



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

THIRD SECTION

CASE OF TIMUS AND TARUS v. THE REPUBLIC OF MOLDOVA

(Application no. 70077/11)

JUDGMENT

STRASBOURG

15 October 2013

FINAL

15/01/2014

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

In the case of Timus and Tarus v. the Republic of Moldova,

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

Josep Casadevall, *President*,

Alvina Gyulumyan,

Ján Šikuta,

Luis López Guerra,

Kristina Pardalos,

Johannes Silvis,

Valeriu Grițco, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 24 September 2013,

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

PROCEDURE

1. The case originated in an application (no. 70077/11) 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 two Moldovan nationals, Mr Serghei Timus and Ms Victoria Tarus (“the applicants”), on 25 October 2011.

2. The applicants were represented by Mr I. Oancea, a lawyer practising in Chișinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr L. Apostol.

3. The applicants alleged, in particular, a breach of Articles 2 and 3 of the Convention as a result of the ill-treatment and killing of their brother.

4. On 10 April 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background information

5. The applicants were born in 1990 and 1989 respectively and live in Chișinău.

6. The present case concerns the circumstances surrounding the killing of the applicants' 29-year-old brother Alexei Vlasi during a police operation on 14 March 2009.

7. On that date at approximately 10.20 p.m. three plain-clothed police officers (N., B. and C.) entered a five-storey apartment block to arrest a person suspected of armed robbery. According to their information, the suspect in question was supposed to be visiting his ex-girlfriend M. that evening, who lived on the fourth floor of the building.

8. At the same time, M. was coming down the stairs from the fourth floor with a group of four friends. None of them was the suspect wanted by the police. Two young women (S. and Z.) and a young man (G.) were at the front of the group and they passed the police officers between the third and second floor.

9. Upon passing the first part of the group one of the police officers immediately apprehended G. Alexei Vlasi and M. were several storeys up and saw the police officers as they approached the rest of the group. Two police officers rushed after Alexei Vlasi, who started to run back up the stairs. They apprehended him on the fifth floor. Shortly afterwards, one of the police officers shot him in the back of the head at very close range. He died instantly.

10. An investigation followed, during which all the witnesses and police officers were questioned. There were two versions of events: that of the group of friends coming down the stairs with the victim (the witnesses), and that of the police officers.

B. The witnesses' version of events

11. The witnesses' version was that two police officers, N. and C., were armed with pistols which they were holding upwards. Upon passing the first part of the group, the officers saw that there was someone else upstairs and ran in that direction, leaving the first part of the group with police officer N. They then told police officer N. to come upstairs with the rest of the group. After apprehending Alexei Vlasi somewhere on the fifth floor, police officers B. and C. started to beat him up. All the members of the group recounted an almost identical description of what they had heard and the conversation that had taken place between the two police officers and Alexei Vlasi. According to them, one of the police officers (B.) called Alexei Vlasi by his first name and told him to follow them. In response, he addressed B. by his first name and told him to stop beating him up. Sounds of someone being beaten up were heard and Alexei Vlasi threatened to report his injuries to a forensic doctor. The manner in which he said this last sentence was very specific, as he used a mixture of both Romanian and Russian words and the witnesses recounted it in the same manner. It later

transpired that police officer B. and Alexei Vlasi already knew each other, as in 1999 the latter had been arrested by the former for bicycle theft.

12. The encounter between police officers B. and C. and Alexei Vlasi took place on the fifth and top floor. Two of the witnesses M. and G. were the closest to the scene at the time, being held by police officer N. on the fourth floor. The fourth floor was separated from the fifth floor by two flights of stairs going in opposite directions joined by an intermediate landing. M. (who also already knew police officer B.) started to shout at him, telling him to leave Alexei Vlasi alone. She called him by his first name and tried to get past police officer N. in order to help Alexei Vlasi. In her struggle with police officer N. she could partly see what was happening on the fifth floor. G. was also there. According to them, police officer B. grabbed Alexei Vlasi by his right hand while officer C. grabbed him by his left hand and started to make his way down the stairs from the fifth floor to the landing between the fifth and fourth floors. At about the third from last step, Alexei Vlasi was facing the handrail and grabbed it. The police officers who were behind him bent him over and, according to one of the witnesses, held both his hands behind his back. According to another witness, one of his hands was on the handrail while the other was held by a police officer behind his back. Police officer C. was holding his pistol at the back of Alexei Vlasi's head while he was bent over. Police officer B. punched him in the ribs and he repeated again that he would be reporting his injuries to a forensic doctor. Immediately afterwards, he was shot in the back of the head by police officer C. at very close range. He collapsed on the landing between the two flights of stairs, with his feet on the stairs and his body on the landing. Blood started to spurt out of his head wound. M. shouted: "He shot him straight in the head!" and her first reaction was to try to stop him losing any more blood with her hands. In what appeared to be an attack of hysteria she started to scream and to attack police officer B. and shouted "Why did you do that?" Another female friend in the group approached her from behind, hugged her and tried to pull her away from the body.

13. According to the witnesses, Alexei Vlasi did not have anything in his hands after collapsing to the ground. Police officer B. asked officer C.: "What the hell did you do?!" C. did not respond with anything intelligible but remained still, holding his head in his hands. One of the witnesses said they heard him respond in a low voice: "I didn't want to do that". He was very pale. According to the witnesses he did not have any visible injuries and could walk perfectly well. Immediately afterwards, officer B. ordered all the witnesses to go into M.'s apartment on the fourth floor. He and police officer N. pushed everybody into her apartment and closed the door. Police officer N. was holding the doorknob so that nobody could leave. Many of the neighbours started to look out of their apartments but the police officers ordered them all to close their doors and stay inside.

C. The police officers' version of events

14. According to the police officers, when Alexei Vlasi ran up the stairs, they thought he was the suspect they had been after. They claimed to have been convinced that the victim was the suspect they were looking for and that they only realised their mistake after he had been shot. However, during a confrontation which took place later, police officer B. admitted he had known Alexei Vlasi for a long time. The following description of the police officers' version of events was made after a video reconstruction of the scene, which was filmed during the investigation with the participation of police officer C. on 7 August 2009. Police officer B. recounted an identical version of events.

15. Police officer B. chased Alexei Vlasi and approached him from behind on the landing of the top, fifth floor. He put his hand on his shoulder, called him by the name of the wanted suspect, announced that he was a police officer and asked him to come with him. At that moment Alexei turned around and punched police officer B. in the face with his right fist and attempted to run down the stairs. When he punched police officer B. he did not have anything in his hand. Police officer B. was pushed into a wall on his right and lost his balance. However, police officer C., who had already approached them from behind, managed to apprehend Alexei Vlasi by pulling his left arm near his shoulder (in his initial statement police officer C. stated that he had apprehended him by the collar of his jacket). The apprehension took place on the top three steps of the flight of stairs leading to the fifth floor. Police officer C. was behind Alexei Vlasi on a higher step, holding his hand with his left hand and holding his pistol pointed upwards in his right hand. At that moment, without changing his position, Alexei Vlasi stabbed police officer C. in the right thigh with a knife, which he had been holding in his right hand in reverse grip. Then, without changing the position of the knife, Alexei Vlasi attempted to turn to his left and to stab police officer C. in the face. According to police officer C., Alexei Vlasi had been standing upright. Fearing for his life, police officer C. pulled the trigger of the pistol he was still holding upwards and shot him in the upper neck. The police officers did not say how the victim's body ended up on the landing between the fifth and fourth floor some six or seven steps lower, but it is reasonable to infer that it rolled down by itself before slumping at the bottom of the stairs.

D. The criminal investigation

16. A criminal investigation was formally initiated on 15 March 2009. According to a report describing the scene, Alexei Vlasi's body was lying in a pool of blood on the intermediate landing between the fourth and fifth floors. There was an open small pocket knife with a lock mechanism with a

blade 6.5 cm long in the palm of his right hand. His feet were on the first two steps of the flight of stairs leading to the fifth floor. There were traces of blood on those steps. The report contains pictures of areas stained with blood, such as the landing where the body was lying, the walls around it, and the landing between the third and the fourth floor, where blood had run down from above. No traces of blood appear to have been found above the steps on which the victim's feet were located. On the wall above the sixth step of the flight of stairs going down to the fourth floor from the landing where the body was lying, there was a bullet hole 2.3 metres above the step, exactly opposite where the witnesses alleged the victim had been shot when facing the handrail.

17. During the investigation, the Chişinău prosecutor's office obtained several forensic reports which found, *inter alia*, that the entry wound was on Alexei Vlasi's upper left neck and the exit wound was on the right side of his forehead above his eyebrow. According to the forensic report, the shot was fired at such close range that gunshot residue was present on the victim's skin around the entry wound. Another forensic report found that the police officer who had shot him had had an injury to his right thigh made by a knife wound and the other police officer who had allegedly been punched in the face by Alexei had had a bruise on his face. Another expert report did not find any fingerprints on the knife found in Alexei Vlasi's palm after his death.

18. On 21 September 2009 the Chişinău prosecutor's office decided to discontinue the criminal investigation on the grounds that the police officer who shot Alexei Vlasi had acted in self-defence. The prosecutor's office was based on the police officers' version of events. The applicants challenged the above decision before the Prosecutor General's Office.

19. On 9 October 2009 a deputy Prosecutor General quashed the above decision on the grounds that it was based exclusively on the police officers' version of events and that no consideration was given to the witnesses' statements. The investigator had failed to determine the exact place of the shooting and the victim's position in relation to the shooter. Moreover, no ballistics test had been conducted in order to determine the trajectory of the bullet.

20. In the reopened investigation some of the witnesses were re-questioned. One of them, G., changed his statements and submitted that he had not seen or heard anything, but later claimed that he had only done so because he had been pressured and threatened to do so by the accused police officers.

21. A ballistics test was carried out with the help of an assistant standing where the police officers alleged the victim had been standing at the time of shooting. The assistant had a cabbage placed on his shoulder, near his head. Through a hole pierced in the cabbage, a thread was led to the bullet hole in the wall, which was considerably lower than the cabbage. Taking into

consideration the positions of the entry and exit wounds on the victim's head, it was concluded that, at the moment of the shooting, the victim had been bent over and not standing upright as suggested by the police officers in their version of events.

22. On 30 June 2010 the Chişinău prosecutor's office again discontinued the criminal proceedings on similar grounds as the first time, namely on the basis of the police officers' version of events. It does not appear that the prosecutor attempted to reconcile the findings of the ballistics test with the police officers' version of events concerning the circumstances of Alexei Vlasi's shooting. The applicants appealed.

23. On 22 July 2010 a hierarchically superior prosecutor dismissed the applicants' appeal. They appealed to an investigating judge.

24. On 20 October 2010 an investigating judge from the Rascani District Court upheld the applicants' appeal, quashed the decisions of 30 June and 22 July 2010 and ordered a re-investigation of the case. He concluded that the investigation had been incomplete and that the conclusions reached by the investigators were inconsistent with the evidence in the case file. The investigating judge also noted that no confrontations had been carried out between all the witnesses and the accused officers, no importance had been attached to the fact that no fingerprints had been found on the knife the victim had allegedly stabbed police officer C. with, and that the investigation had not been conducted within a reasonable time.

25. Following the investigating judge's decision, the applicants applied to the Prosecutor General's Office with a request to have the case removed from the Chişinău prosecutor's office on account of its bias and to have it transferred to another prosecutor's office. On 8 November 2010 a deputy Prosecutor General rejected the applicants' request as ill-founded.

26. On 27 April 2011 the Chişinău prosecutor's office questioned witness M. again. On 17 May 2011 witness G. was questioned again. He submitted having seen police officer B. stabbing police officer C. in his thigh with a knife before being forced into M.'s apartment after the shooting. According to him, this took place between the third and the fourth floor and he had mentioned it during his initial questioning, but no record had been made. Confrontations were organised between M. and police officer B. and between G. and police officer B. on 20 and 24 May 2011, during which each party maintained their statements.

27. On 21 July 2011 witness G. took a lie-detector test to determine whether his statement about police officer B. stabbing police officer C. with a knife was truthful. The test result was negative, i.e. G.'s statement was not truthful.

28. On 15 September 2011 the Chişinău prosecutor's office again discontinued the criminal investigation on similar grounds as the previous occasions. The results of the lie-detector test were added to the decision. The applicants appealed against it and argued that the results of the

lie-detector test were inadmissible because the test had been carried out by colleagues of the accused police officers rather than by independent experts.

29. On 20 October 2011 the hierarchically superior prosecutor dismissed the applicants' appeal. They appealed to an investigating judge.

30. On 12 December 2011 an investigating judge from the Rascani District Court upheld the applicants' appeal, again finding that the investigation had been incomplete. The judge also declared the results of the lie-detector test inadmissible.

31. On 13 April 2012, without conducting any further investigative measures, a prosecutor from the Chişinău prosecutor's office again discontinued the criminal investigation. The content of the decision was identical to that of the decision of 15 September 2011, including reference to the lie-detector test.

32. On 9 July 2012 the hierarchically superior prosecutor dismissed the applicants' appeal. They appealed to an investigating judge.

33. On 16 October 2012 an investigating judge from the Rascani District Court again upheld the applicants' appeal, quashed the decisions of 13 April and 9 July 2012 and ordered a reopening of the investigation.

34. On 11 March 2013 a prosecutor from the Chişinău prosecutor's office again discontinued the criminal investigation.

35. On 22 April 2013 the hierarchically superior prosecutor dismissed the applicants' appeal. They appealed to an investigating judge.

36. On 19 July 2013 an investigating judge from the Rascani District Court again upheld the applicants' appeal, quashed the decisions of 11 March and 22 April 2012 and ordered a reopening of the investigation. The investigation appears to be pending to date.

II. RELEVANT DOMESTIC LAW

37. Under section 17 of the Police Act of 18 December 1990, in force at the material time, police officers had the right to use firearms as a last resort in the process of self-defence. Firearms could be used by police officers without being preceded by a warning about the intention to use them where there was a sudden attack or an attack necessitating the use of special fighting techniques.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION

38. The applicants complained that Alexei Vlasi had been ill-treated and killed by State agents, and that the domestic authorities had failed to carry out an effective investigation into the circumstances of his death. They relied on Articles 2 and 3 of the Convention, which read as follows:

Article 2

“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.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

Article 3

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. Admissibility

39. The Government submitted that the investigation into the circumstances of the present case was still ongoing and that no final decision had yet been given at domestic level. For that reason, they maintained that the applicants’ application was premature and that he had failed to exhaust the domestic remedies available to him.

40. The Court reiterates that the purpose of Article 35 § 1 of the Convention is to afford Contracting States the opportunity to prevent or put right the violations alleged against them before those allegations are submitted to the Court. Consequently, States are dispensed from answering for their acts before an international body before they have had the opportunity to put matters right through their own legal systems (see, for

example, *Remli v. France*, 23 April 1996, § 33, *Reports of Judgments and Decisions* 1996-II, and *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V). At the same time, “an applicant does not need to exercise remedies which, although theoretically of a nature to constitute remedies, do not in reality offer any chance of redressing the alleged breach” (see *Yoyler v. Turkey*, no. 26973/95, 13 January 1997, and *Akdivar and Others v. Turkey*, § 68, 30 August 1996, *Reports* 1996-IV).

41. In the instant case, it is true that the proceedings are still pending before the domestic courts. Nevertheless, the Court finds that the question of exhaustion of domestic remedies inextricably linked to the merits of the complaints, that is, the question of the effectiveness of the investigation into the applicants’ allegations of ill-treatment and killing of Alexei Vlasi. Therefore, it considers that both questions should be joined and examined together (see *Mikheyev v. Russia*, no. 77617/01, § 88, 26 January 2006).

42. The Court further notes that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring the application inadmissible have been established. It must therefore be declared admissible.

B. Merits

1. The parties’ submissions

43. The applicants submitted that the State was responsible for the death of Alexei Vlasi since his shooting had not been warranted by the circumstances. He had not been armed and presented no threat to the life or health of the police officers. After fatally shooting him, the police officers had attempted to falsify evidence to make it appear like self-defence. For that purpose one of them had hurt the other with a knife and had planted the knife in the dead victim’s hand. The applicants relied on the statements of the witnesses which supported that version of events. Lastly, the applicants submitted that the investigation into the circumstances of the victim’s death had not been effective as required by Article 2 of the Convention.

44. The Government did not make any submissions on the merits of the case but only endorsed the position of the prosecuting authorities in their decisions to discontinue the investigation, according to which police officer C. had acted in self-defence when he shot the victim in the head.

2. The Court’s assessment

(a) General principles

45. Article 2, which safeguards the right to life and sets out the circumstances in which deprivation of life may be justified, ranks as one of

the most fundamental provisions in the Convention, from which no derogation is permitted. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which deprivation of life may be justified must therefore be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *Andronicou and Constantinou v. Cyprus*, 9 October 1997, § 171, *Reports of Judgments and Decisions* 1997-VI, and *Huohvanainen v. Finland*, no. 57389/00, § 92, 13 March 2007).

46. The text of Article 2, read as a whole, demonstrates that it covers not only intentional killing but also the situations where it is permitted to “use force” which may result, as an unintended outcome, in the deprivation of life. Any use of force must be no more than “absolutely necessary” for the achievement of one or more of the purposes set out in sub-paragraphs (a) to (c). This term indicates that a stricter and more compelling test of necessity must be employed than that normally applicable when determining whether State action is “necessary in a democratic society” under paragraphs 2 of Articles 8 to 11 of the Convention. Consequently, the force used must be strictly proportionate to the achievement of the permitted aims (see *Kelly and Others v. the United Kingdom*, no. 30054/96, § 93, 4 May 2001).

47. In keeping with the importance of Article 2 in a democratic society, the Court must, in making its assessment, subject deprivations of life to the most careful scrutiny, particularly where deliberate lethal force is used, taking into consideration not only the actions of the State agents who actually administer the force but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination. In determining whether the force used is compatible with Article 2, it may therefore be relevant whether a law-enforcement operation has been planned and controlled so as to minimise to the greatest extent possible recourse to lethal force or incidental loss of life (see *Bubbins v the United Kingdom*, no. 50196/99, §§ 135-36, ECHR 2005-II, and *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 150 and 194, Series A no. 324).

48. Furthermore, the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State’s general duty under Article 1 to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. The essential purpose of such an investigation is to secure the effective implementation of the domestic laws safeguarding the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility (see *Makaratzis v. Greece* [GC], no. 50385/99, § 73, ECHR

2004-XI). What form of investigation will achieve those purposes may vary in different circumstances. However, whatever mode is employed, the authorities must act of their own motion, once the matter has come to their attention. They cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures (see *Kelly and Others*, cited above, § 94, and, *mutatis mutandis*, *İlhan v. Turkey* [GC] no. 22277/93, ECHR 2000-VII, § 63).

49. A requirement of promptness and reasonable expedition is implicit in this context (see *Yaşa v. Turkey*, 2 September 1998, §§ 102-04, *Reports* 1998-VI). Any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible is liable to fall foul of the required standard of effectiveness (see *Kelly and Others*, cited above, §§ 96-97, and *Anguelova v. Bulgaria*, no. 38361/97, § 139, ECHR 2002-IV).

(b) Application of these principles to the present case

50. Turning to the facts of the present case, the Court notes that it is undisputed that Alexei Vlasi was shot in the head by a police officer while being apprehended. The only matter in dispute is whether the use of deadly force against him was justified in the circumstances of the case. In justifying the use of force by the police, the Government relied on the version of events submitted by the police officer who had shot him.

51. The Court notes from the outset some blatant discrepancies between the version of events relied on by the Government and the evidence in the case file. According to the video reconstruction of the scene of the shooting (see paragraphs 14 and 15 above) the shooting took place on the upper part of the stairs leading to the fifth floor. However, a report describing the scene immediately after the incident and enclosing relevant pictures does not contain any information about traces of blood which would indicate that the victim's body had rolled down the stairs to the landing between the fourth and fifth floors. The Court finds it highly implausible that the victim's body, which had been subjected to a serious gunshot wound to the head, could roll down the stairs without leaving any traces of blood. Indeed, according to that report the victim had lost so much blood that traces of it were found on the storey below, on the landing between the fourth and third floors.

52. In the same video reconstruction, police officer C. alleged that at the moment of the shooting, Alexei Vlasi had been standing upright with his head right in front of him on the step below, and that he had been holding his gun at the back of the victim's head pointed upwards. However, the bullet with which the victim was shot hit the wall at a significantly lower point than where the victim's head had allegedly been positioned. Indeed, the ballistics test indicated that in order for the bullet to have hit the wall at the place suggested, the victim must have been bent over (see paragraph 21

above). Had the victim been where police officer C. described, the bullet could not have hit the wall at the place suggested.

53. In view of the above fundamental discrepancies, corroborated by the fact that no fingerprints of the victim were found on the knife with which police officer C. was allegedly stabbed and with the statements of witnesses which, unlike those of the police officers, are not inconsistent with the factual evidence in the case file, the Court has serious reservations concerning the credibility of the version of events relied upon by the Government. It follows that they have not proved that the use of deadly force against Alexei Vlasi was necessary in the circumstances of the case and therefore their responsibility is engaged.

54. The Court must also have regard to the manner in which the domestic authorities investigated the case. It notes firstly that the proceedings in respect of the applicants' complaint have been pending before the domestic authorities for more than four years, during which time the case has not even reached the courts. Judging by the materials in its possession, the Court is not persuaded that the present case is of such complexity as to have required such a long time to be resolved. There were several long periods during which nothing happened in the proceedings. For instance, after the reopening of the investigation on 20 October 2010 when an investigating judge found, *inter alia*, that the investigation had not been conducted within a reasonable time (see paragraph 24 above), no procedural events took place until 27 April 2011 (see paragraph 26 above). After the reopening of the investigation on 12 December 2011 (see paragraph 30 above) no investigative measures were conducted until 13 April 2012, when the investigation was again discontinued (see paragraph 31 above). Lastly, it appears that the investigation is open to date (see paragraph 36 above).

55. Having carefully examined the case materials, the Court considers that the manner in which the prosecuting authorities assessed the circumstances of the case could give an independent observer the impression that they did not genuinely attempt to elucidate the circumstances of the case and discover the truth. As shown above, the prosecutors appear to have favoured the police officers' version of events to such an extent that they were prepared to disregard some blatant discrepancies between that version and the factual evidence in the case file. Furthermore, the witnesses' statements were treated as so irrelevant that the prosecutors did not even bother to explain why they were not taken seriously. For example, the ballistics test was only carried out in order to verify the trajectory of the bullet from where the police officers alleged the victim had been positioned. For reasons unknown, the authorities did not consider it necessary to verify whether the location of the bullet hole in the wall fit with where the witnesses alleged the victim had been positioned.

56. In the light of the shortcomings described above and the overall length of the criminal investigation, the Court concludes that the

investigation into the circumstances surrounding Alexei Vlasi's death was neither adequate nor sufficiently effective.

57. The Court reiterates that if the domestic remedy chosen by an applicant is adequate in theory, but, with the course of time, proves to be ineffective, the applicant is no longer obliged to exhaust it (see *Tepe v. Turkey*, 27244/95, Commission decision of 25 November 1996). Having concluded above that the investigation into the applicants' allegations was ineffective, the Court considers that they are no longer required to wait for the termination of the investigation in order to exhaust domestic remedies. The Court thus dismisses the Government's objection of non-exhaustion of domestic remedies and holds that there has been violation of Article 2 of the Convention in both its substantive and procedural limbs.

58. In view of these findings, the Court does not consider it necessary to also examine the case under Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

59. The applicants contended that they had not had any effective remedies in respect of the breach of their rights guaranteed by Article 2 of the Convention and that there had therefore been a breach of Article 13, which reads as follows:

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

60. The Court notes that this complaint 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

61. The applicants submitted that they had not had any criminal-law remedies because the criminal investigation had been ineffective, and as a result of that ineffectiveness, they had not had any effective civil remedies by which to claim compensation for their brother's death.

62. The Government did not make any submissions in respect of this complaint.

63. In so far as the first part of the applicants' complaint is concerned, namely that they did not have effective criminal-law remedies in respect of their brother's alleged killing, the Court notes that it does not raise any separate issue from that examined under the procedural limb of Article 2.

64. As to the other part of the complaint, the Court considers that, given the inadequacy of the investigation into the circumstances of Alexei Vlasi's death, a civil claim relying on the same facts and allegations would not have had any prospect of success. Accordingly, the Court considers that it has not been shown that effective remedies existed enabling the applicants to claim compensation for the killing of their brother by the police (see, *mutatis mutandis Corsacov v. Moldova*, no. 18944/02, § 82, 4 April 2006, and *Gurgurov v. Moldova*, no. 7045/08, § 73, 16 June 2009). There has therefore been a violation of Article 13 taken in conjunction with Article 2 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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

66. The applicants claimed 180,000 euros (EUR) in respect of non-pecuniary damage suffered as a result of the violations found above. They submitted that at the time of their brother's killing, they were 19 and 18 years old respectively and had no other family except him. Their mother had died in 2002 and their father had left them several years earlier. Their only support had been their elder brother, the victim Alexei Vlasi, who had been 29 years old at the time. The applicants submitted that losing their brother and later having to endure the unfair investigation of the case had caused them a lot of psychological suffering.

67. The Government disagreed with the applicants and asked the Court to dismiss their just satisfaction claims along with the application.

68. The Court observes that it has found that the authorities were accountable for Alexei Vlasi's death. In addition to this serious violation, it has further found that the authorities failed to undertake an effective investigation and to provide an effective remedy in respect of it, in violation of their procedural obligation under Article 2 of the Convention. In view of the above, the Court, judging on an equitable basis, awards each applicant EUR 25,000.

B. Costs and expenses

69. The applicants also claimed EUR 6,377 for the costs and expenses incurred before the Court. They submitted some documents in support of their claims.

70. The Government disagreed with the amount claimed and asked the Court to award whatever it considered reasonable.

71. Regard being had to the information contained in the case, the Court considers it reasonable to award EUR 3,000 for costs and expenses.

C. Default interest

72. 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. *Joins to the merits* the Government's preliminary objection concerning the exhaustion of domestic remedies by the applicants and rejects it;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 2 of the Convention in both its substantive and procedural limbs;
4. *Holds* that no separate issue arises under Article 3 of the Convention;
5. *Holds* that no separate issue arises under Article 13 of the Convention in so far as the applicants' complaint about the ineffectiveness of the criminal investigation is concerned;
6. *Holds* that there has been a violation of Article 13 of the Convention taken in conjunction with Article 2 of the Convention in so far as the applicants' complaint of lack of civil remedies in respect of their brother's killing is concerned;

7. *Holds*

(a) that the respondent State is to pay the applicants, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the first applicant;

(ii) EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the second applicant; and

(iii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicants jointly, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

8. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 15 October 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President