



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

FOURTH SECTION

CASE OF ANUSCA v. MOLDOVA

(Application no. 24034/07)

JUDGMENT

STRASBOURG
18 May 2010

FINAL

18/08/2010

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

In the case of Anusca v. Moldova,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 27 April 2010,

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

PROCEDURE

1. The case originated in an application (no. 24034/07) 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 Liuba Anuşca (“the applicant”), on 21 May 2007.

2. The applicant was represented by Mr I. Turcanu, a lawyer practising in Edinet. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicant alleged that the authorities' investigation into the death of her son failed to meet Convention standards.

4. On 22 October 2008 the President of the Fourth 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 1957 and lives in Lopatnic.

6. She is the mother of Ion Anuşca, who was born in 1985 and who died on 5 October 2004, during his military service.

7. The facts of the case, as submitted by the parties, may be summarised as follows.

8. The applicant's son commenced his mandatory military service in November 2003, assigned to the Guard Regiment within the Basic Air Forces, where he performed farm work. The following August he was transferred to other duties. According to the Government, this was because of certain behavioural problems, including intoxication and aggressiveness.

9. On 3 October 2004 the applicant's son was absent from his unit for two-three hours without permission. Two days later, he was ordered to provide a written explanation for this absence. He explained orally that he had visited an acquaintance in the nearby village, to whom he had entrusted a number of his personal objects for safe-keeping. One of his superiors who was acquainted with both the applicant and her son spoke sharply to him. At approximately 8.10 p.m., following the evening meal, the applicant's son asked another soldier for a pen. A few minutes later he returned the pen along with a piece of paper and a bullet. He told the soldier not to read what was written on the paper and left the room. The soldier nevertheless read the paper, which contained a few words including a farewell addressed to a person by the name of Olesea. He informed his commander of the situation, who immediately gave the order to fall in. When the applicant's son failed to respond, the other soldiers were sent to search for him. He was found some minutes later lying dead under a tree behind the barracks with a broken cord around his neck, the other end of which was tied to a branch overhead.

10. The commander-in-chief of the regiment contacted the Bălţi military prosecutor's office, which sent a prosecutor, V.M., to the scene to investigate. The investigation commenced shortly before midnight. A number of details were verified and recorded in the official report: presence of a military cap near the body; the length of each piece of cord; the diameter of the branch to which it was tied. The investigator took possession of the piece of paper and the bullet referred to above.

11. An external examination of the body was made later that night by a forensic doctor, who commenced his examination at 1.56 a.m. He noted that the only sign of injury on the body was to the neck. As pointed out by the applicant, the temperature of the body was not recorded, making it impossible to establish the exact time of death.

12. According to the Government, the investigator interviewed 15 soldiers and commanders about Ion Anuşca's time in the regiment and the circumstances of his death. Nothing that was said gave grounds to suspect foul play. The person named on the piece of paper was also interviewed, as was the applicant herself. She told the investigation that her son had not had any difficulties in entering into military service, nor had he ever complained to her about military life. He had even been contemplating a career in the military, and had plans to rent a house close to the base.

13. The investigation also included a post-mortem psychiatric assessment of the deceased performed by a panel of three psychiatrists. In their first report, dated 19 November 2004, they stated that on the basis of

the elements before them it was not possible to state whether Ion Anuşca had been influenced by another person to commit suicide. In their second report, dated 17 December 2004, and following an interview with “Olesea”, they concluded that there was nothing about Ion Anuşca's behaviour during his military service or shortly before his death that suggested he suffered from psychological problems. Nor did it appear that any person had induced him to commit suicide.

14. The investigator also requested a forensic examination of the body, which took place on 7 December 2004. This confirmed that death had been due to asphyxia caused by strangulation. It also established the presence of alcohol at the time of death (1.1 mg).

15. On 23 December 2004, the military prosecutor issued an ordinance closing the investigation, finding that the death had been caused by suicide, and that no crime had been committed.

16. On 1 April 2005, the Prosecutor General's deputy annulled this ordinance on the ground that the death of Ion Anuşca had not been sufficiently investigated. He specified several steps to be taken, including a handwriting analysis and further interviews with the soldiers and officers of the regiment with a view to establishing the reasons for the suicide, and to obtaining more information on the deceased's behaviour, attitude and personal situation.

17. The handwriting analysis was obtained on 29 April 2005. During that same month, the investigator interviewed more of the colleagues of Ion Anuşca. These witnesses referred to relational difficulties within the Anuşca family and tension in the home. They recalled that Ion Anuşca's behaviour had changed radically when he returned to the barracks from a visit to his home in the summer of 2004, becoming shy, drinking heavily and not being able to recall his actions later on. According to these witnesses, he behaved at times in a violent manner towards other soldiers, and inflicted physical harm on himself as well by beating his head against walls. It was for this reason that he had been transferred to a new unit in August 2004. These interviews also provided the name of the person that Ion Anuşca used to go to see in the nearby village, P.S.. The military prosecutor closed the investigation for the second time on 3 May 2005, again concluding that no crime had been committed.

18. In November 2006 the applicant applied to the Balţi municipal court to annul the closure of the investigation. She complained that she had not received a copy of the military prosecutor's decision, nor had she seen the investigation file. She was therefore unaware whether an autopsy had been performed. Her request that certain persons be interviewed had been rejected by the military prosecutor. Her lawyer requested exhumation of the body in order to establish whether any injuries had been inflicted before death.

19. On 20 November 2006 the court ruled that the applicant's rights under Articles 77, 78 and 80 of the Code of Criminal Procedure had been seriously violated. These included the right to submit documents and evidence for inclusion in the investigation file, the right to challenge the decisions of the investigator, the right to make requests, and the right to become acquainted with the contents of the file. Because these rights had not been respected, the applicant still did not know the cause of her son's death. The court also noted that while the forensic examination referred to the taking of photographs of the body, there were no photos in the file, although these might have led to the discovery of new facts. However, since the applicant had not observed the procedure set out at Article 313 of the Code of Criminal Procedure, her complaints had to be rejected.

20. The applicant sought the assistance of a Member of Parliament, who made representations to the Prosecutor General. On 31 May 2007 the Prosecutor General's deputy annulled the military prosecutor's ordinance of 3 May 2005. He ruled that the applicant had to be recognised as the injured party, thereby granting her the rights set out in Article 60 of the Code of Criminal Procedure. He directed that information be obtained from the town hall of the applicant's village concerning her son's character, his relations with his family and about the applicant herself. He further indicated that the reasons for Ion Anuşca's absences from the military base and whereabouts at such times should be established.

21. The military prosecutor closed the investigation for the third time on 28 August 2007. The applicant was informed of this by letter of 20 September 2007, to which was appended a copy of the decision.

22. That decision was cancelled by the Prosecutor General's deputy on 16 January 2008, who noted that neither the photographs taken during the forensic examination of the body nor the camera film had been added to the investigation file. Nor had any more information been retrieved about Ion Anuşca's absences. He called for P.S. to be interviewed to see whether there was any link between the inhabitants of the village and Ion Anuşca's death.

23. The following day, 17 January 2008, the Prosecutor General's office wrote a letter to the military prosecutor of Balţi strongly criticising the manner in which the case had been handled. The investigation had been incomplete and there had been unjustified delay. Steps that had been ordered had not been taken, which was a failure to fulfil official duties and showed a lack of proper control on the part of the military prosecutor. He was ordered to provide a written explanation for the situation, take sufficient measures of redress and avoid such faults in future.

24. The investigation was closed for the fourth and last time on 21 May 2008, it having been concluded that no criminal offence had been committed. The applicant was informed of this by a letter dated 27 May 2008, which enclosed a copy of the military prosecutor's decision.

II. RELEVANT DOMESTIC LAW

25. Article 59 of the Code of Criminal Procedure defines “the injured party” as any person who, as a result of a crime, has sustained moral, physical or material damage. Article 60 details the many specific procedural rights associated with such status. Article 81 provides for a close relative to assume this role where the injured party is deceased. The relevant parts of that provision read as follows:

“Article 81. The successor of the injured party or of the civil party

(1) In criminal proceedings, the recognised successor of the injured party or of the civil party shall be a close relative who has expressed his/her wish to exercise the rights and obligations of the injured party who is deceased or who, on account of the crime committed against them, has lost the capacity to consciously express his/her wish. ...

(2) The decision to recognise a close relative as the successor of the injured party or of the civil party is made by the prosecutor conducting the criminal prosecution, or, where appropriate, by the court, if the close relative so requests....

...

(4) The successor of the injured party or of the civil party participates in the criminal proceeding in the place of the injured party or the civil party.

...

THE LAW

26. The applicant originally complained under Article 6 about the investigation into the death of her son. However, the Court, being master of the characterisation to be given in law to the facts of the case, is not bound by the characterisation given by the parties. By virtue of the *jura novit curia* principle, it has, for example, considered of its own motion complaints under Articles or paragraphs not relied on by the parties. A complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on (see *Powell and Rayner v. the United Kingdom*, 21 February 1990, § 29, Series A no. 172, and *Guerra and Others*, cited above, § 44). The Court considers it appropriate to examine her complaint under Article 2, and it is on this basis that the parties made have their submissions. The relevant part of Article 2 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.”

I. ADMISSIBILITY

27. The Government argued that the applicant failed to exhaust domestic remedies, since she had not sought to challenge the final decision in this case, i.e. the closure of the investigation on 21 May 2008, although such a challenge was provided for by the relevant provisions of the Code of Criminal Procedure. The Government further submitted that the applicant's complaint was manifestly ill-founded, for while she refused to accept the conclusion reached by the military prosecutor, she was unable to point to any evidence that could cast doubt on it, let alone suggest that her son had been the victim of a criminal act. In this respect the Government refer to the Court's judgment in *Grădinar v. Moldova*, no. 7170/02, 8 April 2008, in which the complaint under Article 2 was found to be unsubstantiated.

28. The applicant argued that she had made use of an appropriate remedy through her application to the Bălți municipal court, which had recognised the validity of her complaints, even though it had ultimately denied her request for procedural reasons. That decision being final, she was then entitled to bring the matter before the Court. She added that the military prosecutor had failed to heed any of the criticisms contained in the judgment of the municipal court.

29. The Court notes that the applicant did endeavour to assert her procedural rights under domestic law although, as explained above, her action was rejected on procedural grounds. Even so, the validity of her complaint was recognised by the Prosecutor General when ordering the continuation of the investigation on 31 May 2007. It cannot therefore be said that she remained passive during the period of the investigation. Moreover, the Court is not convinced that a challenge to the last decision of the military prosecutor could have effectively dealt with the Convention issues at stake, which concern the adequacy of the investigation, its duration and the applicant's involvement in it. Re-opening the investigation a fifth time, nearly four years after the event, cannot be seen as an effective remedy in these circumstances. The Court accordingly dismisses this preliminary objection.

30. The Court also rejects the Government's objection that the complaint is manifestly ill-founded. The Government's reference to the *Grădinar* is inapposite, since in that case the applicant's complaint was that the authorities had failed in their positive obligation to protect her husband from a fatal attack. The Court found that she had failed to substantiate this claim, and had also failed to submit evidence to show that the investigations were superficial or inefficient. In the present case, the applicant has not alleged a substantive violation of her son's right to life, confining her complaint to the manner in which his death was investigated. The Court considers that this complaint raises questions of law which are sufficiently serious that its determination should depend on an examination of the merits. As the

application is not inadmissible on any other ground, it must therefore be declared 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 this complaint.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

A. The submissions of the parties

31. The applicant advanced a series of criticisms of the investigation into her son's death. She complained that the authorities had failed to recognise her as the successor of the injured party, thereby denying her all the procedural rights associated with such status. The Balți municipal court had affirmed that her rights under the Code of Criminal Procedure had been severely violated, and had noted that two years after her son's death she had not had sight of the investigation file nor had she been officially informed of how her son died.

32. She also criticised the investigation for the shortcomings that led to it being re-opened three times. It was clear from this, and clearer still from the very critical remarks contained in the letter from the office of the Prosecutor General to the military prosecutor at Balți, that the investigation had been deficient and dilatory, whether intentionally or negligently. The report of the scene had omitted important details such as the height of the branch from the ground, and the exact type of cord used; these points had only been noted in the statement taken from a soldier who had assisted the military prosecutor. The external examination of the body was performed without a forensic doctor being present, as provided for by the Code of Criminal Procedure. Because of the failure to record the body temperature, the exact time of death could not be established. Nor had there been any attempt to reconstruct her son's last moments, leaving open such questions as how long it had taken for him to die, and whether the cord had snapped before or after this.

33. The investigation had assumed that this was a suicide case from the outset, although at that stage there was insufficient evidence to exclude the hypothesis of murder. How her son came to have a significant amount of alcohol in his system had never been investigated. Similarly, there had been no real attempt to establish whether he had been in conflict with his superior officers immediately before he died. Even if he had indeed died by his own hand, the applicant maintained that it was nonetheless incumbent on the Government to conduct a sufficiently thorough investigation to allay any suspicions. Lastly, the applicant pointed to the fact that the investigation was performed by a trainee military prosecutor rather than one fully qualified and duly appointed in accordance with national legislation.

34. The Government submitted that while the investigation was reopened several times at the instigation of the Prosecutor General's office, when it finally ended all of the evidence gathered led to the conclusion that this was a case of suicide and that no criminal offence had been committed. Although the military prosecutor had not performed his task satisfactorily, the intervention of the office of the Prosecutor General had ensured that ultimately the investigation met the standard required by Article 2. All but two of the various deficiencies observed in the earlier stages had been cured by the end. The photographs of the body had not been located, but that could not undermine the findings of the forensic doctor, who was under a legal duty to report his findings fully and accurately. As for the involvement of the applicant in the investigation, the Government argued that it is only where an investigation establishes that a crime has occurred that one can speak of a victim or an injured party. Given the conclusion in this case, that no crime had been committed, there was no crime victim and so the applicant could not claim the status of successor to the victim.

35. Even so, the applicant had been able to exercise certain procedural rights; the Balți municipal court had examined her complaint about the investigation despite her lack of status. The Government maintained that all relevant investigative steps had been taken, and that the other steps referred to by the applicant would have had no bearing on the conclusion reached. The investigator had taken the rare step of commissioning a post-mortem assessment of the deceased's mental state, which supported the view that he had been pre-disposed to take his life.

36. As regards the qualifications of the military prosecutor who conducted the investigation, the Government maintained that he had the requisite standing. The fact that the investigation was carried out with reference to the offence of inducement to suicide and not murder was of no significance, as this could and would have been changed had any evidence pertaining to the latter offence emerged. The applicant had no basis on which to suggest that her son had been murdered. The Government concluded that the applicant's complaint was of a fourth-instance nature.

B. The Court's assessment

37. The applicant did not complain of a substantive violation of Article 2. The Court will therefore consider the procedural aspect of Article 2 only.

1. The applicable principles

38. As the Court has already had the opportunity to affirm in a number of cases concerning the suicide of conscripts, the procedural protection of the right to life, which is inherent in Article 2, applies equally to fatalities during compulsory military service (see *Hasan Çalışkan and Others v. Turkey*, no. 13094/02, § 49, 27 May 2008, also *Esat Bayram v Turkey*, no. 75535/01, §§ 46-47, 26 May 2009). The competent authorities must conduct an effective investigation in order to establish the circumstances of the death and to determine whether official responsibility is engaged. This is an obligation of means, not of result.

39. Particular diligence is called for when a young man dies at a time when the military authorities were responsible for his physical and moral well-being. Where suicide is presumed, the authorities must show that they have done all in their power to dispel the doubts that the deceased's family could reasonably entertain as to the circumstances surrounding the death. This means in practice scrutinising closely all elements tending to exclude the possibility of a criminal act against the deceased. The investigation must be thorough and detailed. The authorities must take all reasonable steps to gather the relevant elements. A requirement of promptness and reasonable expedition is implicit. Furthermore, the next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (*Hasan Çalışkan*, cited above, §§ 50-51).

2. Application to the present case

40. The investigation into the death of Ion Anuşca began promptly, as required by the Convention. Although the applicant has criticised the initial actions of the investigator, the Court does not find that the points omitted from his report on the scene were such as to compromise the investigation. While it appears that no doctor attended the scene, the Court notes that both the external examination of the body performed several hours later and the internal examination that took place two months later reached the same clear conclusion about the cause of death. The loss of the photographs of the body does not undermine the results of these forensic examinations. The failure to take the temperature of the body, and the consequent inability to determine the precise time of death is regrettable. However, as emerges from the statements made by the other soldiers to the investigator, the period between their last sighting of the applicant's son and the discovery of his body was about twenty minutes. Given all of the other elements in the file, the absence of the precise time of death does not call into question the conclusion reached by the investigation. The applicant considered that further measures should have been taken in relation to the scene, and referred to the many types of measure listed in the Code of Criminal Procedure, but the Court is not persuaded that these would have pointed to

any other explanation for the death of her son. It understands that the applicant would wish for a complete account of her son's final moments, answering all the questions she still has, but the procedural obligation under Article 2 does not necessarily extend so far.

41. The applicant contended that her son's relationship with his superior officers should have been investigated, as should the fact that there was a significant level of alcohol in his system when he died. The Court notes that the investigator did conduct additional interviews with members of her son's regiment, which brought to light certain difficulties he was having with military life. The statement of P.S. provided an explanation for Ion Anuşca's intoxicated state. The fact that this was not taken any further by the investigator or the military authorities is not, in the circumstances, a matter for reproach under Article 2.

42. The Court considers that the investigation into the death of Ion Anuşca did ultimately and eventually achieve its end. There are no elements before it that would cast doubt on the conclusion that the applicant's son committed suicide by hanging (contrast with *Esat Bayram*, cited above, in which the Court noted patent contradictions between the forensic reports prepared on where the bullet entered the deceased's body, making it impossible to establish whether death was caused by suicide or an unlawful act§ 52).

43. However, as stated above, the procedural obligation deriving from Article 2 is primarily one of means. Even though the overall finding in this case can be accepted, the Court is nevertheless struck by the fact that the office of the Prosecutor General considered it necessary to intervene three times. On each occasion it ordered the military prosecutor to re-open the procedure and conduct further inquiries into what were clearly material issues. Even accepting the Government's assertion that the military prosecutor's assignment to the task was not contrary to law, his performance of it was clearly unsatisfactory. The stern rebuke addressed to the Balţi military prosecutor on 17 January 2008 (see § 23 above) bears out the applicant's concerns about an investigation which, by that stage, had been running for more than three years. The Court accepts the Government's argument that the actions of the office of the Prosecutor General ultimately cured the deficiencies in the investigation, but they did not and could not make up for the delay. The Court would stress the requirement of reasonable expedition. The investigation did indeed commence promptly, but the time taken for it to finally conclude – 3 years and 7 months – cannot be justified by its complexity or any objective difficulties. The applicant therefore had grounds to question to diligence of the authorities in shedding light on what was, for her, the sudden and unexplained death of her son during his military service.

44. Moreover, as is clear from the judgment of the Balţi municipal court (see § 19 above), the authorities did not sufficiently involve the applicant in

the investigation, at least during the first two years. The Court has stressed on many occasions that the involvement of the next of kin serves to ensure public accountability of the authorities and public scrutiny of their actions in such situations (see *Ramsahai and Others*, cited above, § 321). In this case, the applicant had a strong and legitimate interest in the conduct of the investigation, which would have been served by granting her the status she sought under the Code of Criminal Procedure. The Court does not accept the Government's argument on this point, i.e. that it is only once the investigation has concluded that a crime has been committed that the next of kin should be recognised as the successors to the victim. Such a view, which would place suicides outside the scope of the procedural aspect of Article 2, is at odds with the Court's case law and must be rejected. Significant delays in involving the next of kin in investigative procedures cannot be accepted (see *Mikayil Mammadov v. Azerbaijan*, no. 4762/05, § 132, 17 December 2009). The Government argued that there had been nothing to prevent the applicant from acquainting herself with the investigation file, and that she had been informed by the military prosecutor of the closure of the investigation and copied with his decision. The Court would emphasise that Article 2 requires more than merely informing the next of kin of the progress of the investigation, and includes their active involvement in it (see *Salgin v. Turkey*, cited above, § 89). The Court finds that this was not done for the applicant (see *Trubnikov v. Russia*, no. 49790/99, § 93, 5 July 2005).

45. In conclusion, having regard to the manner in which Ion Anuşca's death was investigated, the time it took and the very limited involvement of the applicant in the investigation, the Court considers that the investigation was not "effective" within the meaning of its case law. There has accordingly been a violation of Article 2 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant claimed 116,040 Moldovan lei (MDL) in respect of pecuniary damage. She estimated that this was the sum that she should have received from the State under the applicable rules on compensation in the event of death during military service. She claimed a further 100,000 Euros (EUR) for the psychological suffering she had endured on

account of the delays and inadequacies of the investigation into her son's death.

48. The Government contended that the applicant had adduced no proof of actual pecuniary loss. They noted that the applicant had not at any stage sought compensation from the domestic authorities. As regards non-pecuniary damage, the Government argued that as there had been no violation, no compensation was due. In any event, it viewed the applicant's claim as excessive in the light of the Court's practice in similar cases.

49. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. Regarding non-pecuniary damage, and ruling on an equitable basis, the Court awards the applicant EUR 8,000.

B. Costs and expenses

50. The applicant made no claim for costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of 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 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency at the rate applicable at the date of settlement;

(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 18 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President