



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

THIRD SECTION

CASE OF LAPTEV v. RUSSIA

(Application no. 36480/13)

JUDGMENT

Art. 2 (procedural) • Effective investigation • Failure to take all reasonable steps to ascertain the circumstances of the deceased's death while in State custody • Refusal to open a criminal investigation a serious breach of domestic procedural rules capable of undermining the validity of any evidence collected

Art 2 (substantive) • Positive obligations • Failure of the authorities to safeguard the deceased's right to life in custody • Lack of sufficient, strong, clear and concordant inferences indicating that the death occurred at the hands of State officials • Failure of the authorities to respond in a reasonable way to the known risk to the deceased's life

STRASBOURG

9 February 2021

FINAL

09/05/2021

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

In the case of Laptev v. Russia,

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

Paul Lemmens, *President*,

Georgios A. Serghides,

Dmitry Dedov,

María Elósegui,

Darian Pavli,

Anja Seibert-Fohr,

Peeter Roosma, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 36480/13) 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, Mr Oleg Anatolyevich Laptev (“the applicant”), on 15 April 2013;

the decision to give notice to the Russian Government (“the Government”) of the complaints under Article 2 of the Convention concerning the death of the applicant’s brother in State custody and the lack of proper investigation into the events and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 19 January 2021,

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

INTRODUCTION

1. The present case concerns the applicant’s complaints under Article 2 of the Convention about the events surrounding the death of the applicant’s brother during the latter’s remand in custody between 4 and 6 January 2011 and the quality of the subsequent domestic investigation in this connection.

THE FACTS

2. The applicant was born in 1982 and lives in the village of Yubileyny, in the Medvedovskiy District of the Republic of Mariy El. The applicant was represented by Ms A.I. Petrova, a lawyer practising in Yoshkar-Ola.

3. The Government were represented by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights.

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

I. EVENTS BETWEEN 4 AND 6 JANUARY 2011

5. On 4 January 2011 the applicant's brother, Mr Sergey Laptev ("SL"), who at the time worked as a policeman, was arrested on suspicion of rape. No reports regarding the use of force in respect of SL were filed by the officers in the aftermath of the arrest, but after SL's death the officers reported having used force to restrain him when apprehending him (see paragraphs 11 and 23 below).

6. On the same day SL was detained in a temporary detention centre of the Ministry of the Interior of the Republic of Mariy El. Upon his admission, an officer of the detention centre examined SL and reported no trace of injuries on his body.

7. SL was placed in a cell with Ch., an undercover police agent who was posing as a suspect in another criminal case. There were no other inmates in the cell during the relevant time. It appears that at the time, and also throughout most of the subsequent proceedings, Ch.'s identity remained concealed and secret. According to the applicant, Ch. may have had the task of convincing or coercing the applicant's brother to confess. The Government, in their submissions, confirmed that Ch. was an undercover police agent, but did not comment on the exact nature of his activities in the detention centre.

8. On 5 January 2011 the applicant's brother had two interviews with an investigator. One of these interviews took place in the presence of G., a lawyer. According to the applicant, his brother complained to G. about the pressure exerted on him by the police to make him confess, including the threat that they would arrange for him to be raped by other inmates.

9. At 6.40 a.m. on 6 January 2011, Kh., P. and B., who were guards in the detention centre, found SL dead in his cell. He was examined by a team of emergency medics at around 7 a.m. The autopsy report compiled on the same day established mechanical asphyxiation as the cause of death. In addition to ligature marks on the neck, the report described scratches on both forearms, a bruise on the right calf dating back to between one and three days prior to SL's death, and bruises on both calf muscles and the left knee dating back to between four and six days prior to SL's death.

II. PROCEEDINGS IN RESPECT OF THE EVENTS BETWEEN 4 AND 6 JANUARY 2011

A. Internal investigation

10. On 7 January 2011 the detention centre, acting of its own motion as part of the Ministry of the Interior, conducted an internal investigation into the death of SL. Among other things, the investigation included an analysis of the relevant camera footage. The resulting final report concluded that

between 3.19 a.m. and 6.10 a.m. on that night, no guards had been present in the corridor and that the officers in charge had thus “seriously breached” various security and disciplinary rules on the supervision of detainees. As a result of these proceedings, the guards Kh. and B. and their superiors, Sh., I. and E., were punished for misconduct. Kh. and B. were dismissed from the police, and the other officers were reprimanded.

B. Preliminary inquiry

11. A preliminary inquiry in respect of the events was also instituted by a local branch of the Investigative Committee of Russia. The investigator interviewed

(i) the guards Kh., P. and B., who had not noticed any suspicious or abnormal activity in the cell prior to the discovery of the corpse;

(ii) the guard Kh., who stated additionally that he had checked the cell at around 5 a.m. and had not noticed anything suspicious;

(iii) Ch., who was posing as a suspect in an unrelated criminal case and who alleged that he had been sleeping and had not heard anything on that night, while mentioning that SL had refused to eat and had been feeling “low”;

(iv) police officers U. and O., who had been involved in the arrest, and the investigator in charge of the rape case, who all denied mistreating SL but who admitted to using some physical force when apprehending SL, as the latter had allegedly resisted the arrest by trying to flee; and

(v) the lawyer G., who mentioned that, among other things, his client had complained of pressure and threats during the investigation.

12. By a decision of 4 July 2011, the inquiry concluded that SL’s death had been suicide and that the injuries detected on his body during the autopsy had resulted from the proportionate use of physical force during the arrest on 4 January 2011. At the same time the decision admitted that prison guards had committed errors in the supervision of detainees on that night, as they had not been present at their posts, but it denied that these errors had resulted in or had in any way been related to the death of the applicant’s brother. The proceedings were accordingly discontinued.

C. Court proceedings regarding the decision of 4 July 2011

13. The applicant appealed against the decision of 4 July 2011 in court. He raised numerous arguments pointing to various inconsistencies in the statements of the officials and the conclusions of that decision and deplored its overall poor quality.

14. By a judgment at first instance of 19 April 2012, the Yoshkar Ola Town Court allowed the applicant’s appeal and quashed the decision of 4 July 2011. The court agreed with many of the applicant’s arguments. In

particular, it noted that Ch.'s identity, his address and other personal details remained unclear. The exact circumstances of his stay in the same cell as SL were also unclear and had to be ascertained. The court further noted the loss of a number of key pieces of evidence, such as the underwear which SL had apparently used to strangle himself and the video footage of that night from the detention centre's archives. The court also pointed to the lack of clarity regarding the date and time when SL's bruises had been inflicted and under what circumstances. Lastly, the court required the investigation to provide more information regarding the exact extent of the omissions that had led to the prison guards being disciplined.

15. That decision was confirmed on appeal on 18 June 2012 by the Supreme Court of Yoshkar Ola.

D. Further proceedings

16. On 19 July 2012 an investigator of the Investigative Committee of the Republic of Mariy El again refused to open a criminal investigation into the death of SL. There is no indication that the shortcomings pointed to by the Town Court (see paragraph 14 above) were eliminated.

17. On 24 July 2012 a superior official of the Investigative Committee quashed the decision of 19 July 2012 and ordered that the investigation into the events be recommenced.

18. On 3 August 2012 an investigator again refused to open a criminal investigation into the death of SL. The decision of 3 August 2012 was later quashed too.

19. On 13 and 19 August 2012 an investigator again refused to open a criminal investigation. Those two decisions were quashed on 16 August and 11 September 2012 respectively.

20. On 28 August 2012 the applicant lodged complaints against the investigators and the officials of the detention centre, accusing them of negligence and blaming them for the death of SL.

21. The applicant's attempts to institute civil proceedings failed, as on 30 August 2012 his action was discontinued. That decision was essentially confirmed on appeal on 7 November 2012 with reference to the fact that there was a pending criminal investigation into the matter.

22. On 30 November 2012 the Investigative Committee of the Republic of Mariy El informed the applicant that the investigation of his complaint had been discontinued on 25 October 2012. The letter asserted that the investigation had led to all the previously mentioned defects being corrected. At the same time, the Investigative Committee initially refused to send the applicant a copy of the decision on account of the fact that it had contained classified information. It appears that the applicant was able to receive a copy of the decision at a later stage.

23. The decision essentially reproduced the version of events set out in the decision of 4 July 2011. As regards the injuries discovered on SL's body during his autopsy, the investigators again interviewed the officers of the detention centre and the officers involved in SL's arrest and, having reconstructed the exact course of events during his arrest, concluded that the bruises on the forearms, calves and knee area had resulted from the officers' attempts to stop SL from fleeing. The investigation also established that the officials of the detention centre had failed to inspect SL's body properly, which is why they had not reported SL's injuries during his admission to the detention centre on 4 January 2011 (see paragraph 6 above).

24. As regards the alleged pressure exerted on SL by the investigators, the decision referred to statements of various officials involved in SL's criminal case, all of whom denied having put SL under pressure. The decision agreed with those statements, citing the lack of any indication of undue pressure among the evidence obtained.

25. As regards the alleged involvement of SL's inmate Ch. (see paragraph 7 above), the investigative authorities referred to the statements made by Ch. during the first round of the preliminary inquiry (see paragraph 11 above), at which time Ch. had been posing as a suspect in an unrelated criminal case. It appears that the investigation accepted his statements without further queries and without investigating Ch.'s undercover activity, his mandate or assignment.

26. At least one detention centre official provided information in respect of SL's mental state prior to his death. In response to the question regarding the need to place SL in the same cell as Ch., Officer S., who was on duty during SL's admission in the detention centre, stated that "some information provided [to them] by the operative officials suggested that SL was susceptible to contemplating suicide and that detention centre officials, being responsible for the life and health of detainees, could not hold such persons in solitary confinement".

27. Overall, the authorities admitted shortcomings in the supervision of SL, notably because some of the prison guards had not been on duty, in breach of the applicable rules. However, they insisted that SL's death had been suicide and that it was unrelated to the above-mentioned shortcomings. They dismissed any allegations of exerting pressure on SL, citing that version of events as "unsupported by objective evidence". It appears that owing to the preliminary status of those proceedings, the applicant could not participate in them.

28. The last round of court proceedings took place in 2013. On 20 May 2013 the Town Court of Yoshkar Ola upheld the decision of 25 October 2012. The judgment at first instance of the Town Court was upheld on appeal by the Supreme Court of the Republic of Mariy El on 8 July 2013.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

29. The applicant complained that the Russian authorities had failed to protect SL's life and that the ensuing investigation into his death had not been effective. He relied on Article 2 of the Convention, which reads in its relevant part as follows:

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

A. Admissibility

30. The Government argued that the applicant had learned about the alleged defects in the investigation at a fairly early stage, so he had been under an obligation to bring his complaints to the Court without waiting for the outcome of the domestic proceedings. The Government submitted that as a result the applicant had brought his complaints out of time.

31. The applicant disagreed with the Government.

32. The Court notes the Government's argument that the applicant's complaints were lodged after the time-limit. It observes in this connection that from the timing of the domestic proceedings, it is clear that the applicant pursued all reasonably available opportunities of contesting the outcome of the domestic preliminary inquiry throughout 2011, 2012 and 2013. In fact, the final court decisions in the case rejecting his complaints had already been given after the application had been lodged with the Court in May and July 2013 (see paragraph 28 above). In these circumstances, the Court is satisfied that the application has been brought in time and rejects the Government's argument accordingly.

33. 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

34. The applicant argued that the Russian authorities had failed to establish the circumstances of SL's death and, as a result, had not fulfilled the obligations imposed on them by Article 2. In his opinion, there had been sufficient evidence to show that SL had not hanged himself of his own volition and that he might have been induced to commit suicide or been killed by his inmate Ch. In support of that version, the applicant referred to

various injuries found on SL's body to confirm that the investigation might have put pressure on SL to confess. In the opinion of the applicant, the injuries, taken in conjunction with Ch.'s undercover activity, pointed to the authorities' possible involvement in the death or suicide of SL. He also argued that his brother had not had suicidal tendencies.

35. The applicant further argued that the investigation conducted by the authorities had not met the minimum standards of effectiveness and had been in breach of Article 2 of the Convention. The investigation had not been speedy, independent or effective. The initial inquiry had been perfunctory. Subsequently, the prosecutor had quashed refusals to open a criminal investigation into SL's death on numerous occasions, stating each time that the inquiry had been incomplete or that the dismissal of the case had been premature. At no time had an official criminal investigation been instituted. The evidence had not been secured effectively in the immediate aftermath of SL's death, and with the lapse of time it had become virtually impossible to establish what had really happened. The applicant had been unable to participate in the investigation.

36. The Government disagreed with the applicant. In their opinion, the application did not disclose a violation of Article 2. The Russian authorities had conducted a thorough investigation into SL's death and had established that he had committed suicide. The complaints in connection with the investigation into SL's death had been thoroughly examined by the authorities.

2. *The Court's assessment*

37. The general principles as regards the State's obligations enshrined in Article 2 of the Convention are well established in the Court's case law and have been summarised in *Fanzyeva v. Russia* (no. 41675/08, §§ 46-51, 18 June 2015).

(a) **Alleged failure to carry out an effective investigation into SL's death**

38. At the outset the Court observes that the authorities refused to conduct a fully-fledged criminal investigation into SL's death. As a result, a whole range of procedural investigative measures aimed at collecting and securing physical evidence and testimony were not available to the investigators. Instead, they conducted several rounds of inquiries, of which all but the last were ruled to be perfunctory. Apart from the autopsy report, the investigators had to base their findings regarding SL's death mainly on statements made by various witnesses.

39. The Court has previously ruled in a number of cases against Russia that failure on the part of the authorities to open a criminal investigation in a situation where an individual has died while in State custody is in itself a serious breach of domestic procedural rules capable of undermining the

validity of any evidence which has been collected (see, among other authorities, *Trapeznikova and Others v. Russia*, no. 45115/09, § 34, 1 December 2016; *Kleyn and Aleksandrovich v. Russia*, no. 40657/04, § 56, 3 May 2012; and *Fanziyeva*, cited above, § 53).

40. The Court further reiterates that in the context of the Russian legal system, a “pre-investigation inquiry” alone is not capable of leading to the punishment of those responsible, since the opening of a criminal case and a criminal investigation are prerequisites for bringing charges against alleged perpetrators which may then be examined by a court (see *Trapeznikova and Others*, cited above, § 35; *Lyapin v. Russia*, no. 46956/09, §§ 132 and 135-36, 24 July 2014; and *Zelenin v. Russia*, no. 21120/07, §§ 56-57, 15 January 2015). The Court points to the failure of the domestic authorities to examine in detail SL’s psychological profile and any need for special care he may have had and the potentially negligent behaviour of the officials of the detention centre in this connection. It also notes the investigation’s failure to seriously examine Ch.’s possible involvement in the events of 6 January 2011 and that no efforts were deployed to locate Ch. and to question him again.

41. Regard being had to the material in its possession and the above considerations, the Court concludes that the Russian authorities did not take all reasonable steps to ascertain the circumstances in which SL’s death occurred.

42. There has accordingly been a violation of Article 2 of the Convention under its procedural limb on account of the authorities’ failure to conduct an effective investigation into SL’s death.

(b) Alleged breach of SL’s right to life

43. The Court observes that the factual circumstances surrounding SL’s death are disputed by the parties. The applicant stated that his brother might have been killed or forced to commit suicide, while the Government asserted that he had committed suicide by hanging himself without any outside pressure.

44. The Court notes that SL was placed in a cell with Ch., an undercover police agent (see paragraph 7 above). According to the internal investigation into the death of SL, on the night when SL died between 3.19 a.m. and 6.10 a.m. no guards had been present in the corridor and the officers in charge had thus “seriously breached” various rules on the supervision of detainees (see paragraph 10 above). It further notes that during the interview of 5 January 2011 according to the uncontested submission by the applicant, his brother complained to G. about pressure exerted on him by the police to make him confess, including the threat that they would arrange for him to be raped by other inmates (see paragraph 8 above). The autopsy report dating from 6 January 2011 described scratches on both forearms, a bruise on the right calf dating back to between one and three days prior to SL’s death (see

paragraph 9 above). Though the Investigative Committee of Russia concluded that the injuries detected on his body during the autopsy had resulted from the proportionate use of physical force during the arrest on 4 January 2011, no such reports regarding the use of force in respect of SL were filed by the officers in the aftermath of the arrest (see paragraph 5 above) and the officer who examined SL upon his admission to the detention centre reported no trace of injuries on his body (see paragraph 6 above).

45. The Court reiterates that the applicable standard of proof under Article 2 is that of “beyond reasonable doubt”. Whilst it recognises that some of the circumstances of the case were suspicious, in the instant case the Court finds insufficient evidence in support of the hypothesis of the intentional taking of SL’s life or SL having been forced to commit suicide by the authorities. Even despite the numerous defects in the overall quality of the investigation (see paragraphs 38-41 above) and, in particular, the authorities’ failure to elucidate the exact role of Ch. in the events of 6 January 2011 (see paragraph 40 above), the Court does not discern sufficiently strong, clear and concordant inferences allowing it to conclude that the applicant’s brother died at the hands of State officials.

46. However, this finding does not absolve the respondent State of responsibility for SL’s death. It is incumbent on the Court to ascertain whether the authorities knew or ought to have known that there was a real and immediate risk of his committing suicide and, if so, whether they did all that could reasonably have been expected of them to guard against that risk (compare *Trapeznikova and Others*, cited above, § 40).

47. The Court notes that the officials of the detention centre were aware of SL’s unstable psychological condition, as witnessed by S., an officer on duty during SL’s admission to the detention centre, who conceded to having knowledge of SL’s susceptibility “to suicidal behaviour” and being aware of the detention centre’s duty of care in this connection (see paragraph 26 above). A similar statement was given by SL’s inmate Ch., an undercover police agent (see paragraphs 7 and 11 above), who mentioned that before the incident the former had refused to eat and had felt low. In such circumstances and leaving aside SL’s exact psychological state, which the authorities failed to examine during the domestic inquiry, the Court considers that the authorities knew or ought to have known about the risk to SL’s life.

48. In view of the admissions contained in the relevant domestic decisions regarding the absence of any proper supervision in the detention centre on that night (see paragraphs 10, 12 and 27 above), the Court finds that there was a clear failure on the part of the authorities to respond in a reasonable way to the known risk to SL’s life.

49. There has accordingly been a violation of Article 2 of the Convention under its substantive limb on account of the authorities' failure to safeguard SL's right to life.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicant claimed compensation in respect of non-pecuniary damage in connection with the alleged violations of Article 2 of the Convention, leaving the determination of the amount of just satisfaction to the discretion of the Court.

52. The Government disputed the applicant's claims.

53. The Court considers that the applicant must have suffered anguish and distress as a result of the circumstances of his relative's death and his inability to obtain an effective investigation into the matter. In those circumstances, the Court finds it reasonable to award the applicant 23,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

54. The applicant also claimed EUR 3,814 for the costs and expenses incurred before the domestic courts and the Court. In particular, he claimed EUR 119 for the lawyer's fee in the domestic proceedings, EUR 72 for postal expenses, photocopying and international phone calls, EUR 92 for translation expenses and EUR 3,532 for the legal fees incurred in the proceedings before the Court.

55. The Government submitted that the expenses were excessive and, in any event, unnecessary. In addition, they claimed that the applicant had not actually paid the lawyer's fee for the Strasbourg proceedings.

56. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession, the above criteria, the Court considers it reasonable to award the sum of EUR 3,430 covering costs under all heads, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

57. 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 on account of the authorities' failure to conduct an effective investigation into Mr Sergey Laptev's death;
3. *Holds* that there has been a violation of Article 2 of the Convention under its substantive limb on account of the State's failure to safeguard Mr Sergey Laptev's right to life;
4. *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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 23,000 (twenty-three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 3,430 (three thousand four hundred and thirty euros) plus any tax that may be chargeable to the applicant, 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 February 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Paul Lemmens
President