



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

Communicated on 15 May 2014

FIRST SECTION

Application no. 9441/11
Svetlana Aleksandrovna KUDRYASHOVA
against Russia
lodged on 20 January 2011

STATEMENT OF FACTS

The applicant, Ms Svetlana Aleksandrovna Kudryashova, is a Russian national, who was born in 1950 and lives in the Moscow Region.

The circumstances of the case

1. Death of the applicant's son

From the materials of the criminal investigation it follows that on 4 October 2003 after midnight the applicant's son was driving on highway "Moscow – Rostov-on-Don" in the Domodedovo District, the Moscow Region. At some point he stopped his car in the middle lane of the highway, which has three lanes in either direction. Apparently something went wrong with the car's suspension and, having neither turned the warning lights on nor set the emergency warning triangle, he got out of the car to fix it.

At this time Mr O. and Mr N. were driving two cars in the middle lane of the highway, each with several passengers in the car. Mr N. was following Mr O. in the direction of the latter's summer house. There was no road lighting when Mr O. saw a stopped car on the road. Trying to avoid the accident he made a quick right turn. The applicant's son was standing near the boot of his car. Following Mr O.'s car, Mr N. first saw Mr O.'s breaking lights go on and his turning right. At the last moment he saw the stopped car in his lane and quickly turned left. After having noticed a man on the left side of the stopped car he applied emergency brake. According to Mr N., the man then suddenly rushed towards his car which led to a collision.

At approximately 12.20 a.m. on 4 October 2003 the applicant's son was hit by Mr N.'s car and he died of the injuries sustained at the scene of the accident.

2. Criminal proceedings in respect of the applicant's son death

The investigating authorities immediately examined the scene and drafted a scheme of the accident.

On 6 October 2003 the Domodedovo Department of the Interior instituted a criminal investigation into the road accident. Forensic examination of the applicant's son's body completed on 16 October 2003 established that he had died of serious head trauma as a result of the road accident. It also concluded that at the moment of the accident he was moving. Technical expert examination no. 2466/14 completed on 24 December 2003 established that, given the technical characteristics of Mr N.'s car and the circumstances of the accident, he could not have avoided hitting the applicant's son.

The investigating authorities also questioned Mr N., Mr O. and the passengers of the two cars.

On 6 January 2004 the criminal proceedings were discontinued on account of lack of evidence of an offence.

On 23 January 2004 the Domodedovo Prosecutor's Office quashed the decision of 6 January 2004 on account of contradictory findings of the forensic examination and incompleteness of the investigation and ordered to carry out an additional forensic examination.

According to the findings of the additional forensic examination, conducted on unspecified dates, it was not possible to establish conclusively whether at the moment of the collision the applicant's son was moving or standing still.

On 28 February 2004 the Domodedovo Department of the Interior again discontinued the criminal proceedings.

On unspecified date this decision was quashed by the prosecutor.

On 1 November 2004 an additional technical expert examination was ordered and thereafter the investigation was suspended.

On 1 March 2005, upon the completion of the additional technical expert examination, the investigation was resumed.

On 28 July 2005 the investigation was discontinued another time. The applicant appealed to a court.

On 26 December 2005 the Domodedovo Town Court quashed the decision of 28 July 2005 on the ground that certain documents were missing in the investigation file and that in the decision the investigator failed to address the findings of certain expert examinations.

According to the applicant, in the course of the following years the investigation was again discontinued on 2 June and 4 October 2006, 28 December 2007 and 28 December 2008 on account of lack of *corpus delicti* in Mr N.'s actions. However, all these decisions were subsequently quashed either by the prosecutor or the court on account of the incompleteness of the investigation. In particular, having set aside the decision of 2 June 2006 the prosecutor gave instructions to carry out a comprehensive expert examination in order to clarify inconsistencies in the experts' previous findings. It is not clear whether this examination took place.

On 13 January 2009 the Domodedovo Department of the Interior again discontinued the criminal proceedings for lack of evidence of a crime in the actions of Mr N. According to the decision, Mr N. was not responsible of

the accident as he took all the measures to avoid the collision but, in the circumstances of the case, it appeared impossible. At the same time the applicant's son, having left his car in the middle of the highway without the required alarm signalling being set up, violated the road safety rules.

On 21 April 2010 the applicant appealed against the investigator's decision of 13 January 2009.

By the decision of 28 May 2010 the Domodedovo Town Court upheld the investigator's decision as being lawful and well-founded.

On 7 June 2010 the applicant appealed against the first-instance decision.

On 22 July 2010 the Moscow Regional Court upheld the decision. It found that the first-instance court had rightly endorsed the investigator's findings and that the decision to discontinue the criminal proceedings had been lawful.

3. Civil proceedings in regard to the compensation for non-pecuniary damage and pecuniary damage

On 21 April 2010 the applicant instituted civil proceedings against Mr N. before the Lyubertsy Town Court claiming 1,000,000 roubles (RUB) in respect of non-pecuniary damage and RUB 165,159 in respect of pecuniary damage.

On 19 July 2010 the Lyubertsy Town Court granted the applicant's claim. Mr N. lodged an appeal.

On 5 October 2010 the Moscow Regional Court partially upheld this decision. It reduced the award in respect of non-pecuniary damage to RUB 300,000, quashed the decision in the remaining part and sent it for a fresh examination to the first-instance court. It is not clear whether it has been re-examined.

COMPLAINTS

The applicant complains, referring to Article 6 of the Convention, that the investigation into her son's death was ineffective as it lasted unreasonably long, having been repeatedly discontinued and resumed, and failed to take into account and duly assess the results of all the expert examinations conducted. She also complains that the award of non-pecuniary damage was too low.

QUESTION TO THE PARTIES

In the circumstances of the case, has the State complied with its positive obligation under Article 2 of the Convention vis-à-vis the applicant (such as an obligation to conduct effective investigation into the accident or to provide the applicant with effective compensatory remedy against the perpetrator), in particular in the light of the Court's case-law establishing the criteria of effective investigation and adequate compensatory remedy?