

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

FIRST SECTION

DECISION

Application no. 11680/03
by Otar Shirinovich ALOYAN and Zadina Chachikoyevna NADRYAN
against Russia

The European Court of Human Rights (First Section), sitting on 11 October 2011 as a Chamber composed of:

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and Søren Nielsen, *Section Registrar,*

Having regard to the above application lodged on 11 March 2003,

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

Having deliberated, decides as follows:

THE FACTS

The applicants are Mr Otar Shirinovich Aloyan, who is a Russian national born in 1936, and Ms Zadina Chachikoevna Nadryan, who is an Armenian national born in 1940. The applicants live in Yerevan. They were represented before the Court by Mr R.B. Ahues, a lawyer practising in Bremen. The Russian Government were represented by Mr P. Laptev, a former Representative of the Russian Federation at the European Court of Human Rights.

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

A. Events in 1995

On 11 May 1995 the applicants' son, Mr Armen Aloyan, born in 1974, left his apartment in Moscow, drove away and was not seen again.

On 15 May 1995 officers from Moscow no. 111 police station found the applicant's son's car in a car park in Moscow. According to the Government, the officers then unlawfully used the car from that date until 18 May 1995, when Armen Aloyan's relatives found and identified the car as belonging to him.

On 26 May 1995 the burned remains of a man with a gunshot entry wound to the back of the head were found in Istra District in the Moscow region.

On 29 May 1995 a medical forensic examination was carried out on the remains in the context of criminal proceedings opened on the same date (see below). The experts stated that the death could have been caused by a gunshot wound to the head. Also, a ring made from yellow metal with a white metal setting with two rows of white precious stones was found on the little finger of the right hand of the body. A fragment of a black shoe with a leather sole was found on the left foot, a fragment of cotton fabric of a yellow-brown colour, a fragment from a grey sweater and a crucifix made of white metal were found on the neck and chest of the body.

During a witness interview of 30 June 1995, one of Armen Aloyan's brothers, Mr M. A., stated that his missing brother had been wearing a gold ring with white diamonds on the little finger of his right hand. Later that day he identified the ring and the fragments of clothes and shoe which had been on the dead body found on 26 May 1995 as belonging to his brother, Armen Aloyan. The body was then handed over to the applicants, who buried it in Armenia.

B. Criminal investigation

On 29 May 1995 two sets of criminal proceedings were instituted, in connection respectively with the disappearance of the applicants' son and the discovery of the dead body in Istra District. The cases were later joined under the number 12528; the investigation was carried out under Article 103 (premeditated murder) of the RSFSR Criminal Code then in force.

It appears that the applicants retained doubts as to the identity of the body found in Istra District on 26 May 1995. In late 2000 they met a certain Mr S., who, according to him, had been held in division no. 9 of psychiatric hospital no. 5 in the town of Chekhov in the Moscow Region ("the Chekhov psychiatric hospital") and had seen the applicants' son there in 1996-98. The

applicants insisted that Armen Aloyan could have been abducted by officers of police station no. 111 of Moscow, or by officers of the Moscow Region department of the fight against organised crime, who had carried out a special operation in the Golden Palace casino in Moscow on 11 May 1995. In this latter respect, the applicant alleged that on the date of his disappearance their son had telephoned them on his mobile phone and stated that he was in that casino. The applicants also insisted that officers of the Istra town prosecutor's office, acting with medical experts, showed them their son's personal belongings for identification – a ring and a crucifix – and then delivered to them another man's body which had been burned to an extent which made identification impossible. The applicants further claimed that after he was abducted their son had been placed in the Chekhov psychiatric hospital.

According to the Government, the investigating authorities thoroughly checked all aspects of the version put forward by the applicants and did not find any evidence to support it. The applicants on their part had been highly uncooperative and had obstructed the course of the investigation by numerous refusals to take part in investigative actions. In support of their submissions, the Government referred to the documents from the criminal investigation file in case no. 12528. These documents reveal the following.

1. Investigative actions with a view to establishing the identity of the dead body

On 29 May 1995 the body found in the Istra District on 26 May 1995 was examined by medical experts (see above).

On 30 June 1995 Mr M. A. identified the remains as those of his brother, Armen Aloyan (see above).

According to an expert report of 14 December 1995, pieces of fabric collected during the inspection of the scene where the corpse was found, represented a piece of a sweater of a blue-grey colour and a piece of cotton denim fabric.

During their interviews, witnesses who had seen Armen Aloyan on the day of his disappearance stated that he had been wearing a blue-grey sweater and jeans.

In a witness interview of 25 February 2003, Mr M. S., one of Armen Aloyan's brothers, stated that he had no doubts that the body found on 26 May 1995 in the Istra District was that of Armen Aloyan. He added that he had been in conflict with his parents, the applicants, after Armen Aloyan's death, because they insisted that the latter was alive. Mr M. S. also stated that he could not explain why his parents believed his deceased brother was alive.

Between 7 April and 30 May 2003 a medical forensic molecular-genetic (DNA) examination of the remains found in Istra District was carried out on the basis of blood samples provided by Mr M. A., one of Armen Aloyan's

brothers. It was thus confirmed that the remains were those of Armen Aloyan.

2. Investigative actions with a view to establishing whether Armen Aloyan was being held in the Chekhov psychiatric hospital

In a witness interview of 13 September 2002 Mr S., born in 1929, stated that between 18 November 1996 and 19 July 2001 he had undergone treatment in the Chekhov psychiatric hospital. According to him, from the date of his admission to hospital until winter 1998 he had been held in division no. 9 of that hospital, and afterwards he had been transferred to another division. Mr S. further stated that in 2000 his wife, who had come to see him in hospital, had shown him a newspaper article with Armen Aloyan's photograph stating that his parents were looking for him and that he had been abducted by the police and placed in the Chekhov psychiatric hospital. In Mr S.'s submission, having looked at the photograph, he had recognised Armen Aloyan, as he had seen the latter in division no. 9 during the three years Mr S. said he had spent there.

According to a report of 20 March 2003 on Mr S.'s psychiatric forensic examination, at the relevant time the latter had been suffering from a mental disorder of a kind which made him mentally incompetent and incapable of adequately perceiving and understanding reality. Moreover, Mr S's mental state at present made it impossible for him to participate in the investigation. The investigation also established that Mr S. had spent four and a half months in division no. 9 of the Chekhov psychiatric hospital rather than three years as had been alleged by him. Moreover, only elderly patients were admitted to that division, therefore under no circumstances could a person of Armen Aloyan's age be held there.

The materials of the criminal investigation file further reveal that enquiries had been made of the Chekhov psychiatric hospital by various authorities, including the Russian Representative for Human Rights, and that medical personnel were questioned in the course of the investigation; however, no evidence that Armen Aloyan had ever been in that hospital was ever obtained.

3. Other investigative actions

It is clear from the submitted materials that a number of other investigative actions were also taken. In particular, a number of expert examinations of various kinds were conducted, with a view to establishing the time and cause of Armen Aloyan's death, and numerous witnesses were interviewed. Some witnesses indicated by the applicants as those who had certain information concerning their son had been questioned on several occasions, and confrontations between them and the applicants were held. All the witnesses were consistent in their statements and denied having any

meaningful information concerning Armen Aloyan, or having given the applicants any information concerning his fate, as the latter alleged.

In particular, as regards the applicants' version of events, that their son had been abducted by police during a special operation in the Golden Palace casino on 11 May 1995, several witnesses who had been in the casino on that date, including one of Armen Aloyan's brothers, denied having seen Armen Aloyan there at any time on the date in question. Also, a number of witnesses were interviewed in connection with the applicants' version that their son had been abducted by officers from police station no. 111 who had then used his car. It was established that the officers in question had found Armen Aloyan's car abandoned in a car park and used it, in breach of their duties, instead of reporting the finding of an unidentified car to their superiors; however, no evidence of their involvement in Armen Aloyan's abduction and/or murder had ever been found.

The materials of the investigation file in case no. 12528 also contain numerous reports by the investigators in charge of the case at various times, indicating that throughout the investigation the applicants had repeatedly refused to take part in it, and in particular to participate in witness interviews and confrontations, to submit the remains found on 26 May 1995 and the items found along with the remains for additional expert examinations, to provide blood samples for DNA analysis of the remains, and so on.

A decision of 8 June 2003, by which the criminal proceedings in case no. 12528 were terminated on the latest occasion for failure to establish the identities of those responsible, stated, *inter alia*, that in their complaints against the investigating authorities the applicants had mainly alleged that those authorities were biased and had not been diligent in carrying out the investigation. According to the decision, the applicants had proposed various versions as regards the involvement of various people in abducting their son and putting him in the Chekhov psychiatric hospital, and had insisted that those people had information concerning their son's whereabouts. The decision went on to say that, once all those versions had been thoroughly checked, by, *inter alia*, confrontations between the applicants and the individuals to whom they had referred, and had been rejected, the applicants would accuse the investigating authorities of incompetence and bias and would advance other versions, which, in their turn, would prove to be unfounded. The decision also stated that in the course of the investigation the authorities had investigated versions according to which Armen Aloyan might have been killed as a member of a criminal group in a territorial struggle with other criminal groups.

C. Proceedings against the Chekhov psychiatric hospital

On 11 October 2001 the first applicant lodged with the Basmanniy District Court, Moscow ("the District Court") a complaint against the head of the Chekhov psychiatric hospital. The first applicant alleged that he had information that his son, Armen Aloyan, was being unlawfully kept in that hospital. He further complained that the hospital authorities had consistently refused to provide him with information concerning his son's state of health and location, and requested the court to order that he be provided with the information.

On 17 July 2002 the District Court dismissed the first applicant's complaint with reference to the absence of any evidence that Armen Aloyan had ever been held in the Chekhov psychiatric hospital. It had rejected as unreliable the testimony given by Mr S., who had been summoned and examined by the court at the first applicant's request, to the effect that he had seen Armen Aloyan in the Chekhov psychiatric hospital. The court referred to the results of the enquiries made of the hospital by various authorities, and to the list of patients admitted to the hospital in May and June 1995 which did not include Armen Aloyan's name. It appears that during the proceedings the first applicant requested the District Court to call and examine some other witnesses on his behalf, however failed to indicate their full names and addresses, as was required by domestic law then in force.

On 2 October 2002 the Moscow City Court upheld the above judgment on appeal.

COMPLAINTS

The applicants complained about their son's disappearance and that the authorities had failed to conduct an effective investigation into the matter. They alleged that their son had been kidnapped and beaten by the authorities and had been kept unlawfully in the Chekhov psychiatric hospital since then. In connection with their complaint, the applicants relied on Articles 2 and 5 of the Convention.

The first applicant also complained under Article 6 of the Convention that the proceedings before the Basmanniy District Court of Moscow were unfair, as the court had failed to secure the attendance of several witnesses of his choosing.

THE LAW

1. The applicants complained under Article 2 of the Convention that their son had gone missing, having been abducted by police in Moscow on 11 May 1995, and that the authorities had failed to carry out an effective investigation into this incident. The relevant Article reads as follows:

> "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."

The applicants maintained their complaints.

The Government argued, with reference to the findings of the domestic investigation, and in particular to a report on the 2003 DNA test, that Armen Aloyan's death was an established fact, that he had been murdered in 1995, which was before the ratification of the Convention by Russia, and that therefore the circumstances of his death were outside the Court's temporal jurisdiction. They also stated that there was no evidence, nor even an accusation by the applicants, as to any involvement of State agents in the murder of Armen Aloyan. The Government further insisted that the investigation in the present case had been full and adequate and that all possible measures had been taken to resolve the crime. In particular, all versions advanced by the applicants had been thoroughly verified, all their complaints had been duly addressed and they had received reasoned replies.

Having regard to the materials adduced, and in particular to the DNA test carried out in 2003, the Court accepts the Government's argument that the domestic investigation clearly established that the remains found on 26 May 1995 were those of the applicant's son, Armen Aloyan. It is also clear that his death, an instantaneous event not creating a continuing situation, occurred before 5 May 1998, which is the date of the ratification by Russia of the Convention.

It follows therefore that the applicants' complaint under the substantive limb of Article 2 of the Convention is incompatible *ratione temporis* with the provisions of the Convention, within the meaning of Article 35 § 3 (a), and must be rejected in accordance with Article 35 § 4 thereof.

As regards the alleged ineffectiveness of the investigation into the circumstances of Armen Aloyan's death, the Court reiterates that, in principle, it may have temporal jurisdiction to examine a State's compliance

with its procedural obligation under Article 2 of the Convention in respect of deaths occurring before the date of the ratification by that State of the Convention, in a situation where a significant proportion of the procedural actions were taken after that date. It is in any event only procedural acts and/or omissions occurring after that date that fall within the Court's temporal jurisdiction (see *Šilih v. Slovenia* [GC], no. 71463/01, §§ 159-67, 9 April 2009).

In the present case, the investigation into the disappearance, and subsequently into the death, of the applicant's son commenced on 29 May 1995 and was terminated on 8 June 2003. It is clear from the adduced documents that a number of important investigative measures were taken both before and after 5 May 1998. In any event, even if the Court is prepared to accept that it has temporal jurisdiction to assess the effectiveness of the investigation in the instant case, it considers that this complaint is inadmissible for the following reasons.

The Court reiterates that a procedural obligation to investigate "is not an obligation of result but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's version of events; however, it should in principle be capable of leading to the establishment of the facts of the case (see, *mutatis mutandis*, among many other authorities, *Vladimir Romanov v. Russia*, no. 41461/02, § 81, 24 July 2008). In the present case, it is clear that the authorities had taken a large number of measures aiming at establishing the circumstances of Armen Aloyan's disappearance and death and finding those responsible. Various versions of the circumstances of his disappearance and death, including all those suggested by the applicants, were carefully checked. In particular, as can be ascertained from the materials of the criminal investigation file submitted by the Government, a number of forensic expert examinations had been carried out in respect of Armen Aloyan's remains, to identify them and to establish the time and cause of his death. Numerous witnesses, including those referred to by the applicants, were interviewed and confrontations between them and the applicants held. It is also clear that the applicants were given an adequate opportunity to take part in the investigation; however, they remained highly reluctant to cooperate with the authorities and participate in investigative actions, which could not but obstruct and protract the criminal proceedings in this case.

Overall, there is no evidence to suggest that the authorities did not display reasonable expedition and diligence in investigating the circumstances of the applicants' son's disappearance and death, or that they failed to take any important steps to establish the facts of that incident. While expressing dissatisfaction with the investigation, the applicants did not indicate what other measures the authorities could take to investigate the matter. In fact, they did no more than insist, despite objective evidence to

the contrary obtained by the investigation, that their son was still alive and that the authorities should establish his whereabouts and/or release him.

In the light of the foregoing, the Court finds that the present complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. The applicants complained that their son, Armen Aloyan, had been ill-treated at the hands of the police and placed in unacknowledged detention in the Chekhov psychiatric hospital. These complaints fall to be examined under Articles 3 and 5 of the Convention, which read as follows:

Article 3

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

Article 5

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

The applicants maintained their complaints.

The Government argued that the applicants' relevant complaints were outside the Court's competence *ratione temporis*, given that it had been established at the domestic level that the applicant's son had been killed in 1995, prior to the entry into force of the Convention in respect of Russia. They also insisted that there was no evidence of any involvement of State agents in the alleged ill-treatment of the applicant's son, or his detention.

In view of its above finding under Article 2 of the Convention in its substantive aspect, the Court rejects this part of the application, in accordance with Article 35 § 4 of the Convention, as incompatible *ratione temporis* with the provisions of the Convention, within the meaning of Article 35 § 3 (a) thereof.

3. Lastly, the first applicant complained that the first-instance court had failed to secure the attendance of several witnesses of his choosing in the proceedings against the Chekhov psychiatric hospital. This complaint falls to be examined under Article 6 § 1 of the Convention, which, in its relevant part, reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

The first applicant insisted that Article 6 of the Convention, under its civil limb, was applicable to the proceedings in question. He further maintained his complaint.

The Government argued that the proceedings brought by the applicant against the Chekhov psychiatric hospital had not determined the applicant's civil rights and obligations, and therefore had fallen outside the scope of Article 6 of the Convention. They further pointed out that the first-instance court had, in fact, granted the first applicant's request for certain witnesses of his choosing to be examined, but the first applicant's failure to indicate the names and addresses of those witnesses, as had been required by the procedural law then in force, had made it impossible for the court to secure those witnesses' attendance.

The Court does not consider it necessary to address all the arguments advanced by the parties and, in particular, leaves the question of the applicability of Article 6 to the proceedings in question open, as the present complaint is in any event inadmissible on the following grounds.

The Court observes that on the facts as they stand it is clear that the first applicant was fully able to state his case before domestic courts at two levels of jurisdiction. In particular, there is no evidence that he was in any way prevented from adducing evidence he considered necessary. Also, he was able to obtain attendance of Mr S., a witness of his choosing, and to

have him examined by the District Court. Moreover, it appears that the first applicant could have obtained the attendance of other witnesses of his choosing, had he complied with the statutory requirement to indicate their full names and addresses. The Court reiterates in this respect that Article 6 of the Convention does not prevent the State from requiring certain formalities be complied with by the parties to the court proceedings. In the present case, it does not appear that the requirement in question was unreasonable or impaired the very essence of the first applicant's right of access to a court, given, in particular, that he was obviously capable to provide necessary information with regard to witness S., who was then summoned and examined, and that he had never alleged that for some reason he had been unable to provide that information in respect of other witnesses whose attendance he sought. Overall, the proceedings under consideration do not appear to have been unfair within the meaning of Article 6 of the Convention, and the decisions taken by the domestic courts do not appear arbitrary or unreasonable.

Against this background, the Court finds that the present complaint 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 unanimously

Declares the application inadmissible.

Søren Nielsen
Registrar

Nina Vajić
President