



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

THIRD SECTION

CASE OF ANOSHINA v. RUSSIA

(Application no. 45013/05)

JUDGMENT

STRASBOURG

26 March 2019

This judgment is final but it may be subject to editorial revision.

In the case of Anoshina v. Russia,

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

Alena Poláčková, *President*,

Dmitry Dedov,

Jolien Schukking, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 5 March 2019,

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

PROCEDURE

1. The case originated in an application (no. 45013/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Ms Yelena Alekseyevna Anoshina (“the applicant”), on 8 December 2005.

2. The applicant was represented by Ms O. Sadovskaya, a lawyer practising in Nizhniy Novgorod. The Russian Government (“the Government”) were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. On 2 March 2009 notice of the application was given to the Government.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1956 and lives in Nizhniy Novgorod.

A. Murder of applicant’s brother in alcohol recovery centre

5. On 25 July 2002 the applicant’s 51-year-old brother Aleksandr Alekseyvich Anoshin was murdered by a policeman in the alcohol recovery centre of the Sovietsky District Police Department of Nizhniy Novgorod (*медицинский вытрезвитель при Советском РУВД г. Нижнего Новгорода*).

6. Earlier that day, at about 7 p.m., he was stopped in the street by a police patrol as he was staggering home after having drinks with

workmates. He was driven to the centre and left alone on a bed in a recovery room, as centre staff sat down to a game of cards nearby. One hour later Mr Anoshin started banging on the door and asking to be let out. Officer M., who together with his partner K. had just returned from patrol duty, got annoyed at the disruption, pushed Mr Anoshin away from the door and demanded that he calm down. Mr Anoshin fell on the bed and his head slammed against the wall. He then got to his feet and stepped towards the officer. Officer M. punched the applicant's brother in the head and chest five times, and strangled him until he was unconscious using a squared piece of a broken wooden chair. M. laid Mr Anoshin down on the bed, and walked out. Officer An. watched this scene from the doorway.

7. At 10 p.m. the applicant's brother died of asphyxia.

B. Investigation

8. On 3 August 2002 the Prosecutor's Office of the Sovietsky District opened a criminal investigation into the death. The investigation lasted four years and was handled in turn by at least six different investigators. They inspected the scene, conducted witness interviews, commissioned forensic reports, and staged reconstructions.

9. The centre staff initially testified that they had found the applicant's brother unwell in his bed, but then changed their story, saying that they had seen him hang himself using a bed sheet tied to the bars of his cell window. The forensic reports (on the cause of death, the nature of the injuries, the origin of blood on the wall and the presence of metallic traces on the sheet) refuted the hanging hypothesis, pointed to a violent death and incriminated the centre staff. However, the investigation was put on hold thirteen times because no credible suspect had been identified.

10. In March 2006 M. was interviewed for the first time.

11. By August 2006 the case against him had gone to trial.

C. Conviction of the perpetrator

12. On 1 August 2008 the Sovietsky District Court of Nizhniy Novgorod convicted M. of murder and violent abuse of official power and sentenced him to fourteen years' imprisonment and a three-year ban from police service. Neglect-of-duty charges brought against his two co-defendants (Officers An. and Ag.) were dropped as time-barred.

13. At the trial, M. was directly incriminated by An., Ag., and K. Officers An. and Ag. confessed that the suicide story had been a cover-up condoned by commanders of Sovietsky Police Department.

14. On 14 November 2008 the Nizhniy Novgorod Regional Court upheld the sentence.

D. Tort damages against the State

15. The applicant and three of her brother's four children each claimed from the State 3,000,000 Russian roubles (RUB – approximately 69,000 euros (EUR)) for emotional distress caused by the crime. On 25 May 2009 the Sovietsky District Court awarded RUB 150,000 (approximately EUR 3,400) to each claimant.

16. On 14 August 2009 the Nizhnyi Novgorod Regional Court upheld that decision.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION ON ACCOUNT OF THE MURDER

17. The applicant complained under Article 2 about her brother's murder by an agent of the State. In so far as relevant, this Article 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. The parties

18. The Government admitted that the applicant's brother's right to life had been breached. They contended, however, that this complaint should be struck out of the Court's list of cases because, by convicting the perpetrator and awarding damages to the victim's relatives, the authorities had “resolved the matter” within the meaning of Article 37 § 1 (b) of the Convention.

19. The applicant objected. She submitted that, “leaving aside the amount of compensation”, two of the three culprits (An. and Ag.) had escaped punishment because the authorities had delayed the investigation until the case against them had lapsed under the statute of limitations.

B. The Court

1. Striking out

20. The Court reiterates that a matter is considered “resolved” if the circumstances complained about no longer obtain and if the effects of a possible violation have been redressed (see *Pisano v. Italy* (striking out) [GC], no. 36732/97, § 42, 24 October 2002).

21. The ill effects of the premature death of the applicant's brother still obtain because he is no longer alive.

22. Redress for death inflicted by State agents must include the prosecution of the perpetrator and compensation (see *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 56, 20 December 2007).

23. As to the question of prosecution, the Court is satisfied with the fourteen-year term of imprisonment handed down to the murderer. This is only one year short of the statutory ceiling. Though An. and Ag. did indeed escape punishment for the charge of neglect of duty under the statute of limitations, they were not the main culprits.

24. As to the compensation for emotional distress awarded by the domestic court, it should not be "substantially lower" than that usually awarded by the Court (see *Kopylov v. Russia*, no. 3933/04, § 144, 29 July 2010). The domestic court awarded the applicant EUR 3,400 whereas this Court would have awarded her at least EUR 32,500. This shortfall is substantial.

25. The Court therefore rejects the Government's request for the complaint to be struck out of its list of cases under Article 37 § 1 (b) of the Convention.

2. Admissibility

26. 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.

3. Merits

27. The parties agreed that the State had intentionally and unjustifiably deprived the applicant's brother of his life. There has, accordingly, been a violation of Article 2 on this account.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION ON ACCOUNT OF THE INEFFECTIVE INVESTIGATION

28. The applicant complained under Articles 2 and 13 of the Convention that the investigation into her brother's death had been ineffective. The Court considers that this complaint falls to be examined under Article 2 alone (see *Šilih v. Slovenia* [GC], no. 71463/01, § 154, 9 April 2009).

A. The parties

29. The Government argued that this complaint should be struck out of the Court's list of cases pursuant to Article 37 § 1 (b) of the Convention

because the eventual conviction of the murderer had proved the effectiveness of the legal proceedings (*cydonprouzvodstva*), and for the reasons cited in paragraph 18 above.

30. The applicant objected for the reasons cited in paragraph 19 above. She added that the investigation had been slow and that the relatives of the victim had not been properly informed about its progress.

B. The Court

1. Striking out

31. The Court again reiterates that a matter is considered “resolved” if the circumstances complained about no longer obtain and if the effects of a possible violation have been redressed (see *Pisano*, cited above, § 42).

32. The uncertainty caused by the outstanding investigation has ceased, because the truth about Mr Anoshin’s death has been uncovered. However, the damages awarded to the applicant were in no way tied to any possible shortcomings in the investigation, and hence did not constitute redress.

33. The Court therefore rejects the Government’s request for the complaint to be struck out of its list of cases under Article 37 § 1 (b) of the Convention.

2. Admissibility

34. 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.

3. Merits

35. The State’s procedural obligation to investigate deaths effectively is “detachable” from its substantive obligation not to kill people (see *Šilih*, cited above, § 159).

36. An investigation is “effective” when it is independent, adequate, thorough, objective, impartial, open, and prompt (see *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 240, 30 March 2016).

37. The investigation into Mr Anoshin’s death cannot be so described. The crime happened in a secure government compound, and all the evidence was available to the authorities. The forensic findings undermined the shifting narrative proffered by the centre staff and implicated them. Despite the closed circle of suspects, it was not until March 2006 that the chief perpetrator was interviewed for the first time. Until then, the investigation seems to have been inexplicably oblivious to his and his fellow patrolman’s presence at the scene, although it must have been registered on the duty roster and in patrol logs. The investigation changed hands among six

investigators and was stayed thirteen times. Though two key witnesses had admitted to false testimony condoned by the headquarters of Sovietsky Police Department, no charges were pressed in that regard.

38. The Court concludes that the investigation was ineffective. There has, accordingly, been a violation of Article 2 on this account.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S OWN ANGUISH

39. The applicant complained under Article 3 that she had suffered personal anguish as a result of her years-long search for truth about her brother's death. This Article reads:

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

A. The parties

40. The Government argued that the applicant had been awarded compensation and that, therefore, this complaint should be struck out of the Court's list of cases pursuant to Article 37 § 1 (b) of the Convention and declared inadmissible owing to the loss of her status as a victim.

41. The applicant objected, arguing that she had only been compensated for the death of her brother, and not for her own suffering as inflicted by the ineffective investigation.

B. The Court

1. *Striking out*

42. The Court rejects the Government's strike-out request for the same reasons as set out above.

2. *Admissibility*

43. The Court reiterates that it has always been sensitive in its case-law to the profound psychological impact of a serious human rights violation on the victim's family members who are applicants before the Court. However, in order for a separate violation of Article 3 of the Convention to be found in respect of the victim's relatives, there should be special factors in place giving their suffering a dimension and character distinct from the emotional distress inevitably stemming from the aforementioned violation itself. The relevant factors include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question and the involvement of the applicants in the attempts to obtain information about the fate of their relatives (see

Janowiec and Others v. Russia [GC], nos. 55508/07 and 29520/09, § 177, ECHR 2013). There are no such factors in the present case.

44. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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.”

46. In respect of non-pecuniary damage the applicant claimed EUR 40,000, less the compensation that had already been awarded by the domestic courts, provided that it was actually paid.

47. The Government argued that the claim was excessive in the light of the Court’s case-law and should be reduced by the amount awarded in Russia. They furnished evidence that the applicant had been issued with a writ of execution to enable her to enforce payment of that sum.

48. The Court awards the applicant EUR 36,600 in respect of non-pecuniary damage.

Default interest

49. 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. *Dismisses* the Government’s request to have the complaints under Article 2 of the Convention struck out of the list;
2. *Declares* the complaints under Article 2 admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 2 of the Convention on account of the murder of the applicant’s brother and its ineffective investigation;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months, EUR 36,600 (thirty-six thousand six hundred euros) 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, plus any tax that may be chargeable;

(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.

Done in English, and notified in writing on 26 March 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Alena Poláčková
President