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

FIRST SECTION

DECISION

Application no. 31179/11
Raisa UTSMIYEVA and Others
against Russia

The European Court of Human Rights (First Section), sitting on 26 August 2014 as a Chamber composed of:

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, Section Registrar,

Having regard to the above application lodged on 6 May 2011,

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

1. The applicants, Ms Raisa Utsmiyeva, Ms Luiza Utsmiyeva and Ms Khabira Guniyeva, are Russian nationals who were born in 1938, 1971 and 1935 respectively and live in Grozny. They were represented before the Court by lawyers of the NGO Materi Chechni. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

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

Abduction of the applicants' relatives and the subsequent investigation

1. Abduction of Mr Isa Utsmiyev, Ms Larisa Ansarova and Ms Anzhela Ansarova

3. The applicants are close relatives of Mr Isa (also spelt Issa) Utsmiyev, who was born in 1960, Ms Larisa Ansarova, who was born in 1959 and Ms Anzhela (also known as Aset) Ansarova, who was born in 1981. Mr Isa Utsmiyev and Ms Larisa Ansarova are married, and Ms Anzhela Ansarova is their daughter. The first applicant is the mother of Mr Isa Utsmiyev and the second applicant is his sister. The third applicant is the mother of Ms Larisa Ansarova.

4. At the material time, Mr Isa Utsmiyev lived with his wife and daughter in a block of flats in Kosiora Street in Grozny. He used to work at a local police station, but became unemployed shortly before the events.

5. According to the applicants, at around midnight on 10 June 1996 an APC accompanied by a convoy of military vehicles arrived in Kosiora Street, Grozny. A large number of masked servicemen in camouflage uniforms armed with machine guns got out of the vehicles, cordoned off the area and broke into the family's flat. The servicemen spoke unaccented Russian. They took Mr Isa Utsmiyev and his wife and daughter outside, put them in the APC and drove away.

6. The applicants have not seen their three relatives since 10 June 1996.

7. The applicants did not witness the abduction; their account is based on their relatives' and neighbours' recollection of the events.

8. The Government did not contest the facts as presented by the applicants, but at the same time pointed out that there was no unequivocal evidence confirming the alleged involvement of State servicemen in the incident.

2. Official investigation into the abduction

9. On an unspecified date in June or July 1996 the applicants complained of their relatives' abduction to the Leninskiy district department of the interior (ROVD) in Grozny. On 18 July 1996 it opened a search file (no. 94/96) in respect of Mr Isa Utsmiyev. It is unclear whether files were also opened in respect of Ms Larisa Ansarova and Ms Anzhela Ansarova.

10. It is also unclear whether any criminal investigation into the abduction was initiated between 1996 and 2001. According to the applicants, owing to the overall instability in the region at the material time, an investigation was opened at some point in 1999, but then the criminal case file was lost in unknown circumstances.

11. Following a complaint by the first applicant, on 11 February 2001 the Grozny town prosecutor's office opened a criminal case (no. 11041) to investigate the abduction.

12. On 26 February 2001 the first applicant was questioned and granted victim status in the criminal case. She stated that on an unspecified date she had learnt from Mr Isa Utsmiyev's neighbours that on 10 July 1996 four armed men had taken away her son, his wife and their daughter. His wife Ms Larisa Ansarova had been in a dispute with a criminal gang leader, "Malysh", whose gang had carried out criminal activities in the area and who had promised to take revenge on her. Three days after that conflict the family had been abducted. According to the applicants, at some point later "Malysh" had been killed as a result of a blood feud.

13. On 11 April 2001 the investigation was suspended.

14. On 5 July 2002 the investigation was resumed and on 22 July 2002 the first applicant was questioned again. She reiterated her previous statement.

15. On 5 September 2002 the investigation was suspended. The applicants were informed thereof.

16. Between September 2002 and May 2010 the applicants did not contact the authorities.

17. On 24 May 2010 the third applicant complained to the Chechnya Parliament of her relatives' abduction. On 27 May 2010 her complaint was forwarded to the Chechnya Investigations Committee.

18. On 22 October 2010 the first applicant complained to the Leninskiy District Court in Grozny, requesting that the investigation be resumed and carried out effectively.

19. On 28 October 2010 the investigation was resumed and several witnesses were questioned; no new information was obtained.

20. On 28 November 2010 the investigation was suspended again. The applicants were informed thereof.

21. On 22 December 2010 the Leninskiy District Court in Grozny rejected the applicants' complaint of 22 October 2010, stating that the investigation had been resumed on 28 October 2010.

22. The investigation is still pending.

COMPLAINTS

23. Relying on Article 2 of the Convention, the applicants complained that their relatives had disappeared after allegedly having been abducted by State agents, and that the authorities had failed to investigate the matter effectively. Under Article 3, they complained that they had endured mental suffering as a result of their relatives' disappearance and the authority's

reaction thereto. Under Article 5, they complained of the unlawfulness of their relatives' detention by State agents, and under Article 13 of a lack of domestic remedies in respect of the violations alleged.

THE LAW

24. The applicants complained of a violation of Articles 2, 3, 5 and 13 of the Convention as a result of their relatives' abduction. The respective provisions, in so far as relevant, provide 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..."

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 ..."

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. The parties' submissions

25. The Government submitted that the application should be dismissed as the case fell outside the Court's jurisdiction *ratione temporis*, as the factual circumstances underlying the complaints had taken place in 1996, prior to the ratification of the Convention by the Russian Federation in 1998.

26. The Government also submitted that the applicants had lodged their application on 6 May 2011, within six months of the domestic court's decision of 22 December 2010.

27. The applicants did not comment on the Government's objection concerning temporal jurisdiction.

28. The applicants made a general statement to the effect that they had complied with the admissibility criteria, as because of the ongoing

investigation, there had been no final domestic decisions capable of triggering the six-month time-limit.

B. The Court's assessment

29. The Court notes that it is common ground between the parties that the applicants' relatives were abducted in July 1996. As the Convention only entered into force in respect of Russia in May 1998, such a matter is outside the Court's temporal jurisdiction. In the light of this, the Court considers that it has no competence *ratione temporis* to examine the applicant's complaint under the substantive limb of Article 2 of the Convention (see, for a similar situation concerning a disappearance in 1996, *Tashukhadzhiyev v. Russia*, no. 33251/04, § 59, 25 October 2011).

30. As to the remaining complaints and the applicants' compliance with the six-month time limit, the Court reiterates that the purpose of the six-month rule is to promote legal certainty, to ensure that cases raising issues under the Convention are dealt with within a reasonable time, and to protect the authorities and other persons concerned from being under any uncertainty for a prolonged period of time (see *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002; *Sincar v. Turkey*, no. 44698/98, 5 October 2004; and *Aydin and Others v. Turkey* (dec.), no. 46231/99, 26 May 2005). The Court further reiterates that if no remedies are available or if they are judged to be ineffective, the six-month time-limit in principle runs from the date of the act complained of (see *Hazar and others v. Turkey* (dec.), no. 62566/00). Where an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, the six-month period starts from the date when the applicant first became or ought to have become aware of those circumstances (see *Edwards v. the United Kingdom* (dec.), no. 46477/99, 7 June 2001).

31. As far as disappearances are concerned, they give rise to a continuing situation and, depending on whether the passage of time affects what is at stake, it is indispensable that the applicants, who are the relatives of missing persons, do not delay unduly in bringing a complaint about the ineffectiveness or lack of such investigation before the Court. With the lapse of time, memories of witnesses fade, witnesses may die or become untraceable, evidence deteriorates or ceases to exist, and the prospect that any effective investigation can be undertaken will increasingly diminish; the Court's own examination and judgment may be deprived of meaningfulness and effectiveness. Accordingly, where disappearances are concerned, applicants cannot wait indefinitely before coming to Strasbourg. They must make proof of a certain amount of diligence and initiative and introduce their complaints without undue delay (see *Varnava and Others v. Turkey*

[GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, §§ 148 and 161, ECHR 2009).

32. In most disappearance cases, unlike in cases concerning killings, allowances must be made for the uncertainty and confusion which frequently mark the aftermath of a disappearance. However, even in those cases applications can be rejected as out of time where there has been an excessive or unexplained delay on the part of applicants once they have, or should have, become aware that the investigation has lapsed into inaction or become ineffective and there is no immediate, realistic prospect of an effective investigation being provided in the future. Where there are initiatives being pursued with regard to a disappearance situation, applicants may reasonably await developments which could resolve crucial factual or legal issues. Indeed, as long as there is some meaningful contact between families and authorities concerning complaints and requests for information, or some indication, or realistic possibility, of progress in investigative measures, considerations of undue delay will not generally arise. However, where there has been a considerable lapse of time, and there have been significant delays and lulls in investigative activity, there will come a time when the relatives must realise that no effective investigation has been, or will be, provided. When this stage is reached will depend, unavoidably, on the circumstances of the particular case (see *Varnava and Others*, cited above, §§ 162 and 165).

33. If there is an investigation of sorts, even if sporadic and plagued by problems, the relatives may reasonably wait some years longer until hope of progress being made has effectively evaporated. Where more than ten years have elapsed, the applicants would generally have to show convincingly that there was some ongoing, and concrete, advance being made to justify a further delay in coming to Strasbourg. Stricter expectations would apply in cases where the applicants have direct domestic access to the investigative authorities (*Varnava and Others*, cited above, § 166).

34. Turning to the present case, the Court notes that the applicants lodged their application with the Court more than fourteen years and ten months of the date of the abduction, and that the investigation was formally pending at the time when the application was lodged.

35. The Court further observes that the investigation has not attained any tangible results and no suspects have been identified. The investigation was suspended on several occasions and at least once for the significant period of more than seven and half years, when no steps were taken and no communication between the authorities and the applicants took place (see paragraph 16 above).

36. The Court notes that even in the context of the counter-terrorist operation in the region, the applicants, nonetheless, had direct access to the authorities and could have applied for information or otherwise communicated with the investigators regarding the abduction of their family

members. The applicants had no information from the authorities for more than seven years, and there is no evidence in the documents submitted that for such a significant period of absence of any news from the authorities, they had attempted to request it of their own initiative. They remained passive in respect of the seemingly dormant domestic investigation, unlike the applicants in many other Chechen disappearance cases in a similar situation (see, amongst many other authorities, *Kaykharova and Others v. Russia*, nos. 11554/07, 7862/08, 56745/08 and 61274/09, § 129, 1 August 2013, and *Gakayeva and Others v. Russia*, nos. 51534/08, 4401/10, 25518/10, 28779/10, 33175/10, 47393/10, 54753/10, 58131/10, 62207/10 and 73784/10, § 318, 10 October 2013).

37. The Court observes that since the applicants are close relatives of the disappeared, they may be expected to display due diligence and take the requisite initiative in informing themselves of the progress being made in the investigation into the disappearance of their family members. The absence of any news from the investigators of such a serious crime for such a significant period of time should have prompted them to draw appropriate conclusions (see, for example, *Açış v. Turkey*, no. 7050/05, § 42, 1 February 2011).

38. Further, the Court notes that the investigation into the disappearance of the applicants' relatives has been pending for more than ten years, without any meaningful investigative steps taken by the authorities, or new evidence or information appearing which would provide the applicants with grounds for hope or some realistic prospect that the search for their missing relatives would become effective and would attain tangible results. If the applicants had not become aware of the ineffectiveness of the investigation with such a significant lull in the course of proceedings, the Court considers that this was on account of their own negligence (see, for example, *Findik and Omer v. Turkey* (decs.), nos. 33898/11 and 35798/11, § 15).

39. The Court's findings concerning the ineffectiveness of investigations into disappearances perpetrated in the region between 1999 and 2006 (see *Aslakhanova and Others v. Russia*, nos. 2944/06, 8300/07, 50184/07, 332/08 and 42509/10, 18 December 2012) do not absolve the applicants from complying with the time-limits of lodging applications with the Court.

40. In view of the above, the Court finds that the applicants have not shown convincingly that there was some concrete advance being made to justify their inactivity for more than seven years. It finds that following the suspension of the investigation in September 2002 the applicants ought to have concluded long before and more than six months before to the introduction of the present application that this investigation was without effect. The Court does not find that their initiative in 2010 can lead to another conclusion (see, *mutatis mutandis*, *Finozhenok v. Russia* (dec.), no. 3025/06 and *Nasirkayeva v Russia* (dec.), no. 1721/07). Accordingly, the Court finds that the remainder of the present application lodged in 2011

must be rejected for failure to comply with the six month time-limit set out in Article 35 §§ 1 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President