

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

FIFTH SECTION

DECISION

Application no. 3919/21
Merab MEREBASHVILI and Lali JIOSHVILI
against Georgia

The European Court of Human Rights (Fifth Section), sitting on 5 September 2024 as a Committee composed of:

Mykola Gnatovskyy*, President*,
Lado Chanturia,
Úna Ní Raifeartaigh*, judges*,

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 3919/21) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 30 December 2020 by two Georgian nationals, Mr Merab Merebashvili and Ms Lali Jioshvili ("the applicants"), who were born in 1964 and 1971 respectively, live in Kheltubani and were represented by Ms I. Brelidze and Mr L. Dvalishvili, lawyers practising in Tbilisi;

the decision to give notice of the application to the Georgian Government ("the Government"), represented by their Agent, Mr B. Dzamashvili, of the Ministry of Justice;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns, under Articles 2 and 3 of the Convention, the adequacy of a criminal investigation conducted into circumstances surrounding the death of the applicants' son, T.M. On 6 July 2018 at around 1:25 a.m. a road traffic accident occurred in the village of Kheltubani, the Gori district. The accident consisted in a vehicle running over a man, the applicants' son, who was lying, either unconscious or sleeping, on a motorway passing through the village ("the Kheltubani motorway").

2. A criminal investigation was launched on the same day, probing into two possible versions – (i) intentional infliction of severe physical injuries (Article 117 of the CP), that is whether the victim had been physically abused prior to the road traffic accident, and (ii) breach of traffic safety rules which entailed the victim's death (Article 276 of the CP), that is whether T.M.'s death was attributable solely to the road traffic accident. Numerous investigative measures were undertaken in the aftermath, which consisted of, amongst others, conducting various medical forensic and other crime-detection examinations, collecting video evidence from the CCTV systems, retrieving communication data (calls and text messages) from the mobile phones of the victim and a number of people of interest, and interviewing all possible witnesses who could provide any information about what T.M. had been doing in the hours preceding his death (overall, almost 100 interviews were conducted with the witnesses). The results of those investigative measures, which were subsequently endorsed by the domestic courts as established facts (see paragraphs 9-10 below), revealed the following.

3. In the late evening of 5 July 2018, the applicants' son attended a late-evening party at his friend's (G.K.) place, together with four other young men, their common friends. Alcohol in large quantities was consumed by the young men that evening, which resulted in a number of minor incidents, such as T.M.'s having a verbal altercation with one of the guests, and also in the latter person's cutting his hand with pieces of glass accidentally broken by drunken T.M; the applicant's son had also had his hand slightly cut with the same broken glass. The injured guest – with the shards of glass in his hand – was provided with the requisite medical care on site and then escorted home by G.K.'s father. T.M., on the other hand, who by that time had been heavily drunk, left G.K.'s place at around 12:50 a.m. on 6 July 2018 alone. Thirty-five minutes later, at around 1:25 a.m., an unknown person, who was later identified as Z.K., the driver of the minibus which ran over the victim (see paragraph 9 below), telephoned the police and medical emergency services, reporting the discovery of a young man's body, who would later be identified as T.M., lying in an unconscious condition on the Kheltubani motorway.

4. The investigators conducted a number of investigative measures, the results of which addressed a number of specific concerns voiced by the applicants both at the domestic level and in the proceedings before the Court. Notably, whilst the applicants feared that their son's dead or unconscious body could have been dragged by unknown people onto the Kheltubani motorway in order to stage a road traffic accident, the results of a number of crime detection examinations conducted on the deceased's clothes and body ruled out any possibility of the body having been moved around. Also, whilst the applicants' asked questions about a knife found near their son's dead body, the investigation established that that knife had been carried by T.M. himself. A dactyloscopy examination of the knife did not reveal any

fingerprints on the knife except for those of T.M. Neither did a medical-forensic examination of the dead body reveal the existence of any injuries caused by a knife or any other sharp object. Furthermore, whilst the applicants suggested that their son might have been killed as result of a brawl with the young people present at G.K.'s place (see paragraph 3 above), the investigators interviewed all the people with whom T.M. had had contact immediately before his death, and, apart from having established the fact of a light verbal altercation with one of the guests (see paragraph 3 above), no other suspicious circumstances were established. The same conclusions followed from a detailed examination of the communication data retrieved from the cellular phones of all above-mentioned people of interest; nor did the footage from the CCTV system in the Kheltubani village gave any grounds for suspicion.

5. The investigators further established that after T.M. had left G.K.'s place on 6 July 2018 at around 12:50 a.m. (see paragraph 3 above), he made a number of telephone calls to his close relatives as well as to the national emergency number (112); the applicants' son was speaking in a confusing manner, with some of his correspondents realising that T.M. was drunk. During those telephone conversations with different people, T.M. contradictorily stated that there either were "injured people in the Kheltubani village", or that "he was injured himself", bumbling that either "an ambulance ought to arrive to the village" or that he was heading himself "to a nearest hospital". Eventually, the investigators concluded that those telephone calls should be attributed to T.M.'s being drunk, especially since he had had the proven history of being hyper-communicative via telephone when under the influence of alcohol. As to the reference to "the wounded people" in the Kheltubani village, the investigators concluded that the young man had apparently been making allusions to the circumstances in which he and another guest at G.K.'s party had injured themselves with broken glass (see paragraph 3 above). The investigators also identified, with the help of a footage from the CCTV system, and duly interviewed a passer-by in the Kheltubani village who had seen T.M. sitting alongside the Kheltubani relevant motorway on 6 July 2018 at around 1:15 a.m.; according to that witness, the applicant's son had been holding his head with both hands and seemed to be highly disoriented.

6. Furthermore, T.M.'s dead body was examined by several medical forensic experts shortly after its discovery. Their conclusions established that the cause of the biological death had been the injuries caused by outside pressure (multiple fractures of various bones and several damages to internal organs) which could have been developed as a result of a heavy vehicle rolling over his body. The experts did not find marks of any additional injuries which could have been inflicted independently from the road accident (such as, for instance, gunshots or injuries caused by stabbing or cutting). The experts also concluded, and those conclusions were then orally reiterated

during the trial (see paragraph 9 below), that T.M. had been alive prior to receiving the injuries associated with the road traffic accident. The forensic experts also established that the level of alcohol found in the victim's body was exceptionally high.

7. A number of crime-detection examinations were conducted on the vehicle that Z.K., the person who first notified the police about the discovery of T.M.'s body (see paragraph 3 above), was driving. Z.K. was also questioned several times, and he admitted to having run over T.M. but argued that he could not have avoided the accident because of the poor visibility that night. However, the results of the relevant investigative measures, as well as statements given by another person traveling in Z.K.'s car, led the investigators to conclude that the driver had duly noticed the man lying on the roadway and could have avoided the accident, had he been respecting the relevant traffic rules pertaining to safe speed and distance.

8. Having regard to the above-mentioned findings, on 10 February 2019 the authorities decided to abandon the investigation under Article 117 into the question of whether or not T.M. had been ill-treated prior to the road traffic accident, focusing instead only on the investigation under Article 276 of the CP into violation of road safety rules (see paragraph 2 above). The applicants, who had been granted victim status, were duly informed of that decision. Subsequently, a criminal charge under Article 276 of the CP was brought against Z.K. who was arrested, and the case was sent for trial.

9. On 15 November 2019 the Tbilisi City Court, after having conducted an adversarial hearing during which all the witnesses were questioned and all other pieces of evidence were studied in the parties' presence, convicted Z.K. of violation of road safety rules which had resulted in T.M.'s death. Endorsing all of the above-mentioned findings of the investigation (see paragraphs 4-8 above) as established facts, the court ruled that Z.K. could have avoided running over T.M., who was lying on the Kheltubani motorway in an apparent state of heavy alcohol intoxication, by respecting the relevant road safety rules. Z.K. was sentenced to four years and six months in prison.

10. By a judgment of 2 July 2020, the Tbilisi Court Appeal, after having conducted a full re-trial, upheld the conviction of 15 November 2019. The appellate court noted that the collected evidence left no room for suspecting that any offence had been committed against T.M. after he had left G.K.'s place on 6 July 2018 at around 12:50 a.m. (see paragraph 2 above) except for the lethal road traffic accident.

THE COURT'S ASSESSMENT

11. The applicants complained that the criminal investigation into the death of their son had been ineffective, in breach of Article 2 of the Convention, because the investigative authorities had failed to explore the

possibility of their son's having been ill-treated or killed prior to the road traffic accident.

12. The Court reiterates that, in order for an investigation to be effective, its conclusions must be based on a thorough analysis of all relevant elements, and that failure to explore adequately a credible line of inquiry undermines the investigation's ability to establish the circumstances of the case and the person responsible (see *Tsintsabadze v. Georgia*, no. 35403/06, § 93, 15 February 2011).

13. In the present case, however, it cannot be said that the domestic authorities disregarded the line of enquiry advanced by the applicants. Thus, whilst they raised questions about what happened to their son at G.K.'s party, several hours before his death, the investigation had duly established the chain of the events, finding no ground for suspecting anyone present at that party of committing an offence against their son. Furthermore, whilst the applicants claimed before the Court that their son's dead body had been dragged onto the Kheltubani motorway in order to stage a traffic accident, the investigation had duly addressed that eventuality and ruled out it for being unsupported and even contracted by the evidence collected. Finally, whilst the applicants argued that no consideration was given to the suspicious fact of discovery of the knife near their son's dead body and to the fact that immediately before his death T.M. had placed a number of telephone calls informing various people of his being injured, the Court observes that all those aspects were duly addressed by the domestic authorities (see paragraphs 4-7 above).

14. All in all, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that it cannot be said that the domestic authorities disregarded a reasonable line of inquiry, or failed to take indispensable and obvious investigative steps in the direction of such a line of inquiry (compare *Pankov v. Bulgaria*, no. 12773/03, §§ 53-54, 7 October 2010, and *Huohvanainen v. Finland*, no. 57389/00, §§ 110-15, 13 March 2007). As there is no other ground for calling into question the adequacy of the criminal investigation (the principles governing the procedural obligation under Article 2 in the event of a suspicious death have recently been summarised in *Oghlishvili v. Georgia*, no. 7621/19, §§ 46-47, 11 June 2024) the application is, accordingly, manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 26 September 2024.

Martina Keller
Deputy Registrar

Mykola Gnatovskyy
President