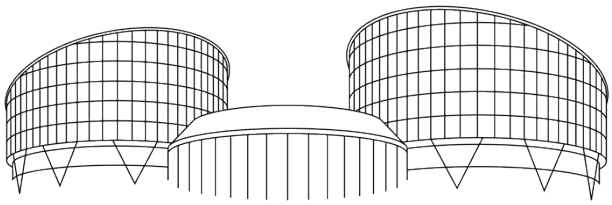

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF CEKA v. ALBANIA

(Application no. 26872/05)

JUDGMENT
(Striking out)

STRASBOURG

23 October 2012

FINAL

18/03/2013

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

In the case of Ceka v. Albania,

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

Lech Garlicki, *President,*
David Thór Björgvinsson,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Nebojša Vučinić,
Vincent A. De Gaetano, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 2 October 2012,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 26872/05) against the Republic of Albania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Albanian national, Ms Gjyste Ceka ("the applicant"), on 13 July 2005.

2. The applicant was represented by Mr A. Perlesi, a lawyer practising in Rrubik, Mirditë. The Albanian Government ("the Government") were represented by their then Agent, Ms E. Hajro and, subsequently, by Ms L. Mandia of the State Advocate's Office.

3. The applicant alleged that her son's death in police custody amounted to a breach of Articles 2 and 3 of the Convention.

4. By a decision of 22 February 2011, the Court declared the application admissible.

5. By letter of 16 July 2012 the Government submitted a declaration on the basis of which it requested the Court to strike the case out of its list of cases. By letter of 5 September 2012 the applicant submitted comments thereon.

THE FACTS

6. The applicant was born in 1963 and lives in Mirditë. The case concerns the death of the applicant's son while he was in police custody.

7. The facts of the case, as submitted by the parties, are summarised below. A more detailed description can be found in the Court's decision on the admissibility of this case (*Ceka v. Albania* (dec.), no. 26872/05, 22 February 2011).

8. On 6 May 2004 the applicant's twin sons, C and E, were detained by the Rrubik police force and placed in custody on suspicion of robbery. They were almost 17 years of age at the material time.

9. The applicant's sons shared a cell with two other inmates, K and B. On 5 July 2004 the applicant's son, E, and his cellmate, K, began to fight. The on-duty guard, G, alerted the control centre with a view to restoring order in the detention cell. V, the control centre officer, opened the door of the cell and took E and K to the interrogation room of the pre-trial detention facility for questioning. G escorted V and the two detainees.

10. Upon questioning both detainees about the fight, V left the interrogation room to question the other two inmates who had been in the same cell. G remained with E and K in the interrogation room, where E agreed to make peace with K provided he was not made to share the cell with K. This request was refused by G who began arguing with E, as a result of which E was slapped hard on his face and neck and shoved out of the room. In the corridor, on the way to his cell, E lost consciousness and fell to the ground.

11. When E regained consciousness, he complained about a painful headache, nausea and generally poor state of health. He was taken to the Rrëshen hospital in the afternoon of the same day and, upon repeated complaints, in the early hours of the morning of 6 July 2004.

12. The doctors decided to send him for specialised treatment at the Tirana Military Hospital. The applicant submitted that E had lapsed into a coma by the time he was transported by ambulance to Tirana. Transportation by air was impossible. E died at 4 p.m. on 8 July 2004.

13. E's death certificate indicated that he had suffered from "beatings with a hard, bruising, blunt object" which led to his death as a result of "cerebral haemorrhage and epidural haematoma".

A. The criminal investigation

14. On 7 July 2004, following the notification of the fight between inmates, a report on the inspection of the scene was drafted.

15. On 8 July 2004 the expert medical report stated that E had lapsed into a coma as a result of a collision with hard objects. The report further

stated that the damage caused was life threatening and was in the category of serious injuries.

16. On 9 July 2004 police officers G and V were suspended from work.

17. On 10 July 2004 G and V were remanded in custody. G was accused of breaching the rules on on-duty service (*shkelja e rregullave të shërbimit të rojes*) in accordance with Article 41 § 2 of the Military Criminal Code ("MCC"). V was accused of violating the escort rules (*shkelja e rregullave të shoqërimit*) in accordance with Article 44 § 1 of the MCC.

18. The forensic report of 13 July 2004 on the post-mortem examination of E provisionally concluded that death had been caused by a fracture of the base of the skull, epidural haematoma and cerebral haemorrhage, inflicted by a hard, flat, blunt object with a relatively high intensity. The report provided that the above injuries which led to the death of the applicant's son could have been caused by his falling on the floor, on the right side of his skull. The final determination of E's death would be given after a microscopic examination of the corpse.

19. On 21 July 2004, following the microscopic examination of E's corpse, the forensic expert concluded that E's death had been caused by the contusion of the brain when the right hand side of his head hit the floor.

20. Between 7 July 2004 and 8 September 2004 several witnesses' statements were made concerning the incident and E's state of health. A detailed description of the witness statements is contained in the Court's decision on the admissibility of the case.

21. On 8 October 2004 the Tirana prosecutor's office, following a prior decision by the Mirditë prosecutor's office to transfer the file, lodged a bill of indictment against G and V with the Tirana Military District Court ("the Military District Court").

22. The applicant was not informed of the investigation into her son's death or of the ensuing domestic court proceedings against G and V.

B. Criminal court proceedings against V and G

1. Criminal court proceedings against V

23. On 4 November 2004 V was dismissed from the police force for abuse of duty resulting in the death of a detainee in pre-trial detention.

24. On 8 November 2004 the Military District Court found V guilty of breaching the escort rules under the first paragraph of Article 44 of the MCC as he was not supposed to intervene and escort inmates to the interrogation room by himself. The trial court sentenced him to ten months' imprisonment. In accordance with the summary procedure which had been granted to him alone at the material time, the sentence was commuted to six months and twenty days' imprisonment. According to the decision, the sentence started to run from the date of V's arrest, 10 July 2004 (see

paragraph 17 above). The decision became final on an unspecified date, no appeal having been filed against it.

2. Criminal court proceedings against G

25. On 4 November 2004 G was dismissed from the police force for abuse of duty resulting in the death of a detainee in pre-trial detention.

26. On 10 December 2004 the Tirana Military District Court ("the Military District Court"), as a result of the use of the summary procedure, sentenced G to eight months' imprisonment in accordance with the first paragraph of Article 41 of the MCC. According to the decision, the sentence started to run from the date of G's arrest, 10 July 2004 (see paragraph 17 above).

27. On 18 January 2005, following the prosecutor's appeal, the Tirana Military Court of Appeal sentenced G to 3 years' imprisonment relying on the second paragraph of Article 41 of the MCC and, in accordance with the summary procedure which had been granted to him afterwards, the sentence was commuted to two years' imprisonment. The Court further ordered G's conditional release for two years as he had served the sentence imposed by the Military District Court and had already been released. The decision became final, no appeal having been filed against it.

C. Civil action for damages

28. On an unspecified date the applicant brought a civil claim against the Mirditë police commissariat seeking compensation for non-pecuniary damage for the death of her son.

29. On 23 January 2007 the Mirditë District Court awarded her 2,301,750 leks (ALL), approximately 17,257 euros ("EUR") at the material time. The Mirditë District Court accepted that, while in detention, the applicant's son had been beaten up by police officers. It observed that the police officers had not promptly informed doctors of the causes of E's deteriorating health. Neither his family nor his representative had been informed in a timely manner. Furthermore, his state of health had not been reflected in the prison medical records. In the District Court's view, the above circumstances engaged the direct responsibility of the police commissariat for the death of the applicant's son. The police commissariat had failed to respect and adhere to the necessary procedures.

30. On 31 January 2008, following an appeal by the defendant, the Tirana Court of Appeal upheld the Mirditë District Court's decision of 13 January 2007.

31. On 31 March 2009 the Government informed the Court that an appeal by the defendant was currently pending before the Supreme Court.

32. On 12 February 2010 the Government informed the Court that the domestic courts' award had been paid in full on 11 December 2009. The

relevant supporting documents for this purpose confirmed that the applicant had been paid ALL 3,654,852, which also included legal costs and expenses.

33. On 16 January 2012 the State Advocate's Office lodged a civil action against the applicant's lawyer with the Lezhë District Court for the return of money that he has allegedly been paid without justification by way of legal costs and expenses. The proceedings are pending.

THE LAW

34. The applicant complained that there had been a breach of Articles 2 and 3 of the Convention on account of her son's death in police custody and the lack of an effective investigation.

35. By a letter of 16 July 2012 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised in the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration, which bore the date of 13 July 2012, reads as follows:

> "The Government regret the death of the applicant's son in police custody resulting from the use of violence by State agents. They note in this connection the findings of the domestic courts concerning the involvement of police officers in the death of the applicant's son and the award of 17,257 euros ("EUR") made by the domestic courts to the applicant.
>
> The Government further accept that the investigation carried out into the circumstances surrounding the death of the applicant's son was not compatible with Articles 2 and 3 of the Convention, and that this matter was not addressed in the above-mentioned domestic proceedings.
>
> The Government declare, by way of this unilateral declaration, their acknowledgment of a breach of the procedural limb of Articles 2 and 3 of the Convention. The Government undertake to ensure that acts of violence committed by State agents against detainees, whether in the circumstances of the death of the applicant's son or in other, different instances, shall be prevented, promptly investigated and adequately punished in accordance with the requirements of Articles 2 and 3 of the Convention.
>
> The Government are prepared to pay the applicant as just satisfaction the sum of EUR 10,000 (ten thousand euros) to cover any and all pecuniary and non-pecuniary damage as well as any and all costs and expenses plus any tax that may be chargeable to the applicant. The above amount takes account of the award already made to the applicant by the domestic courts in the domestic civil proceedings.
>
> The above amount shall be converted into the national currency at the rate applicable on the date of payment and will be payable within three months from the date of delivery of the judgment. From the expiry of the above-mentioned three months until settlement, the Government undertake to pay simple interest on it at a

> rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. This payment will constitute the final settlement of the case."

36. In her letter of 4 September 2012 the applicant appeared not to accept the Government's unilateral declaration but maintained the complaints about a breach of her son's Convention rights. Her lawyer further submitted that the Government had been trying to intimidate him with a view to his withdrawing from representing the applicant.

37. The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

38. It also recalls that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued. It has done so, in particular, in the context of the examination of Article 2 complaints made with the Court (see, for example, *Alder v. the United Kingdom* (striking out), no. 42078/02, 22 November 2011; *Haran v. Turkey* (striking out), no. 25754/94, 26 March 2002; and, *Akman v. Turkey* (striking out), no. 37453/97, ECHR 2001-VI.

39. Moreover, the Court has accepted a respondent Government's unilateral declaration in the examination of complaints made under other Articles of the Convention (see, for example, *Meriakri v. Moldova* (striking out), no. 53487/99, 1 March 2005 in the context of complaints made under Article 8 of the Convention as regards the respect for the applicant's correspondence; *Facondis v. Cyprus* (dec.), no. 9095/08, 27 May 2010 in the context of complaints made under Articles 6 § 1 and 13 of the Convention as regards the length of proceedings and the lack of an effective remedy thereof; *Jamiyev v. Azerbaijan* (dec.), no. 11916/06, 30 September 2010 in the context of complaints made under Article 6 §§ 1 and 3 (d) of the Convention as regards the unfairness of criminal proceedings; *Grosu v. Moldova* (dec.), no. 36170/05, 2 November 2010 in the context of complaints made under Article 3 of the Convention as regards the conditions of detention; *Asociatia Cetateneasca Lichidarea Consecintelor Pactului Molotov-Ribbentrop v. Moldova* (dec.), no. 32118/06, 2 November 2012 in the context of complaints made under Article 11 of the Convention as regards the applicant organisation's freedom of assembly; and, *Malon v. France* (dec.), no. 13192/10, 15 February 2011 in the context of complaints made under Article 5 § 3 of the Convention as regards the length of detention).

40. To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law (see, for example, *Alder*, cited above, § 30; *Haran*, cited above, § 23; *Akman*, cited above, §§ 30-31; and, in particular, *Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and, *Sulwińska v. Poland* (dec.) no. 28953/03, 18 September 2007).

41. The Court has established in a number of cases its practice concerning complaints about a breach of Articles 2 and 3 of the Convention, similar to those raised by the applicant in the instant case (see, for example, *Salman v. Turkey* [GC], no. 21986/93, ECHR 2000-VII; *McKerr v. the United Kingdom*, no. 28883/95, ECHR 2001 III; *Hugh Jordan v. the United Kingdom*, no. 24746/94, ECHR 2001 III (extracts); *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, ECHR 2002 II; and, *Ali and Ayşe Duran v. Turkey*, no. 42942/02, 8 April 2008 as regards the nature and extent of the obligations of respondent States under Article 2; and, *Tomasi v. France*, judgment of 27 August 1992, §§ 108-11, Series A no. 241-A; *Assenov and Others v. Bulgaria*, 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII; *Selmouni v. France* [GC], no. 25803/94, ECHR 1999-V; *Labita v. Italy* [GC], no. 26772/95, ECHR 2000-IV; and *Abdülsamet Yaman v. Turkey*, no. 32446/96, 2 November 2004 as regards the nature and extent of the obligations of respondent States under Article 3).

42. Having regard to the nature of the admissions contained in the Government's declaration, in particular a clear acknowledgment of procedural breaches of Articles 2 and 3 of the Convention, as well as the amount of compensation proposed, which would appear to be comparable with the amounts awarded in similar cases, the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1(c)). The Court further notes that criminal proceedings were brought against the police officers which led to their conviction. Moreover, the Court takes note of the respondent State's general undertaking to conduct an effective investigation and adequately punish those responsible for acts of violence against detainees. It cannot emphasise enough the existence of a sufficient element of public scrutiny of the investigation as well as the involvement of the next-of-kin of the victim in the procedure. Finally, it is understood that the declaration only concerns the application before this Court and that the adoption of this judgment is without prejudice to any pending or future domestic proceedings.

43. In light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 in fine).

44. In view of the above it is appropriate to strike the case out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Takes note* of the terms of the respondent Government's declaration under Articles 2 and 3 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein; and

2. *Decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Done in English, and notified in writing on 23 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Lech Garlicki
Deputy Registrar	President