

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 1721/07
by Aminat NASIRKHAYEVA
against Russia

The European Court of Human Rights (First Section), sitting on 31 May 2011 as a Chamber composed of:

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
George Nicolaou,
Mirjana Lazarova Trajkovska, *judges,*

and Søren Nielsen, *Section Registrar,*

Having regard to the above application lodged on 10 November 2006,

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, Ms Aminat Nasirkhayeva, is a Russian national who lives in Grozny, Chechnya. She is represented before the Court by Mr D. Itslayev, a lawyer practising in Nazran, Ingushetia. The respondent

Government are represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

1. Events of 1999-2000

The applicant had four children. One of them, Ms Balizha Nasirkhayeva, was born in 1992. The applicant lived in Grozny with her family.

In 1999 the Russian Government launched a counter-terrorist operation in Chechnya.

On 27 December 1999 the applicant's daughter received a wound to the head as a result of an explosion. The family and the wounded child remained in the basement of their house in view of the ongoing hostilities.

On 11 or 13 January 2000 when federal servicemen reached the district, they gave Balizha Nasirkhayeva first aid and delivered the applicant and her daughter to a military hospital by helicopter. From there the applicant and her daughter were taken to a hospital in Vladikavkaz where the child spent six days in an intensive care unit.

On 7 April 2000 Balizha Nasirkhayeva was brought to the Clinical Hospital of Ingushetia in Nazran and diagnosed with a post-traumatic condition caused by a penetrating wound to the skull. She was operated upon and several days later she was transferred by plane to a specialised paediatric hospital, the Ninth Hospital, in Moscow.

On 14 April 2000 Balizha Nasirkhayeva died at the intensive care unit of the Ninth Hospital in Moscow.

2. Proceedings related to compensation

On 23 September 2004 the applicant and her husband sought assistance in receiving compensation for their child's death from the Human Rights Office of the President of the Chechen Republic ("the Human Rights Office").

On 25 July 2005 the applicant sued the Government of Chechnya, seeking compensation for her daughter's death.

On 16 May 2006 the Staropromyslovskiy District Court of Grozny awarded her 20,000 Russian roubles in a lump sum, such award being given to people whose relatives had died during the counter-terrorist operation in Chechnya. The remaining claims for non-pecuniary damage were dismissed for the absence of a causal link between the actions of the defendant and the claim.

The applicant did not appeal and on 26 May 2006 the judgment became final.

3. Criminal investigation

On 24 October 2005 the Human Rights Office requested that the prosecutor's office of the Zavodskoy District of Grozny ("the district prosecutor's office") investigate Balizha Nasirkhayeva's death. The letter indicated that information about the criminal proceedings had been sought by the Staropromyslovskiy District Court within the scope of the compensation proceedings. It is unclear if this letter reached the district prosecutor's office.

On 7 March 2006 the applicant complained about her daughter's death to the district prosecutor's office.

On 12 March 2006, referring to a letter from the Human Rights Office of 10 March 2006, the district prosecutor's office opened an investigation under Article 105 § 1 of the Criminal Code (murder). The case was assigned number 51040.

Pursuant to the Court's request following the communication of the present case, the Government submitted thirty-six pages of documents from the criminal investigation file. These documents can be summarised as follows.

On 8 April 2006 the district prosecutor's office granted victim status to the applicant. She was questioned and stated that her daughter had been wounded as a result of an explosion. Two neighbours stated that they had heard the explosions outside and then saw that the applicant and her daughter had been wounded. The investigator also collected medical records and attempted to obtain information about the military operations in Grozny at that time. It does not appear that they obtained any relevant information in this respect.

On 12 May 2006 the investigation in case no. 51040 was suspended for its failure to identify any suspects. The applicant was informed, but did not appeal against this decision.

On 9 April 2009 the applicant wrote to the Investigative Committee of the Chechnya Prosecutor's Office and asked for an update on the investigation.

B. Relevant domestic law

Article 125 of the Code of Criminal Procedure provides as follows:

"Article 125. Judicial examination of complaints

1. Decisions of an investigator or prosecutor concerning their refusal to initiate a criminal investigation ... or any other decisions and acts or omissions which are liable to infringe the constitutional rights and freedoms of the parties to criminal proceedings or to impede citizens' access to justice, may be appealed against to a district court, which is empowered to examine the lawfulness and grounds of the impugned decisions....

3. The court shall examine the lawfulness and the grounds for the impugned decisions or acts ... within five days from the receipt of the complaint...

5. As a result of the examination of the complaint the court shall deliver one of the following decisions:

1) Declaring the decisions, acts or omissions of the official as unlawful or unsubstantiated and obliging the official to eliminate the defects;

2) Not allowing the applicant's complaint..."

COMPLAINTS

1. The applicant complained, under Article 13 of the Convention, that she had had no effective domestic remedies in relation to her daughter's death.

2. She further complained, under Article 6, that the domestic court had dismissed her non-pecuniary claims.

THE LAW

I. AS TO THE EFFECTIVENESS OF THE INVESTIGATION INTO THE APPLICANT'S DAUGHTER'S DEATH

The applicant complained that she had had no effective domestic remedies in respect of her daughter's death. The Court considers that the matter raises issues under the positive obligation under Article 2 of the Convention, as well as Article 13 of the Convention. These provisions read:

Article 2

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally ...."

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."

A. Arguments of the parties

The Government considered that the application should be declared inadmissible. They argued, first of all, that the applicant had failed to exhaust domestic remedies available to her. She had never appealed against the decision of the investigating authorities, even though she had had the opportunity to do so as a victim in the proceedings. They further argued that

the investigation carried out by the prosecutor's office had complied with the requirements of the Convention and domestic legislation. However, its effectiveness had been grossly compromised by the fact that the request for an investigation and, consequently, the information about the alleged crime, had reached the prosecutor's office only in March 2006, i.e. more than six years after the events in question. Finally, they stressed that the applicant had been able to obtain monetary compensation for the death of her daughter through a court procedure which had not been based on tort, which in the circumstances could be considered an effective remedy in respect of her complaints. They argued that she was still able to claim further compensation through civil proceedings.

The applicant argued that she had exhausted domestic remedies. Firstly, she argued that the domestic authorities were under an obligation to investigate instances of violent deaths and that they should have opened a criminal investigation on their own motion once such information had become available to them. Secondly, she argued that the criminal investigation had been ineffective and that she had realised this in May 2006 when it had been adjourned. Thus, she had complied with the six-month requirement. As to the compensation obtained for the death of her daughter, the applicant considered that it could not be regarded as a remedy under Article 2, in line with the Court's practice.

B. The Court's assessment

Firstly, the Court observes in its established case-law that the procedural obligation to carry out an effective investigation under Article 2 constitutes a separate and autonomous duty on Contracting States. It can therefore be considered an independent obligation arising out of Article 2, capable of binding the State even when the substantive aspect of Article 2 is outside of the Court's jurisdiction, for example by reason of *ratione temporis* (see *Šilih v. Slovenia* [GC], no. 71463/01, § 159, 9 April 2009). The Court stresses that the scope of its review in the present case is limited to the procedural obligation to investigate instances of violent deaths, arising under Articles 2 and 13 of the Convention.

Next, turning to the parties' arguments concerning the exhaustion of domestic remedies, the Court reiterates that it has already found in a number of similar cases that civil procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-21, 24 February 2005, and *Estamirov and Others v. Russia*, no. 60272/00, § 77, 12 October 2006). Accordingly, the Court confirms that the applicant was not obliged to pursue civil remedies. It will now proceed to examine the parties' arguments concerning the criminal investigation into the death of Balizha Nasirkhayeva.

The Government points out that no application was submitted by the applicant to the investigating authorities until 7 March 2006 (see above). The applicant does not deny this. However, she argues that the authorities were under an obligation to investigate a case of violent death on their own motion, once information in that regard had become available to them. The Court accepts that the authorities were required to conduct an effective official investigation into the death. However the question as to when this information became available to them in the present case remains open.

The Court notes that the wounding occurred in December 1999 during a period characterised by armed clashes in the Chechen Republic and in the area, which, at the time, had been the scene of a violent confrontation between the federal armed forces and rebel fighters (see *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, § 178, 24 February 2005, and *Umarov v. Russia* (dec.), no. 30788/02, 18 May 2006). In addition, the situation in the present case was quite complex in view of the medical necessities involved: the applicant's wounded daughter was transferred to three hospitals in the region and then to Moscow, where her death occurred in April 2000. She was buried later that month in Grozny. In such circumstances it is reasonable to suggest that if the applicant had considered that a crime had been committed, she should have informed the law-enforcement authorities in one of those locations, or upon her return to Grozny in April 2000. In the absence of such initiative on the part of the applicant, the Court is unable to conclude that the authorities were made aware of the alleged crime at the time.

However, even if the applicant's argument that the authorities already possessed this information in 2000 and therefore were under an obligation to act is accepted, the ineffectiveness of this avenue must have become clear to her long before May 2006, given the absence of any contact between her and the law-enforcement authorities for six years. The Court also notes the absence of any explanation as to why the applicant remained passive for such a long time.

The Court has refrained from indicating in its case-law a specific period for establishing when the applicant should perceive the investigation as ineffective for the purposes of calculating the six-month period. The determination of such a period by the Court depends on the circumstances of each case and other factors such as the diligence and interest displayed by the applicants (see, *Gasyak and Others v. Turkey*, no. 27872/03, § 58, 13 October 2009 and *Narin v. Turkey*, no. 18907/02, § 50, 15 December 2009). In the present case, even though it is unable to point to an exact point in time when the six-months limit has started, taking into account all the elements of the case, the Court must conclude that the applicant's complaint concerning the lack of investigation into her daughter's killing prior to March 2006 must be dismissed as falling outside of the six-month limit provided for by Article 35 § 1 of the Convention.

As to the investigation that was opened in March 2006, the Government argued that the applicant had failed to appeal against the decision of 12 May 2006 to suspend the proceedings. The Court notes that the relevant domestic legislation establishes two avenues of appeal against such decisions (see above) and that the applicant has not advanced any reasons for her failure to employ them. The Court also notes that, unlike some other cases previously examined, the supervising prosecutors or courts had not examined any earlier, similar decisions in the applicant's case. Nor did the applicant allege that in May 2006 she had been unaware of the progress and the state of the proceedings, therefore rendering the mechanism in question ineffective or practically inaccessible to her (see, *a contrario*, *Dzhambekova and Others v. Russia*, nos. 27238/03 and 35078/04, § 289, 12 March 2009, and *Betayev and Betayeva v. Russia*, no. 37315/03, § 89, 29 May 2008). However, it should be reiterated that speed is an important element in determining the effectiveness of a criminal investigation, and the applicant's failure to raise the matter with the authorities in due time resulted in no investigation being carried out for six years. In such circumstances, the Court remarks that the prospects of success of any remedy at this stage would be doubtful and the exact reasons for which the applicant had failed to appeal against the decision to suspend the investigation would appear irrelevant as to the Court's eventual conclusions on exhaustion (see *Khatsiyeva and Others v. Russia*, no. 5108/02, § 151, 17 January 2008; see also the recent case of *Nasipova and Khamzatova v. Russia* (dec.), no. 32382/05, 2 September 2010, where the Court found that the applicants had failed to exhaust domestic remedies in view of their failure to appeal, in due time, against the decisions of the national investigating authorities).

The Court thus observes that the investigation carried out in 2006 was unable to establish the circumstances of the wounding or to identify the perpetrators of the impugned act in view of passage of considerable time since the event in question. In particular, it does not appear that the gaps resulting from the absence of the most basic investigative steps at the initial stages of the proceedings could be filled in at that point. Nor does it appear that at this stage the applicant has submitted any new information, which could have warranted a different conclusion. In such circumstances the Court does not consider that this round of proceedings constituted a new development which could have revived the procedural obligation under Article 2 and therefore bring the complaint within the scope of the Court's temporal jurisdiction (see, a contrario, *Brecknell v. the United Kingdom*, no. 32457/04, § 70-71, 27 November 2007; and *Gasyak and Others*, cited above, § 60).

In the light of the foregoing the Court considers that the applicant has failed to comply with the six-month rule in respect of her complaints under Articles 2 and 8 of the Convention. This aspect of the case must therefore be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

II. AS TO THE ALLEGED VIOLATION OF ARTICLE 6

The applicant also complained of a violation of Article 6 of the Convention in the proceedings related to the compensation due to the fact that the domestic court had dismissed a part of her claim. However, the Court notes that the applicant did not appeal against the first-instance judgment of 16 May 2006 and therefore failed to exhaust domestic remedies. It follows that this part of the application must also be rejected under Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren Nielsen
Registrar

Nina Vajić
President