

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

THIRD SECTION

CASE OF MIRONOVA v. RUSSIA

(Application no. 47784/14)

JUDGMENT

STRASBOURG

2 November 2021

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



In the case of Mironova v. Russia,

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

Peeter Roosma, *President,*
Dmitry Dedov,
Andreas Zünd, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 47784/14) 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 Valentina Ivanovna Mironova ("the applicant"), on 15 June 2014;

the decision to give notice to the Russian Government ("the Government") of the application;

the parties' observations;

Having deliberated in private on 5 October 2021,

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

INTRODUCTION

1. The application concerns the alleged lack of an adequate judicial response to a lethal car accident as a result of which the applicant lost her son.

THE FACTS

2. The applicant, Ms Valentina Ivanovna Mironova, is a Russian national, who was born in 1963 and lives in Tolmachevo, a village in the Leningrad Region. She is the mother of Mr A.M., who died in 2010 in a road traffic accident.

3. The Government were represented by Mr G. Matyushkin, the then Representative of the Russian Federation to the European Court of Human Rights, and lately by Mr M. Vinogradov, his successor in that office.

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

I. THE EVENTS OF 21 MARCH 2010

5. Early in the morning on 21 March 2010 the applicant's son was travelling in a car with his friends Sh. and L. on a remote road in the Leningrad Region when it collided head-on with another car. The applicant's son died on the spot, whilst L. passed away in a hospital three

days later. The car in which he was travelling belonged to Sh. and the other car involved in the collision belonged to F.

6. On the same date investigating authorities inspected the scene of the accident. They asked Sh.'s mother to store the two damaged cars involved in the accident until the end of the investigation. It does not appear that Sh.'s mother was properly notified about her obligation not to dispose of the car.

II. SUBSEQUENT PROCEEDINGS

7. Three days after the accident, on 24 March 2010 the investigating authorities instituted criminal proceedings against Sh. on suspicion of unintentional homicide. The applicant was granted victim status in those proceedings.

8. On 8 April 2010 Sh. was interviewed for the first time.

9. On 22 April 2010 F. was interviewed for the first time.

10. In May 2010 the investigator learned that Sh. had sold his car to a third party for parts. It appears that eventually some of the remaining bits of the car were located at a scrapyard.

11. On 9 June 2010 an expert of the forensic bureau of the Ministry of the Interior (the St Petersburg Branch) issued a report regarding the accident of 21 March 2010. The report was based on the case-file materials and addressed various questions posed by the investigator regarding the factual circumstances of the accident, the speed with which the two cars moved prior to collision and the compliance of both drivers with road traffic rules. The report pointed out that it was a head-on collision but noted that during the scene inspection the investigation had failed to note the traces of tires of the two vehicles prior to collision, which made it impossible to determine the trajectory of movement as well as the speed. Based on the above, the report noted that it was impossible to establish the degree of responsibility of each driver for the accident. The report also noted the need to examine the damaged cars.

12. On 24 September 2010 the investigator discontinued the criminal proceedings against Sh. for lack of *corpus delicti.* The decision was largely based on the witness statements of the survivors of the accident who insisted that their side had been innocent and the report of 9 June 2010.

13. On several subsequent occasions, the investigator in charge of the case discontinued the criminal proceedings. These decisions were later overruled by the prosecutor and the proceedings were reopened.

14. On 26 April 2012 the investigator discontinued the criminal proceedings against Sh., having found no *corpus delicti* in his actions. The decision pointed out at its inability to establish the circumstances of the case in their entirety due to the loss of objective evidence. The decision was accordingly based on witness statements which were clearly insufficient to

indict any of the two drivers. A copy of the decision to discontinue the case was sent to the applicant.

15. In December 2012 the applicant challenged the decision of 26 April 2012 in court.

16. On 15 February 2013 the Luzhskoy Town Court of the Leningrad Region dismissed her complaint as unsubstantiated.

17. On 11 April 2013 the Leningrad Regional Court ("the Regional Court") dismissed an appeal by the applicant against the lower court's decision of 15 February 2013, largely ignoring the arguments about the poor quality of investigation.

18. The applicant lodged a cassation appeal with the Presidium of the Regional Court, asking it to quash the decision of 15 February 2013 as upheld on 11 April 2013.

19. On 3 July 2013 a judge of the Regional Court refused to refer the case for consideration by the Presidium of that court.

20. The applicant lodged a fresh cassation appeal against the decision of 15 February 2013 as upheld on 11 April 2013 with the Supreme Court of the Russian Federation.

21. On 2 April 2014 a judge of the Supreme Court refused to refer the case for consideration by the Civil Chamber of the Supreme Court.

22. It appears that the applicant did not bring any civil proceedings against Sh. or F.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

23. The applicant complained that the investigation conducted by the authorities in respect of the death of her son had been defective, in breach of Article 2 of the Convention, which reads as follows:

> "1. Everyone's right to life shall be protected by law ..."

A. Admissibility

24. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

25. The applicant maintained her complaints.

26. The Government disagreed and argued that the investigation had been in compliance with the requirements of the procedural aspect of Article 2 of the Convention.

27. The applicable legal principles have been summarised in *Nicolae Virgiliu Tănase v. Romania* [GC] (no. 41720/13, §§ 161-63, 25 June 2019). The Court reiterates that in cases concerning unintentional infliction of death and/or lives being put at risk unintentionally, the requirement to have in place an effective judicial system will be satisfied if the legal system affords victims (or their next-of-kin) a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts, enabling any responsibility to be established and any appropriate civil redress to be obtained. Where agents of the State or members of certain professions are involved, disciplinary measures may also be envisaged (see *Nicolae Virgiliu Tănase*, cited above, § 159).

28. Turning to the circumstances of the present case, the Court observes that there was nothing in the case-file to indicate that the applicant's son's death had resulted from an intentional act. It further notes that even though Russian law offers victims of negligent conduct (or their next of kin) other remedies, such as, for example, the possibility of bringing a tort claim against the driver at fault (see *Kotelnikov v. Russia*, no. 45104/05, § 107, 12 July 2016), the respondent Government did not argue that the applicant had realistic prospects of success in civil courts and that she failed to avail herself of that remedy (see, for example, *Tikhomirova v. Russia*, no. 49626/07, § 29, 3 October 2017). The parties essentially disagreed in their assessment of the quality of the criminal proceedings with the applicant pointing at various shortcomings in the investigation which, according to her, made it virtually impossible to hold accountable those at fault, whilst the Government insisted that the quality had been acceptable.

29. Having examined the case file and the parties' submissions, the Court notes that the accident in question involved a head-on collision of two cars on a remote road at a late hour and that the police immediately became aware of the accident and examined the scene. Given the lack of eye-witnesses, it is clear that one of the key tasks for the official in charge of the inquiry at this point was to accurately collect the evidence which would later enable expert examinations of various technical aspects of the case with a view to attributing responsibility for the accident in any subsequent proceedings.

30. The Court finds that the investigation authorities obviously failed in that task, as their errors and omissions made it impossible to establish with certainty which of the two drivers may have been at fault for the collision (see paragraphs 11, 12, 14 and 17 above). This lack of professionalism is furthermore confirmed by a serious delay in interviewing the drivers (see paragraphs 8 and 9 above) and a surprising decision to give the damaged cars for storage to a party potentially at fault which lead to a further partial loss of evidence (see paragraphs 6 and 10 above).

31. The foregoing considerations are sufficient to enable the Court to conclude that the way the authorities handled this case compromised the

effectiveness of the domestic legal process as a whole. The respondent State therefore failed to comply with its procedural obligations under Article 2 of the Convention. Accordingly, there has been a violation of this provision of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant claimed an award at the Court's discretion in respect of non-pecuniary damage.

34. The Government considered that the award should be made in accordance with the Court's case-law.

35. In the light of all the material in its possession and making its assessment on an equitable basis, the Court awards the applicant 15,000 euros (EUR) on account of non-pecuniary damage, plus any tax that may be charged on this amount.

B. Costs and expenses

36. The applicant also claimed EUR 3,152, in respect of costs and expenses incurred before the domestic courts and the Court.

37. The Government considered this claim excessive.

38. 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 and the above criteria, the Court considers it reasonable to award the sum requested, plus any tax that may be chargeable on that amount.

C. Default interest

39. 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 the procedural aspect of Article 2 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement

(i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 3,152 (three thousand one hundred and fifty-two euros), plus any tax that may be chargeable, 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 2 November 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Peeter Roosma
President