



Ineffective investigation into the death of a student during hazing activities, but legal framework was sufficient

In today's **Chamber judgment**¹ in the case of **Soares Campos v. Portugal** (application no. 30878/16) the European Court of Human Rights held, unanimously, that there had been:

a violation of the procedural aspect of Article 2 (right to life) of the European Convention on Human Rights, and no violation of the substantive aspect of Article 2.

The case concerned the death of Mr Soares Campos's son, who was swept out to sea while taking part on a beach in a gathering linked to *Praxe* (a student tradition that includes hazing activities). Mr Soares Campos alleged that his son's death had been caused by the lack of a legal framework regulating hazing activities at Portuguese universities, and complained that the investigation into the circumstances of his son's death had been ineffective.

The Court found in particular that the criminal investigation had not satisfied the requirements of Article 2 of the Convention. It noted that a number of urgent measures could have been ordered in the immediate aftermath of the tragedy.

However, the Court found that there did not exist an area outside the law or a legal vacuum with regard to hazing activities in Portugal, observing that domestic legislation in fact laid down a series of criminal, civil and disciplinary provisions designed to prevent, suppress and punish offences endangering individuals' lives or their physical or psychological integrity. While acknowledging the undoubtedly tragic nature of the present case, the Court did not find it established that the State had failed in its positive obligations under Article 2 and could therefore be held responsible for the death of Mr Soares Campos's son.

Principal facts

The applicant, José Carlos Soares Campos, is a Portuguese national who was born in 1971 and lives in Lisbon.

While taking part in an annual gathering linked to *Praxe* on Meco beach on the night of 14 December 2013, Mr Soares Campos's son (Tiago Campos) and six other students were caught unawares and were swept out to sea by a large wave. Only one of them (J.G.) managed to get back to the beach and survived. He was found suffering from hypothermia and was taken to hospital.

On the morning of 15 December 2013 the body of Mr Soares Campos's son was found. He was 21 years old and had been a student at Lusófona University (*Universidade Lusófona de Humanidades e Tecnologias*), a private university in Lisbon.

On 16 December 2013 the public prosecutor's office opened a criminal investigation to determine the circumstances of the tragedy. The same day an autopsy was performed on Tiago Campos's body. Toxicology tests revealed that he had a blood alcohol level of 0.85 g/l and had consumed cannabis. Over the following days the bodies of the other five victims were found and autopsies were

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

performed. The public prosecutor decided to make the case file confidential owing to the widespread media coverage of the case.

On 9 January 2014 the victims' apartment was cleaned out. The cleaner reportedly found a large wooden spoon (*colher de pau*) there, which symbolises *Praxe* and is used in hazing activities.

On 5 February 2014 J.G. gave evidence as a witness. He told the investigators that Tiago Campos had stood up suddenly because he was cold and at that moment had been struck by a wave. All those present had then ended up in the water.

On 25 February 2014 the applicant and other parents of victims lodged a criminal complaint against J.G. and a person or persons unknown for negligent homicide and endangering the lives of others. They alleged that at the time of the incident the victims had been standing blindfolded with their backs to the sea, as part of a hazing challenge led by J.G.

On 28 July 2014 the public prosecutor's office discontinued the case. The applicant and other parents of victims appealed against that decision and requested the opening of a judicial investigation. The investigation was opened in October 2014 and J.G. was charged.

On 4 March 2015 the Criminal Investigation Court issued a decision not to send the case for trial, upholding the discontinuance decision. The applicant appealed. The Evora Court of Appeal found that the victims had been adults and that there was no evidence to suggest that they had been deprived of their personal autonomy during the weekend in question.

On 29 December 2015 Mr Soares Campos also brought a civil action for compensation against J.G. and the Training and Cultural Events Cooperative, seeking 150,000 euros (EUR) in damages. Those proceedings were still ongoing in April 2018.

Complaints, procedure and composition of the Court

Relying on the procedural aspect of Article 2 (right to life), Mr Soares Campos complained of not having the benefit of an effective investigation capable of establishing the circumstances of his son's death.

Under the substantive aspect of Article 2, the applicant alleged that his son's death had been caused by the lack of a legal framework regulating hazing activities at Portuguese universities.

The application was lodged with the European Court of Human Rights on 27 May 2016.

Judgment was given by a Chamber of seven judges, composed as follows:

Paul Lemmens (Belgium), *President*,
Georgios A. Serghides (Cyprus),
Paulo Pinto de Albuquerque (Portugal),
Helen Keller (Switzerland),
Alena Poláčková (Slovakia),
Gilberto Felici (San Marino),
Lorraine Schembri Orland (Malta),

and also Stephen Phillips, *Section Registrar*.

Decision of the Court

[Article 2 \(right to life, procedural aspect\)](#)

On the subject of the investigations conducted following a death, the Court reiterated that, for an investigation to be effective, the authorities had to take all reasonable steps available to them to

secure the evidence concerning the incident.

The Court noted that the investigation had been opened the day after the death of the applicant's son and his friends and that an autopsy had been performed on Tiago Campos's body the same day. An air-sea rescue operation had been launched to find the bodies of the remaining victims and autopsies had been performed as soon as the bodies had been found. Furthermore, the case had attracted widespread media coverage and the media had at a very early stage advanced the theory of hazing activities that had gone wrong.

With regard to the investigation, the Court considered that the following urgent measures could have been ordered straight away by the public prosecutor's office as soon as it learned of the incident.

Firstly, the house where the victims had been staying could have been secured and access barred to all persons not connected with the investigation, in order to prevent evidence from being interfered with or lost and to prevent the cleaning of the apartment on 9 January 2014. The Court was particularly struck by the fact that J.G. and his relatives, the victims' families and third parties had had unrestricted access to the house.

Secondly, whereas the inspection of the scene of an incident should normally be carried out as soon as possible, the forensic examination of the house had not taken place until 11 February 2014. However, the items in the house and on Mecó beach had potentially contained important and sensitive information relating to the persons concerned. Seizing those items and placing them under seal for investigative purposes would have prevented any interference by a number of individuals and prevented the police from having to reclaim them subsequently.

Thirdly, the clothes worn by J.G. on the night of the tragedy, and his computer, could have been seized immediately and subjected to forensic examination. They had not been seized until 7 March 2014.

Fourthly, a reconstruction of the events on the beach with the involvement of J.G. could have been carried out as soon as possible after the events. However, it had not taken place until 14 February 2014.

Fifthly, there was no explanation as to why the authorities had not immediately taken witness statements from the people present in the vicinity, including the neighbours and the people in charge of the house where the victims had been staying. Those people had not given evidence until 8 and 10 February 2014, that is, a month and a half after the events.

Sixthly, the investigation had not started in earnest until it had been taken over by the public prosecutor's office at the Almada District Court, over a month after the events.

Consequently, the Court held that the criminal investigation into the circumstances of the death of the applicant's son had not satisfied the requirements of the procedural limb of Article 2. **There had therefore been a violation on that account.**

[Article 2 \(right to life, substantive aspect\)](#)

The Court considered that the present application raised the issue of hazing at universities and its monitoring by the State. It pointed out that, unlike hazing within the armed forces, hazing activities at university were performed by students on other students and not by agents of the State or under the control of the State.

The issue to be determined was whether the legal framework existing at the time had been sufficient to prevent, suppress and punish any offence endangering the life of the applicant's son.

The Court answered this question in the affirmative, noting that, while *Praxe* was not prohibited or regulated in domestic law, any abuse, whether or not it occurred in the context of a hazing

challenge, was punishable by law; the Constitution enshrined the principle of human dignity and prohibited torture and inhuman or degrading treatment. Furthermore, any offence endangering a person's life, physical or psychological integrity, or private life was punishable under the criminal law, including by prison sentences of up to 25 years. Any act of violence or physical or psychological force against other students, including in the context of hazing activities, was also a disciplinary offence punishable by a penalty ranging from a warning to expulsion. Lastly, universities and higher education establishments could be held responsible for any material and moral damage caused on their premises. The Supreme Court had previously ordered two higher education establishments, in 2009 and 2013, to pay damages for the abuse of a student and for the death of another student as a result of hazing activities within their institutions.

Consequently, the Court considered that there did not exist an area outside the law or a legal vacuum with regard to hazing activities in Portugal. Domestic law set out a series of criminal, civil and disciplinary provisions designed to prevent, suppress and punish offences endangering individuals' lives or their physical or psychological integrity. While acknowledging the undoubtedly tragic nature of the present case, the Court did not find it established that the State had failed in its positive obligations under Article 2 and could thus be held responsible for the death of the applicant's son. **There had therefore been no violation of the substantive aspect of Article 2 of the Convention.**

Just satisfaction (Article 41)

The Court held that Portugal was to pay the applicant 13,000 euros (EUR) in respect of non-pecuniary damage and EUR 7,118.51 in respect of costs and expenses.

The judgment is available only in French.

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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.