committed criminal offences shall be criminally liable only for ... intentional grievous bodily injury ..., [and] intentional bodily injury of medium severity

Article 105. Discharge from punishment subject to compulsory measures of an educational nature

1. A minor who has committed a minor offence or an offence of medium severity may be discharged from punishment by a court if it is found that the punishment may be discontinued due to the minor’s genuine repentance and further irreproachable conduct.

2. In this case, the court may impose the following measures of an educational nature on a minor:

(1) a warning;

(2) restriction of leisure time and special requirements in respect of the minor’s conduct;

(3) placing the minor under the supervision of his/her parents or foster parents, or school teachers or colleagues upon their consent, or other individuals at their request;

(4) obliging a minor who has attained 15 years of age and possesses any property or money, or has any earnings, to compensate any pecuniary damage;

(5) placing the minor in a special educational and correctional institution for children and teenagers until the minor’s rehabilitation is complete, but for a term not exceeding three years. The conditions of the stay in and the procedure for discharge from these institutions shall be provided for by law.

3. A minor may be subjected to several compulsory correctional measures as provided for by paragraph 2 of this Article. The duration of the compulsory correctional measures provided for in subparagraphs (2) and (3) of paragraph 2 of this Article shall be determined by the court.

4. A court may also find it necessary to appoint a tutor for a minor pursuant to the procedures provided for by the law.

Article 106. Discharge from criminal liability and punishment after expiry of the limitation periods

1. Discharge from criminal liability and punishment after expiry of the limitation periods shall be applied to persons having committed criminal offences when under 18 years of age, pursuant to Articles 49 and 80 of this Code and subject to the provisions of this Article.

2. The following limitation periods shall be established in respect of the persons described in paragraph 1 of this Article:

...

(3) seven years - for a serious offence”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

51. The applicant complains that the investigation in his case was ineffective, and that the proceedings were excessively lengthy. He invokes Articles 3, 6 and 13 of the Convention.

The Court, which is master of the characterisation to be given in law to the facts of the case, finds that the above complaints fall to be examined solely under the procedural limb of Article 3 of the Convention, which reads as follows:

Article 3

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

A. Admissibility

52. The Government did not submit any observations on the admissibility of this complaint.

53. 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.

B. Merits

54. The Government submitted that the investigation in the present case had included the questioning of eighteen witnesses, the questioning of the victim on four occasions, and the questioning of K. on seven occasions. There had been four forensic medical examinations and one forensic ballistic examination. Since all the persons involved were minors, the investigation had required particular diligence and caution.

55. The Government further reiterated that the applicant's father had initially not wanted to have K. prosecuted, and had later been given the opportunity to participate fully in the investigation.

56. Thus, the Government stated, the State authorities had taken all possible measures to secure the evidence in the case, which had required particular diligence, and had secured the applicant's right to participate in the investigation. As a result the guilty person had been identified and his actions had been correctly classified. The State had therefore complied with its obligations under Article 3 of the Convention in the present case.

57. In reply, the applicant argued that the questioning of witnesses and the forensic examinations should not, in the circumstances of the case, have taken more than half a year. Instead the proceedings in the case had lasted for eight years. The applicant believed that the State authorities had intentionally protracted the proceedings so that K. would be spared responsibility.

58. The Court notes at the outset that as a result of the violent actions of a private individual, K., the applicant sustained grievous bodily harm, lost the sight in his left eye and became disabled. Thus, the treatment to which he was subjected reached the threshold of severity necessary to fall within the scope of Article 3 of the Convention (see, *a contrario*, *Tonchev v. Bulgaria*, no. 18527/02, § 38-40, 19 November 2009).

59. The Court further reiterates that its case-law is consistent and clear on the point that Article 3 of the Convention requires that the authorities conduct an effective official investigation into alleged ill-treatment even if such treatment has been inflicted by private individuals (see *Ay v. Turkey*, no. 30951/96, § 60, 22 March 2005, and *M.C. v. Bulgaria*, no. 39272/98, § 151, ECHR 2003-XII and, most recently, *Biser Kostov v. Bulgaria*, no. 32662/06, 10 January 2012).

60. In particular, Article 3 requires States to put in place effective criminal-law provisions to deter the commission of offences against personal integrity, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. On the other hand, it goes without saying that the obligation on the State under Article 1 of the Convention cannot be interpreted as requiring the State to guarantee through its legal system that inhuman or degrading treatment is never inflicted by one individual on another or that, if it is, criminal

proceedings should necessarily lead to a particular sanction. In order that a State may be held responsible it must in the view of the Court be shown that the domestic legal system, and in particular the criminal law applicable in the circumstances of the case, fails to provide practical and effective protection of the rights guaranteed by Article 3 (see *Beganović v. Croatia*, no. 46423/06, § 71, 25 June 2009, with further references).

61. The minimum standards of effectiveness laid down by the Court's case-law include the requirements that the investigation must be independent, impartial and subject to public scrutiny, and that the competent authorities must act with exemplary diligence and promptness (see, *mutatis mutandis*, *Menesheva v. Russia*, no. 59261/00, § 67, ECHR 2006-III).

62. The procedural requirements of Article 3 go beyond the preliminary investigation stage when, as in this case, the investigation leads to legal action being taken before the national courts: the proceedings as a whole, including the trial stage, must meet the requirements of the prohibition enshrined in Article 3. This means that the domestic judicial authorities must on no account be prepared to let the physical or psychological suffering inflicted go unpunished. This is essential for maintaining the public's confidence in, and support for, the rule of law and for preventing any appearance of the authorities' tolerance of or collusion in unlawful acts (see, *mutatis mutandis*, *Okkalı v. Turkey*, no. 52067/99, § 65, ECHR 2006 XII (extracts)).

63. In the present case, the Court notes that the criminal proceedings in the case against the applicant's assailant lasted for eight and a half years - from 20 June 2000, when the police were informed about the incident, until 23 December 2008, when the court terminated the proceedings in the case as the time-limit for prosecution had expired.

64. The Court notes that the case before the national authorities does not appear to have been complicated. The circumstances of the case were clear and the incident was limited to only one episode and involved a small number of witnesses. It took the national authorities, however, more than eight years to investigate the case. The case was several times referred for additional investigation, in particular, for failure to determine the main issues in the case (the degree of severity of the injuries inflicted and K.'s intent to inflict them) after four years of investigation and court proceedings (see paragraph 30 above). By the time the final decision in the applicant's case was taken, a criminal prosecution of K. had become time-barred.

65. The Court further notes that the proceedings included significant periods of inactivity. In particular, the proceedings were stayed for unknown reasons for half a year (see paragraph 16 above) and it took the national authorities more than two years to perform the final forensic medical examination in the applicant's case (see paragraphs 42 and 44 above). The protracted character of the investigation and court proceedings was

recognised by the national authorities themselves (see paragraphs 24 and 47 above).

66. In the light of the foregoing, the Court concludes that in the present case the authorities failed to conduct an effective investigation into the applicant's allegations of ill-treatment, which led to the expiry of the relevant deadline and made it impossible to pursue prosecution any further. Accordingly, there has been a violation of Article 3 of the Convention under its procedural limb.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

67. The applicant also complained that the proceedings in the criminal case against K. had been unfair. He invoked Articles 6 and 14 of the Convention.

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

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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

71. The applicant claimed 75,000 euros (EUR) in respect of non-pecuniary damage.

72. The Government stated that the applicant's claims were unsubstantiated.

73. The Court, deciding on an equitable basis, awards the applicant EUR 7,500 in respect of non-pecuniary damage.

B. Costs and expenses

74. The applicant did not claim any costs and expenses.

C. Default interest

75. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 3 of the Convention concerning ineffective investigation admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,500 (seven thousand five hundred euros), to be converted into Ukrainian hryvnas at the rate applicable on the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (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* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Dean Spielmann
President