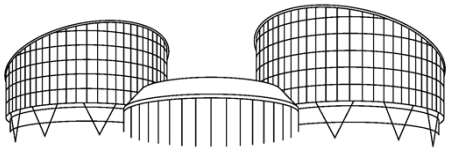

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF BELENKO v. RUSSIA

(Application no. 25435/06)

JUDGMENT

STRASBOURG

18 December 2014

FINAL

18/03/2015

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Belenko v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 25 November 2014,

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

PROCEDURE

1. The case originated in an application (no. 25435/06) 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 Tatyana Aleksandrovna Belenko ("the applicant"), on 20 May 2006.

2. The applicant was represented by Mr S. Vlasov, a lawyer practising in Novosibirsk. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant, whose daughter Oksana Belenko died in a hospital, alleged that the State failed to protect the right to life of her daughter, protect her against ill-treatment and ensure an effective investigation into the circumstances of her death.

4. On 10 February 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1959 and lives in the town of Krasnoobsk, the Novosibirsk Region. She had a daughter, Oksana Vladimirovna Belenko, born in 1983 but now deceased.

A. Illness and death of the applicant's daughter

6. On 14 August 2003 Oksana Belenko complained of feeling ill. She was trembling, felt pain in her limbs, was having delusions and was behaving strangely. That evening her parents called an ambulance. The doctor of the ambulance team, having decided that she was suffering from hysterical neurosis, gave her some sedatives and painkillers. Her condition became worse, so the next morning she was taken to the town hospital, accompanied by her parents. In the town hospital she was examined by the chief psychiatrist, Rz., and a neuropathologist, Pn. The applicant's daughter was behaving hysterically: she was laughing, shouting, trying to run around and threw a trolley over. As she was showing signs of a serious psychiatric disorder, later that day she was transferred to a psychiatric clinic.

7. It appears from her medical records that on admission to the clinic, the daughter did not react when spoken to, refused to submit to examination, and was moving her hands and legs around chaotically. The doctors at the clinic examined her and concluded that she was suffering from schizophrenia. No signs of any other illness or injury were evident at that time. Oksana Belenko was already in such a state that the clinical director decided to ask the District Court for authorisation for her continued confinement in the clinic. Her parents (her father and the applicant) did not object to the confinement.

8. According to the applicant, during the first few days in the psychiatric clinic her daughter was still able to recognise her relatives and had some understanding of the people and things around her. According to the official records, her condition was very serious and continued to deteriorate, and her understanding of the situation was seriously impaired.

9. On 16 and 17 August 2003 she was examined by the clinic's doctors on duty, Kr. and Vas. She was administered Sibazon and Haloperidol injections.

10. On 18 August 2003 the applicant's daughter was examined first by a psychiatrist on duty and then by a team of three doctors, including the acting chief doctor, Yar., and two other doctors, Lkh. and Olkh. She did not react to their questions, her eyes were motionless, she shouted out sporadically, and dropped herself onto the bed. The expert team considered that she needed further inpatient treatment.

11. On the same day the applicant asked the clinical director to release her daughter for further treatment at home. However, it was refused, the chief psychiatrist instead asking the court to issue a confinement order in respect of her.

12. On 20 August 2003 the Zheleznodorozhniy District Court of Novosibirsk examined the clinical director's request for Oksana Belenko's further confinement to the psychiatric clinic. Neither the applicant nor her daughter participated in those proceedings. According to the applicant, she

was not informed about the date or place of the hearing. The District Court authorised the further confinement.

13. The applicant continued to visit her daughter in the clinic almost every day. According to her, on one occasion her daughter was taken by the clinic staff to a meeting with her directly from the shower; her head was wet and, as a result, she caught a cold. The clinic staff also allegedly prevented her from visiting her daughter.

14. Oksana Belenko received treatment in the psychiatric clinic until 31 August 2003. It appears that her medical condition was very serious. Several examinations conducted within that period showed that she was suffering from a very rare disease, known as febrile expressionless schizophrenia of a pernicious nature. The illness is potentially fatal and has various symptoms, such as high fever, catalepsy (being stuck in rigid postures for hours), delusions, muteness, and excessive motor activity (constant movement). She was spending hours in her bed in a "foetal position", with her hands and legs bent and pressed against her body. Treatment with psychotropic drugs only had a limited effect on her. In addition, because of her immobility and cataleptic postures she started developing decubitus ulcers (bedsores). According to the Government, between 18 and 31 August 2003 she was examined by doctors three times.

15. On 26 August 2003 the applicant wrote a letter to the psychiatric clinic asking for her daughter to be released, insisting that she would be better treated at home by a visiting doctor. However, given the daughter's state of health and mind, the request was refused.

16. According to the applicant, during that period her daughter was being tied to her bed by the clinic staff. She and some of her relatives and friends saw ligature marks on her daughter's hands and legs when they visited her in the clinic. The clinic staff, namely doctor L. and nurse B., denied tying her up.

17. On 31 August 2003 the applicant's daughter had a high fever. She was examined by a doctor, who concluded that she had developed pneumonia, aggravated by a cardiac valve defect. The applicant informed the hospital that her daughter had congenital heart disease and that her skin had developed a bluish color, so the doctors of the psychiatric clinic called a cardiologist from the town hospital. After examining her, the cardiologist recommended her immediate transfer there, which was implemented the same day.

18. On 1 September 2003 the applicant's daughter became worse and was transferred to the town hospital's emergency unit. Doctor Pn. who examined her there discovered ligature marks on her body. On the same day the head of the hospital's psychiatric department, Ls., made an entry in the daughter's medical record which read "evidence of tying up on the shins and arms" (later reproduced in the expert report of 17 May 2005, see paragraph 32 below).

19. It appears that in so far as pneumonia was concerned, her treatment with antibacterial drugs had some positive effects. An X-ray examination was carried out on 15 September 2003 but did not reveal any characteristic signs of pneumonia in her lungs.

20. On 9 October 2003 the applicant's daughter was transferred to the psychiatric department of the town hospital. It appears that as a result of the catalepsy, she had developed large purulent ulcers in the groin area. Two weeks later she was admitted to the surgical ward of the town hospital in connection with the ulcers and necrotic abscess.

21. At some point, the relatives lost confidence in the doctors' ability to treat her properly. They thought that she was being neglected and even ill-treated in the various hospitals, starting to suspect that she might also have been sexually abused there. The applicant made several written complaints to the regional authorities.

22. On an unspecified date the applicant's daughter had a new episode of pneumonia, which the doctors related to the sepsis (inflammation) she had developed as a result of the purulent ulcers. She also developed tetraparesis (muscular weakness of all four limbs).

23. On 27 October 2003 a special panel was set up by the regional administration, which examined Oksana Belenko's case. It concluded that the doctors' actions had been adequate, that the worsening of her condition was due to external factors, and that the actions of the doctors did not present any danger to her life.

24. On 30 October 2003 the applicant's daughter was admitted to the regional hospital. Her physical and mental health continued to deteriorate. According to the Government, while in the hospital she had continued to receive adequate medical care, such as treatment with fourth generation antibiotics.

25. On 4 November 2003 the applicant lodged a written criminal complaint regarding the allegedly inadequate treatment of her daughter. On 14 November 2003 the investigator refused to open an investigation in this connection.

26. On 7 December 2003 Oksana Belenko died.

27. On 8 December 2003 doctors examined her body. The doctors who carried out the post-mortem (*вскрытие*) concluded that she had died as a result of cerebral oedema, related to her psychiatric condition and aggravated by the pneumonia. The examination did not reveal any ligature marks. At the same time the doctors discovered that her left hip was dislocated, and that she had purulent necrotic wounds in the groin area and on her shins.

B. Criminal investigation into the death of the applicant's daughter

28. A few days after Oksana Belenko's death, the applicant lodged a criminal complaint to have the doctors who had treated her daughter prosecuted. The inquiry was reopened.

29. On 31 December 2003 investigator O., following an additional inquiry, decided not to open a criminal investigation into her death.

30. On 4 February 2004 the Deputy Regional Prosecutor overruled the above decision and decided to open a criminal investigation, to be treated as a medical negligence case. The case was entrusted to investigator O.

31. On 20 May 2004 the Presidium of the Novosibirsk Regional Court, by way of supervisory review, quashed the Zheleznodorozhniy District Court's decision of 20 August 2003 (see paragraph 12 above). The Presidium held that Oksana Belenko's relatives had not been duly informed of the hearing, and furthermore, that the District Court had not verified whether her condition had warranted her confinement. Since she had died by that time, it was decided that the proceedings should be discontinued.

32. On 17 May 2004 a group of doctors from the No. 6 Regional Psychiatric Hospital examined her case and concluded that it was impossible to discern a direct link between her mental condition and her death. In their report, they concluded that the death had actually been caused by a brain oedema and pulmonary valve insufficiency caused by pneumonia. The experts approved the diagnosis of the psychiatric clinic and hospitals and confirmed that the methods and medication used to treat her had been appropriate.

33. On 22 June 2004 the applicant was given victim status in the case (see paragraph 30 above).

34. On 11 October 2004 the Serbskiy Institute of Psychiatry conducted a second psychiatric expert examination of Oksana Belenko's case. It concluded that the doctors had made the correct assessment of her condition, and had prescribed and administered her adequate treatment in a timely manner.

35. On 12 January 2005 a new forensic examination of the case concluded that she had died primarily as a result of the brain oedema caused by her psychiatric disorder. The expert team had at its disposal samples of tissue taken from her body during the post-mortem examination and her medical records. The experts confirmed that the earlier diagnosis had been correct and that the treatment she had received had been adequate, excluding any possibility that she had died as result of inappropriate treatment. The report, in summarising the doctors' earlier observations, noted that the examination of 1 September 2003 had revealed ligature marks on her shins and later mentioned marks on her arms.

36. Between 14 and 28 January 2005 a new forensic examination was carried out of the tissue taken from various parts of Oksana Belenko's body.

In addition, the investigator held a face-to-face confrontation between the applicant and doctors L., P., and Zh. Several of the psychiatric clinic staff were questioned, as were staff of the town and regional hospitals.

37. On 4 February 2005 the criminal investigation was closed, the investigator concluding that the applicant's daughter had died of natural causes.

38. On 5 May 2005 the Deputy Prosecutor of the Novosibirsk Region ordered that the case be reopened and informed the investigator of the additional steps to be taken.

39. On 19 May 2005 the applicant requested the investigator in charge of the case to conduct an additional expert examination to establish the cause of her daughter's death. In particular, the applicant alleged that her daughter had developed pneumonia because of the poor sanitary and hygienic conditions in the psychiatric clinic and the town hospital. In her opinion, her daughter had contracted the infection through her ulcers. In addition, the experts had failed to establish why her daughter had had ligature marks on her body. In the applicant's opinion, the purulent wounds discovered on her daughter's lower legs were not the "decubitus ulcers" caused by her immobility but rather a result of her being tied up in the psychiatric clinic. In addition, the expert reports did not establish the cause of her dislocated hip. The applicant invited the investigator to commission a new expert examination and put relevant questions to the experts.

40. On 12 June 2005 the investigator decided to close the case again. According to the report of that date, the ligature marks discovered on Oksana Belenko's body during her examination on 1 September 2003 had been located around her shins.

41. On 11 July 2005 the case was reopened but then closed again on 14 July 2005.

42. On 25 January 2006 the case was reopened by the supervising prosecutor but then closed again on 26 February 2006.

43. The applicant contested the closure of the case in court.

44. On 20 March 2006 the supervising prosecutor ordered the case to be reopened and the investigator to carry out additional investigative measures, such as identifying and questioning other patients of the psychiatric clinic and establishing the cause of the ligature marks discovered on her body during the examination of 1 September 2003.

45. On 19 January 2007 the Zheleznodorozhniy District Court noted that the case file contained conflicting expert opinions on the cause of Oksana Belenko's death. Furthermore, the cause of the second episode of pneumonia and the purulent wounds on the lower legs had not been established. The court instructed the investigator to commission a new comprehensive forensic examination (*комплексная судебно-медицинская экспертиза*) to establish the cause of her death, and to carry out other investigative measures if necessary.

46. On 9 February 2007 the investigator commissioned the new comprehensive forensic examination, ordered by the court, into the cause of the death of the applicant's daughter. He entrusted it to the No. 6 Regional Psychiatric Hospital. However, in 12 February 2007 the hospital refused to carry out the examination on the grounds that it had already prepared a similar report on the matter at an earlier date.

47. On 9 March 2007 the investigator closed the case again.

48. The applicant challenged that decision in court. On 26 June 2007 the Zheleznodorozhniy District Court ordered the investigation to be continued. The court held, in particular, that the refusal of the No. 6 Regional Psychiatric Hospital to conduct a new expert examination did not prevent the investigator from seeking an expert opinion from another competent institution elsewhere.

49. On 13 August 2007 the court's decision was upheld by the Novosibirsk Regional Court on appeal.

50. The criminal investigation was reopened but closed again on 5 September 2007.

51. In 2008 the applicant challenged the discontinuation of the criminal proceedings in court again. On 18 September of that year the Zheleznodorozhniy District Court examined the applicant's complaint against the investigator's decision of 5 September 2007 and ordered the case to be reopened. However, it appears from the documents submitted by the Government that this decision was not enforced and the case not reopened until 15 April 2011, as confirmed in a letter by the Zheleznodorozhniy District Prosecutor dated 19 April 2011.

52. On 15 April 2011 the District Prosecutor quashed the decision of 5 September 2007 and ordered the case to be reopened again.

53. On 20 April 2011 the investigator ordered another forensic examination of Oksana Belenko's body to be commissioned and entrusted this task to the Krasnoyarsk Region Forensic Centre. However, on 22 April 2011 it refused to conduct the examination on the grounds that the investigator had failed to produce her medical records and the "tissue archive" (*гистологический архив*).

54. On 20 May 2011 the investigator decided to close the case again. The investigator reiterated the findings of the earlier expert examinations of the case and in particular the report of 12 January 2005 (see paragraph 35 above). Among other things, the investigator acknowledged that it proved impossible to find the medical records of the applicant's daughter and the "tissue archive" and that, as a result, the experts were not in a position to conduct an additional forensic examination into the cause of her death. He further noted that:

> "... during the preliminary investigation it was established that ... [Oksana Belenko] had suffered from psychiatric disease in the form of schizophrenia, the febrile catatonic form. The reason for [her] death was [this disease]. From the

> medical examination report dated 12 January 2005 it follows that [her] death resulted from cerebral oedema, which itself had resulted from [the above-mentioned disease] ...
>
> It was noted on 1 September 2003 that on a few occasions [she] had been seen as carrying [marks on her arms], but from the statements of the questioned persons, it was impossible to establish with certainty any facts of the use of violence (tying up) in respect of [her] ...
>
> At the present time in this criminal case all of the indications of the Prosecutor's office of the Novosibirsk Region were executed. The results of the conducted preliminary investigation demonstrated that no crime set out in Article 109 § 2 of the Criminal Code had taken place because [Oksana Belenko's] death resulted from the cerebral oedema resulting from the psychiatric disease, that is from the natural factor, [her] treatment having been conducted in accordance with modern methods of treatment. It follows that the death of [Oxana Belenko] did not result from anyone's unlawful actions."

55. It does not appear that there have been any developments in the applicant's case since the decision of 20 May 2011.

II. RELEVANT DOMESTIC LAW

A. The Criminal Code of the Russian Federation

56. Article 109 § 2 of the Criminal Code ("CC") provides that negligent infliction of death due to improper execution of professional duties shall be punishable by compulsory works for a period of up to three years and/or the stripping of the right to occupy certain posts or to work in certain spheres for a period of up to three years.

B. The Code of Criminal Procedure of the Russian Federation

57. Article 144 of the Code of Criminal Procedure ("CCrP") provides that prosecutors, investigators and inquiry bodies must consider applications and information about any crime committed or being prepared, and take a decision on that information within three days. In exceptional cases, that time-limit can be extended to ten days. The decision should be one of the following: (a) to institute criminal proceedings; (b) to refuse to institute criminal proceedings; or (c) to transmit the information to another competent authority (Article 145 of the CCrP).

58. Article 125 of the CCrP states that the decision of an investigator or a prosecutor to dispense with or terminate criminal proceedings, and other decisions and acts or omissions which are liable to infringe the constitutional rights and freedoms of the parties to criminal proceedings or to impede citizens' access to justice, may be appealed against to a District Court, which is empowered to check the lawfulness and grounds of the impugned decisions.

59. Article 213 of the CCrP provides that, in order to terminate the proceedings, the investigator should adopt a reasoned decision with a statement of the substance of the case and the reasons for its termination. A copy of the decision to terminate the proceedings should be forwarded by the investigator to the prosecutor's office. The investigator should also notify the victim and the complainant in writing of the termination of the proceedings.

60. Under Article 221 of the CCrP, the prosecutor's office is responsible for general supervision of the investigation. In particular, the prosecutor's office may order that specific investigative measures be carried out, transfer the case from one investigator to another, or reverse unlawful and unsubstantiated decisions taken by investigators and inquiry bodies.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

61. The applicant complained under Article 2 of the Convention that her daughter had died as a result of the negligence of the doctors. Article 2 of the Convention, insofar as relevant, reads as follows:

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

A. The parties' submissions

1. The Government

62. The Government argued that the applicant's daughter had received timely and adequate treatment, and that the quick worsening of her state of health and ultimately her death had been as a result of natural causes. She had developed ulcers, not as a result of "being tied" but due to the stiffness of her posture for weeks on end, and high muscular tension in her arms and legs. The ligature marks had not been in the same place where the ulcers had developed. Even if the applicant's daughter had been tied to her bed once, it had been a necessary measure: it appears from the testimony of the psychiatric clinic staff that she had tried to run away and had scratched one of the paramedics. She had been making impulsive and irrational brisk movements; she had been potentially a danger to herself and others, so tying her up had been inevitable.

63. As to the procedural aspect, the Government described the inquiries and investigations that had taken place in the case. The Government argued that the decisions to close the case had been quashed by the supervising prosecutors owing to the incompleteness of the investigation. Even if there

had been delays in the investigation of the case, these had been related to the need to conduct additional medical examinations and had been justified given the complexity of the case.

2. The applicant

64. The applicant argued that her daughter had not received timely and adequate medical treatment. Thus, the ambulance doctor who had examined her daughter on the evening of 14 August 2003 had underestimated the seriousness of her condition. She had not been hospitalised until the second day, on 15 August 2003. Her confinement to the psychiatric clinic had been unlawful.

65. According to the applicant, because of the negligence of the medical staff at the psychiatric clinic her daughter had caught a cold; as a result, she had contracted pneumonia. Furthermore, a lack of due care in the clinic had resulted in her developing a septic infection and several ulcers. Her daughter had been tied to her bed, which had been noticed by the doctor on her transfer to the town hospital (see paragraph 18 above). The applicant classed the tying up of her daughter as ill-treatment. In addition, her left hip had been dislocated; that injury remained unexplained by the investigator. The applicant believed that the hip dislocation had been caused by her daughter being tied up in the psychiatric clinic. The applicant indicated that during the last investigation the experts had been unable to conduct an additional forensic examination because her daughter's medical records and tissue samples ("archive") had been lost, and that this had made any further examination into the circumstances of her death impossible.

B. Admissibility

66. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

67. The Court observes that the applicant's daughter died as a result of a sudden and serious illness. In such circumstances, the first issue that it needs to address is whether the authorities were under an obligation to take "appropriate steps to safeguard" Oksana Belenko's life and, if so, whether they have complied with it (see, *inter alia*, *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III, and *Keenan v. the United Kingdom*, no. 27229/95, § 89, ECHR 2001-III).

68. The Court will then examine whether the subsequent investigation into the events leading to the applicant's daughter's death was compatible with the requirements of the procedural aspect of Article 2 of the Convention (see *Kudra v. Croatia*, no. 13904/07, §§ 100 and 101, 18 December 2012).

1. Substantive aspect

69. The Court reiterates that Article 2 does not solely concern deaths resulting from the use of unjustified force by agents of the State but also, in the first sentence of its first paragraph, lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction (see, for example, *L.C.B.*, cited above, § 36, and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 54, ECHR 2002-II).

70. Those principles apply in the public-health sphere too. The aforementioned positive obligations therefore require States to make regulations compelling hospitals, whether public or private, to adopt appropriate measures for the protection of their patients' lives (see, for instance, *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 49, ECHR 2002-I; *Powell v. the United Kingdom* (dec.), no. 45305/99, ECHR 2000-V; and *Oyal v. Turkey*, no. 4864/05, §§ 53-54, 23 March 2010).

71. Turning to the circumstances of the present case, the Court observes that despite having been subjected to an involuntary confinement (see paragraphs 6 and 12 above), the applicant's daughter was not a detainee. It was not in dispute between the parties that her condition was extremely serious (see paragraphs 6-8 above) and her parents put her in the clinic on their own initiative; it had been done for their daughter's own good and with the aim of her being treated in the clinic (see paragraph 7 above).

72. The Court next notes that according to the expert reports obtained by the investigators (see paragraphs 32 et seq. above) the doctors who treated her respected the applicable regulations and procedures, used scientifically tested treatment methods, and employed approved medical substances and equipment.

73. Where a Contracting State has made adequate provision for securing high professional standards among health professionals and the protection of the lives of patients, the Court cannot accept that matters such as error of judgment on the part of a health professional or negligent co-ordination among health professionals in the treatment of a particular patient are sufficient of themselves to call a Contracting State to account from the standpoint of its positive obligations under Article 2 of the Convention to protect life (see *Byrzykowski v. Poland*, no. 11562/05, § 104, 27 June 2006).

74. Having examined the materials at its disposal, the Court cannot detect such flaws in the case at hand and concludes that the State complied

with its substantive positive obligation to safeguard the applicant's daughter's right to life. There has therefore been no violation of Article 2 of the Convention on this account.

2. Procedural aspect

75. The Court will now turn to the issue of the State's compliance with its procedural obligations under Article 2 of the Convention.

76. The Court reiterates that Article 2 of the Convention requires an effective independent judicial system to be set up so that the cause of death of patients in the care of the medical profession, whether in the public or the private sector, can be determined and those responsible made accountable (see, among other authorities, *Calvelli and Ciglio*, cited above, § 49). Where the infringement of the right to life or physical integrity is not caused intentionally, the positive obligation imposed by Article 2 to set up an effective judicial system does not necessarily require the provision of a criminal-law remedy in every case. In the sphere of medical negligence, the obligation may, for instance, also be satisfied if the legal system affords victims a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts, enabling any liability of the doctors concerned to be established and any appropriate civil redress, such as an order for damages and for the publication of the decision, to be obtained. Disciplinary measures may also be envisaged (ibid., § 51; *Lazzarini and Ghiacci v. Italy* (dec.), no. 53749/00, 7 November 2002; and *Mastromatteo v. Italy* [GC], no. 37703/97, § 90, ECHR 2002-VIII).

77. What is important is that the domestic legal system as a whole and the particular proceedings that the applicant engaged in the specific circumstances of the case satisfied all of the guarantees required by the Convention (see *Dodov v. Bulgaria*, no. 59548/00, §§ 87-98, 17 January 2008; *Bajić v. Croatia*, no. 41108/10, § 93, 13 November 2012; and, in the context of Russia, *Korogodina v. Russia*, no. 33512/04, § 53, 30 September 2010).

78. Turning to the present case, the Court notes that Oksana Belenko's death gave rise to two sets of preliminary inquiries and seven rounds of investigation. The criminal investigation into her death was closed seven times: on 4 February 2005, 12 June 2005, 14 July 2005, 26 February 2006, 9 March 2007, 5 September 2007, and 20 May 2011 (see paragraphs 37, 40-42, 47, 50 and 54 above). On each of these occasions the supervising prosecutors and courts pointed out various defects in the quality of the investigation, refused to confirm the conclusions of the investigation and instructed the investigators to pursue the investigation and carry out new investigative measures.

79. The Court recalls its findings in *Korogodina*, cited above, § 58:

> "... [F]ollowing the opening of the criminal case, the prosecuting authorities discontinued the investigation on six occasions. Each time, the applicant appealed and

> the supervising prosecutor quashed the relevant decision and reopened the investigation noting the investigator's or the subordinate prosecutor's failure to fully determine the circumstances of the case. The Court considers that such remittals of the case for re-examination disclose a serious deficiency of the criminal investigation which irreparably protracted the proceedings. ..."

80. In the present case, the investigation into the circumstances of Oksana Belenko's death lasted with interruptions from 2003 to 2011. Although a reopening of a criminal investigation is not in itself ultimate proof of its "deficiency" in terms of the Court's case-law, the sheer number of the reopenings shows that no genuine attempt to establish the truth was made. In particular, the Court is struck by the fact that although on 18 September 2008 the Zheleznodorozhniy District Court ordered the case to be reopened, that was not done until 15 April 2011 (see paragraph 51 above). This means that for over two and a half years, the decision of the court to continue the investigation was simply disregarded.

81. Furthermore, during the last round of the proceedings the investigator held that it had been impossible to obtain an additional expert examination into the circumstances of Oksana Belenko's death because the "tissue archive" of the deceased (the samples of her tissue) and her medical records had been lost (see paragraph**s** 53 and 54 above). The Court considers unexplained loss of a central piece of evidence sufficient in itself to compromise the findings of an investigation (see, *mutatis mutandis*, *Maslova and Nalbandov v. Russia*, no. 839/02, § 94, 24 January 2008). It also notes with regret that the mentioned deficiencies resulted in the investigation's inability to shed any light on the origin of suspect ligature marks on her body (see paragraphs 16, 18 and 27 above). This information could constitute an important element in the analysis of the cause of her death as well as clarify the circumstances surrounding the events.

82. The Court is not called upon to determine or to identify what sort of steps the domestic authorities should have taken in the case at hand. Therefore, it confines itself to noting that the investigation in this case was protracted, inefficient and failed to determine with sufficient clarity the cause of death of the patient in the care of the medical profession, so as to make those responsible for it accountable, if anyone (see *Bajić*, cited above, §§ 91-108).

83. The Court would next recall that any deficiency in the criminal proceedings is not sufficient in itself to find a procedural violation of Article 2 (see, for example, *Šilih v. Slovenia* [GC], no. 71463/01, §§ 202-211, 9 April 2009, and *Dodov*, cited above, §§ 91-98), unless the deficiencies in the criminal-law remedy affect the effectiveness of the other remedies available (see, for example, *Byrzykowski*, cited above, § 116). In the present case, the Court finds that the availability of the "tissue archive" of the deceased as well as her medical records was so important for a proper resolution of the applicant's claims that their loss critically undermined the

applicant's prospects of success in any other types of domestic proceedings that she could have brought in respect of these events. In this context, the Court also recalls the conflicting medical reports on the cause of Oksana Belenko's death (see paragraph 45 above).

84. Against the above background, the Court finds that the Government failed to demonstrate that the domestic system as a whole, faced with a case of an allegation of medical negligence resulting in death of the applicant's daughter, provided an adequate and timely response consonant with the State's procedural obligations under Article 2 of the Convention.

85. It follows that in the present case, there has been a violation of Article 2 of the Convention under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

86. The applicant complained that her daughter, while in the psychiatric clinic and the hospital, had been neglected and ill-treated. She referred to Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

87. The parties' submissions under Article 3 of the Convention are virtually identical to their observations under Article 2. The Court decides that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, and that it is not inadmissible on any other grounds. It must therefore be declared admissible. However, in view of its findings under Article 2, the Court considers that the applicant's complaint under Article 3 does not require separate examination.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

88. The applicant also complained under Article 5 of the Convention that Oksana Belenko's detention had been unlawful. The Court notes that the latest decision in connection with this complaint was taken on 20 May 2004, whereas the application was lodged on 20 May 2006, which is more than six months later. It follows that this complaint was introduced out of time and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

89. To the extent that the applicant referred to Articles 6 and 13 in connection with the refusal of the authorities to prosecute the doctors, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention. It follows that this part of the application must be declared inadmissible as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

90. 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

91. The applicant claimed 100,000,000 Russian Roubles (RUB) in respect of non-pecuniary damage.

92. The Government considered that amount to be excessive.

93. The Court observes that the prolonged failure of the authorities to give satisfactory answers to questions which Oksana's death raised, must have caused the applicant, her mother, acute mental suffering. At the same time, the Court findings under Article 2 in the present case are of a procedural nature. In the light of all materials in its possession, on an equitable basis the Court awards the applicant EUR 15,000 on account of non-pecuniary damage, plus any tax that may be charged on this amount.

B. Costs and expenses

94. The applicant did not claim anything under the head of costs and expenses, so the Court does not make any award in this respect.

C. Default interest

95. 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 complaints under Articles 2 and 3 admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 2 of the Convention under its substantive limb;

3. *Holds* that there has been a violation of Article 2 of the Convention under its procedural limb;

4. *Holds* that there is no need to examine this complaint separately under Article 3 of the Convention;

5. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent state, at the rate applicable at the date of settlement;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 December 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President