

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

THIRD SECTION

CASE OF LESNYKH v. RUSSIA

(Application no. 1609/13)

JUDGMENT

STRASBOURG

6 July 2021

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



In the case of Lesnykh v. Russia,

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

Darian Pavli, *President,*
Dmitry Dedov,
Peeter Roosma, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 1609/13) 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 two Russian nationals, Ms Nataliya Guramovna Lesnykh and Mr Sergey Ivanovich Lesnykh ("the applicants"), on 7 November 2012;

the decision to give notice to the Russian Government ("the Government") of the complaints concerning the failure properly to investigate the death of Mrs D.G., the applicants' daughter;

the parties' observations;

Having deliberated in private on 15 June 2021,

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

INTRODUCTION

1. The present case concerns the applicants' complaints under the procedural aspect of Article 2 of the Convention about the lack of an effective investigation into the death of their daughter who was found hanged in the yard of her own house.

THE FACTS

2. The applicants, Ms Nataliya Guramovna Lesnykh and Mr Sergey Ivanovich Lesnykh, are Russian nationals, who were both born in 1957 and live in the village of Pereleshinskiy of the Voronezh Region.

3. The Government were represented by Mr M. Galperin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr A. Fedorov.

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

I. BACKGROUND INFORMATION

5. The applicants are the parents of Mrs D.G., born in 1988, who died as a result of the events described below. Prior to her death Mrs D.G. was married to Mr S.G. with whom she had a daughter. The family resided together in a house.

6. Mr S.G. was unemployed and in May 2009 he was investigated by the police on suspicion of participation in a gang rape. The case was apparently later dropped.

II. EVENTS OF 12 JUNE 2009

7. On 12 June 2009 the Anninskiy Interdistrict Investigative Department of the Investigative Committee of the Voronezh Region was informed over the phone that at around 1.30 a.m. Mrs D.G. had been found hanged in the yard of her house.

8. On the same day the authorities examined and described the scene of the accident, having made photographs and seized the corpse and the rope on which it had hanged. They also identified the circle of possible witnesses, among them the victim's husband, members of the extended family, other relatives and neighbours. The authorities also found hand-written notes by Mrs D.G., in which she had complained about her husband and, among other things, threatened to divorce him.

III. PRE-INVESTIGATION INQUIRY PROCEEDINGS

A. First round of pre-investigation inquiry

9. The authorities acted within the framework of pre-investigation inquiry.

10. In a statement dated 12 June 2009 Mr I.L., the brother of Mrs D.G., described her sister's family situation as "difficult" and mentioned that Mr S.G. on multiple occasions had been violent to his sister, that he himself had witnessed some of the resulting injuries. He also stated on 13 and 14 May 2009 that he had witnessed a conversation between her sister and her husband in which the latter threatened "to kill her", whereas his sister in turn threatened to commit suicide.

11. In a statement dated 12 June 2009 Mrs O.Ye., a sister of Mrs D.G., described a few episodes during which Mr S.G. had been violent towards Mrs D.G. and also stated that the latter had discussed the possibility of committing suicide.

12. In a statement dated 14 June 2009 Ms T.L., another sister of Mrs D.G., gave essentially similar statements, without mentioning anything on the latter's allegedly suicidal thoughts.

13. In respective statements dated 14 June 2009 the second applicant confirmed multiple instances of domestic violence, whereas the first applicant also mentioned witnessing a conflict between her daughter and the husband prior to the suicide.

14. In a statement dated 16 June 2009 Mr S.G. admitted to having used violence in respect of his wife and also mentioned the Mrs D.G. had had

suicidal thoughts. The authorities did not put any detailed questions to Mr S.G. about the episodes of domestic violence.

15. The body was examined by a forensic expert between 13 and 27 June 2009, who issued a report establishing that Mrs D.G. had died as a result of hanging, that there was a strangulation line on the neck, that there was a fresh bruise on the right knee and that there were four old scars on the left forearm, as well as signs of alcohol intoxication in the blood.

16. From the case-file it does not appear that Mr S.G. or his clothes were ever examined by a doctor or a forensic expert after the discovery of Mrs D.G.'s body. It also appears that the mobile phone of the victim was never located and examined.

17. On 22 June 2009 the investigator took a decision not to bring criminal investigation into the events. The decision mentioned with reference to statements of multiple witnesses that there had been instances of domestic violence in the family, that at least on one occasion, on 11 September 2008, Mrs D.G. had applied for medical help in a district emergency service and that this information had been forwarded to the police. The investigator decided that the mentioned violence had taken place in the past, that it was unrelated to the suicide and closed the case accordingly.

B. Subsequent rounds of pre-investigation inquiry

18. On 5 October 2009 the decision of 22 June 2009 was reviewed and quashed by the Regional Investigative Committee. The investigation was ordered, among other things, to establish in detail the events of the last day, to collect detailed witness statements regarding episodes of domestic violence, to give legal characterisation to the actions of Mr S.G. during the episodes of domestic violence as well as further to elucidate the circumstances of death of Mrs D.G.

19. Between 5 October 2009 and 28 November 2014 the pre-investigation inquiry was resumed and suspended on multiple occasions.

20. It appears that all of the decisions to refuse to bring criminal investigation mentioned different episodes of Mrs D.G.'s ill-treatment by her husband, that Mrs D.G. had left the husband and had come back many times, that Mrs D.G. had had an abortion some time prior to the events, after which she became depressed and that on the day before the spouses had not had an argument or fight. All decisions insisted on the lack of connection between the violent episodes and Mrs D.G.'s suicide.

21. An expert examination conducted between 14 September 2011 and 9 April 2012 in respect of Mrs D.G.'s mental condition concluded that the deceased had not had psychiatric issues prior to death. With reference to

witness statements, the same report pointed at Mrs D.G.'s vulnerability, apathy and depression prior to her death.

22. The numerous decisions to quash the decisions to refuse to bring criminal investigation into the death of Mrs D.G., taken in reply to the applicants' appeals, including appeals in court, referred to poor quality and insufficient scope of the previous inquiries.

C. Criminal investigation into the events of 12 June 2009

1. First round of criminal investigation

23. On 10 November 2014 the authorities (the Voronezh Regional Branch of the Investigative Committee) decided to open criminal investigation in respect of the events surrounding Mrs D.G.'s death. In November 2014 the case was assigned to the Panninskiy District Branch of the Investigative Committee. On 28 November 2014 the applicants were recognised as victims within the framework of the investigation.

24. The investigator proceeded to conduct interviews of the witnesses. The investigator also ordered additional expert examinations in respect of the body of Mrs D.G., her hand-written notes as well as her mental condition prior to death. The authorities received in response expert reports with essentially the same conclusions as previously.

25. On 1 December 2014 the investigator interviewed Mr S.G., who at this time was held in remand prison on robbery charges.

26. By letter of 9 December 2014 the Forensic Centre of the Ministry of Justice in the Voronezh Region informed the investigation that it was impossible to date Mrs D.G.'s hand-written notes.

27. On 12 January 2015, after multiple additional interviews of various witnesses, the criminal investigation was discontinued for the lack of evidence of any crime.

2. Subsequent rounds of criminal investigation

28. On 27 February 2015 the decision of 12 January 2015 was quashed and the investigation resumed. The criminal investigation was then repeatedly discontinued and resumed (the latest decision dating 22 June 2016) with essentially the same reasoning as previously. In one of the decisions the authorities admitted to having failed to locate and examine the victim's mobile phone during the proceedings.

29. On 4 December 2020 the first applicant informed the Court that on 12 July 2016 the second applicant had died.

THE LAW

I. PRELIMINARY ISSUE

30. The Court at the outset notes that the second applicant, Mr Sergey Ivanovich Lesnykh, died after lodging the application and that his wife (the first applicant) has expressed her wish to continue the proceedings before the Court. The Government did not dispute the first applicant's standing to pursue the application in the second applicant's stead.

31. The Court accepts that the first applicant has a legitimate interest in pursuing the application in her late husband's stead. However, for reasons of convenience, the text of this judgment will continue to refer to Mr Sergey Ivanovich Lesnykh as "the second applicant", even though only the first applicant is today to be regarded as having the status of applicant before the Court (see *Mammadov and Others v. Azerbaijan*, no. 35432/07, §§ 79-80, 21 February 2019).

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

32. The applicants complained that the authorities failed to conduct an effective investigation of death of their daughter Mrs D.G., as required by Article 2 of the Convention, which reads as follows:

Article 2

"Everyone's right to life shall be protected by law."

33. The applicants maintained that the authorities had failed to carry out a proper criminal investigation and that the family had limited access to the case-file.

34. The Government argued that the domestic authorities had taken all the procedural actions necessary in order to investigate the case effectively. They admitted that there had been a delay with the institution of criminal investigation, but argued that in other respects the investigation had been conducted in compliance with the domestic law. The applicants had had sufficient access to the case file and had been able effectively to participate in the proceedings.

A. Admissibility

35. 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

36. The general principles concerning the State's obligation inherent in Article 2 of the Convention to investigate cases where there has been a deprivation of life caused by private individuals have been summarised in the case of *Mazepa and Others v. Russia* (no. 15086/07, §§ 69-70, 17 July 2018).

37. At the outset the Court observes that Mrs D.G. died in suspicious circumstances, as various witnesses suggested that Mr S.G. had been violent towards her and threatened and harassed her on multiple occasions (see paragraphs 10, 11, 12, 13 and 14 above). The authorities were therefore under an obligation to investigate the circumstances of Mrs D.G.'s death of strangulation. It was essential, in particular, to examine Mr S.G.'s behaviour and his interaction with Mrs D.G. during the days immediately preceding the incident and also to scrutinize the alleged episodes of domestic violence pointed at by various family members and a possible connection of such violence to Mrs D.G.'s death.

38. The Court notes that between 12 June 2009 and 10 November 2014 the authorities had conducted multiple preliminary inquiries into the incident, which ended each time with a decision refusing to bring criminal investigation (see paragraphs 17, 18, 19 and 22 above). Each of those decisions was later quashed due to poor quality of the inquiries. A fully fledged criminal investigation was instituted only on the latter date, that is five and a half years after the events (see paragraphs 23 above).

39. The Court also recalls that it has previously ruled in many Russian cases that a "pre-investigation inquiry" alone was not being capable of meeting the requirements of an effective investigation under Article 2 of the Convention. That preliminary stage has too restricted a scope and cannot lead to the trial and punishment of the perpetrator, since the opening of a criminal case and a criminal investigation are prerequisites for bringing charges that may then be examined by a court (see *Ilgiz Khalikov v. Russia*, no. 48724/15, § 35, 15 January 2019, with further references, and *Dalakov v. Russia*, no. 35152/09, § 71, 16 February 2016).

40. The Court further reiterates that the protracted nature of proceedings is a strong indication that they were defective to the point of constituting a violation of the respondent State's positive obligations under the Convention, unless the State has provided highly convincing and plausible reasons to justify the length of the proceedings (see *Mazepa and Others*, cited above, § 80).

41. Having observed the time-line of the proceedings and various decisions adopted by the investigative authorities, the Court finds no reasons which could justify the delays and further notes that the conduct of the proceedings was tainted with a number of shortcomings, which had a serious negative impact on the overall effectiveness of the procedure.

42. Having conducted initial interviews with witnesses and discovering the allegations of domestic abuse, the investigation clearly failed to react appropriately and follow up on this information to uncover all relevant details relating to ill-treatment. This is even more so, as Mr S.G. himself apparently had not denied the facts (see paragraph 14 above).

43. It appears that the authorities were unwilling to consider the alleged domestic violence as anything other than a "private" or "family" matter, separate and unrelated to the death of Mrs D.G. In the Court's view, such reluctance should be seen in the context of the systemic deficiencies in the Russian legal framework, which, as the Court has previously ruled, failed to define domestic violence, whether as a separate offence or an aggravating element of other offences, and established a minimum threshold of gravity of injuries required for launching public prosecution (see *Volodina v. Russia*, no. 41261/17, §§ 78-85, 9 July 2019). Given that one of key aspects of the case was a possible connection between the domestic violence in respect of Mrs D.G. and her death, these systemic deficiencies and the resulting reluctant behaviour of the investigation adversely affected its capacity to ascertain the circumstances in which the incident took place.

44. Furthermore, the authorities never reconstructed the events immediately preceding the latter's death, because of their failure to have Mr S.G. and his personal belongings examined by a doctor or a forensic expert during the first few days after the incident (see paragraph 16 above). Also, the investigation failed to examine the origin of a bruise on the right knee of the deceased (see paragraph 15 above) and to locate the victim's mobile phone and examine its contents (see paragraphs 16 and 28 above).

45. These shortcomings, coupled with subsequent decisions to suspend the proceedings and the resulting delays, seriously complicated or possibly even compromised all subsequent efforts of the investigation.

46. Lastly, the Court notes with regret that the applicants' access to the criminal investigation was seriously and unjustifiably curtailed, as the applicants were officially recognized as victims only in November 2014 (see paragraph 23 above).

47. Regard having been had to the considerations set out in the preceding paragraphs, the Court takes the view that the requirements of the procedural aspect of Article 2 of the Convention were not met in the present case, which suffices for it to conclude that the investigation in the case was not in compliance with the requirements of Article 2 of the Convention. There has accordingly been a violation of the procedural limb of Article 2 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. The applicants claimed 1,000,000 euros (EUR) in respect of non-pecuniary damage.

50. The Government considered that amount to be excessive.

51. The Court observes that the prolonged failure of the authorities to give satisfactory answers to the questions raised by Mrs D.G.'s death must have caused the applicants acute mental suffering. At the same time, the Court's findings under Article 2 of the Convention in the present case are of a procedural nature. In the light of all the material in its possession and making its assessment on an equitable basis, the Court awards the first applicant EUR 20,000 on account of non-pecuniary damage, plus any tax that may be charged on this amount.

B. Costs and expenses

52. The applicants claimed EUR 5,000 in respect of costs and expenses, including legal fees. They did not submit any documents or an itemised schedule in support of their claims.

53. The Government considered these claims excessive and not duly justified.

54. 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 have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the applicants' claims and the above criteria, the Court rejects the claims for costs and expenses as unsubstantiated.

C. Default interest

55. 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

1. *Holds* that the first applicant has standing to pursue the application in the second applicant's stead;

2. *Declares* the complaints concerning the shortcomings of the criminal investigation into the death of Mrs D.G. admissible;

3. *Holds* that there has been a violation of Article 2 of the Convention under its procedural limb;

4. *Holds*
   (a) that the respondent State is to pay the first applicant, within three months, EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 6 July 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova	Darian Pavli
Deputy Registrar	President