



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

1959 · 50 · 2009

FIRST SECTION

CASE OF SHEMILOVA AND SHEMILOV v. RUSSIA

(Application no. 42439/02)

JUDGMENT
(Striking out)

STRASBOURG

8 October 2009

FINAL

08/01/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Shemilova and Shemilov v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Elisabeth Steiner,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinvernì,
George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 17 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 42439/02) 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 two Russian nationals, Ms Selikhat Shemilova and Mr Magomed Ayubovich Shemilov (“the applicants”), on 15 June 2002.

2. The applicants were represented by Mr R. Malsagov, a lawyer practising in St Petersburg. The Russian Government (“the Government”) were initially represented by Mr P. Laptev and Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mr G. Matyushkin.

3. The applicants complained, in particular, that their property had been destroyed by representatives of the State and that they had no access to court to have their claim for compensation examined. They relied on Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

4. On 29 August 2004 the President of the First Section decided to grant priority to the application under Rule 41 of the Rules of Court.

5. By a decision of 11 December 2008, the Court declared the application partly admissible.

6. The Government, but not the applicants, submitted further written observations (Rule 59 § 1).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

7. The applicants, who are relatives, were born in 1912 and 1966 respectively. Their place of residence is unknown.

8. At the material time the applicants lived in a privately owned house at 167 Ulyanova Street in the Oktyabrskiy District of Grozny.

9. According to the applicants, on 29 March 2000 a group of federal servicemen in two armoured personnel carriers with obscured hull numbers approached the applicants' house. The servicemen were masked and had the Russian Armed Forces emblem on their sleeves. One of them pointed his machine gun at the second applicant, who was standing near the gate, and ordered him not to move. The soldiers then entered the courtyard of the applicant's house and one of them asked the first applicant whether she was of Chechen origin. When the first applicant said that she was, the servicemen further asked her whether Chechen rebel fighters (*boyeviki*) were living in the house. The first applicant replied that no fighters had ever lived in her house, that she lived there with the second applicant, and that they had never been involved in military activities.

10. The servicemen then broke the door down and entered and searched the house. They remarked, turning to the first applicant, that her living conditions were quite good and that apparently it was the house of some Chechen field commander. The soldiers then sprayed the walls inside the house with petrol and set it on fire. The house, with the applicants' possessions inside it, was completely burnt down.

11. On an unspecified date the applicants complained to the Oktyabrskiy District Office of the Interior of Grozny ("the Oktyabrskiy VOVD") that federal servicemen had burnt their house down.

12. On 5 April 2000 the Oktyabrskiy VOVD decided to dispense with criminal proceedings on the grounds that it was impossible to establish to which military unit the servicemen involved in the arson attack belonged.

13. According to the Government, on 24 January 2006 the decision of 5 April 2000 was set aside and criminal proceedings were instituted under Article 167 § 2 of the Russian Criminal Code (aggravated deliberate destruction of, or infliction of damage on, property) in connection with the incident of 29 March 2000. The investigation was under the supervision of the Prosecutor General's Office.

14. On 19 September 2000 the local authorities drew up an evaluation report (*дефектный акт*), which listed the items of the applicants' property that had been destroyed on 29 March 2000.

15. On an unspecified date the applicants obtained an estimate of costs for repair works to be carried out on their house.

16. On 11 October 2001 the applicants brought proceedings in the Oktyabrskiy District Court of Grozny ("the District Court"), seeking damages in connection with the deliberate destruction of their property by the federal servicemen.

17. On 6 November 2001 the District Court held that the applicants' claims "could not be allowed in court proceedings" on the ground that the alleged damage should be compensated in accordance with the temporary regulations concerning compensation and other social benefits for Russian citizens who had suffered damage as a result of the military conflict in the Chechen Republic, and therefore the applicants should apply to a local migration service for compensation.

18. On 5 March 2002 the Supreme Court of the Chechen Republic upheld the above judgment on appeal, having repeated the reasoning of the first-instance court.

19. The applicants did not apply for compensation in accordance with the ruling of the domestic courts.

THE LAW

20. Following the decision on admissibility, in a letter of 19 December 2008 the Court invited the parties to submit their further observations by 16 February 2009. The Government, but not the applicants, submitted their observations within the specified time-limit.

21. In the absence of any reply from the applicants, by a registered letter of 16 April 2009 the Court drew the attention of the applicants' representative to the fact that the period allowed for submission of the applicants' observations and claims for just satisfaction had expired and that no extension of the deadline had been requested. The applicants' representative was reminded that, in accordance with Article 37 § 1 (a) of the Convention, the Court may strike a case out of its list of cases where the circumstances lead to the conclusion that the applicants do not intend to pursue the application.

22. This letter was returned to the Court on 30 June 2009 bearing the mark "unclaimed".

23. Meanwhile, on 26 May 2009 the Court sent a registered letter similar to that of 16 April 2009 and enclosing a copy of the Court's letter of 19 December 2008 to the applicants' address indicated in their application form. This letter was also returned to the Court on 30 June 2009 with an indication to the effect that it had been impossible to find the applicants as they no longer resided at the indicated address. The applicants had never apprised the Court of their new address.

24. The Court considers that, in these circumstances, the applicants may be regarded as no longer wishing to pursue their application, within the meaning of Article 37 § 1 (a) of the Convention. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require continued examination of the case (see, by way of contrast, *Karner v. Austria*, no. 40016/98, § 28, ECHR 2003-IX). In view of the above, it is appropriate to strike the case out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English, and notified in writing on 8 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President