



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

FIFTH SECTION

CASE OF MURAVSKAYA v. UKRAINE

(Application no. 249/03)

JUDGMENT

STRASBOURG

13 November 2008

FINAL

13/02/2009

This judgment may be subject to editorial revision.

In the case of Muravskaya v. Ukraine,

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

Rait Maruste, *President*,
Karel Jungwiert,
Volodymyr Butkevych,
Renate Jaeger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 14 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 249/03) 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 Tatyana Petrovna Muravskaya (“the applicant”), on 3 December 2002.

2. The applicant, who had been granted legal aid, was represented by Mr A. P. Bushchenko, a lawyer practising in Kharkiv. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev.

3. The applicant alleged, in particular, that the State authorities had failed to carry out an effective and adequate investigation into the death of her son.

4. On 13 September 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning ineffective investigation into the death of the applicant’s son to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

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

5. The applicant was born in 1950 and lives in Slavyansk, in the Donetsk Region of Ukraine.

6. On 23 January 1999 the applicant's son, Mr M., disappeared.

7. On 1 February 1999 the applicant learned that her son had been beaten and, a few days later, that he had been murdered.

8. The body of Mr M. was found in a lake on 18 March 1999. The applicant maintained that this lake had been deliberately omitted from the police search, although neighbouring lakes had been checked.

9. On 18 March 1999 the investigator of the Slavyansk Prosecutors' Office ("the SPO") ordered a forensic medical examination of the corpse. The examination was conducted the next day by a forensic expert, Mr D. The expert concluded that the cause of death of the applicant's son could not be established and that the latter had been slightly drunk at the time of his death.

10. On 26 March 1999 the SPO investigator refused to institute criminal proceedings regarding the death of Mr M. The investigator based his decision on the evidence submitted by the witnesses, Messrs D., P., G., and P., who were with the applicant's son on the day of his disappearance. They testified that Mr M. had been very drunk and had behaved badly, fighting with some of them. They also stated that Mr M. had left them to go home and that they did not see him again. Moreover, the forensic examination had not established the cause of death, only that Mr M. had been drunk.

11. On 6 August 1999 the Slavyansk Town Court quashed the decision of 26 March 1999 and remitted the case for further inquiry, finding, in particular, that the expert's opinion had been incomplete and the investigator had failed to scrutinise the circumstances evidencing that the death of the applicant's son could have been a violent one.

12. On 18 August 1999 the SPO investigator refused to open criminal proceedings regarding the death of Mr M., stating that the additional inquiry did not disclose any new circumstances. At the same time he instituted criminal proceedings concerning the beating of Mr M. that allegedly took place on the day of his disappearance. He transferred the case to the Slavyansk Internal Affairs Department ("the SIAD").

13. On 1 October 1999 the GPO prosecutor quashed the decision of 18 August 1999 refusing to open criminal proceedings, stating in particular that the inquiry had been carried out superficially and improperly. The prosecutor requested, in particular, that a further inquiry be held to clarify the following issues:

- why the applicant submitted that some persons had initially confessed to the murder of her son;
- which of the police officers were informed by the applicant of the trail leading to the ice-hole in the lake where Mr M.'s corpse had been found and who else had seen that trail;
- why the police officers omitted the lake where Mr M.'s corpse was found when checking the neighbouring lakes.

14. On 29 October 1999 the SPO investigator refused to open criminal proceedings regarding the death of Mr M. since the cause of his death could not be established. Apparently, the SPO did not undertake any further inquiry into the applicant's allegations.

15. On 11 November 1999 the SIAD investigator, in the course of the investigation of the alleged beating of Mr M., ordered a forensic examination to establish the circumstances of the death of Mr M.

16. The examination conducted by a group of experts of the Donetsk Forensic Medical Examination Bureau within the period between December 1999 and February 2000 reached the following conclusions:

- it was not possible to establish the date of death of Mr M. with sufficient precision, although it could not be ruled out that he had died on the day of his disappearance;
- Mr M. had bodily injuries, including serious facial ones, most of which could not have been caused by falling on to the ground;
- the cause of death could not be established exactly, but it could be assumed that death had been caused by suffocation as a result of haemorrhaging; in that case, there was a causal link between the injuries and the death;
- that Mr M. had drunk alcohol not less than one or two hours before his death; and
- that his body had remained in water from one and a half to two months.

17. On 27 December 1999 an independent forensic expert, Mr P., gave his conclusions in the case. He stated that Mr M. had suffered bodily harm of different degrees of severity, including grievous injuries. As a result of this harm, Mr M. could no longer have acted consciously and could have lived no longer than an hour or so afterwards. He further presumed that a hole found in the skull could have been caused by a firearm, although it had been deemed to be a trepanation by the first forensic expert. Mr P. concluded that, in any event, death had been caused by violence.

18. Within the period between March and April 2000 the experts of the Donetsk Forensic Medical Examination Bureau drew an additional report in which they concluded that Mr M. had bodily injuries of varying degrees of severity, some of which were grievous. They established that such injuries were not deadly in themselves but would have caused unconsciousness, followed by haemorrhaging, suffocation and death. Until suffocation, Mr M. would have been capable of movement. They finally mentioned that there were no reliable data that Mr M. had been alive when he entered the lake. On the contrary, there were data in support of the opposite conclusion.

19. On 12 May 2000 the SIAD reclassified the case of beating the applicant's son as a case of inflicting intentional grievous bodily harm on him, causing his death.

20. Within the period between March and May 2001 an additional expert examination was conducted in the Central Office of Forensic Examination in Kyiv. The expert commission concluded that there were no signs of a bullet wound to the skull. However, death could have been caused by a serious trauma to the facial part of the skull. They further stated that it was very unlikely that, given the severity of the injuries, Mr M. would have been capable of movement. They finally maintained that there were no data to conclude whether Mr M. had been alive or dead when he got into the lake water.

21. On 27 August 2001 the SIAD investigator refused to institute criminal proceedings against Messrs P., D., G., and P. for the beating of the applicant's son since prosecution under this *corpus delicti* was time-barred.

22. By a letter of 18 October 2001 the GPO admitted to the applicant that the investigation into the death of her son had been carried out unprofessionally and unsatisfactorily, there had been unreasonable delays by the investigators, and as a result the crime had not yet been exposed. It further informed the applicant that local prosecutors and investigators dealing with the case as well as Mr D., the expert making the first medical examination of her son's corpse, had been disciplined for their omissions.

23. On 17 December 2001 the SIAD investigator refused to institute criminal proceedings against Messrs P., D., G., and P. for inflicting grievous bodily harm causing the death of Mr M., since their guilt could not be sufficiently proved.

24. On 19 December 2001 the SIAD suspended the investigation into the infliction of grievous bodily harm on Mr M. causing his death as the perpetrators of the crime could not be identified.

25. On 28 January 2002 the GPO found that the investigation was flawed, quashed the decision of 19 December 2001 as unfounded and remitted the case for further investigation. The GPO ordered, in particular, the following:

- a reconstruction of events with the participation of Mr P., Mr D., Mr G., Mr P. and the medical expert for the purpose of clarifying and specifying what blows were inflicted on Mr M. by each of the participants in the fight;
- confrontations between all participants in the incident to clarify their testimonies;
- additional forensic medical examination for the purpose of comparing the received data with the medical conclusions drawn in respect of the corpse of Mr M. and the cause of his death.

26. On 6 December 2002 the investigation was suspended again since the responsibility of Mr D., Mr P., Mr G., and Mr P. for the death of the applicant's son could not be sufficiently proved, and the identity of other possible perpetrators could not be established.

27. On 24 March 2003 the GPO quashed the decision of 6 December 2002, finding that the investigation had flaws, and ordered further investigatory actions.

28. On 17 April 2003 the case was transferred to the Donetsk Regional Internal Affairs Department for further investigation.

29. In August 2003 the case was sent for additional forensic examination. On 17 December 2003 the case was sent to the Central Office for Forensic Medical Examination in Kyiv.

30. On 7 April 2004 the investigation was suspended since the perpetrators of the crime could not be identified.

31. On 21 July 2004 the investigation was renewed and additional forensic expertise ordered.

32. In April 2005 the additional forensic expertise was completed. In their conclusion the experts assumed, in particular, that Mr M. had received a craniocerebral facial injury followed by asphyxia and death. They further noted that due to the putrefaction process of the corpse they could not precisely establish the cause of death.

33. On 11 July 2005 the investigation was suspended for the reason that it was impossible to establish the identity of the persons responsible for the death of Mr M.

34. On 19 July 2005 the Donetsk Regional Prosecution Office quashed the decision of 11 July 2005 as unfounded and remitted the case for further investigation. The investigation is still pending.

II. RELEVANT DOMESTIC LAW

35. The relevant provisions of the Constitution provide:

Article 3

“The human being, his or her life and health, honour and dignity, inviolability and security are recognised in Ukraine as having the highest social value. ...”

Article 27

“Every person has the inalienable right to life.

No one shall be arbitrarily deprived of life. The duty of the State is to protect human life. ...”

36. The relevant provisions of the Code of Criminal Procedure read as follows:

Article 4**The obligation to institute criminal proceedings and investigate a crime**

“The court, prosecutor or investigator must, to the extent that it is within their power to do so, institute criminal proceedings in every case where evidence of a crime has been discovered, take all necessary measures provided by law to establish whether a crime has been committed and the identity of the perpetrators and punish them.”

Article 94**Grounds for instituting criminal proceedings**

“Criminal proceedings shall be instituted on the following grounds:

(1) applications or communications from ... individuals;

...

(5) direct detection of signs of a crime by a body of inquiry or investigation, a prosecutor or a court.

A case may be instituted only when there is sufficient evidence that a crime has been committed.”

THE LAW**I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION**

37. The applicant complained that the State failed to conduct an effective investigation into the disappearance and death of her son in violation of Article 2 of the Convention, which reads, in so far as relevant, as follows:

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

A. Admissibility

38. The Government raised no objection as to the admissibility of this complaint. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *Submissions of the parties*

39. The Government maintained that the law-enforcement bodies had taken all necessary procedural actions in order to effectively investigate the circumstances of the death of the applicant's son and identify the persons guilty of the crime. They noted, in particular, that fifteen medical examinations, twenty-two witness statements, four reconstructions of events and one confrontation had been held in the course of criminal proceedings. They concluded that there was nothing to suggest that the investigation had been protracted or ineffective.

40. The applicant disagreed. She alleged that the criminal proceedings had not been instituted promptly and that after they had been instituted the investigative bodies had repeatedly suspended them without valid reason. The applicant further emphasised that the investigation had been seriously misdirected by the first expert's report, which had concluded that it was impossible to establish the cause of death of the applicant's son. She finally argued that the investigatory steps taken were mostly belated and insufficient.

2. *The Court's assessment*

a. General principles

41. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, *Kaya v. Turkey*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 324, § 86). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life. What form of investigation will achieve this purpose may vary in different circumstances. However, whatever mode is employed, the authorities must act of their own motion once the matter has come to their attention. They cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigatory procedure (see, for example, *mutatis mutandis*, *İlhan v. Turkey* [GC], no. 22277/93, § 63, ECHR 2000-VII). This is not an obligation of result, but of means. The authorities must have taken all reasonable steps to secure the evidence concerning the incident. Any deficiency in the

investigation which undermines its ability to establish the cause of death or the persons responsible will risk falling foul of this standard (see *Gongadze v. Ukraine*, no. 34056/02, § 176, ECHR 2005-XI).

42. There is also a requirement of promptness and reasonable expedition implicit in this context (see *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, pp. 2439-40, §§ 102-04, and *Çakıcı v. Turkey* [GC], no. 23657/94, §§ 80, 87 and 106, ECHR 1999-IV). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating the use of lethal force or a disappearance may generally be regarded as essential in ensuring public confidence in their maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see, in general, *McKerr v. the United Kingdom*, no. 28883/95, §§ 108-15, ECHR 2001-III, and *Avşar v. Turkey*, no. 25657/94, §§ 390-95, ECHR 2001-VII).

b. Application in the present case

43. The Court observes that in the present case the efficiency of the investigation into the disappearance and death of the applicant's son was seriously undermined at the initial stage for at least two major reasons.

44. Firstly, the law-enforcement bodies failed to carry out a prompt and comprehensive search for the corpse of the applicant's son though, as appears from the case file, there were sufficient clues to where the corpse should have been searched for. Meanwhile, had they acted promptly and diligently the corpse would not have deteriorated that much and there would have been better chances of establishing more precisely the cause of Mr M.'s death.

45. Secondly, the primary forensic examination performed by Mr D. yielded no conclusions as to the possible cause of Mr M.'s death, though the results of subsequent forensic examinations contained consistent assumptions that his death had been caused by a serious facial injury to Mr M. that could not have happened by his falling on the ground and that after that injury he would not have been capable of movement. Meanwhile, the primary expert's opinion had served as a strong argument not to investigate the version of the violent death of Mr M. straight after the discovery of his body. It was not until 12 May 2000, almost fourteen months after the corpse had been found, that the case about the beating of the applicant's son was reclassified as a case of bodily harm causing a death. The Court also notes that the deficiencies of the primary forensic examination were acknowledged by the domestic authorities who disciplined Mr D. on that account.

46. The Court further observes that the investigators' refusal to institute criminal proceedings had been quashed several times by the domestic authorities, who stated that the inquiry had been carried out superficially and indicated the specific actions that had to be taken by the investigative bodies.

47. The Court also notes that numerous investigators' decisions suspending criminal proceedings were repeatedly quashed by the GPO as unfounded, whereupon the investigators were given clear instructions about further procedural steps that should have been taken to disclose the crime. These instructions, however, were not always followed.

48. The Court further observes that there was a series of delays in the investigation, the total duration of which cannot be reasonably justified. Meanwhile, the delays in the investigation significantly diminished the prospect of its success and completion.

49. Finally, the Court notes that the above deficiencies were acknowledged by the domestic authorities on several occasions and disciplinary measures taken with regard to the relevant persons.

50. In the light of these circumstances the Court concludes that the State authorities failed to carry out an effective investigation into the disappearance and death of the applicant's son. There has accordingly been a violation of the procedural limb of Article 2 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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."

52. The applicant did not submit a claim for just satisfaction within the time-limit fixed. Accordingly, the Court considers that there is no call to award her any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 2 of the Convention concerning ineffective investigation into the death of the applicant's son admissible;
2. *Holds* that there has been a violation of Article 2 of the Convention under its procedural limb.

Done in English, and notified in writing on 13 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Rait Maruste
President