



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

Communicated on 12 March 2014

FIRST SECTION

Application no. 44959/09
Valentina Aleksandrovna DANILENKO and Konstantin Viktorovich
SHUMIKHIN
against Russia
lodged on 25 July 2009

STATEMENT OF FACTS

The applicants, Ms Valentina Aleksandrovna Danilenko and Mr Konstantin Viktorovich Shumikhin, are Russian nationals, who were born in 1949 and 1976 respectively and live in Taganrog and Nikolayevka. They are represented before the Court by Mr V.B. Gusev, a lawyer practising in Taganrog.

A. The circumstances of the case

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

The first and second applicants are Ms Angela Lyapunova's mother and brother respectively.

Ms Lyapunova married Mr V.L. in 1991 and they had a son, K.L., born in 1993. Until 2000 they lived together in a flat in Italyanskaya Street, Taganrog, which they occupied under a social tenancy agreement. In 1993 the flat was privatised and Mr V.L. became its sole owner, although Ms Lyapunova and K.L. did not waive their rights to the privatised flat and Ms Lyapunova neither gave her consent nor was informed of the privatisation of the flat by Mr V.L.

As relations between Ms Lyapunova and Mr V.L. had deteriorated, Ms Lyapunova did not live permanently in the flat from 2000 to 2003. During that period Ms T.L., Mr V.L.'s mother, was released from a penal facility, and Mr V.L. officially registered her as residing in the flat. It appears that during the same period Ms Sh., Mr V.L.'s sister, and her minor son moved into the flat too.

In April 2003 Mr V.L. sold the flat to Mr S., without informing Ms Lyapunova.

Later Mr V.L. was convicted of a criminal offence and imprisoned. While he was serving his sentence, Ms Lyapunova moved back into the flat.

In 2004 Ms Lyapunova and Mr V.L. divorced.

In 2005 Mr V.L. was released.

Ms Lyapunova later successfully contested before a court both the privatisation of the flat and the sale to Mr S., which were declared null and void by a final judgment of the Rostov Regional Court of 20 February 2008. The court also ordered the return of the flat to the city.

Ms Lyapunova continued living in the flat under a social tenancy agreement.

On 19 April 2008 Ms Lyapunova applied to the Taganrog police for measures to be taken to protect her. She stated that since 2008 her ex-husband, Mr V.L., had been constantly threatening her, demanding that she registered him as officially residing in the flat. In particular, he had been calling on her mobile phone and threatening to stab her. She gave the police the details of the most recent call, including the phone number and the exact time when the call was made. Ms Lyapunova submitted that she was afraid for her life as her ex-husband was a drug addict and a criminal who wanted her flat.

On the same date Ms Lyapunova was questioned by the police and she confirmed her statement.

On 21 April 2008 the police questioned Mr V.L., who claimed that he had never threatened Ms Lyapunova and that her statement was slanderous.

On the same date a police officer from the Taganrog police drew up a report stating that he had visited Ms Lyapunova's flat, but had found no witnesses to be questioned.

On 22 April 2008 police department no. 1 of the Taganrog Directorate of Internal Affairs refused to institute criminal proceedings following Ms Lyapunova's application on the ground that the threats allegedly made by Mr V.L. "were not real".

On 13 June 2008 at approximately 10 p.m. Mr V.L. went to the block of flats where Ms Lyapunova lived. He waited for her in the yard and, when she left the flat, stabbed her with a knife. He stabbed her numerous times in the chest and arms and, after she tried to run away, caught up with her and stabbed her several times in the back. Ms Lyapunova died on the spot from her wounds .

On 11 July 2008 the Taganrog Department of the Investigative Committee of the Prosecutor's Office of the Russian Federation issued an instruction addressed to police department no. 1 of the Taganrog Directorate of Internal Affairs to take measures to rectify the circumstances that had contributed to the crime. The Investigative Committee stated that although Ms Lyapunova had applied to the police seeking protection in connection with the threats of murder she had been receiving from her ex-husband, due attention had not been paid to her application and no preventive measures had been taken in respect of Mr V.L. Therefore, the police's failure to take any measures to prevent the crime had to a certain degree contributed to its commission. The Investigative Committee instructed the police to ensure that due measures be taken in similar situations in the future.

On 1 December 2008 the Taganrog Town Court convicted Mr V.L. of murder and sentenced him to ten years and six months' imprisonment. It

also allowed the applicants' civil claims and granted the first applicant 800,000 roubles (RUB) and the second applicant RUB 300,000. Mr V.L. appealed.

On 3 February 2009 the Rostov Regional Court upheld the judgment of 1 December 2008.

B. Relevant domestic law

In accordance with section 2 of the Police Act of 18 April 1991, in force until 1 March 2011, the tasks of the police included crime prevention. Under section 10 (1) of the Act, the police had a duty to prevent crimes and administrative offences; to detect circumstances conducive to the commission of a crime and to take measures for the elimination of such circumstances.

COMPLAINT

The applicants complain under Article 2 of the Convention that the police, being aware of the risk to Ms Lyapunova's life, failed to comply with their duty to protect her from Mr V.L.'s criminal acts.

QUESTIONS TO THE PARTIES

1. Was Ms Angela Lyapunova's right to life, guaranteed by Article 2 of the Convention, violated in the present case?

In particular, having regard to the positive obligation under Article 2 of the Convention (see *Osman v. the United Kingdom*, 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, § 115, and *Kontrová v. Slovakia*, no. 7510/04, §§ 46-55, 31 May 2007), did the State comply with its duty to take preventive operational measures to protect an individual whose life was at risk from the criminal acts of another individual?