



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

FIRST SECTION

Application no. 29951/09
Zoya Ivanovna AGARKOVA
against Russia
lodged on 26 February 2009

STATEMENT OF FACTS

The applicant, Ms Zoya Ivanovna Agarkova, is a Russian national who was born in 1945 and lives in Kaliningrad.

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

A. Death of the applicant's son and investigation thereof

On 17 January 2007 the applicant's son, Mr Pavel Agarkov, was taken to the Kaliningrad Emergency Hospital (*больница скорой медицинской помощи г. Калининграда*) with severe head trauma. Before lapsing into a coma, he told the applicant and friends that he had sustained his injuries at the hands of police officers from the Moskovskiy District Department of the Interior of Kaliningrad (*ОВД Московского района г. Калининграда*).

On 1 February 2007 the applicant's son died.

On 26 February 2007 the investigation department of Kaliningrad (*следственное управление СКП по г. Калининграду*) instituted criminal proceedings into the death of the applicant's son (criminal case no. 030292/07).

On 29 December 2007 the investigator discontinued the criminal proceedings, having established that on 17 January 2007 at about 5 a.m. the applicant, armed with a baseball bat, came to a certain V. and started a fight. In the course of the fight he hit the wall and the bat broke in two pieces. V. took the bigger piece that broke off and hit the applicant's son at least four times on the head thus causing him contused wounds of left frontal-parietal region, left parietal region and left frontal region of the head, contused wound and bruise of right frontal region, bruises of both ocular regions, haemorrhage in the soft tissues of the head, splintered fracture of left nasal bone, fracture of temporal process of left zygomatic bone, splintered

depressed fracture of left temporal and parietal bones, haemorrhages over and under the dura mater on the left, haemorrhage under the dura mater on the right, focal haemorrhages under the soft mater of left cerebral hemisphere, haemorrhages under the soft mater in the region of left frontal lobe hemisphere. The investigator arrived to the conclusion that the above injuries leading up to the death of the applicant's son two weeks later were inflicted by V. in the state of necessary defence. The decision was not supported by reference to any evidence.

On an unspecified date the above decision was quashed.

Subsequently, between 23 February 2008 and 29 August 2009 the criminal proceedings were on eight occasions discontinued and resumed. Three of the decisions, namely of 23 February, 23 May and 30 June 2008, repeated word by word the previous decision of 29 December 2007. The following five decisions, namely the decisions of 22 November 2008, 8 January, 20 February, 15 July and 29 August 2009, reaching the same conclusion, relied on:

- forensic medical report no. 39/696 of 23 April 2007 establishing that the death of the applicant's son was caused by an open blunt traumatic brain injury accompanied by contused head wounds and bruises, haemorrhages in the soft tissues of the head, fractures of the skull bones, haemorrhages above and under the maters, complicated by brain oedema and compression;

- statements by V. submitting that on 17 January 2007 he had a fight with the applicant's son and administered to the latter at least two blows on the head with a broken piece of a baseball bat, following which he called the police who took the applicant's son to the police station;

- statements by witnesses T. and P. who were present at the scene of the fight and confirmed the statements by V.;

- statements by police officer Erk. who arrived at the scene and saw the applicant's son squatted down, with blood streaming from his head and a bruise under his eye; he submitted that the applicant's son, V., T. and P. were taken to the police station, following which an ambulance was called for the applicant's son as his head was bleeding; no violence was applied to the latter;

- statements by the officer on duty Tr. who received information about the fight and saw the applicant's son brought to the police station in a state of alcoholic intoxication, with a lacerated wound in the region of one eye and several abrasions, following which an ambulance was called to the applicant's son and he was taken to the hospital; he submitted that nobody in his presence subjected the applicant's son to any beatings;

- similar statements by officer on duty Ser.;

- statements by operative agent Mir. who saw the applicant's son at the police station with injuries on his body; he submitted not having seen anybody beating the applicant's son at the police station;

- statements by witness F. who arrived at the police station having learned that the applicant's son had been taken there; however, she was informed that the later had been taken to the hospital to be treated for his injuries; she further submitted that in hospital the applicant's son told her that he had been beaten up by the police in the entrance of V.'s house;

- statements by witness G. who accompanied the applicant's son in the car to the scene of the fight; he submitted that the applicant told him he had

to settle scores with a man called “Erik” who cooperated with the police; he saw the applicant’s son knock on the window, let inside the building with a baseball bat in his hands; in about fifteen minutes he saw the police arrive the exit the building fifteen minutes later; the applicant’s son was walking unassisted, he was not handcuffed, yet he was holding on to his head; one of the police officers was holding a plastic bag with two fragments of the baseball bat; the applicant’s son sat in the police car and was taken to the police station; he did not see anybody hitting the applicant’s son or threatening him;

- statements by the applicant who submitted the her son told her that he had been beaten up by the police;
- statements by witness Min. who knew about the fight from V.;
- statements by witness Mot. who knew about the fight from T.;
- statements by neighbours Sukh. and Tishch. who knew nothing about the events in question;
- statements by witness Gor., the applicant’s son’s partner, who learned from the latter that he had been beaten by the police;
- statements by witness Ven. who underwent treatment in the hospital at the time when the applicant’s son was admitted and who submitted that the latter told him of having sustained the injuries having been beaten with a baseball bat;
- police station’s registration log which contained no mention of the applicant’s son being arrested on the 17 January 2007;
- expert report no. 366 V. according to which V. had an abrasion on his right forearm which could have been caused on 17 January 2007 from a blow by a hard blunt object;
- expert report no. 250 on examination of the applicant’s son’s skin sample from the left half of the parietal region of the head with well-defined diffuse microinclusions of iron;
- expert report no. 52 of 2 July 2008 that the open blunt brain injury of the applicant’s son was due to a combination of traumatic impacts in the region of the head which could be caused under circumstances described by V., that is by infliction of multiple blows by a baseball bat fragment in the region of the head.

Throughout the proceedings five different investigators were entrusted with the investigation.

In the meantime, the applicant repeatedly challenged the adequacy of investigation. In particular, she complained about the failure of the investigator to inform her of the decisions taken on the case and to explain the possible venues for appeal. She further complained about the refusal of her requests to obtain information about the exact time when V.’s call was registered at the police station, the exact time when her son was brought to the police station and when the ambulance was called for him. The applicant also sought to have clarified the reasons why her son had not been questioned on the circumstances in question for a week until he lapsed into a coma, and to obtain expert examination of blood stains on his clothes which could have clarified whether he had been standing up or laying down when he sustained his injuries.

In response to her complaints, on 29 May, 18 August, 5 September and 26 September 2008 the Moskovskiy District Court of Kaliningrad found the

investigator's refusals and inactivity unlawful and unjustified and obliged to eliminate the above deficiencies by way of conducting a thorough and comprehensive investigation.

However, regardless of the above decisions no measures were taken by the investigation to remedy the defects of the conducted enquiries.

Relying on the failure of the investigation authority to comply with the requirements of the above decisions, on 15 October 2008 the applicant challenged the inactivity of the head of the investigation department before the court.

On 12 December 2008 the Moskovskiy District Court of Kaliningrad found the inactivity of the head of the investigation department unlawful and obliged the latter to eliminate the violations found, also to no avail.

The case-file contains no information on any further developments in the investigation of the circumstances of the applicant's son's death.

B. Civil claim for damages

On 25 December 2008 the applicant brought civil proceedings against the Ministry of Finance seeking to recover non-pecuniary damages caused to her by the failure of the domestic authorities to investigate her son's death.

On 31 March 2009 the Tsentralniy District Court of Kaliningrad dismissed the applicant's claims.

On 20 May 2009 the Kaliningrad Regional Court upheld the judgment on appeal.

COMPLAINTS

1. The applicant complained under Article 2 of the Convention about the death of her son at the hands of the police and the absence of an effective and prompt investigation into his death.

2. She further complained under Articles 6 § 1 and 13 about various decisions of the domestic authorities preventing her from obtaining the effective investigation into her son's death.

QUESTIONS TO THE PARTIES

Having regard to the procedural protection of the right to life (see *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 51, ECHR 2002-I), was the investigation by the domestic authorities into the death of the applicant's son as a result of alleged beatings by the police in breach of Article 2 of the Convention? Was the applicant involved in the procedure to the extent sufficient to safeguard her legitimate interests?

The Government are requested to produce the entire investigation file pertaining to the circumstances in question and to inform the Court of the current state of proceedings in the case.