

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

THIRD SECTION

CASE OF LOZOVYYE v. RUSSIA

(Application no. 4587/09)

JUDGMENT

STRASBOURG

24 April 2018

FINAL

24/07/2018

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Lozovyye v. Russia,

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

Helena Jäderblom, *President,*
Branko Lubarda,
Helen Keller,
Dmitry Dedov,
Pere Pastor Vilanova,
Georgios A. Serghides,
Jolien Schukking, *judges,*

and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 14 November 2017 and 3 April 2018,

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

PROCEDURE

1. The case originated in an application (no. 4587/09) 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, Mr Andrey Mikhaylovich Lozovoy and Ms Tamara Vasilyevna Lozovaya ("the applicants"), on 10 November 2008.

2. 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. The applicants complained about the domestic authorities' failure to notify them of their son's death.

4. On 8 June 2010 the application was communicated to the Government. The parties submitted written observations on the admissibility and merits.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are Russian nationals who were born in 1952 and 1954 respectively and live in the town of Belomorsk in the Republic of Karelia.

A. The applicants' son's death and criminal proceedings on a murder charge

6. On 1 December 2005 the applicants' son, Mr M. Lozovoy, was killed in St Petersburg. Criminal proceedings were instituted against a Mr O. on a charge of murder.

7. On 18 January 2006 Ms L., an investigator of the Primorskiy district prosecutor's office in St Petersburg, asked the head of the Primorskiy district police to identify relatives of the deceased; to establish their place of residence and to summon them to the prosecutor's office for the purpose of granting them victim status in the criminal case.

8. A week later the applicants' son was buried under his full name in St Petersburg. A record in a cemetery registration log indicated that the body had been unclaimed.

9. On 30 January 2006 the investigator, having concluded that it was impossible to identify relatives of the deceased, assigned the status of victim in the criminal case to a representative of the municipal authorities. The following day police officials informed the investigator that operative measures undertaken by them to identify Mr M. Lozovoy's relatives had not produced any results.

10. On 2 February 2006 the applicants contacted Ms L. and informed her of their intention to come to St Petersburg to take part in the criminal proceedings.

11. Despite that notification by the applicants, five days later Ms L. sent the criminal case file to the Primorskiy District Court for trial.

12. Sometime later the applicants were invited to take part in the criminal proceedings in the capacity of victims.

13. On 14 February 2006 the applicants were allowed to exhume their son's remains. Two days later they buried him in Belomorsk.

14. On 6 June 2006 the Primorskiy District Court found Mr O. guilty of having murdered the applicants' son and sentenced him to six years' imprisonment.

15. On the same day, responding to the applicants' complaints about the authorities' failure to notify them of their son's death, the District Court issued an interim decision (*частное постановление*) in respect of the investigator, Ms L. The decision, sent to the Primorskiy District Prosecutor, in so far as relevant, reads as follows:

> "Moreover, the [finding] that the investigator, Ms L., did not take sufficient steps to find relatives of the deceased and that measures undertaken [by her] were formalistic in character is not only confirmed by the fact that the decision assigning victim status to [a representative of the municipal authority] had been taken before the information was received from the police officials, but also by the fact that the criminal case-file material contained sufficient information about [the applicants' son] on the basis of which it was possible to establish the place of residence of his relatives ([there was] an explanation from Mr O. made on 1 December 2005, in which he had given

information about the place of residence of [the applicants' son]; a statement made by Mr O. on 8 December 2005 in which he said that a criminal case against [the applicants' son] was pending before a court; statements by a witness, Ms A., who asserted that [the deceased's] mother had occasionally made telephone calls to [the deceased's] flat; a certificate on [the deceased's] criminal record from which it is apparent that the Primorskiy district prosecutor's office of St Petersburg applied a measure of restraint in the form of a written undertaking in respect of [the applicants' son] in criminal case no. 137755; the material in the above-mentioned criminal case file contains a copy of [the applicants' son's] passport; and so forth).

It follows that the victims' rights envisaged by the law in force were substantially violated in the course of the preliminary investigation.

Relying on Article 29 § 4 of the Russian Code of Criminal Procedure, [the court] rules:

- that the violations of criminal procedural law committed during the preliminary investigation in the criminal case should be brought to the attention of the Primorskiy district prosecutor in St Petersburg;
- that the Primorskiy District Court of St Petersburg should be informed of the measures taken no later than a month after receipt of the present decision."

B. Proceedings for compensation for damage

16. In 2007 the applicants lodged an action against the Prosecutor General's Office and the Ministry of Finance, seeking compensation for pecuniary and non-pecuniary damage. Relying on the Primorskiy District Court's interim decision of 6 June 2006, the applicants argued that as a result of the investigator's failure to promptly notify them of their son's death, they had sustained pecuniary damage, having been forced to pay for the exhumation and transport of their son's remains from St Petersburg to Belomorsk. In addition, they had suffered non-pecuniary damage as they had been unaware of their son's whereabouts for a long time and had been forced to initiate a search for him; they had been unable to properly say "goodbye" to their son and to provide him with a decent burial; they had been forced to go through a two-week bureaucratic procedure to obtain permission to exhume their son's remains; and subsequently, after the exhumation, they had been forced to identify his disfigured remains.

17. On 5 February 2008 the Tverskoy District Court of Moscow dismissed the claim, having found that the investigator had not committed any unlawful actions and there had been no final decision by any domestic court establishing otherwise.

18. On 20 May 2008 the Moscow City Court upheld the judgment, endorsing the District Court's reasoning.

II. RELEVANT DOMESTIC LAW

A. Russian Code of Criminal Procedure ("the CCrP")

19. The CCrP, as in force at the material time, did not impose an explicit obligation on the domestic authorities to notify relatives of the death of an individual who had died as a result of a criminal act. However, as was apparent from other provisions of the CCrP, the identification of relatives was necessary in most cases of violent death, as relatives fulfilled the procedural role of victim in the deceased's stead.

20. Article 5 of the CCrP defined "close relatives" as spouses, parents, children, adoptive parents, adopted children, brothers and sisters, grandparents and grandchildren.

21. Article 42 § 1 of the CCrP defined a "victim" as a physical person who had sustained physical, pecuniary or non-pecuniary damage as a result of a criminal offence. The decision to recognise an individual as a victim could be made by an examiner, an investigator, a prosecutor or a court.

22. Article 42 § 8 of the CCrP provided that in cases concerning crimes which resulted in the death of a person, the victim's rights should be transferred to one of his or her close relatives.

23. As regards the procedural powers of a trial court in a criminal case, Article 29 § 4 of the CCrP provided that should the trial of a criminal case reveal circumstances facilitating the commission of an offence or a violation of citizens' rights and freedoms, a court could render an interim decision drawing the attention of appropriate organisations and officials to such circumstances or violations of the law which required adequate measures to be taken.

B. Burial and Funeral Affairs Act

24. The Burial and Funeral Affairs Act (Federal Law no. 8-FZ of 12 January 1996 – *Федеральный закон от 12.01.1996 № 8-ФЗ «О погребении и похоронном деле»*) regulated the organisation of funeral rites in Russia at the time in question.

25. Section 12(1) of the Act provided that where there was no spouse, relative or lawful representative or where he or she was unable to make the necessary funeral arrangements, the burial of a deceased was to be performed by a special funeral agency within three days of the determination of the cause of death.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

26. The applicants complained under Articles 6 and 13 of the Convention of the authorities' failure to duly notify them of their son's death, as a result of which they had been left in a state of ignorance of their son's whereabouts for a very long time and stripped of an opportunity to give their son a proper burial.

27. Being the master of the characterisation to be given in law to the facts of the case (see *Bouyid v. Belgium* [GC], no. 23380/09, § 55, ECHR 2015), the Court finds it appropriate to examine the applicants' allegations under Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The parties' submissions

28. The Government submitted that the authorities had acted diligently and had made reasonable efforts to locate Mr M. Lozovoy's relatives. Once the search had proven fruitless, they had organised his funeral. The applicants, for their part, had failed to maintain regular contact with their son and had only started searching for him two months after his death.

29. The applicants maintained their initial complaint. With reference to the interim decision issued by the Primorskiy District Court (see paragraph 15 above) they argued that the authorities had had sufficient information to establish that Mr M. Lozovoy was their son and that they could thus have informed them of his death.

B. The Court's assessment

1. Admissibility

30. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) Applicability of Article 8 of the Convention

31. The Government did not contest the applicability of Article 8 of the Convention.

32. The Court reiterates that the right of access to information relating to one's private and/or family life raises an issue under Article 8 of the Convention (see, among other authorities, *Roche v. the United Kingdom* [GC], no. 32555/96, §§ 155-56, ECHR 2005-X; *Guerra and Others v. Italy*, 19 February 1998, §§ 57-60, *Reports of Judgments and Decisions* 1998-I; and *Gaskin v. the United Kingdom*, 7 July 1989, § 37, Series A no. 160).

33. The Court further notes that various aspects of funeral rites fall within the scope of both "private life" and "family life" within the meaning of Article 8 of the Convention (see, for example, *Maskhadova and Others v. Russia*, no. 18071/05, § 212, 6 June 2013; *Sabanchiyeva and Others v. Russia*, no. 38450/05, § 123, ECHR 2013 (extracts); and *Hadri-Vionnet v. Switzerland*, no. 55525/00, § 52, 14 February 2008).

34. The applicants in the present case argued that they had not been properly notified of their son's death and thus had been deprived of an opportunity to take part in his funeral. In the light of its case-law on an applicant's right to information concerning his or her private and family life, taken together with the case-law on the applicability of Article 8 to an individual's ability to attend the funeral of a deceased member of the family, the Court considers that the applicants' right to respect for their private and family lives was affected by the failure of the State to inform them, or even to take steps to inform them, of the death before their son was buried.

35. The Court therefore concludes that Article 8 of the Convention is applicable in the present case.

(b) Compliance with Article 8 of the Convention

36. The Court reiterates that although the object of Article 8 is essentially that of protecting an individual against an arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference. In addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private and family life (see *Bédat v. Switzerland* [GC], no. 56925/08, § 73, ECHR 2016). In choosing how to comply with their positive obligations, States enjoy a broad margin of appreciation (see *A, B and C v. Ireland* [GC], no. 25579/05, § 249, ECHR 2010).

37. The substance of the applicants' complaint is not that the State acted in a certain way but that it failed to act (see *Airey v. Ireland*, 9 October 1979, § 32, Series A no. 32). In particular, the applicants alleged that the authorities' failure to notify them of their son's death had violated their

rights guaranteed by Article 8 of the Convention, including their right to give their son a proper burial. The Court finds it appropriate to approach the present case from the perspective of a positive obligation of the respondent State under Article 8 of the Convention.

38. The Court therefore takes the view that in situations such as the one in the present case, where the State authorities, but not other family members, are aware of a death, there is an obligation for the relevant authorities to at least undertake reasonable steps to ensure that surviving members of the family are informed.

39. In order to establish whether the requirements of Article 8 of the Convention were met in the present case the Court will examine, firstly, whether there was an appropriate legal framework in Russia capable of properly addressing situations akin to the one at hand and, secondly, whether the authorities undertook reasonable steps to locate the applicants and notify them of their son's death.

40. As regards the legal framework and practice, the Court observes that there was no explicit obligation on the domestic authorities under Russian law to notify relatives of an individual who had died as a result of a criminal act. It is true that Article 42 § 8 of the CCrP (see paragraph 22 above) imposed a certain obligation on the authorities to search for relatives of the deceased in a criminal case in that it assigned them the status of victim. Further, section 12(1) of the Burial and Funeral Affairs Act stipulated that the burial of a deceased was only to be performed within three days of determination of the cause of death if there was no spouse, relative or lawful representative able to make the necessary funeral arrangements (see paragraph 25 above).

41. On the other hand, in finding in its interim decision of 6 June 2006 that the investigator, Ms L., had breached procedural law, the Primorskiy District Court made no reference to any particular provision of the CCrP or any other piece of legislation (see paragraph 15 above). Nor did the Government refer in their observations to any particular provision of domestic law or practice.

42. Nonetheless, in the Court's view this lack of clarity with regard to the domestic legal framework and practice is not sufficient in itself to find a violation of the respondent State's positive obligations under Article 8 of the Convention in the present case.

43. The Court will therefore next examine whether the Russian authorities undertook reasonable steps in the circumstances.

44. It is apparent from the interim decision of 6 June 2006 (see paragraph 15 above) that there were several avenues which the authorities could have used to establish that the applicants were Mr M. Lozovoy's parents. The District Court listed a number of documents and items of evidence which could have readily supplied the authorities with the necessary information to locate the applicants (call records;

Mr M. Lozovoy's acquaintances; his official documents attached to the criminal case file, and so on). The Government submitted no explanations as to why those avenues had not been used by the investigator or the police.

45. The Court notes that the decisions to bury the applicants' son and to assign the status of victim in the criminal case to a representative of the municipal authorities was made before the search for his relatives had officially ended (see paragraphs 8 and 9 above).

46. In these circumstances and given the personal information about Mr M. Lozovoy that was available to the domestic authorities after his death, the Court concludes that the authorities did not act with reasonable diligence and therefore did not comply with their positive obligation in the present case.

47. There has accordingly been a violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

48. The applicants complained under Articles 6 § 1 and 13 of the Convention of difficulties in having access to and about the outcome of the civil proceedings for compensation for the damage sustained. The Court finds it appropriate to examine these complaints under Article 6 § 1 of the Convention alone.

49. The Court has examined these complaints and considers that, in the light of all the material in its possession and in so far as the matter complained of is within its competence, they either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

50. It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicants each claimed 10,000 euros (EUR) in respect of non-pecuniary damage. They also claimed 37,049 Russian roubles (RUB) in

respect of pecuniary damage, referring to expenses linked to the exhumation and reinternment of their son's body.

53. The Government contested the applicants' claim in respect of non-pecuniary damage as excessive and ill-founded. As regards the claim in respect of pecuniary damage, they submitted that the amount could be awarded for "humanitarian considerations".

54. The Court considers that the applicants must have suffered non-pecuniary damage on account of the violation found, and awards them jointly, on an equitable basis, EUR 10,000 under this head. As concerns their claim in respect of pecuniary damage, the Court accepts the claim in full and awards the applicants EUR 539.

B. Costs and expenses

55. The applicants also claimed RUB 25,687 for the costs and expenses incurred before the domestic courts in the tort proceedings.

56. The Government contested the applicants' claim.

57. 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 documents in its possession and the above criteria, the Court considers it reasonable to grant the applicants' claims in full and to award them the sum of EUR 374 for costs and expenses in the domestic proceedings.

C. Default interest

58. 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 complaint that the authorities failed to properly notify them of their son's death admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicants, jointly, 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 Russian roubles at the rate applicable at the date of settlement:

(i) EUR 539 (five hundred and thirty-nine euros), plus any tax that may be chargeable to them, in respect of pecuniary damage;

(ii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable to them, in respect of non-pecuniary damage;

(iii) EUR 374 (three hundred and seventy-four euros), plus any tax that may be chargeable to the applicants, 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.

Done in English, and notified in writing on 24 April 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Helena Jäderblom
President