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Press release issued by the Registrar

Chamber judgment¹

Eugenia Lazăr v. Romania (application no. 32146/05)

**INVESTIGATION INTO A YOUNG MAN'S DEATH IN HOSPITAL UNDERMINED BY THE
INADEQUACY OF RULES ON FORENSIC MEDICAL REPORTS**

Unanimously:

***Violation of Article 2 (right to life) – procedural aspect
of the European Convention on Human Rights***

Principal facts

The applicant, Eugenia Lazăr, is a Romanian national who was born in 1951 and lives in Dobra. During the night of 10 to 11 July 2000 she took her 22-year-old son Adrian to Deva County Hospital as he was showing signs of suffocation. He was admitted to the emergency ward at 2.30 a.m., before being transferred to the ear, nose and throat (ENT) department, where Dr C. administered cortisone. At about 2.45 a.m. C. sent for Dr M., who decided to perform a tracheotomy on Adrian in order to clear his respiratory tract. At about 3.15 a.m. the two doctors operated on Adrian, who suffered respiratory arrest, could not be resuscitated and died at about 5 a.m.

Three reports were drawn up on the causes of the death. On 6 November 2000 the Deva Forensic Medical Laboratory issued a detailed autopsy report at the request of the police. The report stated that the tracheotomy had been performed too late because Adrian had incorrectly been transferred to the ENT department. The supervisory committee of the Timișoara Institute of Forensic Medicine confirmed that conclusion but emphasised that the doctors could not be held liable for the hospital's shortcomings. Lastly, on 15 October 2001, at the request of the prosecution service, the Higher Forensic Medical Board of the Mina Minovici Institute in Bucharest – the highest national authority on forensic medical reports – gave its opinion on the conclusions of the two previous reports and found that the doctors had acted in accordance with accepted practice and had not committed any medical errors.

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.

The applicant brought disciplinary proceedings against C., but to no avail; a reprimand imposed as a penalty on C. was revoked on the ground that the complaint had been addressed to the wrong authority.

Criminal proceedings were instituted against the doctors, and on 5 November 2001 the public prosecutor's office at the first-instance court discontinued the proceedings. That decision was set aside on an appeal by the applicant. Continuation of the investigation was ordered on account of its inadequacy. The public prosecutor's office at the County Court, relying in particular on the report by the Mina Minovici Institute, found that there was insufficient evidence for the doctors to incur criminal liability and that all the forensic reports that the investigative authorities could have ordered by law had already been produced.

On two occasions, following appeals by Mrs Lazăr, a fresh forensic medical report was ordered, but the three institutes refused to produce one, in accordance with the Forensic Medicine Institutes Act, since the Mina Minovici Institute, the highest authority in the field, had already submitted its conclusions. Proceedings were discontinued on both occasions.

On 15 October 2004 an appeal by the applicant was allowed and the public prosecutor's office was asked by the first-instance court to institute criminal proceedings against C. for manslaughter. The court found it unacceptable that the criminal proceedings had taken five years and that the requests for additional investigative measures had been disregarded, and held that the gathering of evidence had been undermined as a result. It also found it inconceivable that the Mina Minovici Institute had relied on certain legal provisions with the aim of avoiding its obligation to produce a second forensic medical report. While noting the professionalism of the report by the Deva laboratory, it observed that the report by the Mina Minovici Institute had simply described existing medical protocol and exonerated the doctors concerned without any scientific basis. The case was referred to the public prosecutor's office at the County Court for further investigation.

In a final judgment of 8 February 2005 the County Court, relying on the report by the Mina Minovici Institute and observing that a fresh forensic medical report could not be produced, concluded that Adrian's death had resulted from post-operative complications, the causes of which had been unforeseeable, and that C. should be cleared of any charge of manslaughter.

Complaints, procedure and composition of the Court

The applicant complained about the death of her son, caused in her view by shortcomings on the part of the hospital departments, and about the manner in which the authorities had conducted the investigation of her criminal complaint. She relied on Article 6 (right to a fair hearing); however, the Court, as master of the characterisation to be given in law to the facts, decided to examine these complaints under Article 2 (right to life).

The application was lodged with the European Court of Human Rights on 29 August 2005.

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),
Ineta **Ziemele** (Latvia), **Judges**,

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

Decision of the Court

Although coordination problems in a public hospital were worrying, the Court could not speculate as to the causes of Mrs Lazăr's son's death. Instead, it set out to examine whether the domestic remedies which could have shed light on the events in question had been adequate.

The Court observed that the procedural obligation implicit in Article 2 required the State to set up an effective independent judicial system so that the cause of death of patients in the care of the medical profession could be determined and anyone responsible made accountable.

The criminal remedy used by Mrs Lazăr

In the medical field, the prompt examination of cases in order to identify any medical errors was important for the safety of users of health services. However, in this case the proceedings had lasted approximately four years and five months in total for two levels of jurisdiction, including four years for the prosecution service's investigation alone; this did not satisfy the requirement of a prompt examination.

With regard to the criminal investigation, the authorities had never addressed the fundamental question of whether the asphyxia that had caused Adrian's death had occurred accidentally during the tracheotomy or as a result of the delay in performing that operation. The conclusions reached by the courts at final instance – to the effect that an item of evidence acquired probative value where it could no longer be replaced by fresh evidence or be refuted by other evidence of the same scientific value – were contrary to Article 2, which required the national authorities to take steps to produce a complete record and an objective analysis of clinical findings.

The Court agreed with the conclusions of the first-instance court as to the shortcomings of the report by the Mina Minovici Institute, and pointed out that the reasons given in its opinion were especially crucial as lower institutes were prevented from subsequently producing other expert reports. In order to preserve their credibility and efficacy, it was essential that the rules on forensic reports should require experts to state reasons for their opinions and to cooperate with the judicial authorities whenever the needs of the investigation so dictated.

Other types of remedy

The Government maintained that other remedies had been available to the applicant. In that connection, the Court noted the excessive formalism displayed by the authorities in the disciplinary proceedings brought by Mrs Lazăr. Furthermore, an appeal to the joint committees – bodies composed of doctors and civil servants appointed by the Ministry of Justice, and not independent and impartial judicial authorities – would not have been effective since the institutes of forensic medicine were authorised by law not to produce a report once the highest authority had issued its opinion. Lastly, an action for damages would have been very uncertain to succeed in the absence of a finding of medical negligence.

While the Court welcomed developments in national regulations towards increased effectiveness of compensation procedures for damage caused to patients' lives or health, it observed that such developments had occurred after the present case.

Accordingly, having regard to the national courts' inability to reach a fully informed decision on the reasons for the applicant's son's death and whether the doctors could incur liability, the Court concluded that there had been a violation of Article 2 (in its procedural aspect).

Under Article 41 (just satisfaction), the Court held that Romania was to pay Mrs Lazăr 20,000 euros (EUR) for non-pecuniary damage and EUR 296 for costs and expenses.

The judgment is available only in French. 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>).

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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.