



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

THIRD SECTION

DECISION

Application no. 32220/07
Gocha APRASIDZE and others
against Georgia

The European Court of Human Rights (Third Section), sitting on 21 May 2013 as a Chamber composed of:

Josep Casadevall, *President*,

Alvina Gyulumyan,

Corneliu Bîrsan,

Ján Šikuta,

Luis López Guerra,

Nona Tsotsoria,

Johannes Silvis, *judges*,

and Marialena Tsirli, *Deputy Section Registrar*,

Having regard to the above application lodged on 23 July 2007,

Having deliberated, decides as follows:

THE FACTS

1. A list of the applicants, who are all Georgian nationals and reside in the village of Etseri, is set out in the appendix.

A. The circumstances of the case

1. The police operation of 24 March 2004

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

3. The first applicant and his brother, the third applicant, are members of the Aprasidze family. The second applicant is their mother. Several criminal cases for various serious offences (multiple murder, numerous episodes of armed robbery, kidnapping, extortion and so on) were pending against some members of this family since 1994.

4. On 24 March 2004, at around 7:30 p.m., the Ministry of the Interior and the Ministry of National Security jointly launched an anti-criminal operation in the village of Etseri, situated in Svaneti, a north-eastern mountainous region of Georgia, where the Aprasidze family was living. The aim of that operation was to apprehend the members of the family who had been evading justice. Several hundred agents of special squads of both Ministries and twelve military helicopters took part in the operation, besieging the Aprasidzes' two family houses situated in close proximity to each other in the village. At the time of the attack, apart from the four men of the family – the head of the family, Mr Evgeni Aprasidze, and his three sons –, there were two women, including the second applicant, and four minor children at home.

5. According to an official version of the events, which is disputed by the applicants, the Aprasidzes put up armed resistance to the law-enforcement agents, damaging one of the military helicopters. The authorities became obliged to respond with fire, as a result of which Mr Evgeni Aprasidze and his youngest son, Mr Omekh Aprasidze, were killed, whilst the first and third applicants were badly wounded by the shooting but captured alive. As to the women of the family, including the second applicant, and the minor children, they found a shelter underneath beds, covered by several thick mattresses, and were thus spared from random bullets during the shooting.

6. According to the applicants, however, the law-enforcement agents were the first to open fire, without any prior warning. To discourage them from shooting, Mr Evgeni Aprasidze went out onto the balcony of his house, holding his hands up as a sign of non-resistance, but was immediately shot down by a sniper. The houses were first shelled with machine guns, grenade and rocket launchers both from the land and helicopters (the photographs contained in the case file show the traces of that heavy shooting on the houses), and then hundreds of masked law-enforcement agents broke in.

7. According to the statements of the first applicant and a neighbour of the Aprasidze family who eye-witnessed to some parts of the police operation, the youngest brother in the family, Mr Omekh Aprasidze, was captured alive but then shot to death by one of the officers, whilst the first applicant, apart from being wounded by bullets, received several deep knife strikes into his lungs, as a result of which he lost his consciousness and was mistakenly considered to be dead (the fact that the first applicant indeed received numerous knife strikes to his both lungs is confirmed by the results of a subsequent medical examination). After the termination of the special operation, one of the family houses was burnt down by the police (this fact is similarly confirmed by the photographic evidence contained in the case file).

2. Investigation into the police actions

8. On 26 March 2004 the General Inspection Department of the Ministry of the Interior, without involving the survivors from the Aprasidze family as victims, opened an internal probe into the lawfulness of the actions of the Ministry's special unit during the operation of 24 March 2004. After a number of investigative measures, the Department concluded, on 23 June 2004, that the use of force by the law-enforcement agents had been fully proportionate in the circumstances.

9. On 24 August 2004 the General Prosecutor's Office, in reply to the first and third applicants' enquiry about the lawfulness of the police actions during the operation, which had been filed by their three lawyers, advised them that the Ministry of the Interior had already investigated the matter and had found that the use of armed force had been proportionate and lawful.

10. On 13 November 2004 the Public Prosecutor's Office of the Mingrelia and Upper Svaneti Region, endorsing the Ministry of the Interior's conclusion of 23 June 2004 without conducting any further investigation, issued a resolution refusing to institute criminal proceedings for excessive use of force by the law-enforcement agents. The operative part of the resolution stated that it should be served on all the persons concerned who were to be informed of their right to appeal against the resolution to the Zugdidi District Court within fifteen days.

11. On 6 December 2004 the second applicant, who allegedly was not aware of the above-mentioned procedural developments, requested the Public Prosecutor's Office of Mingrelia and Upper Svaneti Region to launch a criminal investigation into a possible excess in the use of force by the police during the operation of 24 March 2004 against her family. The criminal complaint was filed in the second applicant's own name and was not accompanied by an authority issued by either of the two remaining applicants.

12. According to the applicants, it was only in reply to the second applicant's criminal complaint of 6 December 2004, that they learnt for the

first time, at the end of February 2005, about the existence of the prosecutorial resolution of 13 November 2004.

13. Subsequently, on 15 March 2005, the second applicant, following the instruction contained in the operative part of the resolution of 13 November 2004, filed a complaint against it with the Zugdidi District Court. She requested that the resolution be annulled and a criminal investigation into the police actions be opened. The complaint was filed in the second applicant's own name only and was not accompanied by an authority issued by either of the two remaining applicants.

14. Subsequent to Article 242 § 4 of the Code of Criminal Procedure, after having registered the second applicant's complaint on 17 March 2005, the Zugdidi District Court disposed of fifteen days maximum for its examination (see paragraph 19 below). However, on 25 March 2005 the District Court transmitted the appeal to the Supreme Court of Georgia for incorporation into the case file concerning the criminal proceedings pending against the first and third applicants for various offences, of which fact the second applicant was informed. At the end, the second applicant's appeal of 15 March 2005 was never examined. According to the case file, the second applicant did not enquire with the authorities about the reasons for the non-examination of her appeal either within or after the expiration of the relevant statutory period.

3. Trial of the first and third applicants

15. Subsequent to the police operation of 24 March 2004, the arrested Aprasidze brothers were placed in pre-trial detention by a court order of 25 March 2005. The detention order was extended several times by various judicial instances.

16. On 1 March 2006 the Kutaisi Regional Court delivered, after a trial which had started on 6 July 2005, a first instance judgment against the Aprasidze brothers. Thus, the first and third applicants, who were assisted by three lawyers of their choice and had, as the minutes of the trial confirm it, an unlimited possibility to question all the relevant witnesses and to submit their defence arguments, were convicted of complicity to commit multiple murders, robbery, kidnapping, extortion, firearms and other serious offences. The conviction was based on numerous relevant witness statements, the results of various crime detection tests and so on. The first and third applicants were sentenced, respectively, to twenty and eighteen years' imprisonment.

17. On 12 April 2006 the first and third applicants filed an appeal on points of law against their conviction of 1 March 2006 with the Supreme Court of Georgia.

18. On 23 January 2007 the Supreme Court, after having conducted an oral hearing during which the applicants' three lawyers were able to voice additional arguments, dismissed their appeal and, subject to a

re-qualification of the committed offences under the Criminal Code, upheld their conviction, maintaining the imposed sentences.

B. Relevant domestic law

19. Pursuant to Article 242 §§ 1 (a) and 4 of the Code of Criminal Procedure, as it stood at the material time, an investigative or prosecutorial authority's decision refusing to launch criminal proceedings could be appealed to a court within fifteen days after the party concerned had been informed of that decision. The court, after having registered such an appeal, disposed of fifteen days maximum for its examination.

COMPLAINTS

20. Relying on Articles 2 and 3 of the Convention, all three applicants complained in their own name as well as on behalf of their killed relatives (Mr Evgeni Aprasidze and Mr Omekh Aprasidze) and the other surviving members of the family – the third applicant's wife and his three minor children – about the disproportionate use of force by the law enforcement agents during the special operation of 24 March 2004 and the absence of an effective criminal investigation thereof. Among other arguments, the applicants particularly emphasised that the Zugdidi District Court had denied justice to them by its failure to examine the second applicant's complaint against the prosecutorial resolution of 13 November 2004 refusing to launch a criminal probe into the lawfulness of the police actions. The applicants complained that the District Court's decision to transmit the second applicant's appeal to the Supreme Court was contrary to the relevant procedural regulations (see paragraphs 14 and 19 above).

21. Expressing in vague terms their dissatisfaction with their placement in pre-trial detention and with the outcome of the criminal proceedings against them, the first and third applicants also cited, without giving any specific explanation or argument, Articles 5 and 6 of the Convention. All three applicants further cited Articles 8 and 14 of the Convention without any explanation whatsoever.

THE LAW

A. As regards the complaints under Articles 2 and 3 of the Convention

22. The applicants mainly complained, under both the substantive and procedural limbs of Articles 2 and 3 of the Convention, about the circumstances surrounding the police operation of 24 March 2004 and the authorities' alleged failure to conduct an adequate investigation. These provisions read, in so far as relevant, as follows:

Article 2

“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary: ...

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained.”

Article 3

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

1. The first and third applicants' complaints

23. The Court considers that whenever facts allegedly constitutive of a violation under the Convention affect a family, each adult member of that family who possesses full legal capacity to act on his or her own is under the obligation to pursue, for the purposes of Article 35 § 1 of the Convention, a relevant domestic remedy in his or her own name and may not substitute this individual course of action by informal reliance on the involvement in the relevant domestic proceedings of other family members. Such an approach – the individual participation of each member of the affected family in the domestic proceedings – is indispensable for the promotion of the interests of factual clarity and legal certainty both before the domestic authorities and the Court, especially since different members of the same family may be affected differently by the alleged violation (compare with *Saghinadze and Others v. Georgia*, no. 18768/05, §§ 80-83,

27 May 2010; *Khamidov v. Russia*, no. 72118/01, 27, 28, 48-50 and 125, 15 November 2007).

24. In the present case, however, the first and third applicants never attempted, according to the available case materials, to appeal to a court against the prosecutorial refusal of 13 November 2004 to institute criminal proceedings into the lawfulness of the police operation of 24 March 2004, which obviously was a relevant domestic remedy for their complaints under Articles 2 and 3 of the Convention (see, amongst many other authorities, *Medvedev v. Russia* (dec.), no. 26428/03, 1 June 2006; and *Slyusarev v. Russia* (dec.), no. 60333/00, 9 November 2006), either jointly with their mother, the second applicant, or separately. As was shown by the circumstances surrounding the police operation, different members of the Aprasidze family, including the applicants, were affected differently by the police actions. It is also to be noted that the two Aprasidze brothers were assisted by several qualified lawyers at the material time, which fact renders their omission to file a judicial complaint even more inexcusable. If, on the other hand, the two brothers wished to see their mother as their representative in the criminal proceedings against the police, they should have provided her with an authority to that end (compare again with *Saghinadze and Others*, cited above, § 83, and *Khamidov*, the paragraphs cited above).

25. Thus, given the first and third applicants' failure to appeal against the prosecutorial resolution of 13 November 2004, the Court considers that their complaints under Articles 2 and 3 of the Convention must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies (compare again, for instance, with *Nasipova and Khamzatova v. Russia* (dec.), no. 32382/05, 2 September 2010).

2. The second applicant's complaints

26. As to the second applicant's complaints under Articles 2 and 3 of the Convention, which were lodged in her own name as well as on behalf of her killed husband and son (Mr Evgeni Aprasidze and Mr Omekh Aprasidze), the Court, having regard to the relevant circumstances of the case, considers that it cannot determine the admissibility of these complaints on the basis of the case file alone. It is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of the application to the respondent Government.

B. As regards the remainder of the application

27. Lastly, as regards the first and third applicants' unelaborated complaints under Articles 5 and 6 of the Convention, and all three applicants' additional complaints under Articles 8 and 14, the Court finds, in the light of all the material in its possession, and in so far as the matters

complained of are within its competence, that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court

Decides by a majority to adjourn the examination of the second applicant's complaints under Articles 2 and 3 of the Convention;

Declares unanimously the remainder of the application inadmissible.

Marialena Tsirli
Deputy Registrar

Josep Casadevall
President

APPENDIX

1. Mr Gocha APRASIDZE born on 17/07/1967.
2. Mrs Dodo SIDIANI-APRASIDZE born on 14/08/1946.
3. Mr Shmagi APRASIDZE born on 25/07/1964.