



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

THIRD SECTION

**CASE OF GHIMP AND OTHERS
v. THE REPUBLIC OF MOLDOVA**

(Application no. 32520/09)

JUDGMENT

STRASBOURG

30 October 2012

FINAL

03/01/2013

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

In the case of Ghimp and Others v. the Republic of Moldova,

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

Josep Casadevall, *President*,

Egbert Myjer,

Corneliu Bîrsan,

Alvina Gyulumyan,

Ján Šikuta,

Luis López Guerra,

Kristina Pardalos, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 9 October 2012,

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

PROCEDURE

1. The case originated in an application (no. 32520/09) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Moldovan nationals, Ms Lilia Ghimp, Tudor Ghimp, Tatiana Siman and Ion Siman (“the applicants”), on 17 June 2009.

2. The applicants were represented by Ms J. Hanganu, a lawyer practising in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicants alleged, in particular, a breach of Article 2 of the Convention as a result of the killing of their husband and relative.

4. On 13 July 2009 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. Following the resignation of Mr Mihai Poalelungi, the judge elected in respect of the Republic of Moldova (Rule 6 of the Rules of Court), the President of the Chamber appointed Mr Ján Šikuta to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1977, 1969, 1961 and 1959 respectively and live in Budești and Chișinău.

7. The present case concerns the circumstances surrounding the death of Leonid Ghimp, who was the first applicant's husband, the second and the third applicants' sibling and the fourth applicant's brother-in-law.

8. Leonid Ghimp, who was thirty-five years old at the time of the events in question and the father of two children aged six and ten years old, worked as a truck driver. On Saturday 10 December 2005 at approximately eight o'clock in the morning he went to work in order to load his truck and prepare it for the following Monday. According to witnesses, he finished work at approximately 2 p.m. After that and before going home, he spent time enjoying drinks with his co-workers, first at their workplace and later in two bars. At approximately 10.00 p.m. he left the bar and took a taxi. He subsequently had a dispute with the taxi driver because the driver had allegedly not taken him to the agreed destination. Because he refused to pay the fare, the taxi driver drove him to Ciocana police station. According to witnesses from the police station, the taxi driver left after a short time and after being paid by Leonid Ghimp. The report of the latter's arrest, however, stated that he had been found drunk and sleeping at a bus station. There was no mention of the incident with the taxi driver in the report.

9. According to the applicants, at the police station, Leonid Ghimp was beaten up by three police officers: A.P., S.C. and I.B, and was left lying in the corridor on a dirty concrete floor. He was released the next morning at approximately 11 a.m.

10. According to the accused police officers, Leonid Ghimp was not beaten up at the police station and was told that he was free to go shortly after being brought in. However, being severely intoxicated he refused to leave and preferred to sleep on the floor until the next morning.

11. After being released at approximately 11 a.m. the next day, Leonid Ghimp went home. According to his wife and a person who had seen him walking home, he was pale and walking very slowly. He told his wife that he had stomach ache and spent all day in bed. Only later during the evening, after the pain had intensified, did he tell his wife about the beating at the police station. He told her that the pain had started after a blow to his stomach which had caused him to feel a sharp pain and lose his breath. Later during the night Leonid Ghimp started vomiting and his wife called an ambulance, which took him to a hospital. On 12 December 2005 at 6.35 a.m. Leonid Ghimp died in hospital.

12. On an unspecified date the first applicant informed the Prosecutor's Office of Leonid Ghimp's account of his beating at Ciocana police station. On 5 January 2006 criminal proceedings were initiated by the Ciocana Prosecutor's Office.

13. An autopsy report dated 23 January 2006 stated that his death had resulted from diffuse purulent peritonitis after a perforated ulcer of the small intestine. The perforated ulcer had developed after a blow with a blunt object with a small impact area, possibly on the night of 10 December 2005.

14. In another forensic report dated 31 May 2006, a panel of forensic doctors composed of doctors G.M., N.S. and I.C., after examining the victim's medical documents and his exhumed corpse, came to a similar conclusion, namely that he had died as a result of a rupture of the small intestine resulting in intestinal contents flowing into the abdominal cavity and causing bacterial contamination of the abdominal cavity – in other words, purulent inflammation of the peritoneum. According to the doctors, the injury causing his death had resulted from a blow from a blunt object with a small surface area to Leonid Ghimp's stomach, possibly on the evening of 10 December 2005. The doctors did not find any traces of alcohol in his blood and concluded that he had been sober at the time of his death. They also concluded that there was a chance that his life could have been saved had he gone to a hospital within the first few hours after being injured.

15. During the criminal investigation, the prosecutor in charge of the case questioned numerous witnesses, including police officers from Ciocana police station. The three police officers suspected of ill-treating Leonid Ghimp denied that he had been treated violently and unanimously maintained that he had been found drunk and sleeping at a bus stop and brought to the police station. They also stated that after questioning him, Leonid Ghimp had refused to go home because it was late and he had no money and preferred to sleep on the floor of the police station. All the police officers submitted that Leonid Ghimp had been intoxicated but that he had not presented any signs of violence or injuries.

16. Two other police officers from Ciocana police station, who were not suspects, submitted that the victim had come to the police station together with a taxi driver, whom he had been refusing to pay for a fare. After several minutes the taxi driver had been paid by Leonid Ghimp and had left the premises of the police station. The police officers also denied having witnessed acts of violence against Leonid Ghimp and also stated that he had preferred to sleep on the floor in the corridor of the police station rather than go home.

17. A witness, O.O., who had been brought to the police station on the same evening (10 December 2005), stated that she had had an argument with her family and had been taken to Ciocana police station from her home. At the police station she had been in the same room as a man who

had had an argument with a taxi driver. She had understood that from the discussion which that man had had with three police officers. Because he had continued to refuse to pay the taxi driver, the police officers had beaten him up in front of her. She had seen the police officers punching the man until he had collapsed to the floor. Then one of the police officers had grabbed the man by his coat, dragged him into the corridor and left him lying on the concrete floor. She had later been released after being forced to sign a document stating that she was being fined for appearing drunk in public. As in Leonid Ghimp's case, the report of her arrest stated that she had been arrested on the street.

18. The prosecutor also questioned the people with whom Leonid Ghimp had spent the day on 10 December 2005. All of them stated that he had appeared to be in good health and had not shown any signs of illness throughout the entire day. The prosecutor's attempt to find the taxi driver who had brought Leonid Ghimp to the police station was not successful.

19. On 6 July 2006 one of the accused police officers, A.P., changed his initial statement. He admitted to having lied in his previous statement and admitted that Leonid Ghimp had been brought to the police station by a taxi driver. He submitted that another co-accused, police officer I.B., had punched the victim several times in the stomach area. Then I.B. had taken money from the pocket of Leonid Ghimp's trousers and had paid the taxi driver. After that, he had punched Leonid Ghimp several more times. A.P. also stated that the beating had taken place in his presence and that of two other people, a police officer and a person who had been brought to the police station that evening and had been in the same room. A.P. stated that he had decided to change his initial statement because he had felt remorseful and sorry for Leonid Ghimp's children and wife. His statement was given in the presence of a lawyer between 10.17 p.m. and 11 p.m. and was videotaped. At the time of his questioning he was not detained in custody.

20. During further questioning of the other two police officers suspected of ill-treating Leonid Ghimp, they also admitted that he had been brought by a taxi driver to the police station – not found sleeping at a bus stop as had been mentioned in the report of his arrest and as initially stated by them. They continued, however, to deny having ill-treated him.

21. The prosecutor also examined the room where questioning usually took place in the Ciocana police station and in which the victim had allegedly been beaten up, and discovered numerous blood stains on the walls and furniture.

22. During the subsequent court proceedings, suspect A.P. changed his statement again and submitted that nobody had ill-treated Leonid Ghimp on the evening of 10 December 2005. When asked why he had admitted on 6 July 2006 to one of the co-accused having ill-treated Leonid Ghimp in his presence, he replied that he could not remember having made such a statement because he had been very tired and hungry on that day, as he had

been on duty the previous night and had worked around the clock. He remembered, however, that the prosecutor had threatened him and had used a swear word in doing so and that he had not been assisted by a lawyer of his choice. He also argued that at the time of questioning he had not realised the questioning was being filmed.

23. On 9 July 2007 the Ciocana District Court found police officers A.P., S.C. and I.B. guilty of acts of violence against Leonid Ghimp causing his death. They were also found guilty of making false statements in the report of Leonid Ghimp's arrest and in the report of witness O.O.'s arrest and were each sentenced to eight years' imprisonment. The court also ordered them to pay compensation to the first applicant in respect of non-pecuniary damage in the amount of 300,000 lei (MDL) and ruled that the rest of the claims made by her be examined in separate civil proceedings.

24. The police officers appealed against conviction. During the appeal proceedings, one of the officers, I.B., presented a new version of events, namely that Leonid Ghimp had fallen down in the police station and that a table had fallen on top of him. On 7 November 2007 the Chişinău Court of Appeal partially allowed the officers' appeals and reduced I.B.'s sentence to six years' imprisonment and that of A.P. and S.C. to five years each.

25. On 11 March 2008 the Supreme Court of Justice allowed an appeal on points of law brought by the officers and, after concluding that the case had not been thoroughly examined, quashed the judgment of the Court of Appeal and ordered a re-examination of the proceedings by the same court.

26. On 6 June 2008 the Chişinău Court of Appeal acquitted the police officers of all charges. A.P.'s statement of 6 July 2006 was excluded on the grounds that it had been obtained in breach of the provisions of the Code of Criminal Procedure, namely that it had been obtained late in the evening when A.P. had been very tired and in the absence of a lawyer of his choice. In excluding A.P.'s statement the court relied on the statement of a psychologist, who submitted that in cases of extreme tiredness a person may be prone to making false self-incriminating statements. As to the statement of O.O., the court considered it unreliable because she had reason to resent the police officers who had arrested her on 10 December 2005. Moreover, some of the assertions she had made in her statement were considered to be contradictory. As to the findings of the panel of forensic doctors, the court held that they were refuted by the statements of one of the experts who had signed the report dated 31 May 2006, I.C. That expert had been invited to testify by one of the accused police officers. He had changed his opinion and had stated that Leonid Ghimp's injuries could have been caused between 6.35 a.m. on 9 December and 6.35 a.m. on 10 December 2005 that is prior to his detention. In accepting I.C.'s new opinion, the court did not explain why it preferred it over the conclusion of the panel of forensic doctors or what had made I.C. change his opinion after two years had passed. In so far as the charges of making false statements in the arrest

reports were concerned, the court found that the accused had indeed made false statements; however, as there was no personal gain involved, they were acquitted.

27. On 27 January 2009 a panel of the Supreme Court of Justice dismissed an appeal on points of law lodged by the Prosecutor's Office and by the first applicant. The Prosecutor's Office challenged this judgment with an extraordinary appeal.

28. On 1 March 2010 the Plenary Supreme Court of Justice accepted the extraordinary appeal and quashed both the judgment of the Court of Appeal and that of the Supreme Court of 27 January 2009. The Supreme Court found, *inter alia*, that the findings of the first panel of forensic doctors could not be rebutted by the opinion of a single doctor and that only the opinion of another panel of doctors could be acceptable. A fresh re-examination of the appeal against the judgment of 9 July 2007 was ordered.

29. During the proceedings, the Court of Appeal ordered a repeated forensic examination in respect of the circumstances of Leonid Ghimp's death by a panel of doctors from the National Institute of Forensic Medicine. In the meantime, I.C., the expert who had testified during the previous proceedings before the Court of Appeal (see paragraph 26 above), had become the chief doctor of the National Institute of Forensic Medicine.

30. In an expert report dated 1 November 2010, a panel of doctors reached, on the basis of medical documents, a conclusion identical to that expressed by I.C. during the previous proceedings before the Court of Appeal (see paragraph 26 above), namely that the victim's injury had been caused between 6.35 a.m. on 9 December and 6.35 a.m. on 10 December 2005. According to the report, the rupture of his intestine had initially been incomplete and only on 12 December 2005 had it become complete, causing Leonid Ghimp's death.

31. On 28 February 2011 the Chişinău Court of Appeal upheld the appeals lodged by the officers, reversed the judgment of the Ciocana District Court of 9 July 2007 and acquitted the officers of all the charges against them. In so doing, the Court of Appeal attributed substantial weight to the new forensic report of 1 November 2010.

32. On 29 May 2012 the Supreme Court of Justice dismissed an appeal on points of law lodged by the Prosecutor's Office.

II. RELEVANT DOMESTIC LAW

33. The Police Act of 18 December 1990 states:

Section 15 – The use of physical force

“Police officers are only entitled to use force and special fighting techniques for the purpose of ending criminal activities and for neutralising resistance to lawful demands

in cases in which non-violent methods are not sufficient to discharge their obligations.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

34. The applicants complained that Leonid Ghimp had been killed by State agents and that the domestic authorities had failed to carry out an effective investigation into his death. They 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.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

A. Admissibility

35. In their observations of 29 November 2011, the Government submitted that in view of the re-examination of the criminal proceedings, the application was premature and argued that it had to be declared inadmissible for that reason.

36. The Court notes that the proceedings ended on 29 May 2012. Therefore the Government’s objection is dismissed.

37. The Court further notes that 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

1. The parties' submissions

38. The applicants submitted that Leonid Ghimp's death had resulted as a consequence of the ill-treatment to which he had been subjected at Ciocana police station on 10 December 2005. They expressed doubt about the medical opinion of doctor I.C. and the report produced by his subordinates after the re-examination of the proceedings, arguing that their findings had not been based on an examination of the victim's body and had not been scientifically substantiated.

The applicants also submitted that it would have been impossible for Leonid Ghimp to have undertaken physical work on Saturday 10 December 2005 and then enjoyed a beer with his friends if he had been suffering from such a serious condition as an incomplete rupture of the intestine. The applicants argued that it was common ground that gastrointestinal perforations result in severe abdominal pain intensified by movement, nausea, vomiting, fever and chills.

The applicants also drew the Court's attention to the behaviour of the police officers who had forged the report of Leonid Ghimp's arrest. According to the applicants, such behaviour had called for a cautious response and the courts should have been more careful in accepting their version of events.

The applicants finally submitted that the investigation into the circumstances of the victim's death had not been effective within the meaning of Article 2 of the Convention.

39. The Government did not make any submissions on the merits of the case but only endorsed the position of the domestic courts, according to which the applicant had received his fatal injury before his arrest.

2. The Court's assessment

(a) General principles

40. Article 2 of the Convention, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention. Together with Article 3, it enshrines one of the basic values of the democratic societies making up the Council of Europe. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-47, Series A no. 324; *Salman v. Turkey* [GC], no. 21986/93, § 97, ECHR 2000-VII; and *Velikova v. Bulgaria*, no. 41488/98, ECHR 2000-VI).

41. In the light of the importance of the protection afforded by Article 2, the Court must subject complaints of deprivation of life to the most careful scrutiny, taking into consideration all relevant circumstances.

Persons in custody are in a particularly vulnerable position and the authorities are under an obligation to account for their treatment. Consequently, where an individual is taken into police custody in good health but later dies, it is incumbent on the State to provide a plausible explanation of the events leading to his death (see, *mutatis mutandis*, *Selmoun v. France* [GC], no. 25803/94, § 87, ECHR 1999-V; *Salman*, cited above; and *Velikova*, cited above).

42. Article 2 imposes a duty on the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions (see *Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports of Judgments and Decisions* 1998-VIII; *Mastromatteo v. Italy* [GC], no. 37703/97, §§ 67 and 89, ECHR 2002-VIII; and *Menson v. the United Kingdom* (dec.), no. 47916/99, ECHR 2003-V).

43. Compliance with the State's positive obligations under Article 2 requires the domestic legal system to demonstrate its capacity to enforce criminal law against those who have unlawfully taken the life of another (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 160, ECHR 2005-VII).

44. The effective investigation required under Article 2 serves to maintain public confidence in the authorities' maintenance of the rule of law, to prevent any appearance of collusion in or tolerance of unlawful acts, to secure the effective implementation of the domestic laws which protect the right to life and the right not to be subjected to ill-treatment and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility (see, among many other authorities, *McKerr v. the United Kingdom*, no. 28883/95, §§ 111 and 114, ECHR 2001-III, and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, §§ 69 and 72, ECHR 2002-II).

45. The requirements of Article 2 go beyond the stage of the official investigation, where this has led to the institution of proceedings in the national courts: the proceedings as a whole, including the trial stage, must satisfy the requirements of the positive obligation to protect lives through the law. While there is no absolute obligation for all prosecutions to result in conviction or in a particular sentence, the national courts should not under any circumstances be prepared to allow life-endangering offences to go unpunished (see, *mutatis mutandis*, *Öneryıldız v. Turkey* [GC], no. 48939/99, § 96, ECHR 2004-XII; *Okkalı v. Turkey*, no. 52067/99, § 65, ECHR 2006-XII; and *Türkmen v. Turkey*, no. 43124/98, § 51, 19 December 2006).

46. A requirement of promptness and reasonable expedition is implicit in this context (see *Yaşa v. Turkey*, 2 September 1998, §§ 102-04, *Reports* 1998-VI; *Çakıcı v. Turkey* [GC], no. 23657/94, §§ 80, 87 and 106, ECHR 1999-IV; *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 109, ECHR 1999-IV; and *Mahmut Kaya v. Turkey*, no. 22535/93, §§ 106-07, ECHR 2000-III). Any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible is liable to fall foul of the required standard of effectiveness (see *Kelly and Others v. the United Kingdom*, no. 30054/96, §§ 96-97, 4 May 2001, and *Anguelova v. Bulgaria*, no. 38361/97, § 139, ECHR 2002-IV).

(b) Application of these principles to the present case

47. Turning to the facts of the present case, the Court observes that Leonid Ghimp appeared to be injured and died after being detained for one night at Ciocana police station. It is therefore incumbent on the Government to provide a plausible explanation for his death.

48. In acquitting the officers the Moldovan courts relied on the medical opinion of a panel of forensic doctors, according to which the fatal injury had been inflicted on Leonid Ghimp prior to his detention, namely between 6.35 a.m. on 9 December and 6.35 a.m. on 10 December 2005.

49. The Court notes that according to the relevant witness statements, which were not challenged, Leonid Ghimp went to work at approximately 8 o'clock on the morning of Saturday 10 December 2005 and between that time and 6.35 p.m. he did not have any accidents or suffer a violent blow as a result of which he could have been injured. Accordingly, following the logic of the medical opinion relied upon by the Government, the fatal injury must have been inflicted on him before 8 a.m. on 10 December 2005, meaning that Leonid Ghimp started his day on 10 December 2005 with a ruptured intestine.

The Court considers that, even without the benefit of expert evidence on this point, such an opinion would appear to be incompatible with the manner in which the victim spent the day of 10 December 2005. Indeed, according to the unchallenged witness accounts, during the first half of that day Leonid Ghimp performed heavy physical work, including loading a truck, and later enjoyed drinks in the company of his workmates in three different places, including two bars, until late in the evening. Moreover, none of the people with whom he came into contact, including the accused police officers, observed any signs of illness on his part.

In spite of all that, the domestic courts accepted without any reserve the medical opinion relied upon by the defence. The Court finds it striking that the courts did not ask the doctors how their opinion could be reconciled with the above-mentioned witness statements and did not attempt to clarify whether it was even theoretically possible for a person suffering from an

intestinal rupture to behave in the manner in which Leonid Ghimp behaved on 10 December 2005 without showing any signs of illness.

50. The above was not the only question to which the courts did not attempt to find an answer. The Court notes that doctor I.C. was part of the first panel of forensic doctors who, after examining the victim's body, reached a conclusion about the possible time at which the fatal injury was inflicted. Some two years later, for reasons best known to himself, doctor I.C. came before the Court of Appeal and expressed an opinion which put a totally different slant on the accusation against the three officers. His new opinion was accepted by the Court of Appeal without questions being asked about the reasons for which doctor I.C. had decided to change his view after such a long time. Moreover, the judges that accepted I.C.'s new opinion did not find it necessary to explain why they preferred this new opinion over the autopsy report and the opinion of the panel of forensic doctors who had had the task of examining the victim's body.

51. Subsequently, the Supreme Court of Justice quashed the judgment acquitting the defendants which had been based on doctor I.C.'s opinion and ordered a re-examination of the case. In so doing, the Supreme Court did not pay attention to any of the fundamental problems mentioned above but merely to a technicality, namely to the fact that a single doctor's opinion was insufficient to rebut the findings of the panel of doctors of 31 May 2006.

52. During the further proceedings a new forensic medical report by a panel of doctors was obtained, apparently with a view to eliminating the deficiency noted by the Supreme Court. The panel of doctors chosen for the task turned out to be hierarchically subordinate to doctor I.C. The new opinion produced by them accorded in all relevant respects with that expressed by doctor I.C. himself, to the extent that the estimated times stated in the report were precisely the same as those of doctor I.C.'s report. As in the case of doctor I.C.'s opinion, the courts did not find it necessary to explain why they preferred the new report, which was based on an examination of documentary material only, over the autopsy report and the initial report based on a direct observation of the victim's body.

53. In assessing the credibility of the explanation provided by the Government, the Court finds it relevant to observe the conduct of the accused police officers during the criminal proceedings and the manner in which the domestic courts treated that conduct. In this respect the Court notes that the officers' statements were incoherent and sometimes hardly plausible. In particular, they all changed their statements as regards the manner in which Leonid Ghimp came to the police station. One of them, A.P., later admitted to violence having been used against Leonid Ghimp during his detention, but withdrew this statement some time later, citing such reasons as tiredness and hunger at the time of questioning. At an advanced stage of the proceedings, another accused officer, I.B., produced a

new possible explanation for Leonid Ghimp's injuries, stating that a table had fallen over and landed on his stomach during questioning. It does not appear that such inconsistent behaviour on the part of the accused officers was assessed by the courts or put in the balance when deciding on the accusation against them.

54. Having carefully examined the materials of the case, the Court considers that the manner in which the domestic courts assessed the circumstances of the case could give an independent observer the impression that they did not genuinely attempt to elucidate the circumstances of the case and discover the truth. Moreover, the Court is not persuaded that the present case presented such complexity as to require such a long time to be resolved. Therefore, the Court concludes that the authorities failed to carry out an effective investigation of the circumstances surrounding Leonid Ghimp's death. In addition, it finds that there is sufficient evidence from which it may be concluded beyond reasonable doubt that Leonid Ghimp died as a result of injuries inflicted while he was in the hands of the police. The responsibility of the respondent State is thus engaged.

55. In view of the above, the Court concludes that there has been both a substantive and a procedural violation of Article 2 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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. Pecuniary Damage

57. The first applicant claimed 50,604.66 euros (EUR) in respect of pecuniary damage. She submitted that this amount constituted the financial loss suffered by her family as a result of the death of her husband Leonid Ghimp. She calculated the loss by multiplying her husband's yearly wage by the number of years he could have worked until retirement. The calculation took into account the average rate of wage inflation between 2005 and 2010, as indicated in the official data of the Ministry of Labour.

58. The method employed by the first applicant was adapted from the method employed by the domestic courts for calculating pecuniary damage in cases concerning the loss of a breadwinner in work-related circumstances, such as a result of an accident at work or industrial disease.

59. The first applicant argued that domestic legislation did not contain any method of calculation of pecuniary damage for the loss of a breadwinner as a result of a crime. However, she expressed the opinion that if a family whose breadwinner had died in work-related circumstances could benefit from such a method of calculation, it was only reasonable to expect that such a method could also be employed where a family's breadwinner had died as a result of a crime imputable to the State.

60. The Government stated that the method of calculation employed by the applicant was similar to that used in the case of *Mikheyev v. Russia*, no. 77617/01, 26 January 2006, where the Court had dismissed it.

61. The Court reiterates that there must be a clear causal connection between the damage claimed by an applicant and the violation of the Convention found and that this may, in an appropriate case, include compensation in respect of loss of earnings (see *Aktaş v. Turkey*, no. 24351/94, § 352, ECHR 2003-V).

62. In addition, it is recalled that a precise calculation of the sums necessary to make complete reparation (*restitutio in integrum*) in respect of the pecuniary losses suffered by an applicant may be prevented by the inherently uncertain character of the damage flowing from the violation (*Young, James and Webster v. the United Kingdom* (Article 50), 18 October 1982, § 11, Series A no. 55). An award may still be made notwithstanding the large number of imponderables involved in the assessment of future losses (*The Sunday Times v. the United Kingdom (no. 1)* (Article 50), 6 November 1989, § 15, Series A no. 38; *Lustig-Prean and Beckett v. the United Kingdom* (just satisfaction), nos. 31417/96 and 32377/96, §§ 22-23, 25 July 2000; and *Orhan v. Turkey*, no. 25656/94, § 431, 18 June 2002).

63. In the present case the Court has found the respondent State responsible for Leonid Ghimp's death: it must follow that the loss of his future earnings is also imputable to the respondent State. An award in this respect is therefore clearly in order.

64. The Court further notes that the present case is distinguishable from *Mikheyev* (cited above) in that the first applicant relied on her husband's actual income received before his death and not on an average national salary as the applicant in the Russian case did. Moreover, in *Mikheyev*, the situation concerning lost income was further complicated by the fact that the applicant's calculation did not include the disability pension he received from the State.

65. As stated above, the Court is aware that any calculation of future income is prone to some degree of speculation since it is subject to unpredictable circumstances and that it is virtually impossible to predict with precision the amount of lost income. In the present case, however, it does not find the method of calculation used by the first applicant to be excessively speculative or unreasonable. It notes, in the first place, that the calculation is based on a method employed by the domestic courts to

calculate lost income in work-related circumstances, even in cases in which an employer is not responsible for the death of his or her employee. Moreover, the applicant's calculation does not take into consideration any possible career advancement, any capitalisation of earnings or any earnings which Leonid Ghimp could have had after retirement. In these circumstances and bearing in mind the fact that the first applicant has to raise two children alone, the Court, judging on an equitable basis, decides to award to the first applicant EUR 50,000.

B. Non-pecuniary damage

66. The first applicant claimed EUR 95,000 and argued that she had experienced grief, helplessness, anxiety and fear for her and her children's life as a result of the tragic death of her husband and of the manner in which the ensuing criminal proceedings had taken place. The other applicants claimed EUR 8,000 each and submitted that they had been devastated by Leonid Ghimp's death and had suffered further frustration as a result of the manner in which the authorities had dealt with the investigation of the case.

67. The Government contested the amounts claimed by the applicants and argued that they were excessive.

68. The Court observes that it has found that the authorities were accountable for the death of Leonid Ghimp. In addition to this serious violation, it has further found that the authorities failed to undertake an effective investigation and provide an effective remedy in respect of it, contrary to the procedural obligation under Article 2 of the Convention. In view of the above, and given that the first applicant has to raise and support two children by herself, the Court, judging on an equitable basis, awards her EUR 60,000. At the same time it does not consider it justified in the circumstances of the present case to make any awards to the other applicants. Their claims are therefore rejected.

C. Costs and expenses

69. The applicants also claimed EUR 4,996 jointly for costs and expenses incurred before the Court. They submitted documents in support of their claims and proof of the fact that the amount had been paid to their representative.

70. The Government considered the amount to be excessive.

71. 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 are reasonable as to quantum. In the present case, regard being had to the documents in its possession, the above criteria and the relevance of the submissions made by

the applicants' lawyer during proceedings, the Court considers it reasonable to award the entire amount claimed.

D. Default interest

72. 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 application admissible;
2. *Holds* that there has been a substantive and a procedural violation of Article 2 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State:
 - (i) EUR 50,000 (fifty thousand euros), plus any tax that may be chargeable, to the first applicant in respect of pecuniary damage;
 - (ii) EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable, to the first applicant in respect of non-pecuniary damage;
 - (iii) EUR 4,996 (four thousand nine hundred and ninety-six euros), jointly to all the applicants in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 30 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President