



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

FOURTH SECTION

CASE OF IORGA v. MOLDOVA

(Application no. 12219/05)

JUDGMENT

STRASBOURG

23 March 2010

FINAL

23/06/2010

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

In the case of Iorga v. Moldova,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

David Thór Björgvinsson,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 2 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 12219/05) 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 a Moldovan national, Ms Svetlana Iorga (“the applicant”), on 23 March 2005.

2. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

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

4. The application was allocated to the Fourth Section of the Court. On 9 December 2008 the President of that Section decided to give notice of the application to the Government. It was 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 1958 and lives in Paşcani.

6. Mr Victor Iorga (V. I.), the applicant's son, was in the seventh month of his compulsory military service as a soldier when he disappeared from his military unit on 9 June 2001. On 14 June 2001 his dead body was found hanging from a tree near the military unit.

7. A criminal investigation (no. 2001019048) was initiated on the same day. According to documents submitted by the Government, during the investigation numerous witnesses were heard and several expert reports were made, including an autopsy, a post-mortem psychiatric report and a report on the samples of various substances gathered from the scene of the event. On 28 December 2001 a military prosecutor decided to discontinue the investigation into the case, finding that V. I. had committed suicide. The applicant considered that her son had been murdered and that the authorities were trying to cover up the case.

8. At the applicant's request, on 6 February 2002 she was for the first time given access to the materials in the file. On 15 August 2002 she challenged in court the decision of 28 December 2001.

9. On 7 November 2002 the Buiucani District Court rejected the applicant's challenge to the decision of 28 December 2001 as lodged out of time. The applicant appealed, claiming that she had never received a summons to the hearing of 7 November 2002.

10. On 11 February 2003 the Chişinău Regional Court ordered a re-examination of the complaint by the Buiucani District Court. In her complaint, the applicant noted that the passage of time made increasingly irrelevant an exhumation of the body in order to carry out another autopsy to verify the cause of her son's death. She also noted that she was still unsure whether she had seen her son's body when she had been asked to verify the identity of the body found on 14 June 2001. She mentioned the absence of a number of marks which her son had had on his body and that she had been pressured into saying that it was her son's body. She also mentioned that her son had complained of violence among the soldiers. It appears that the applicant's complaint was forwarded to the Buiucani District Court. According to the applicant, she was presented with a corpse in an advanced state of decomposition which she was not sure to have identified as her son. Moreover, the photos of the corpse suggested that the victim had received a blow to the head and revealed two strangulation marks, suggesting that he had been hanged from the tree after being asphyxiated. She expressed her doubts to the authorities and asked for an exhumation in order to verify that information, but this was refused.

11. On 24 April 2003 the Buiucani District Court found that, even though many investigative measures had been carried out, including several expert reports, there had been shortcomings in the investigation. In particular, V. I.'s interests had not been represented, the applicant having been treated only as a witness and not as the victim's representative as required by law. That omission had prevented the applicant from exercising her procedural rights under Article 47 of the Code of Criminal Procedure ("the CCP", see paragraph 18 below), taking into account that she had a number of objections to the manner in which the investigation had been carried out. The applicant's rights had not been explained to her by the

investigators, in violation of Article 51 CCP (see paragraph 18 below). The court found that, contrary to legal requirements, the investigation had not analysed fully and objectively the circumstances of the case. The court also found a discrepancy between the post-mortem psychiatric expert report, which apparently found that V. I. had had suicidal tendencies, and the decision taken only several months earlier by the medical commission finding him fit for military service and not disclosing any concerns about his psychological health. The court annulled the decision of 28 December 2001 and ordered a further investigation by the military prosecutor's office.

12. An appeal by the prosecutor against the decision of 24 April 2003 was dismissed by the Chişinău Regional Court on 21 May 2003. The court found, *inter alia*, that even if the case were to be found to concern a suicide and not a murder, a proper investigation was still necessary as it could reveal whether the crime of intentional incitement to commit suicide had been committed. There was, therefore, a need for the victim's interests to be represented during the investigation.

13. According to the Government, on 15 and 16 July 2003 the military prosecutor adopted two decisions, discontinuing different parts of the investigation. The Government did not specify the subject of the decision dated 15 July 2003. It is unclear whether the applicant had access to that decision. The decision of 16 July 2003 concerning investigation no. 2001019048 shows that the applicant's son's autopsy was carried out on 19 December 2001 and that a report on the samples taken from the scene was drawn up on 21 December 2001. The applicant made a complaint to the court, without specifying which exact decision was concerned.

14. On 12 May 2004 the Buiucani District Court annulled the decision of 15 July 2003 concerning criminal investigation no. 2001019048. The court relied, *inter alia*, on reports published in the press, according to which it appeared that general I. C. had some information concerning V. I.'s murder. According to the court, the investigators had failed to verify whether I. C. had in fact had any information relevant to the case and what the source of that information had been. The court also noted that the applicant had challenged the validity of the autopsy and that the prosecutors were concerned more with finding materials denigrating her late son than looking for the perpetrators. According to the provisions of the decision, it was subject to appeal to the Chişinău Court of Appeal. It appears that no appeal was lodged.

15. On 30 June 2004 the military prosecutor discontinued the investigation. A challenge by the applicant to that decision was scheduled for examination by the Buiucani District Court on 9 November 2004. According to the applicant, the summons for that hearing was sent to her on 1 November 2004 but reached her only on 10 November 2004 and she thus missed the hearing. The summons stated that "the presence of the parties is mandatory". On 9 November 2004 the court found that the applicant had

been properly summoned but had failed to appear. It considered that the investigation had been exhaustive and that its discontinuation was based on the evidence in the file. According to its provisions, the decision was final.

16. A further complaint to the Prosecutor General's Office was rejected on 23 December 2004, with reference to the decision of 9 November 2004.

17. The applicant submitted press articles accusing an officer in V. I.'s military unit of possible involvement in his murder. The article added that a video recording had been made of the moment when V. I.'s body had been discovered, but that his relatives had been prevented from seeing it in order to verify that it had been V. I.'s body. The newspaper also described a fact apparently relied on early in the investigation, namely, that a letter had been found in V. I.'s clothes informing him that his girlfriend had decided to marry another man. However, having contacted the former girlfriend, it was revealed that she denied having ever written such a letter. As part of a telephone interview with another newspaper, a prosecutor was quoted as saying "I do not exclude that this is a suicide as a result of possible inappropriate relations. There are a number of similar cases in this battalion."

II. RELEVANT DOMESTIC LAW

18. The relevant provisions of the Code of Criminal Procedure, in force at the relevant time, read as follows:

"Article 47. The victim [*Partea vătămată*].

The victim is the person who has suffered pecuniary or non-pecuniary damage as a result of an offence.

The person declared to be a victim of a crime has the right to make declarations concerning the case. The victim and his or her representative have the right: ... to submit evidence; to make requests; to access all the materials of the case from the time when the preliminary investigation is finished; ... to challenge the actions of the investigator, the prosecutor or the court, and to appeal against court decisions; ...

...

In cases concerning offences as a result of which the victim has died, the rights provided for in the present article shall pass to the close relatives or legal representatives.

Recognition of victim status shall be made by a decision of the ... investigator, the judge or the court."

“Article 51. The obligation to inform the participants in the proceedings of their rights and to ensure their enjoyment of those rights.

The court, the investigator ... have the obligation to inform the participants in the proceedings of their rights and to ensure their enjoyment of those rights.”

THE LAW

19. The applicant complained under Article 6 of the Convention of a violation of her right to challenge the discontinuation of the investigation, since her complaint was examined in her absence on 9 November 2004, of the lack of a right to appeal against the decision of that date, and of the repeated discontinuation of the proceedings in her son's case.

20. The Court considered that this complaint would be more appropriately examined under Article 2 of the Convention. The parties were therefore asked to make their comments in the light of that provision, the relevant part of which reads:

“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. ...”

I. ADMISSIBILITY

21. The Government considered that the application was manifestly ill founded since no crime had been committed against the applicant's son and, accordingly, the applicant did not have any legal right of access to the materials of the case or to be recognised as a victim's representative, with all ensuing rights, within the framework of the criminal investigation.

22. The Court considers that the issue raised by the Government is closely linked with the substance of the applicant's complaint. It will therefore examine this objection together with the arguments concerning the complaint under Article 2.

23. The Court considers that the applicant's complaint under Article 2 of the Convention raises questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits, and no other grounds for declaring them inadmissible have been established. The Court therefore declares this complaint admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider the merits of the complaint.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

24. The applicant complained in essence of the lack of an effective investigation into her son's death. She noted that she had been presented with a corpse in an advanced state of decomposition which she was not sure to have identified as her son. Moreover, the photos of the corpse suggested that the victim had received a blow to the head and revealed two strangulation marks, suggesting that he had been hanged from the tree after being asphyxiated. She had expressed her doubts to the authorities and asked for an exhumation in order to verify that information, but this had been refused.

25. The Government contended that a thorough and effective investigation had been carried out in the present case, in accordance with the procedural requirements of Article 2 of the Convention. More than 200 witnesses had been heard, a number of expert reports made (including an autopsy, a post-mortem psychiatric report and a report on the samples of various substances gathered from the scene of the event). Three hypotheses had been verified: that of a suicide, that of a provoked suicide and that of murder, but only the first version was consistent with the various types of evidence gathered. As to the obligation to keep the applicant informed, this was not required by law since, in the absence of a crime, she had not been recognised as a victim's representative. Despite the absence of a legal obligation, the prosecutors had kept the applicant informed (see paragraph 8 above), thus complying with their obligations under Article 2 of the Convention.

26. 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", requires by implication that there should be an effective official investigation when individuals have died in suspicious circumstances. This obligation is not confined to cases where it has been established that a person was killed by an agent of the State. The mere fact that the authorities have been informed of the death will give rise *ipso facto* to an obligation under Article 2 of the Convention to carry out an effective investigation into the circumstances in which it occurred (see *Sabuktekin v. Turkey*, no. 27243/95, § 98, ECHR 2002-II (extracts); *Kavak v. Turkey*, no. 53489/99, § 45, 6 July 2006; and *Al Fayed v. France* (dec.), no. 38501/02, 27 September 2007).

27. For an investigation to be regarded as effective, it should be capable of leading to the identification, and potentially the punishment, of those responsible (see *Oğur v. Turkey* [GC], no. 21594/93, § 88, ECHR 1999-III). This is not an obligation of result, but one of means. The authorities must have taken the reasonable steps available to them to secure the evidence

concerning the incident (see, for example, *Salman v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000-VII; *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 109, ECHR 1999-IV; *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000; and *Güngör v. Turkey*, no. 28290/95, § 69, 22 March 2005). Any deficiency in the investigation which undermines its ability to establish the cause of the victim's death or to identify the perpetrator or perpetrators may lead to the conclusion that it is ineffective (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 127, ECHR 2001-III (extracts)), and a requirement of promptness and reasonable expedition is implicit in this context (see, for example, *Mahmut Kaya v. Turkey*, no. 22535/93, §§ 106-107, ECHR 2000-III, and *Güngör*, cited above, § 70).

28. Moreover, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *Oğur*, cited above, § 92, where the family of the victim had no access to the investigation and court documents; and *Gül*, cited above, § 93).

29. In the present case, the Court notes that the prosecutors did undoubtedly carry out a substantial amount of work in gathering evidence (see paragraph 25 above).

30. At the same time, it is clear from the materials submitted to the Court that the applicant expressed her doubts concerning the cause of her son's death and referred to a blow to the head of the corpse she had been asked to identify. She also doubted that the corpse was that of her son. She expressly asked for an exhumation of the corpse in order to make another autopsy to dispel her doubts, which was refused. The Court considers that it is first of all for the domestic investigating authorities to decide on the need to perform specific investigative measures. Moreover, they have a certain discretion in deciding whether to carry out such measures (see *Al Fayed*, cited above, § 82), especially when the latter are not obviously necessary for the type of crime concerned or when a repetition of investigative measures already performed is requested, as was the autopsy in the present case.

31. However, such discretion cannot be unlimited and it must be possible for the victim or his/her representative to request such measures to be carried out, to be informed of the decision taken and to be able to challenge them in court in case of disagreement with the investigators. The possibility to fully exercise these procedural rights ensures that the victim's point of view is taken into account by the judicial authorities in deciding on various aspects of an investigation, even if the decisions eventually taken are not in line with the expectations of the victim or his/her representative (compare *Al Fayed*, cited above, § 82).

32. In the present case the Government submitted that, since no crime had been committed, there was no obligation to inform the applicant of the course of the investigation. In this connection, the Court observes that it is in the first place for the domestic courts to interpret provisions of domestic law. As found by the domestic courts in the present case, the applicant had the right to be formally recognised as the victim's representative and to exercise a number of procedural rights (see paragraphs 11 and 18 above). This was true even if the investigation concerned suicide and not murder, since it had to be verified whether the crime of incitement to suicide had been committed (see paragraph 12 above). The domestic courts expressly found that the applicant had been deprived of the possibility of exercising her procedural rights and that she had not been informed of those rights (see paragraph 11 above). The Court has no reason to doubt the domestic courts' interpretation of the law, which is moreover consistent with the State's obligations under Article 2 of the Convention. Therefore, it cannot accept the Government's argument that the applicant had no right to be informed or to be involved in the proceedings.

33. The Government referred to the fact that the applicant was informed of the course of the investigation of her son's death (see paragraph 25 above). The Court notes that the applicant was so informed only on 6 February 2002 – more than a month after the investigation had ended (see paragraph 7 above) and almost eight months after it had begun (see paragraph 8 above). This lack of information included the important initial phase of the investigation, during which the applicant could have raised her most serious objections regarding the decisions taken. In this connection, it is to be noted that the applicant expressly emphasised the need for a quick decision on exhumation in order to dispel her doubts, which she could not effectively request from the investigator in the absence of any information concerning the case. No explanation for this delay was given, except for the above-mentioned absence of a legal obligation to inform. The Court also considers that the authorities had an obligation to keep the applicant informed of the course of the investigation independently of whether she had expressly requested to obtain such information.

34. The Court observes that some of the investigative measures which appear crucial in the present case (the autopsy and the report concerning the samples taken from the scene) were carried out in December 2001, half a year after the applicant's son's body had been discovered (see paragraph 13 above). Again, no explanation for this delay was given.

35. It is also to be noted that the applicant was absent from what was apparently the first and only hearing held by the Buiucani District Court when examining her challenge to the decision of 30 June 2004 (see paragraph 15 above). Even assuming that the applicant received the summons in due time, despite her unchallenged statement to the contrary, the Court considers that the seriousness of the complaints made required the

court to at least verify whether the applicant had in fact lost interest in the case or waived her right to be heard. In this connection, the Court notes that the summons mentioned that the parties' presence was mandatory, which is hard to reconcile with the lack of any form of verification of the reason for one party's absence. The applicant's presence was even more important in view of the fact that whatever the decision of the Buiucani District Court, it was final and not subject to any form of appeal. Hence, the applicant had not had an opportunity to submit to the court her position regarding the investigation of her son's death.

36. The Court considers that the failure to inform the applicant of her procedural rights and of the course of the investigation, the failure to ensure her enjoyment of those rights (see paragraphs 11 and 32 above); the unexplained shortcomings and delays in carrying out some of the important investigative measures (see paragraphs 14 and 34 above); and the final decision discontinuing the investigation, taken in the applicant's absence (see paragraph 35 above), are inconsistent with the respondent State's procedural obligations under Article 2 of the Convention (see, for instance, *Oğur*, cited above, § 92; *Salgın v. Turkey*, no. 46748/99, § 87, 20 February 2007; and *Hasan Çalışkan and Others v. Turkey*, no. 13094/02, § 51, 27 May 2008).

Therefore, the Government's objection as to the manifestly ill-founded character of the application is to be rejected.

37. There has, accordingly, been a violation of the procedural obligations under Article 2 of the Convention in the present case.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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.”

39. In her observations, the applicant stated that “I did not count my expenses in [dealing with] the Military Prosecutor's Office, but for the lies which I endured for so long I will ask compensation for non-pecuniary damage.” However, she did not specify the amount claimed.

40. The Government considered that the applicant had not made any claims for just satisfaction.

41. The Court interprets the applicant's statement as an implied request for the Court to determine the amount of sufficient just satisfaction. Judging on an equitable basis, it awards the applicant EUR 12,000 for non-pecuniary damage caused.

42. The applicant did not make any claims for costs and expenses.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 2 of the Convention in its procedural aspect;
3. *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 12,000 (twelve thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, 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.

Done in English, and notified in writing on 23 March 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President