CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

PARTIAL DECISION

AS TO THE ADMISIBILITY OF

Application no. 249/03
by Tatyana Petrovna MURAVSKAYA
against Ukraine

The European Court of Human Rights (Second Section), sitting on 13 September 2005 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr V. BUTKEVYCH,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged on 3 December 2002,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Tatyana Petrovna Muravskaya, is a Ukrainian national who was born in 1950 and lives in the town of Slavyansk, the Donetsk Region of Ukraine.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

On 23 January 1999 the applicant's son, Mr M. disappeared.

On 1 February 1999 the applicant learned that her son had been beaten and, a few days later, that he had been murdered.

The body of Mr M. was found in a lake on 18 March 1999. The applicant maintained that this lake had been deliberately omitted during the police search, although neighbouring lakes had been checked.

On 18 March 1999 the investigator of the Slavyansk Prosecutors' Office (hereinafter – "the SPO") ordered a forensic medical examination of the corpse. The examination was conducted the next day by a forensic expert, Mr D. The expert concluded that the cause of death of the applicant's son could not be established and that the latter had been slightly drunk at the time of his death. Since 1999 the applicant has requested the prosecutor's office several times to institute criminal proceedings against the expert for reaching an intentionally false conclusion in the forensic examination. Her requests were rejected, after preliminary investigations, as being unfounded. However, these rejections were all quashed by the courts and remitted for additional investigations. The investigation is still pending.

On 26 March 1999 the investigator refused to institute criminal proceedings regarding the death of Mr M. The investigator based his decision on the evidence submitted by the witnesses, Messrs D., P., G., and P., who were with the applicant's son on the day of his disappearance. They acknowledged that Mr M. had been very drunk and had behaved badly, fighting with some of them. They also stated that Mr M. had left them to go home and that they did not see him again. Moreover, the forensic examination had not established the cause of death, only that Mr M. had been drunk.

On 14 June the General Prosecutor's Office (hereinafter "the GPO") informed the applicant that the decision of 26 March 1999 had been quashed and the case remitted for further investigation.

On 18 August 1999 a criminal case was opened concerning the infliction of bodily harm on Mr M., which was later reclassified as a case of inflicting intentional grievous bodily harm causing death.

On 11 November 1999 the SPO investigator ordered an additional forensic examination to establish the circumstances of the death of Mr M.

The examination conducted by a group of experts reached the following conclusions:

- it was not possible to establish the date of death of Mr M. with sufficient precision, although it could not be excluded that he had died on the day of his disappearance;

- Mr M. had bodily injuries, including serious facial ones, most of which could not have been caused by falling on the ground;

- the cause of the death could not be established exactly, but it could be assumed that death had been caused by suffocation as a result of

haemorrhaging; in that case, there was a causal link between the injuries and the death;

- that Mr M. had drank alcohol not less than one or two hours before his death; and

- that his body had remained in water for one and a half to two months.

The experts further stated that Mr M. had bodily injuries of varying degrees of severity, some of which were grievous. They established that such injuries were not deadly in themselves but would have caused unconsciousness, followed by haemorrhaging, suffocation and death. Until suffocation, Mr M. could have actively moved. They finally mentioned that there were no reliable data that Mr M. had been alive when he entered the lake. On the contrary, there were data in support of the opposite conclusion.

On 27 December 1999 an independent forensic expert, Mr P., gave his conclusions in the case. He stated that Mr M. had suffered bodily harm of different degrees of severity, including grievous injuries. As a result of this harm, Mr M. could no longer have performed conscious acts and could have lived no longer than a few dozens minutes afterwards. He further presumed that a hole found in the scull could have been caused by a firearm, although it had been deemed to have been a trepanation by the first forensic expert. Mr P. concluded that, in any event, death had been caused by violence.

On unknown date the criminal case was transferred for further investigation to the Slavyansk Police Department.

In March–May 2001 an additional expert examination was conducted in the Central Office for Forensic Examination in Kyiv. The expert commission concluded that there were no signs of a firearm wound in the scull. However, death could have been caused by a serious trauma to the facial part of the scull. They further stated that it was very unlikely that, given the severity of the injuries, Mr M. could have actively moved. They finally maintained that there were no data to conclude whether Mr M. had been alive or dead when he got into the lake water.

On 17 December 2001 the investigation was suspended as the perpetrators of Mr M.'s death could not be established, and Messrs D., P., G., and P. could not be prosecuted for inflicting bodily harm on the applicant's son since any further prosecution was time-barred.

On 6 December 2002, after a renewal of the investigation, it was suspended again since the responsibility of Messrs D., P., G., and P. for the death of the applicant's son could not be sufficiently proved, and the identity of other possible perpetrators could not be established.

On 11 August 2003 the case was sent for additional forensic examination. On 17 December 2003 the case was sent to the Central Office for Forensic Medical Examination in Kyiv. In November 2004 the applicant was informed by the Donetsk Regional Prosecutor's Office that the completion of the forensic examination was expected in the first half of 2005.

On 2 March 2005 the applicant lodged an administrative law complaint with the Donetsk Voroshylovsky District Court against the police investigator, Mr G., who had been dealing with the case since 2000.

On 15 March 2005 the court rejected her complaint for failure to comply with the Code of Criminal Procedure. The applicant appealed against this decision to the Donetsk Court of Appeal.

On 8 April 2005 the GPO informed the applicant that the investigation in the case had been delayed by the complex additional forensic examination which had not yet been completed.

COMPLAINTS

The applicant complains under Articles 2 and 6 § 1 of the Convention that the criminal investigation into the death of her son has been delayed and has still not been brought to court. Thus nobody has been punished for her son's death.

THE LAW

1. Article 2 of the Convention

The applicant complains that the criminal investigation into the death of her son has suffered serious deficiencies and delays, and that those responsible for his death have not been brought to justice. She invokes Article 2 of the Convention, which, insofar as relevant, provides as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

2. Article 6 § 1 of the Convention

For the same reasons, the applicant invokes Article 6 § 1 of the Convention, which, insofar as relevant, provides as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

The Court reiterates that the Convention does not confer any right of "private revenge". Thus, the right to have third parties prosecuted or sentenced for a criminal offence cannot be asserted independently. Nevertheless, an issue may arise regarding the victim's exercise of the right to bring civil proceedings in domestic law, even if only to secure symbolic reparation or to protect a civil right such as the right to a "good reputation" (see *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-...).

However, the Court notes that in the present case the applicant explicitly and repeatedly submitted that the purpose of her application is to bring those responsible for her son's death to justice. She did not expressly or in substance raise the issue of compensation. All the applicant's complaints to the domestic authorities, including the administrative complaint against the investigator, have only concerned the lack of results in the criminal investigation. The Court finds therefore that there is no element of a civil claim in this aspect of the case, which accordingly must be rejected as being incompatible *ratione materiae* with the provisions of the Convention, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint under Article 2 of the Convention concerning the allegedly ineffective investigation by the domestic authorities into her son's death;

Declares the remainder of the application inadmissible.

S. DOLLÉ
Registrar

J.-P. COSTA
President