

Press release issued by the Registrar

Chamber judgment¹

[Velcea and Mazăre v. Romania](#) (no. 64301/01)

**INEFFECTIVE INVESTIGATION INTO A MAN'S MURDER
OF HIS WIFE AND MOTHER-IN-LAW AND FAILURE TO DISQUALIFY
THE MURDERER'S FAMILY FROM INHERITING FROM HIS WIFE**

*Violation of Article 2 (right to life) and
Violation of Article 8 (right to respect for private and family life)
of the European Convention on Human Rights*

(The judgment is available only in French)

Principal facts

The applicants, Stefan Velcea and Florica Mazăre, are Romanian nationals who were born in 1919 and 1949 respectively and live in Bucharest. They are the father and sister of Tatiana A. On 7 January 1993 Tatiana and her mother were killed during a fight that had started between Tatiana and her husband, Aurel A. On the night of the incident Aurel A's brother, George L., an off-duty police officer, had been with him. George L. had then left with his brother and taken him home. Shortly afterwards Aurel A committed suicide, leaving two letters in which he confessed to having killed his wife and mother-in-law. George L., acting in his capacity as a police officer, reported the incident to the police.

The criminal investigation in respect of Aurel A. was discontinued by the Bucharest County Court on the ground that the perpetrator of the crimes had died and no one else had been involved. The applicants obtained copies of the documents they had requested from the file. Following a criminal complaint lodged by the first applicant against George L., the Bucharest military prosecutor's office (which had jurisdiction because the accused was a police officer) opened an investigation, which was discontinued on 9 December 1994. On an appeal by the applicants, the Military General Prosecutor's Office of the Supreme Court of Justice decided to continue with the prosecution and the investigation was resumed. On 7 April 2003, following legislative amendments concerning the status of police officers, the case was referred to the prosecution service at the Bucharest County Court, which discontinued it on 2 March 2004. The applicants were not notified of those decisions.

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

Proceedings for the division of Tatiana A's estate were commenced in 1993. The first applicant sought to have Aurel A's family disqualified from inheriting on the ground that his daughter had been killed by Aurel A. The Romanian Civil Code (Article 655 § 1 at the material time) provided that a person convicted of murdering the deceased was unworthy to inherit under the latter's estate. Applying a strict interpretation of that provision, the Romanian courts refused to declare Aurel A unworthy of inheriting because he had not been convicted of murder by a final court decision as he had committed suicide shortly after having killed his wife. Accordingly, Lucian L, Aurel A's brother, could inherit under Tatiana's estate.

Complaints, procedure and composition of the Court

Relying on Article 2 (right to life), the applicants complained that the national authorities had not undertaken a speedy and effective investigation with a view to identifying and punishing those responsible for the events of 7 January 1993. The main subject of their complaint was the judicial proceedings against George L. Relying, *inter alia*, on Article 8 (right to respect for private and family life), they also complained of the refusal of the courts to rule that Aurel A was unworthy to inherit, which had had the effect of allowing Aurel A's family to inherit under Tatiana A's estate. The application was lodged with the European Court of Human Rights on 11 April 2000 by Mr Velcea and on 12 April 2002 by Mrs Mazăre.

Judgment was given by a Chamber of seven judges, composed as follows:

Josep **Casadevall** (Andorra), **President**,
Elisabet **Fura** (Sweden),
Corneliu **Bîrsan** (Romania),
Boštjan M. **Zupančič** (Slovenia),
Alvina **Gyulumyan** (Armenia),
Egbert **Myjer** (Netherlands),
Ann **Power** (Ireland), **judges**,

and also Santiago **Quesada**, **Section Registrar**

Decision of the Court

Alleged violation of Article 2

The Court reiterated that where an individual had been killed as a result of the use of force, an effective official investigation had to automatically be carried out both properly and speedily. There also had to be a sufficient element of public scrutiny of the investigation or its results.

In this case an investigation had indeed been carried out on the initiative of the authorities. However, although they had been informed of George L's involvement in the incident it had not been until several months later and after the applicants had lodged a formal criminal complaint that the authorities had opened an investigation in his regard.

Regarding whether the investigation had been adequate, the Court pointed out, among other things, that as George L had been a police officer (although he had not been acting in that capacity when the incident occurred), the investigation in his regard should have been carried out by independent officers. The independence of the military prosecutors who had carried out the investigation had been questionable given the national rules in force at the time according to which military prosecutors and police officers belonged to the same military structure, in accordance with the principle of hierarchical subordination. The role played by the prosecution service at the Bucharest County Court, which had merely

discontinued the proceedings without undertaking any investigative measure, had not sufficed to offset the lack of independence of the military prosecutors.

It was also clear that the investigation – which lasted 11 years – into George L's involvement had not been conducted with the requisite speed.

Lastly, while acknowledging that the applicants had in some respects been kept involved in the proceedings, the Court found that they had not been duly informed of the orders of 9 December 1994 and 2 March 2004 discontinuing the proceedings, which might have prevented them from challenging those decisions effectively.

The Court held, unanimously, that the measures taken in respect of George L's involvement in the incident on 7 January 1993 had not amounted to a speedy and effective investigation and that accordingly Article 2 had been violated.

Alleged violation of Article 8

Inheritance rights were a feature of family life that could not be disregarded. The Convention did not require member States to enact legislative provisions in the area of worthiness to inherit, but where such provisions existed, as was the case under Romanian law, they had to be applied in a manner compatible with their aim.

In the present case there was no doubt that Aurel A had killed Tatiana A. The Court could not call into question the fundamental principle of domestic criminal law according to which criminal responsibility was personal and non-transferable. It found, however, that from a civil-law angle it was unacceptable that following a person's death (Aurel A here) the unlawfulness of his acts should remain without effect. In the specific circumstances of this case, by applying the provision of the Civil Code on causes of unworthiness mechanically and too restrictively, the Romanian courts had gone beyond what was necessary to ensure adherence to the principle of legal certainty.

The Court held, unanimously, that there had been a violation of Article 8.

Application of Article 41 (just satisfaction)

The Court awarded the first applicant 15,000 euros (EUR) and the second applicant EUR 8,000 in respect of non-pecuniary damage, and EUR 6,000 for costs and expenses.

This press release is a document produced by the Registry. It does not bind the Court. The judgments are available on its website (<http://www.echr.coe.int>).

Press contacts

Frédéric Dolt (tel: + 33 (0)3 90 21 53 39) or

Stefano Piedimonte (tel: + 33 (0)3 90 21 42 04)

Tracey Turner-Tretz (tel: + 33 (0)3 88 41 35 30)

Kristina Pencheva-Malinowski (tel: + 33 (0)3 88 41 35 70)

Céline Menu-Lange (tel: + 33 (0)3 90 21 58 77)

Nina Salomon (tel: + 33 (0)3 90 21 49 79)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.