



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

THIRD SECTION

DECISION

Application no. 50977/10
Tatiana ZIMINOV
against the Republic of Moldova

The European Court of Human Rights (Third Section), sitting on 1 October 2013 as a Chamber composed of:

Josep Casadevall, *President*,

Alvina Gyulumyan,

Ján Šikuta,

Luis López Guerra,

Kristina Pardalos,

Johannes Silvis,

Valeriu Grițco, *judges*,

and Santiago Quesada, *Section Registrar*,

Having regard to the above application lodged on 18 August 2010,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Tatiana Ziminov, is a Moldovan national, who was born in 1952 and lives in Chisinau. The Moldovan Government (“the Government”) are represented by their Agent, Mr L. Apostol.

2. On 14 November 2004 the applicant visited her friend L. at her house for the latter’s birthday, and consumed liquor. At approximately 10.30 p.m. both the applicant and L. went to a nearby bar, where they spent the whole night. The next day the applicant was taken to hospital by ambulance from her home. At the hospital it was found that she had a broken leg. Her leg was placed in a cast and she was released from hospital the next day. She was hospitalised again on 22 November, until 10 December 2004.

3. On 14 December 2004 the applicant lodged a criminal complaint with the prosecutor's office, in which she submitted that at approximately 10.30 p.m. on 14 November 2004 she was approached in a bar by an unknown young male, who hypnotised her and grabbed three gold rings from her fingers. She attempted to resist but was punched with a knuckle-duster in the region of her left ankle and collapsed. The aggressor managed to steal the three rings from her and run away. As a result of the attack the applicant suffered a triple fracture to her leg and needed hospitalisation.

4. On 15 December 2004 the applicant's friend L. signed an affidavit at the prosecutor's office, in which she stated that on 14 November 2004 she and the applicant had been in a bar. She was talking with the bartender when she heard the applicant shout: "I've been robbed". She then saw a young man rushing out of the bar. She attempted to stop him but he told her not to interfere and twisted her arm before running away. Then she took the applicant home.

5. Between 23 December 2004 and 19 January 2005 the prosecutor's office questioned all the staff of the bar where the incident took place, and the daughter of the applicant's friend L. Two bar staff members and two waiters stated that the applicant and her friend had come to the bar at approximately 11 p.m. on 14 November 2004, and when they arrived they were already in a very advanced state of intoxication. They had brought a bowl of salad with them. They consumed a large quantity of liquor at the bar and behaved in a very ill-mannered fashion, approaching and hugging the male customers and sitting at their tables. They danced and fell down on several occasions. Then they started to quarrel among themselves. One of them went to the toilet, came out with her pants down, and insulted a member of the bar staff because he had attempted to stop this behaviour. The two female friends spent the whole night at the bar, and in spite of the way they were behaving they were not thrown out, only because one of them, the applicant, had previously worked at that bar and both were regular customers. One of the barmen and a waiter stated that at approximately 6 a.m. they saw the applicant stumbling and falling on the stairs. They helped her to get up and after that she started limping. Later she started to shout that someone had stolen her rings, and in rage broke two glasses. She also scattered the salad she and her friend had brought all over the place. The staff had to call the security company to get the applicant to calm down. The cleaner came to work at 7 a.m. and started cleaning up the salad the applicant had scattered on the floor. She found a gold ring under a table. Since the applicant and her friend did not have the money to pay for the broken glasses, the security guards refused to give the applicant the ring until she paid. Later someone called the applicant's apartment and a young woman came to collect the applicant and brought the necessary money. The applicant was given the ring back and left with that person.

6. The seventeen-year-old daughter of the applicant's friend L. stated that the applicant had come to their apartment at approximately 7 p.m. on 14 November 2004 for her mother's birthday. She and her mother had drunk wine and vodka, and the applicant had become so intoxicated that later in the evening she was found sleeping in a cupboard. At approximately 11 p.m. her mother and the applicant left the apartment. They took a bowl of salad with them. Her mother returned home between 7 and 8 a.m. the next day and told her that the applicant had become even more intoxicated at the bar and that someone had taken her rings. However, her mother had not seen the rings being taken. Her mother did not know what exactly had happened but said that nobody had beaten the applicant.

7. On 17 January 2009 the Prosecutor's Office decided to discontinue the investigation because no suspects could be identified. The applicant challenged that decision and, on 18 July 2009, the Botanica District Court quashed it, on the ground that the investigation had not been sufficiently thorough.

8. The Prosecutor's Office then heard evidence from several witnesses again, held confrontations between witnesses and the applicant, and had an identikit image of the alleged perpetrator produced.

9. On 27 October 2010 the investigation was discontinued again on the ground that no suspects could be identified.

COMPLAINT

10. The applicant complains under Articles 3 and 6 of the Convention that the authorities failed to conduct an effective investigation of her complaint about the assault.

THE LAW

11. The Court considers it more appropriate to examine this case only under the provisions of Article 3 of the Convention. Article 3 reads as follows:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

12. The Government submitted that the State's procedural obligation in the present case was one of means and not of result. They stated that all necessary measures had been taken and the complaint was ill-founded.

13. The applicant submitted that the investigation was not effective within the meaning of Article 3, and indicated numerous shortcomings, such as lengthy periods of inactivity in the investigation, which had led to an overall excessive duration of the investigation. She also submitted that not all necessary measures had been taken by the investigators in due time, and cited the identikit image of the alleged perpetrator, which had been made only some four years after the incident.

14. The Court reiterates that the obligation of the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to ill-treatment, including ill-treatment administered by private individuals (see *A. v. the United Kingdom*, 23 September 1998, § 22, *Reports* 1998-VI; *Z and Others v. the United Kingdom* [GC], no. 29392/95, §§ 73-75, ECHR 2001-V; and *E. and Others v. the United Kingdom*, no. 33218/96, 26 November 2002).

15. In a number of cases, Article 3 of the Convention has been found to give rise to a positive obligation to conduct an official investigation (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports* 1998-VIII). Such a positive obligation cannot be considered, in principle, to be limited solely to cases of ill-treatment by State agents (see, *mutatis mutandis*, *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, ECHR 2002-I).

16. For a State to have a positive obligation to conduct an official investigation into alleged facts of ill-treatment, it must be first established that the allegations of treatment contrary to Article 3 are sufficiently substantiated. If that is not the case, no such obligation can be held against the State.

17. Having perused the materials of the investigation conducted by the domestic authorities, the Court has serious doubts that the applicant was subjected to any form of ill-treatment on the night of 14-15 November 2004. It notes in the first place that the applicant formally complained about the alleged assault only a month later. Some of her statements appeared to be inaccurate and were contradicted by all the witnesses questioned, including by her friend L. None of the witnesses, including her friend L. saw anyone punch the applicant on the ankle or assault her in any other way. The applicant's friend told her daughter the next morning that nobody had assaulted the applicant. The bar staff saw the applicant extremely drunk and falling down while dancing and later falling down the stairs. In such circumstances the Court can only conclude that it has not been sufficiently established that the injuries sustained by the applicant on the night of 14-15 November 2004 were the result of ill-treatment. Accordingly, there is no case for the State to answer about the effectiveness of the ensuing investigation under Article 3 of the Convention.

18. The application is therefore manifestly ill-founded and inadmissible within the meaning of Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President