



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

FIRST SECTION

Application no. 12822/09
Valentina Viktorovna PSHENICHNIKOVA
against Russia
lodged on 11 February 2009

STATEMENT OF FACTS

The applicant, Mrs Valentina Viktorovna Pshenichnikova, is a Russian national, who was born in 1953 and lives in the town of Perm, the Perm Region.

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

The applicant is the mother of Andrey Alekseyevich Pshenichnikov (A.P.), who born in 1982 and died in 2001 while performing his military service.

A. The death of the applicant's son and its investigation in 2001

On 16 November 2000 A.P. was drafted into the army. He was assigned to military unit no. 25863 situated in the settlement of Totskoye-4 of the Orenburg Region (the military unit).

On 23 January 2001 A.P. was hospitalised to the military unit's medical facility with fever and throat ache. He was diagnosed with follicular tonsillitis.

On 1 February 2001 A.P. temperature stabilised and he was discharged from the medical facility.

On 18 March 2001 A.P. lost his consciousness while standing in a queue to take a bath. A medical officer summoned by the other soldiers treated him with liquid ammonia. It appears that the incident was not recorded into his medical file and no further treatment was provided to him.

On 27 March 2001 A.P. passed on. A criminal investigation into the death was immediately opened by the Totskiy Garrison Military Prosecutor's office (the prosecutor's office).

On the same day the applicant received a telegram from the military unit command stating that:

“[A. P. died] of pulmonary embolism.”

The applicant instantly requested the garrison prosecutor's office to provide her with the results of a forensic examination of her son's body.

In a short while the applicant received another letter of the military unit command dated 28 March 2001 informing her that:

“[A. P.] died of cardiac insufficiency.”

From 30 March to 13 June 2001 the applicant sent a number of letters to the garrison and regional military prosecutor's offices and to the Ministry of Defence of Russia. She requested the results of the forensic examination of her son's body and alleged that her son might have been killed by his co-servicemen. The authorities replied that the criminal investigation into the death of her son had been opened on 27 March 2001, but provided no information as to whether the applicant had any standing in these proceedings. They further submitted that it was not possible to send her the forensic expert's conclusions as they were not yet ready.

On 13 June 2001 the applicant received summons to the Totskiy Garrison Military Prosecutor's office with an offer to cover her travel expenses. The applicant decided not to go as the summons did not state any reasons for the visit.

On 27 June 2001 the prosecutor's office, having examined A.P. fellow servicemen, medical officers and the command of his military unit, as well as the forensic expert's conclusions regarding his death, decided that:

“[The applicant's son had an incident of] sudden coronary death caused by numerous mixed microadenomae ... No person is responsible for his death.

...

The criminal case regarding A. P.'s death should be terminated due to the absence of the event of a crime.”

On the same day the Regional Prosecutor's office sent the applicant a letter informing her of the above decision.

In November 2001 the applicant sent several letters to prosecutor's offices of different levels, asking to review the decision of 27 June 2001 and investigate her allegations of murder. They replied that the decision was lawful and substantiated and there were no reasons for its revision.

It seems that between November 2001 and April 2007 neither the applicant, nor the authorities took any steps to advance the case any further.

B. The attempts to reopen the criminal proceedings in 2007

On 9 April 2007 the applicant requested the garrison prosecutor's office to quash the decision of 27 June 2001. She claimed that her son's death was caused by the allegedly negligent treatment of his tonsillitis and asked to perform a new forensic expert examination.

On 19 April 2007 the garrison prosecutor's office replied by a simple letter that the circumstances of A.P.'s death were fully established, that the earlier decisions were lawful and substantiated and there was no reason to quash them.

On 1 June 2007 the applicant complained about the above reply to the Prosecutor's Office of the Privolzhsko-Uralskiy Military District, which by decision of 25 June 2007 rejected the applicant's arguments as manifestly ill-founded.

On 12 July 2007 the applicant lodged a similar request with the Office of the Prosecutor General of Russia. It appears that the letter was redirected to the Prosecutor's Office of the Privolzhsko-Uralskiy Military District, which on 8 October 2007 replied that the criminal case file was transferred to the court dealing with the applicant's civil claim (see below). It further stated that it would re-examine the criminal case once the civil court gives its judgment.

It appears that the criminal investigation is still pending.

C. The civil compensation proceedings

On 14 May 2007 the applicant brought an action against military unit no. 25863 and the federal Ministries of Finance and of Defence, claiming non-pecuniary damages for the death of her son.

On 11 June 2008 the Totskiy District Court of the Orenburg Region rejected the claim in full.

On 6 August 2008 the Orenburg Regional Court examined the applicant's appeal against the above judgment. It found that the first-instance court ignored a number of important issues; in particular, it did not find out whether A. P. received appropriate medical treatment and whether there was a causal link between the medical treatment and his death. The Regional Court quashed the judgment and remitted the case for a new examination.

On 17 August 2009 the Totskiy District Court established that the authorities had been responsible for Mr Pshenichnikov's death, as it was largely caused by the improper treatment of his tonsillitis. The court allowed the applicant's action in part, adjudicating her 150,000 Russian roubles (RUB) (around 3,300 euros (EUR) at the time).

On 7 October 2009 the Orenburg Regional Court increased the amount of compensation up to RUB 300,000 (EUR 6,900 at the time) and upheld the rest of the judgment on appeal.

COMPLAINT

The applicant complains under Article 2 of the Convention that the criminal investigation into her son's death was ineffective.

QUESTIONS TO THE PARTIES

1. Was the investigation into Mr Pshenichnikov's death carried out in compliance with the requirements of the procedural aspect of Article 2 of the Convention?

2. In that respect, has the applicant complied with the six-month time-limit laid down in Article 35 § 1 of the Convention? In particular, did she demonstrate "necessary expedition" in submitting her complaint to the Court after the death of her son? Have there been considerable lapses of time or significant delays in the investigative activity which could have an impact on the application of the six-month time-limit (see, *mutatis mutandis*, *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, §§ 160 and 162, ECHR 2009-...)?