



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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 67326/01
by Ruslan Olegovich MEZHIDOV
against Russia

The European Court of Human Rights (First Section), sitting on 21 September 2006 as a Chamber composed of:

Mr C.L. ROZAKIS, President,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, judges,

and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 15 November 2000,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court.

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ruslan Olegovich Mezhidov, is a Russian national who was born in 1967 and lives in the village of Nadterechnoye, Chechnya. He was represented before the Court by lawyers from the Human Rights Centre Memorial (Moscow) and the European Human Rights Advocacy Centre (London). The Russian Government ("the Government") were

represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

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

At the material time the applicant and his family lived in the village of Znamenskoye, in the Nadterechny District of Chechnya. They had an apartment in a block of flats at 19 Shosseynaya Street. The applicant's family consisted of his father, Oleg Semenovich Mezhidov, born in 1938, his mother, Movlmat Lemayevna Mezhidova, born in 1940, his brother, Bislan Olegovich Mezhidov, born in 1969, and his two sisters, Aminat Olegovna Mezhidova, born in 1973, and Svetlana Olegovna Mezhidova, born in 1985.

1. Killing of the applicant's relatives

In early October 1999 the Russian Government launched a military operation in the Chechen Republic.

According to the applicant, on 5 October 1999, between 7 and 9 p.m., the village of Znamenskoye was shelled with artillery cannons from the Terskiy mountain range, where Russian troops were stationed. It appears that the applicant was absent from home at that moment. His parents, brother and sisters tried to escape but were killed by a shell explosion in the courtyard of the building at 19 Shosseynaya Street.

The applicant submitted that in total five to six shells had been launched during the attack. He submitted a sketch map of the scene of the incident indicating the shell craters.

On 24 November 1999 the Civil Registration Office of the Nadterechny District certified the deaths of the applicant's relatives. The certificates stated that each of them had died of "multiple shell wounds". The date and the place of death were recorded as 5 October 1999, Znamenskoye.

2. Official investigation

According to the applicant, the local courts and administrative institutions ceased to function when the hostilities began.

On 3 February 2000, when the local law-enforcement bodies became operational, the applicant applied to the Nadterechny prosecutor's office, requesting it to investigate the deaths of his family members. The applicant submits that no investigative measures were taken in connection with his application. Some time later he was informed by law-enforcement officials that on 5 October 1999 Znamenskoye had allegedly been shelled by Chechen fighters with 120 mm-calibre mortars.

On 22 June 2000 the applicant applied to the Special Representative of the Russian President in the Chechen Republic for Rights and Freedoms, complaining about the killing of his relatives and the lack of an effective investigation. The Representative assured the applicant that he would take up his case and advised him to lodge another application with the Nadterechny prosecutor's office.

On 30 June 2000 the applicant again applied to the Nadterechny prosecutor's office in writing. He restated the circumstances of his family members' deaths and requested that an investigation be carried out.

On 17 November 2000 criminal proceedings in connection with the death of the applicants' next of kin were instituted under Article 105 § 2 (a) and (f) of the Criminal Code of Russia (murder of two or more persons committed by a generally dangerous method). The case file was assigned no. 28026.

It appears that in the context of these proceedings the scene of the crime in Znamenskoye was examined and fragments of shells were found. According to the applicant, he himself searched for fragments and delivered them to the Nadterechny prosecutor's office.

On 9 August 2000 an expert examined thirty fragments collected at the crime scene in Znamenskoye and reported that they were pieces of large-calibre (122 mm or 152 mm) artillery shells. The applicant has submitted a copy of this report. The Government made no comments as regards the results of the examination.

On 12 April 2001 the applicant was granted the status of a victim of crime in case no. 28026.

In a letter of 28 May 2001 the Nadterechny prosecutor's office notified the applicant that the criminal proceedings in case no. 28026 had been suspended, as it was impossible to identify those responsible. The letter further stated that the search for culprits was being continued.

The applicant submitted that at some point the case had been transmitted to a military prosecutor's office, but no information had followed. The applicant is not aware of any further progress in the case.

With reference to the information provided by the Prosecutor General's Office, the Government submitted in their memoranda dated 30 March and 26 April 2005 that a criminal investigation into the death of the applicant's relatives as a result of an attack "with an unidentified weapon by unidentified persons" had been opened on 17 November 2000 and then repeatedly suspended and resumed. On the two most recent occasions the investigation had been reopened on 19 January and 15 April 2005 and was being supervised by the Prosecutor General's Office. According to the Government, although a considerable number of investigative measures had been taken, the investigating authorities were unable to identify the culprits.

They further submitted that on 12 April 2001 the applicant had been granted the status of a victim of a crime and questioned on the same date

and subsequently on 2 January 2005. The investigating authorities also questioned eighteen witnesses, including the applicant's neighbours. According to the Government, some of the applicant's neighbours testified that rebel fighters in possession of automatic firearms and grenade launchers had lived in the same block of flats as the Mezhidov family and that, before having left on 5 October 1999, they had threatened the residents because of the latter's cooperation with the federal authorities. Shortly after the rebels' departure there had been an explosion in the courtyard of the block of flats. The Government did not specify on what date witness statements had been obtained. According to the Government, it was impossible to find other witnesses in the case, but the search for them was currently under way.

It transpires from the Government's submissions that at some point an expert examination of the fragments of shells found by the applicant at the scene of the incident were conducted. According to the results of that examination, it was impossible to establish the exact origin of the fragments in question. The Government did not specify the date of that examination or produce a copy of a document indicating its results. On 5 February 2005 the investigating authorities ordered another expert examination so as to identify and compare the fragments found during the inspection of the crime scene which had been carried out in the applicant's presence with those delivered by him earlier. On 26 April 2005, the date on which the Government submitted their second memorandum, the examination was still under way.

The Government further stated that the applicant had refused to allow the investigating authorities to exhume the bodies of his relatives so that forensic experts could examine them. Finally, the Government submitted that the investigating authorities had sent a number of queries to various State bodies on 17 November and 17 December 2000, 22 and 28 March and 27 April 2001, 19 and 20 January and 2 February 2005 and taken other investigative measures, but did not specify what those measures had been. Also, on 20 January 2005 an investigative group was set up in connection with the case. An investigator from a military prosecutor's office had been included in that group so as to verify whether federal military personnel had been involved in the alleged offence.

Despite specific requests by the Court on two occasions, the Government did not submit a copy of any of the documents to which they referred. Relying on information obtained from the Prosecutor General's Office, the Government stated that the investigation was in progress and that the disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure since the file contained information of a military nature and personal data concerning the witnesses. At the same time, the Government suggested that a Court delegation could have access to the file at the place where the preliminary investigation was being conducted, with the exception of "the documents [disclosing military

information and personal data concerning the witnesses], and without the right to make copies of the case file and to transmit it to others”.

B. Relevant domestic law

Until 1 July 2002 criminal-law matters were governed by the 1960 Code of Criminal Procedure of the RSFSR. On 1 July 2002 the old Code was replaced by the Code of Criminal Procedure of the Russian Federation (CCP).

Article 161 of the new CCP establishes the rule that data from the preliminary investigation may not be disclosed. Part 3 of the same Article provides that information from the investigation file may be divulged with the permission of a prosecutor or investigator and only in so far as it does not infringe the rights and lawful interests of the participants in the criminal proceedings and does not prejudice the investigation. It is prohibited to divulge information about the private life of the participants in the criminal proceedings without their permission.

COMPLAINTS

The applicant complained under Article 2 of the Convention of a breach of the right to life in respect of his relatives. He further claimed that no proper investigation into their deaths had been conducted and that he had been deprived of any effective remedies on that account. In his original application the applicant also referred to Articles 5, 7 and 8 in connection with the above complaints without giving any further explanations. In his observations of 15 July 2005 the applicant gave further details of his complaint under Article 8, stating that his flat had been severely damaged as a result of the shelling of 5 October 1999. In those observations the applicant also claimed that the Government’s refusal to submit a file in criminal case no. 28026 was in breach of the State’s obligations under Article 34 and Article 38 § 1 of the Convention.

THE LAW

1. The applicant complained about the killing of his relatives and the failure of the domestic authorities to carry out an effective investigation into their deaths. He also complained about the absence of effective remedies in respect of the aforementioned violations. The Court will examine those complaints under Articles 2 and 13 of the Convention, which read 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:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

1. Exhaustion of domestic remedies

(a) Submissions by the parties

The Government argued that the above complaints should be declared inadmissible for non-exhaustion of domestic remedies. They stated that the investigation into the killing of the applicant’s relatives had not yet been completed. With reference to the Constitution and other legal instruments, the Government further contended that it had been open to the applicant to appeal in court against any actions or omissions of the investigating or other law-enforcement authorities, or to seek damages in civil proceedings, but he had not availed himself of any of those remedies. The Government also submitted that during the investigation the applicant had not filed any motions, made any requests or challenged the investigators’ decisions.

The applicant disputed the Government’s arguments. He claimed that the fact that the investigation into the killing of his family members was still pending called into question its effectiveness rather than indicating that his complaints were premature. The applicant also contended that the Government had not demonstrated that the remedies to which they had referred were effective and, in particular, were capable of leading to the identification and punishment of those responsible, as required by the Court’s settled case-law in relation to complaints under Article 2 of the Convention.

(b) The Court’s assessment

The Court considers that the question of exhaustion of domestic remedies is so closely linked to the merits of the case that it is inappropriate to determine it at the present stage of the proceedings.

The Court therefore decides to join this objection to the merits.

2. As to the merits of the applicant's complaints

(a) The Government

The Government admitted that the applicant's family members had died, but claimed that the investigation had found no evidence of the involvement of representatives of the federal forces in the alleged offence. The Government relied on the information provided by the Prosecutor General's Office and the Chechen Department of the Federal Security Service to the effect that the killing of the applicant's relatives had most likely been committed by members of illegal armed formations. The Government therefore argued that there were no grounds to claim that the right to life of the applicant's relatives had been breached by the State.

As regards their procedural obligations under Article 2, the Government claimed that the investigation into the deaths of the applicant's relatives met the Convention requirement of effectiveness, as all measures envisaged in national law were being taken to identify the perpetrators. In particular, the investigating authorities had declared the applicant to be a victim in criminal case no. 28026 and had questioned him on several occasions. Apart from the applicant, eighteen witnesses had been questioned and numerous queries had been sent to various State bodies. Furthermore, an expert examination of the fragments of shells found by the applicant at the scene of the incident had been carried out but had been unable to determine the exact origin of the fragments. They further submitted that another expert examination ordered on 5 February 2005 was pending on the date of the submission of their second memorandum. Moreover, on 20 January 2005 an investigative group had been set up in connection with the case and an investigator from a military prosecutor's office had been included in that group so as to verify whether federal military personnel had been involved in the alleged offence.

The Government also alleged that the applicant had not applied to the law-enforcement bodies until 3 July 2000, even though he had had the opportunity to do so, and that he had not given his consent to the exhumation of his relatives' corpses to enable forensic experts to examine them and extract fragments of shells for further study. The Government submitted that this latter fact had obstructed the investigation, as it was impossible to establish the circumstances of the killing of the applicant's family members without such an examination.

The Government further argued that the applicant had had effective remedies at his disposal as required by Article 13 of the Convention and that the authorities had not prevented him from using them. The applicant had been declared a victim in the criminal case opened in connection with the killing of his next of kin and had received reasoned replies to all his queries.

Besides, he had had an opportunity to challenge the actions or omissions of the investigating authorities in court.

(b) The applicant

The applicant disagreed with the Government's submissions. He stated, firstly, that on 5 October 1999 the village of Znamenskoye had been attacked from the Terskiy mountain range, where Russian troops were stationed. He submitted statements by two witnesses who had testified that the village had been shelled from the Terskiy mountain range and that they had seen the Russian forces stationed there. Secondly, the applicant referred to the expert report of 9 August 2000, which had confirmed that the fragments submitted for examination had been pieces of large-calibre (122 mm or 152 mm) artillery shells. The applicant stated that such shells could only be used for heavy artillery cannons, which presumably were in the exclusive possession of the Russian armed forces. He therefore argued that, in such circumstances, there was no doubt that the death of his five family members was attributable to the State. The applicant also pointed to the Government's refusal to disclose a file in the criminal case instituted in connection with the killing of his relatives. He further submitted that the Government had not advanced any arguments to show that the use of lethal force had been justified under Article 2 § 2 of the Convention.

The applicant further contended that the authorities had failed in their obligation to carry out an effective investigation into the circumstances of the deaths of his next of kin, as required by Article 2. He disputed the Government's assertion that he had only applied to the law-enforcement bodies in July 2000. The applicant referred to the documents submitted by him to the Court previously, and in particular to his letter of 3 February 2000 addressed to the Nadterechny prosecutor's office, shortly after it had resumed functioning, and his letter of 22 June 2000 to the Special Representative of the Russian President in the Chechen Republic for Rights and Freedoms. The applicant further contested the Government's argument that he had not given his consent to the exhumation of the bodies. He claimed that the authorities had never sought his permission to have the corpses exhumed, and that in any event under domestic law such a refusal was not binding on investigators, who could have obtained a court order for the exhumation but had never attempted to do so. The applicant thus argued that he had in no way obstructed the investigation.

The applicant submitted that despite all his efforts, the criminal investigation had not been commenced until 17 November 2000, more than a year after the killing of his relatives. Since then it had been going on without producing any tangible result. The applicant stated that the steps taken during the investigation had clearly been deficient. He pointed out that even though the death certificates issued in respect of his relatives on 24 November 1999 indicated the cause of death of each of them as

“multiple shell wounds”, no autopsy had been performed, an assertion which was not disputed by the Government. The inspection of the scene of the incident had been superficial; the investigators had not taken photographs or collected fragments of shells. Moreover, despite the conclusion of the expert examination of 9 August 2000 that the fragments found by the applicant were those of large-calibre artillery shells, there was no evidence that the authorities had adequately investigated the possible involvement of military personnel into the killing of the applicant’s family members. It does not appear that there were any servicemen among the eighteen witnesses questioned by the investigators. Relying on the above considerations, the applicant argued that the authorities had failed in their obligation to carry out an effective investigation into the circumstances of his relatives’ deaths.

The applicant also maintained his complaint under Article 13 of the Convention.

(c) The Court’s assessment

The Court considers, in the light of the parties’ submissions, that this part of the application raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits of the application. Consequently, it concludes that the complaints under Articles 2 and 13 of the Convention cannot be declared manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

2. The applicant also relied on Articles 5 and 7 of the Convention in connection with his complaints regarding the death of his family members.

The Court finds that the circumstances of the present case do not disclose any appearance of a violation of those provisions.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

3. Lastly, in his original application, while complaining about the killing of his relatives, the applicant also invoked Article 8 of the Convention. In his observations dated 15 July 2005 the applicant clarified that under Article 8 he had complained that his flat had been damaged during the attack of 5 October 1999. This Article, in its relevant parts, provides as follows:

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

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.”

The Government contended that the applicant had not exhausted domestic remedies and that, in any event, in the absence of any evidence of intrusion by State agents into the applicant’s flat, his rights under Article 8 had not been violated.

The applicant argued that under Article 8 he was complaining about the severe damage inflicted on his flat as a result of the artillery shelling of 5 October 1999 rather than about the servicemen’s intrusion.

The Court reiterates that while in accordance with Article 35 § 1 of the Convention those seeking to bring their case against the State before the Court are required to use first the remedies provided by the national legal system, there is no obligation under the said provision to have recourse to remedies which are inadequate or ineffective. If no remedies are available or if they are judged to be ineffective, the six-month period in principle runs from the date of the act complained of (see *Hazar and Others v. Turkey* (dec.), no. 62566/000 *et seq.*, 10 January 2002). The Court further reiterates that special considerations may apply in exceptional cases where an applicant first avails himself of a domestic remedy and only at a later stage becomes aware, or should have become aware, of the circumstances which make that remedy ineffective. In such a situation, the six-month period might be calculated from the time when the applicant becomes aware, or should have become aware, of these circumstances (see *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002).

Turning to the present case, the Court observes that in his initial application lodged on 15 November 2000 the applicant did not make any specific complaints under Article 8 of the Convention but merely relied on that provision in the context of his complaint about his relatives’ death. He first raised the issue of the destruction of his flat in his observations of 15 July 2005. The Court further notes that the applicant has not furnished it with any documentary evidence confirming that he brought these complaints, as submitted to it, before the domestic authorities. It does not consider it necessary to determine whether the applicant had effective remedies available in respect of the alleged infringement of his rights under Article 8 as a result of the damage caused to his housing, as even assuming that in the circumstances of the present case no such remedies were available to him, the events complained of took place on 5 October 1999, whereas the relevant complaint was lodged on 15 July 2005, more than six months later.

It follows that this part of the application was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Joins to the merits the Government's objection concerning non-exhaustion of domestic remedies in respect of the complaints submitted under Articles 2 and 13 of the Convention;

Declares admissible, without prejudging the merits, the applicant's complaints under Articles 2 and 13 of the Convention;

Declares inadmissible the remainder of the application.

Søren NIELSEN
Registrar

Christos ROZAKIS
President