



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

THIRD SECTION

CASE OF CIOBANU v. THE REPUBLIC OF MOLDOVA

(Application no. 62578/09)

JUDGMENT

STRASBOURG

24 February 2015

FINAL

24/05/2015

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ciobanu v. the Republic of Moldova,

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

Josep Casadevall, *President*,

Luis López Guerra,

Ján Šikuta,

Dragoljub Popović,

Johannes Silvis,

Valeriu Grițco,

Iulia Antoanella Motoc, *judges*,

and Marialena Tsirli, *Deputy Section Registrar*,

Having deliberated in private on 3 February 2015,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 62578/09) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Moldovan national, Ms Veronica Ciobanu (“the applicant”), on 14 November 2009.

2. The applicant was represented by Mr T. Osoianu, a lawyer practising in Ialoveni. The Moldovan Government (“the Government”) were represented by their Agent, Mr L. Apostol.

3. The applicant alleged, in particular, that the domestic authorities had failed to conduct an appropriate investigation into her husband’s death, contrary to their obligations under Article 2 of the Convention.

4. On 15 May 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1984 and lives in Fîrlădeni.

6. Her late husband, Mr Alexandru Ciobanu (“the victim”), was a taxi driver and died at work, in a car accident on 6 April 2008. He was twenty-seven years’ old at the time and the father of a three-year-old child. The present application is about the circumstances of his death and the

investigation carried out by the Moldovan authorities into those circumstances.

7. The accident happened at approximately 11.30 p.m. on 6 April 2008 in an illuminated two-way street with two lanes in the town of Hîncești. The speed limit was 40 k.p.h. and a solid line in the centre of the road indicated that no overtaking was allowed. A petrol station was located on one side of the road and there was a short broken line allowing cars to enter the petrol station from the opposite side of the road.

8. There are two versions of the events leading to the accident. The first version is based on the accounts of two eyewitnesses. According to them, the applicant's husband was driving his Lada ("the victim's car") along the street and when he was level with the petrol station located on his left, he slowed down, indicated a left turn and then turned to the left. When his car had crossed the line in the centre of the road and was perpendicular to the road in the lane for traffic from the opposite direction, a speeding 5 series BMW car ("the grey car") came from behind and hit it in the left side doors. The impact was so powerful that the victim's car was lifted spinning up in the air at a height of several meters and was propelled onto a lamp post on the left side of the road. The grey car passed under the victim's car and continued on its way for a while before coming to a complete stop.

9. The second version of the events was that of the grey car driver involved in the accident. He submitted that he had been driving at a speed of between 40 and 50 k.p.h. and had not overtaken any cars, when suddenly the victim, whose car had been parked on the right-hand side of the road, had started to turn left without looking out or indicating. The grey car driver claimed that he could not have applied his brakes or avoided the impact. He had a passenger in his car who submitted that he had not seen anything as he had been talking on the telephone at that very moment. Neither of the grey car occupants was injured in the accident.

10. According to measurements made by the police at the scene of the accident, the distance between the two cars involved in the accident after their complete stop was thirty-three metres. Experts later established that the grey car had hit the victim's car at an angle of approximately ninety degrees. There were no skid marks, meaning that the grey car driver did not apply his brakes before impact. The victim died on the spot from multiple lethal injuries.

11. The police carried out an immediate examination of the scene of the accident and the grey car driver was taken to hospital, where he tested negative for the presence of alcohol in his blood. A criminal investigation was initiated the next day.

12. One of the witnesses questioned during the criminal investigation was a taxi driver, C., who had been driving along the same street and in the same direction as the victim. He submitted that the victim's car had been further ahead but within sight. C. had been driving at a speed of

approximately 60 to 70 k.p.h. when a speeding grey car had overtaken him in spite of the solid line on the centre of the road. He estimated that the grey car had been moving at a speed of 120 to 130 k.p.h. After overtaking his car, the grey car continued to drive in the lane for traffic coming from the opposite direction. C. claimed that he had seen the victim's car ahead of him slowing down and indicating a left turn in front of the petrol station. As the victim's car was turning left, the speeding grey car, which was still driving in the opposite lane, smashed into its left side.

13. Another witness was a student, G., who had been at a car wash across the road from the petrol station. He was standing there waiting for a taxi which he had ordered over the telephone and saw the entire scene. He was questioned on 17 October 2008 and submitted that the victim had been driving along the street before slowing down and indicating a left turn. After turning to the left, he was hit by a speeding grey car which had come from behind him in the lane for traffic coming from the opposite direction. G. estimated that the grey car driver had been travelling at approximately 100 k.p.h. and had not applied his brakes before the impact.

14. On 16 May 2008 an experiment was conducted by the prosecutor in charge of the case with the participation of the grey car driver and witness C. The applicant was not informed about it. The experiment consisted of measuring the time needed for a car to turn left at the place where the accident had happened and in the manner indicated by C. As a result of the experiment, it was established that the victim had needed approximately two seconds to make the manoeuvre of turning left.

15. On 27 May 2008 the prosecutor in charge of the investigation granted the grey car driver's request to return his car to him. It had been held as a piece of evidence until that date.

16. On 28 May 2008 the applicant requested that a technical forensic investigation be conducted in order to determine, *inter alia*, the speed of the grey car, judging by the damage to both vehicles; the distance between the two cars when the victim's car had started its manoeuvre; and whether the grey car could have avoided the impact by braking, had its driver been keeping to the legal speed limit. The request was partly granted by the prosecutor on 30 May 2008 and an expert from the Ministry of Justice was asked to reply only to the question whether the grey car could have avoided the impact if it had been moving at 50 k.p.h. and on the basis that the victim's car had needed approximately two seconds to turn left. The expert was not provided with other information. The applicant was notified about the decision to conduct the forensic investigation on 19 June 2008.

17. In the meantime, on 3 June 2008, an expert from the Ministry of Justice issued a report in which he had taken as the basis of his investigation the fact that the grey car had been moving at 50 k.p.h. when the victim's car had turned left. The report indicated that when the victim's car had started its manoeuvre to the left, the grey car could have been twenty-eight metres

behind it. It did not disclose the origin of the information concerning the distance of twenty-eight metres, nor did it contain any suggestion as to how the expert had come up with that figure. The report also indicated that the braking distance of a BMW of the kind involved in the accident moving at a speed of 50 k.p.h. was between thirty-one and thirty-nine metres. On the basis of the above figures, noting that the braking distance of the grey car was longer than the distance of twenty-eight metres between the cars, the report concluded that the grey car could not have avoided the impact by braking.

18. On 19 June 2008 the prosecutor in charge of the investigation ordered a new technical forensic investigation to determine the position of both vehicles involved in the accident in relation to each other and the road.

19. On 8 July 2008 another expert from the Ministry of Justice issued a report in which he concluded that the grey car had hit the left side of the victim's car at an angle of approximately ninety degrees. The expert could not establish the position of the vehicles in relation to the road at the time of the impact since he had not been provided with sufficient information.

20. On 29 August 2008 the prosecutor in charge of the case ordered a third technical forensic investigation to determine the speed of the grey car, judging by the damage to both vehicles; the distance between the two cars when the victim's car had started its manoeuvre; whether the grey car could have avoided the impact by braking, had it been keeping to the legal speed limit; and the manner in which both drivers should have behaved had they been respecting the provisions of the traffic code.

21. On 22 September 2008 the expert who had issued the first report on 3 June 2008, relying again on the facts as submitted by the grey car driver, concluded, *inter alia*, that there was no way of calculating the grey car's speed; the grey car could not have avoided the impact by braking because its braking distance was longer than the distance between the two cars when the victim's car had started the manoeuvre; the distance between the two cars when the victim's car had turned left could not be determined, but on the basis of previous findings (see paragraph 17 above) it could have been around 27-28 metres; and that the grey car should have stopped when the victim's car had started its manoeuvre, but had been unable to do so.

22. On 14 October 2008 a confrontation was conducted between witnesses C. and the grey car driver. Each of them kept to their initial version of the facts.

23. On 26 November 2008 the prosecutor in charge of the case ordered another forensic technical investigation by a commission of experts. The experts were requested to answer whether the grey car driver had had the right to overtake the victim's car; whether before starting his manoeuvre the victim had been entitled to believe that the grey car driver would respect the traffic code rules; and what the grey car driver should have done when the victim's car indicated a left turn and started its manoeuvre.

24. On 1 December 2008 the applicant requested that an independent expert of her choice be involved in the commission of experts. She nominated an engineer who was also a university professor and had a PhD in the field of traffic security. However, on 2 December 2008 the prosecutor rejected the request on the ground that the person proposed by the applicant was not licenced to practise as a judicial expert. It was decided that the person proposed by the applicant should participate in the commission of experts in the capacity of “specialist”.

25. On 19 December 2008 the expert who had issued the first report on 3 June 2008 together with another expert issued a forensic investigation report in which they refused to give answers to the first two questions because they were of a legal character. In answer to the third question, the experts said that the grey car driver should have reduced his speed. The specialist proposed by the applicant was not informed that a forensic investigation had been carried out.

26. On 23 March 2009 the Hâncești Prosecutor’s Office decided to discontinue the criminal investigation into the circumstances of Alexandru Ciobanu’s death. The prosecutor considered the testimonies of witnesses C. and G. unreliable because they had been contradicted by the findings in the forensic technical reports. On the other hand, the findings in those reports were found to be consistent with the submissions of the grey car driver. Accordingly, the prosecutor accepted the latter’s version of the facts and concluded that the victim had been responsible for the accident because, having been parked on the right-hand side of the road, he had turned left without looking out and making sure that the manoeuvre was safe. The applicant appealed, arguing, *inter alia*, that no independent experts of her choice had been involved in the forensic investigations and no confrontation had been carried out between the grey car driver and witness G.

27. On 9 April 2009 the next level of prosecutor from the Hâncești Prosecutor’s Office dismissed the applicant’s appeal and upheld the decision of the Hâncești Prosecutor’s Office of 23 March 2009. He argued that no independent expert opinion or supplementary confrontations had been necessary because the facts of the accident had been clearly established. The applicant challenged the decision of the Hâncești Prosecutor’s Office of 23 March 2009 before the investigating judge, who dismissed her appeal on 14 May 2009.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

28. The applicant complained of a violation of Article 2 of the Convention in that no effective investigation had been carried out into the circumstances of the accident which had resulted in the death of her husband. She also complained of a violation of Article 6 of the Convention, claiming that the criminal investigation of the accident which had caused her husband's death had not been fair. The Court, however, considers it more appropriate to examine the case solely from the standpoint of Article 2 of the Convention, the relevant part of which reads:

“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. ...”

A. Admissibility

29. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

30. The applicant argued that the investigation had not been effective from the start. In the first place, the report of the accident issued by the police did not indicate important elements, such as the fact that the speed limit on that stretch of road was 40 k.p.h. Secondly, neither the applicant nor her representative had been involved in any of investigative measures conducted by the prosecutor. For instance, they had not been aware of the experiment of 16 May 2008 and the authorities had refused to include an expert of their choice in the forensic investigation commission. The authorities failed to establish all the witnesses immediately after the accident and one of the main eyewitnesses, G., was not identified and questioned until some six months after the event, at the initiative of the applicant. In spite of the serious contradictions between the versions of the grey car driver and witness G., no confrontation was conducted between the two of them. The prosecuting authorities returned the grey car to its owner before any of the forensic investigations had been conducted.

31. The Government argued that the authorities had acted promptly and a criminal investigation had been initiated immediately after the accident.

Within that investigation numerous investigative measures were carried out and all the witnesses were heard. The victim's relatives were properly involved in the investigation and informed about its outcome. The Government emphasised that the State had an obligation of means but not one of result in the present case.

2. *The Court's assessment*

32. The Court reiterates that the first sentence of Article 2 of the Convention requires the States, in particular, to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life in context of any activity, whether public or not, in which the right to life may be at stake (see, amongst many other authorities, *Zubkova v. Ukraine*, no. 36660/08, § 35, 17 October 2013). In case of a life-threatening injury or death, the above obligation calls for an effective independent judicial system to ensure enforcement of the aforementioned legislative framework by providing appropriate redress (see, for example, *Anna Todorova v. Bulgaria*, no. 23302/03, § 72, 24 May 2011). This obligation also applies in the context of designing a framework for protection of life from road traffic accidents (see, for example, *Al Fayed v. France* (dec.), no. 38501/02, §§ 73-78, 27 September 2007; *Rajkowska v. Poland* (dec.), no. 37393/02, 27 November 2007; *Railean v. Moldova*, no. 23401/04, § 30, 5 January 2010). An effective judicial system, as required by Article 2, may, and under certain circumstances must, include recourse to the criminal law (see *Cioban v. Romania* (dec.), no. 18295/08, § 25, 11 March 2014) but if the infringement of the right to life is not intentional, Article 2 does not necessarily require such remedies; the State may meet its obligation by affording victims a civil-law remedy, either alone or in conjunction with a criminal-law one, enabling any responsibility of the individuals concerned to be established and any appropriate civil redress, such as an order for damages, to be obtained (see *Anna Todorova*, cited above, § 73).

33. In principle, States should have the discretion to decide how a system for the implementation of a regulatory framework protecting the right to life must be designed and implemented. What is important, however, is that whatever form the investigation takes, the available legal remedies, taken together, must amount to legal means capable of establishing the facts, holding accountable those at fault and providing appropriate redress. Any deficiency in the investigation, undermining its ability to establish the cause of the death or those responsible for it, may lead to the finding that the Convention requirements have not been met (see *Antonov v. Ukraine*, no. 28096/04, § 46, 3 November 2011).

34. A requirement of promptness and reasonable expedition is implicit in this context. Even where there may be obstacles or difficulties which

prevent progress in an investigation in a particular situation, a prompt response by the authorities is vital in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *Šilih v. Slovenia* [GC], no. 71463/01, § 195, 9 April 2009). Thus, in a number of cases before the Court concerning the implementation of a domestic regulatory framework for the protection of life from road traffic accidents, the finding of a violation was largely based on the existence of unreasonable delays and a lack of diligence on the part of the authorities in conducting the proceedings, regardless of their final outcome (see *Anna Todorova*, cited above, § 76; *Antonov*, cited above, §§ 50-52; *Igor Shevchenko v. Ukraine*, no. 22737/04, §§ 57-62, 12 January 2012; *Sergiyenko v. Ukraine*, no. 47690/07, §§ 51-53, 19 April 2012; *Prynda v. Ukraine*, no. 10904/05, § 56, 31 July 2012; and *Zubkova*, cited above, §§ 41-42).

35. Turning to the facts of the present case, the Court notes that there were two witnesses to the accident who related similar facts. In particular, they both submitted that the victim had been driving along the street before indicating a left turn, slowing down and manoeuvring to the left in a place where a left turn was allowed. According to their account of the events, the grey car was going in the same direction as the victim's car at a very high speed in the lane for traffic coming from the opposite direction when it collided with the victim's car. It also appeared that the grey car driver had not applied his brakes at all before the collision. Those testimonies, which were challenged only by the accused grey car driver, were dismissed by the prosecutor as unreliable because they were considered to be inconsistent with the findings of the technical forensic investigations, which stated that the grey car could not have avoided the impact by braking.

36. Having examined the forensic investigation reports on which the prosecutors based the above decision, the Court notes that all they did was to give an answer to a hypothetical question whether a BMW car of the kind involved in the accident could have avoided the impact by braking, if driven at a speed of 50 k.p.h. and if the distance between it and the victim's car had been twenty-eight metres at the time when the latter started its manoeuvre. The answer given was that in such circumstances the impact could not have been avoided because the braking distance of the grey car would have been longer by at least three metres than the imaginary distance between it and the manoeuvring car ahead of it. That was indeed a purely hypothetical exercise because, as it appears clearly from the materials of the case, neither the grey car's speed nor the distance between it and the victim's car were established during the investigation.

37. In such circumstances, the Court finds it striking that the prosecutor considered it possible to dismiss what appeared to be trustworthy witness statements, which were consistent with each other, on the basis of a purely

hypothetical speculation that was unrelated in any way to the factual circumstances of the case.

38. The Court further notes with concern that the investigation made no real efforts to establish one of the basic elements of the equation, which was the speed at which the grey car was being driven before the impact. That was indeed one of the key elements, especially taking into consideration the submissions of the witnesses that the car was being driven at speeds above 100 k.p.h. on a road where the speed limit was 40 k.p.h. The prosecutor did not consider it necessary to inquire about the real speed even after being expressly requested to do so by the applicant on 28 May 2008 (see paragraph 16 above). It was not until 29 August 2008, namely almost five months after the accident that the prosecutor considered it necessary to ask for the real speed of the grey car to be determined by a forensic expert (see paragraph 20 above). He accepted very easily the expert's answer that there was no way of calculating the speed and did not make any other attempts to establish the speed of the grey car.

39. In addition to the above-mentioned very serious shortcomings, the Court also notes that one of the witnesses, G., was not heard until 17 October 2008, namely more than six months after the accident. Moreover, the victim's family was not allowed to have an expert or "specialist" of its choice included in the commission of experts which conducted the final forensic investigation in the case and the prosecutor decided to return the grey car to its owner before conducting a forensic investigation.

40. In the light of the shortcomings described above, the Court considers that the manner in which the domestic authorities conducted the investigation could give an independent observer the impression that they did not genuinely attempt to elucidate the circumstances of the case and discover the truth. There has accordingly been a procedural violation of Article 2 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

42. The applicant claimed 10,000 euros (EUR) in respect of pecuniary damage suffered as a result of the violation found above. She submitted that that sum constituted the financial loss suffered by her family as a result of

the death of her husband. She also claimed EUR 30,000 in respect of non-pecuniary damage.

43. The Government disagreed with the applicant and asked the Court to dismiss her just satisfaction claims.

44. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects that claim. On the other hand, it awards the applicant EUR 20,000 in respect of non-pecuniary damage.

B. Costs and expenses

45. The applicant did not make any claims for costs and expenses.

C. Default interest

46. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 2 of the Convention under its procedural limb;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 February 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Deputy Registrar

Josep Casadevall
President