



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

FIRST SECTION

Application no. 5632/10  
Oleg Petrovich ORLOV and others  
against Russia  
lodged on 8 December 2009

**STATEMENT OF FACTS**

The applicants are four Russian nationals, Mr Oleg Petrovich Orlov (the first applicant), Mr Artem Dmitrievich Vysotskiy (the second applicant), Mr Stanislav Valeryevich Goryachikh (the third applicant), and Mr Karen Edvardovich Sakhinov (the fourth applicant). The applicants were born in 1953, 1974, 1986 and 1982 respectively. They live in Moscow and are represented by lawyers of the Memorial Human Rights Centre.

**A. The circumstances of the case**

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

*1. Background*

At the material time the first applicant was the Chairman of Memorial, a Russian human rights non-governmental organisation. The second applicant was a reporter of REN TV, a Russian TV company. The third and fourth applicants were a camera operator and an assistant camera operator, respectively, of REN TV.

Following the death of a six-year-old boy, Rakhim Amriev, in the course of a security operation in Chemulga Settlement (the Ingushetia Republic) on 9 November 2007, a protest meeting against abuse of powers by the security forces was planned in Nazran (the Ingushetia Republic) for 24 December 2007. On 22 November 2007 the REN TV company sent to Nazran a camera team consisting of the second, third and fourth applicants in order, *inter alia*, to cover the meeting of 24 December 2007. The first applicant was also on a business trip in Nazran at that time. All four applicants stayed in the hotel “Assa” in Nazran (the hotel).

## *2. Abduction of the applicants*

On 23 November 2007 at about 9.00 p.m. the first applicant returned to the hotel from the Memorial representative office in Nazran. Two and a half hours later (at about 11.30 p.m.), three men wearing balaclava masks, in camouflage uniform and armed with automatic weapons, rushed into the room occupied by the first applicant. The men neither introduced themselves nor produced any documents. They pointed their guns at the first applicant and ordered him to lie on the floor. Then they asked the first applicant why he had come to Ingushetia and what was the aim of his business trip. They spoke Russian without an accent. The applicant explained that he was working for the NGO Memorial and had arrived to monitor the human rights situation in Ingushetia. The men put all the applicant's belongings into a bag. The applicant attempted to protest but was kicked in the ribs by one of the men. Then they placed a black plastic bag over the applicant's head, took him out of the hotel and took him into a minibus.

On 23 November 2007 the three other applicants returned to the hotel from Vladikavkaz where they had worked on a reportage. At about 11.00 p.m. they gathered in the room occupied by the second applicant. At about 11.30 p.m. five men wearing balaclava masks, in camouflage uniform and armed with automatic weapons, broke into the room. Without any explanation they forced the third and fourth applicants to lie on the floor, kicked them a few times and then put black plastic bags over their heads. Subsequently, these two applicants were taken to the entrance door of the hotel and taken into the minibus where the first applicant was already sitting. According to the third applicant, despite the bag on his head he was able to see another man in camouflage uniform on the ground floor.

The second applicant was sitting on a chair when the men broke into the room. He received a hit with a rifle butt in the shoulder and fell down from the chair. He was ordered to turn his face to the radiator. The second applicant complied with the order but asked the men who they were. He received several kicks and blows with the rifle butts and then one of the men answered that they were from the MVD (the Ministry of Interior). The man spoke Russian without an accent. The second applicant was raised from the floor and saw other men collecting all the belongings in the room, including professional equipment, into bags. A black plastic bag was also put over his head. The beatings continued. After that the applicant was brought out of the hotel and was also taken into the minibus.

All the applicants were dressed in jeans, sweatpants, shirts, T-shirts and sleepers. They were not allowed to take socks or overdress.

One of the capturers in the minibus asked the second, third and fourth applicants who they were. They introduced themselves. The first applicant also started to explain who he was but received a number of blows. One capturer said that the hotel had been "mopped-up" and ordered the driver of the minibus to drive. Then the capturers ordered the applicants to be silent and tilt their heads. The applicants were threatened with beatings and death if they did not comply with the capturers' orders. All the capturers spoke Russian without an accent.

The trip lasted about one hour. The minibus drove initially in the streets of the Nazran Town. There were no curtains on the windows of the minibus

and the applicants could see through the bags on their heads the streetlights and the lights of passing cars. According to the third applicant, the bag on his head was loose and he was able to see that the capturers did not hide their weapons. He concluded therefore that the capturers were Russian servicemen.

Some time later the minibus drove down a country road for a while and then stopped in a field. One after the other the applicants were taken out of the minibus and beaten up by the capturers with kicks and rifle butts. According to the applicants, one capturer then said that the applicants should be shot and ordered that the mufflers be picked up from the car. The applicants were afraid of the upcoming execution. Another capturer went into the minibus, came back later and said that no mufflers were there. The capturers then ordered the applicants to remain lying on the ground until their departure and threatened to kill them if they would come to Ingushetia another time. The kidnappers drove off. The applicants took the bags off their heads (some applicants lost their bags during the beatings) and saw a white-coloured GAZ minibus driving away.

The applicants ran in the opposite direction fearing that the capturers could return and execute them. The field was covered with snow. The applicants did not have coats or appropriate footwear and suffered from the cold. After about one hour they reached Nesterovskaya Village in the Ingushetia Republic. A resident of the village called the police. The police arrived and brought the applicants to a nearby police station where they were provided with medical assistance.

### *3. Investigation into the abduction*

By the break of the day on 24 November 2007 the applicants were brought by the police to the Nazran District Department of the Interior (the Nazran ROVD) and gave their explanations concerning the abduction. According to the second applicant, he asked a police officer who was responsible for the abduction and received the answer typed on a mobile phone – the “FSB” (the Russian Federal Security Service).

On the same day, on 24 November 2007 the applicants underwent medical examination which revealed several bruises on their bodies. The Investigative Committee at the Prosecutor’s Office of the Republic of Ingushetia immediately initiated preliminary investigation under Articles 139, 144 and 161 of the Russian Criminal Code (violation of the privacy of home, obstruction of the lawful professional activity of journalists, robbery) and opened criminal case no. 07560126. The investigator noted in his decision to open criminal proceedings that the crimes in respect of the applicants had been committed with the use of violence. The applicants were granted the status of victims in the proceedings. They were questioned by the police about the incident a number of times during the day.

The applicants left the police in the evening of 24 November 2007 and returned to the hotel. They found out that the capturers had taken away all their belongings, including money, credit cards, mobile phones, professional equipment, clothes, a laptop and a digital camera. On 25 November the applicants left for Moscow. On 26 November 2007 the second applicant was admitted to the hospital and received medical treatment in connection

with his injuries, *inter alia*, cerebral concussion. He was discharged from the hospital on 4 December 2007.

On 10 December 2007 the first applicant lodged with the head of the Nazran Branch of the Investigative Committee a request to change the legal characterization of the crimes committed in respect of the applicants to “exceeding official powers”, a crime under Article 286 of the Russian Criminal Code. The applicant argued that the crimes had been committed by State agents.

On 13 December 2007 the investigator in charge of the applicants’ criminal case referred to lack of any evidence of the involvement of any State agents in the applicants’ abduction and refused the request as unsubstantiated.

On 26 May 2008 the preliminary investigation was suspended on the ground that the person to be charged with the offences had not been identified.

On 29 May 2008 the first applicant submitted to the head of the Nazran Branch of the Investigative Committee a statement arguing that it was beyond doubt that the men who had abducted the applicants had been State agents. In support of his statement he referred to the following facts: (1) The hotel where the applicants were staying at the moment of abduction was normally protected by five police officers in view of the security threats in the region at the material time. Referring to statements of the hotel staff, the applicant asserted that about two hours prior to the abduction the policemen were ordered to leave the hotel by their superior. (2) According to the applicant, two Deputy Ministers of the Ingushetia Ministry of Interior also lived in the hotel at the material time and at least one of them was in the hotel at the moment of abduction. However, after examining the list of the hotel guests the captors went to the applicants and were not interested in the abduction of the Deputy Minister or some other State agents living in the hotel. The applicant argued that if the captors were members of illegal armed groups, they would abduct State agents rather than the applicants. (3) The captors introduced themselves to the hotel reception as members of an anti-terrorism unit. (4) The captors behaved very professionally during the abduction and spoke Russian without an accent. (5) The abduction took place in the night before a protest meeting was planned; accordingly, the police should have been on high alert. The minibus with armed men and the applicants was driving for a while in lighted streets of Nazran and should have passed several checkpoints but it was not stopped by the police. Furthermore, the minibus was without curtains on the windows and the capturers did not hide their weapons. (6) According to the applicant, the hotel staff members stated before him and his two other colleagues of Memorial, Mr Sh. and Ms S., that immediately after the abduction they informed the manager of the hotel about the incident. According to the manager of the hotel, who also was questioned by the applicant and his colleagues, he came to the hotel and called the police about half an hour after the abduction. The police allegedly said that they would take all the necessary measures in order to find the applicants. However, the police allegedly did nothing in order to find them. Thus, according to the applicant, the police’s inactivity supports his assumption that the capturers were State

agents. The applicant asked that his statement be included in the investigation file. It appears that no response from the authorities followed.

On 28 January 2009 the applicant requested access to the criminal case file in order to prepare a complaint against the suspension of the preliminary investigation.

On 30 January 2009 the investigator in charge of the applicants' case granted the request in part in respect of the following documents: records of investigative actions which were carried out with the applicants' participation, investigator's decisions to order forensic examinations as well as expert reports. In respect of other documents the request was refused.

On 7 April 2009 the first applicant challenged the investigator's refusal to grant access to the entire criminal case file in court. On 24 April 2009 the Magasskiy District Court of the Ingushetia Republic examined the complaint. The court dismissed the first applicant's complaint and held, *inter alia*:

“In accordance with [the Code of Criminal Procedure] the victim may be familiarised with the materials of the criminal case file upon the completion of the preliminary investigation. Accordingly, [the investigator's] refusal to familiarise the victim with the materials of the case file was lawful and justified.”

The first applicant appealed. It appears that on 9 June 2009 the Supreme Court of the Ingushetia Republic dismissed the applicant's appeal as unfounded and upheld the first instance judgment.

## **B. Relevant domestic law**

Article 42 § 2 (10) of the Russian Code of Criminal Procedure (the CCP), also in force at the material time, gives a victim the right to get acquainted with the records of investigative actions carried out with his/her participation. Article 42 § 2 (11) of the CCP provides the victim with the same right in respect of investigator's decisions to order forensic examinations and expert reports. In accordance with Article 42 § 2 (12) of the CCP the victim may be familiarised with all materials of the criminal case file upon the completion of the preliminary investigation.

Article 161 § 1 of the CCP stipulates that information from the preliminary investigation may not be disclosed. Paragraph 3 of the same Article provides that information from the investigation file may be divulged with the permission of an investigator, but 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 participants in criminal proceedings without their permission

Article 125 of the CCP provides for judicial review of decisions by investigators and prosecutors that might infringe the constitutional rights of participants in proceedings or prevent access to a court.

## COMPLAINTS

1. The applicants complain under Article 3 that they were subjected to ill-treatment by State agents. Under the same Convention provision they complain that there had been no effective investigation following their complaint of the ill-treatment.

2. The applicants also complain under Article 5 that they were arbitrarily deprived of liberty by State agents.

3. The applicants further complain under Article 1 of Protocol no. 1 that they were arbitrarily deprived of their property by State agents.

4. Finally, the applicants complain under Article 13 taken together with Articles 3 and 5 of the Convention and Article 1 of Protocol no. 1 to the Convention that they did not have effective remedies in respect of their allegations of abduction, ill-treatment and deprivation of property.

## QUESTIONS TO THE PARTIES

1. Were the applicants subjected by State agents to ill-treatment within the meaning of Article 3 of the Convention?

2. Was the investigation into the applicants' allegations of ill-treatment adequate and effective, as required by Article 3 of the Convention? In particular, did the authorities examine the applicant's allegation that they had been subjected to ill-treatment by State agents? When the authorities were informed of the applicants' abduction from the hotel – what measures were taken in order to find the applicants and to prevent the ill-treatment?

3. Were the applicants deprived of their liberty by State agents within the meaning of Article 5 of the Convention? If so, was such deprivation compatible with the guarantees of that Article?

4. Were the applicants deprived of their property by State agents within the meaning of Article 1 of Protocol no. 1 to the Convention? If so, was such deprivation compatible with the guarantees of that Article?

5. Did the applicants have at their disposal effective domestic remedies in respect of their complaints under Articles 3 and 5 of the Convention and Article 1 of Protocol no. 1 to the Convention?

The parties are requested to produce an update of events after June 2009, in particular of the investigation in criminal case no. 07560126 instituted in relation to the applicants' abduction, with copies of all relevant documents. The parties are also requested to produce a copy of the judgment of 9 June 2009 issued by the Supreme Court of the Ingushetia Republic in which the refusal to grant access to the investigation file was found lawful. The Government are also requested to produce materials of the criminal investigation into the abduction of the applicants, together with the list of documents contained in the case-file in that case.

