THIRD SECTION

**CASE OF GONCHARUK v. RUSSIA**

*(Application no.58172/14)*

JUDGMENT

STRASBOURG

27 August 2019

*This judgment is final but it may be subject to editorial revision.*

In the case of Goncharuk v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

 Georgios A. Serghides, *President,* Branko Lubarda, Erik Wennerström, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 9 July 2019,

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

PROCEDURE

1.  The case originated in an application (no. 58172/14) 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 Natalya Nikolayevna Goncharuk (“the applicant”), on 1 August 2014.

2.  The applicant was represented by Mr B. Irlitsin, a lawyer practising in Omsk. The Russian Government (“the Government”) were represented by Mr M. Galperin, the Representative of the Russian Federation to the European Court of Human Rights.

3.  On 15 June 2018 notice of the complaint concerning the domestic authorities’ failure to notify the applicant of her daughter’s death was given to the Government and the remainder of the application was declared inadmissiblepursuant to Rule 54 § 3 of the Rules of Court. The parties submitted written observations on the admissibility and merits.

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

4.  The applicant was born in 1972 and lives in Omsk.

A.  The applicant’s daughter’s death and criminal proceedings

5.  On 23 August 2013 the applicant’s daughter, Ms K. Goncharuk, died after falling from a bridge. Her death was registered as suicide. The deceased had some personal belongings and passport with her.

6.  Preliminary criminal inquiry into the accident was initiated.

7.  On 27 August 2013 the applicant contacted Ms B., a friend of Ms K. Goncharuk living in the adjacent room. Ms B. stated that the applicant’s daughter had not been at home for three days.

8.  The applicant filed a missing person complaint with a local police office. However, it was not accepted because a short period of time had passed since Ms K. Goncharuk’s disappearance.

9.  On 29 August 2013 the applicant once again contacted Ms B. to confirm that her daughter was still missing.

10.  An investigator in charge of the preliminary inquiry into the circumstances of Ms K. Goncharova’s death attempted to locate her relatives. On unspecified date between 7 and 13 September 2013 he visited a flat where the applicant’s daughter had resided. He did not manage to get inside, as the door was closed. He also unsuccessfully searched for people with the same last name on the Russian social network “VKontakte”. The investigator did not contact the local police office.

11.  On 16 September 2013 the applicant’s daughter was buried as unclaimed. The burial was authorised by the investigator in charge of her case.

12.  Ten days later the investigator decided not to initiate criminal proceedings, having considered Ms K. Goncharova’s death suicide, and closed the preliminary inquiry.

13.  The applicant contacted the Accidents Record Bureau and thus learned about her daughter’s death.

14.  On 30 September 2013 the applicant asked for the exhumation and reburial of her daughter’s body. Her request was granted on the same day. Reburial took place on 3 October 2013.

B.  Proceedings for compensation for damage

15.  In October 2013 the applicant lodged a tort action against the Investigative Committee and the Ministry of Finance.

16.  On 10 December 2013 the Tsentralniy District Court of Omsk dismissed the claim, having found that the investigator had not committed any unlawful actions. The court also noted that the applicant had failed to display requisite diligence and to undertake active steps to locate her daughter.

17.  On 12 February 2013 the Omsk Regional Court upheld the judgment endorsing the District Court’s reasoning.

18.  The applicant’s cassation appeals were dismissed on 25 March 2014 by the Omsk Regional Court and on 20 May 2014 by the Supreme Court of Russia.

II.  RELEVANT DOMESTIC LAW

19.  The relevant domestic legal provisions were recently summarised in the Court’s judgment in *Lozovyye v. Russia,* no. 4587/09, §§ 19-25, 24 April 2018.

THE LAW

I.  ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

20.  The applicant complained under Article 13 of the Convention that authorities had failed to undertake reasonable practical efforts in order to locate her and notify her of her daughter’s death.

21.  Being the master of the characterisation to be given in law to the facts of the case (see *Bouyid v. Belgium* [GC], no. 23380/09, § 55, ECHR 2015) the Court finds it appropriate to examine the applicant’s allegations under Article 8 of the Convention, which reads as follows:

“1.  Everyone has the right to respect for his private and family life, his home and his correspondence.

2.  There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

22.  The Government submitted that the authorities had acted diligently and had made reasonable efforts to locate Ms K. Goncharuk’s relatives. The applicant, for her part, had failed to maintain regular contact with her daughter and had only contacted competent domestic authorities more than one month after the death.

A.  Admissibility

23.  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.

B.  Merits

24.  The Court reiterates that in a situation such as the one in the present case where State authorities and not family members are aware of the death, there is an obligation on the relevant authorities to undertake reasonable steps to ensure that surviving members of the family are informed of the death of their family member (see *Lozovyye v. Russia*, cited above*,* § 38).

25.  The Court will therefore examine whether in the circumstances of the present case the Russian authorities complied with their positive obligations under Article 8 of the Convention, as laid down above.

26.  The Court observes that there were several venues which could have been used to locate Ms K. Goncharuk’s relatives.

27.  The deceased had a passport with her. Accordingly, her identity was clearly known to the authorities who could have made official inquiries about Ms K. Goncharuk’s family situation in a local registration office.

28.  Furthermore, the applicant made several calls to her daughter’s flat. She was in contact with Ms B., her daughter’s flatmate. In addition, the applicant attempted to lodge an official missing person complaint with the local police office.

29.  At the same time the investigator in charge of the preliminary criminal inquiry made a single visit to the flat where the applicant’s daughter had lived. He did not try to contact neighbors or to leave any messages. Neither did he contact the local police office to inform them of the death or to summon any relevant information about Ms K. Goncharova’s personal life and family status.

30.  In these circumstances the Court concludes that the authorities did not act with reasonable diligence and therefore did not comply with their positive obligation in the present case.

31.  There has accordingly been a violation of Article 8 of the Convention.

II.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

32.  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

33.  The applicant claimed 70,000 euros (EUR) in respect of non‑pecuniary damage and 47,350 Russian roubles (RUB) in respect of pecuniary damage, referring to expenses linked to the exhumation and reinternment of her daughter’s body.

34.  The Government submitted that the applicant’s claim for pecuniary damages was not related to the subject matter of the case. They also contested the applicant’s claim in respect of non-pecuniary damage as excessive and unreasonable.

35.  The Court considers that the applicant must have suffered non‑pecuniary damage on account of the violation found, and awards her EUR 10,000 under this head, plus any tax that may be chargeable on that amount. As regards the claim in respect of pecuniary damage, the Court observes that the applicant has incurred pecuniary loss due to the exhumation and reburial of her daughter’s body. Regard being had to the documents in its possession, the Court finds it reasonable to award EUR 510 under this head, plus any tax that may be chargeable on that amount.

B.  Costs and expenses

36.  The applicant did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award her any sum on that account.

C.  Default interest

37.  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 concerning the domestic authorities’ failure to notify the applicant of her daughter’s death admissible;

2.  *Holds*that there has been a violation of Article 8 of the Convention;

3.  *Holds*

(a)  that the respondent State is to pay the applicant, within three months the following amounts, to be converted into the Russian roubles at the rate applicable at the date of settlement:

(i)  EUR 510 (five hundred and ten euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii)  EUR 10,000 (ten thousand euros euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(b)  that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4.  *Dismisses*the remainder of the applicant’s claim for just satisfaction.

Done in English, and notified in writing on 27 August 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Fatoş Aracı Georgios A. Serghides
 Deputy Registrar President