



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

FIRST SECTION

DECISION

Application no. 3526/04
Maryat Alaudinovna MAGOMADOVA and Others
against Russia

The European Court of Human Rights (First Section), sitting on 11 December 2012 as a Chamber composed of:

Isabelle Berro-Lefèvre, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyev,

Mirjana Lazarova Trajkovska,

Julia Laffranque,

Linos-Alexandre Sicilianos, *judges*,

and Søren Nielsen, *Section Registrar*,

Having regard to the above application lodged on 19 December 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

1. The applicants, Ms Mariyat Magomadova, Ms Bilkis Magomadova, Mr Andarbek Magomadov and Mr Abdul-Vagap Magomadov, are Russian nationals who were born in 1938, 1965, 1959 and 1957 respectively and live in Moscow. They were represented before the Court by lawyers of the NGO EHRAC/Memorial Human Rights Centre, based in London and Moscow. 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.

A. Documents attesting to the applicants' ownership of property

3. The applicants (a mother, daughter and two sons) are former residents of Chechnya. Prior to 1994, the family lived in a flat and a house in Grozny. They submitted that the first applicant had owned a flat at 1-27 Vosmogo Marta Street. The second applicant (the first applicant's daughter) had been the registered owner of a house situated at 40/21 Vozrozhdeniya/Fontannaya Street. In 1993 the first applicant had purchased two further houses adjacent to her daughter's house (40/25 Volnaya/Fontannaya Street and 42 Volnaya Street).

4. On 15 February 1996 the Oktyabrskiy District Court of Grozny confirmed that the second applicant owned a share of the property situated at 40/21 Vozrozhdeniya/Fontannaya Street. On 29 February 1996 the court confirmed that the four applicants (and eight other individuals) had lived at the said property prior to 1994.

5. In July 2007 the Federal Registration Service ("BTI") in Chechnya issued certificates of title to the first and second applicants relating to three land plots of the above-mentioned addresses.

6. In July 2009 the BTI informed the first applicant by letter that its archives had been destroyed. The register maintained by the BTI contained four relevant entries showing that the first applicant owned the properties at 42 Volnaya Street, 40/25 Volnaya/Fontannaya Street and 1-27 Vosmogo Marta Street. The second applicant owned the house at 40/21 Vozrozhdeniya/Fontannaya Street. No corresponding certificates of title were submitted to the Court by the applicants.

B. Destruction of the applicants' property and complaints to the prosecutors' office

7. From 1994 to 1996 and in 1999 the Russian Government carried out counterterrorist operations in Chechnya. Fearing hostilities, the applicants moved to Moscow on an unspecified date.

8. The applicants submitted that during the two campaigns, missile strikes by the Russian air force in 1995 and 1999 had resulted in the destruction of their properties and all their possessions. They submitted a complaint about both incidents to the prosecutor's office in August 2001.

9. On 24 December 2001 a prosecutor of military unit no. 20102 refused the applicants' request to open a criminal investigation. The applicants were

given the option to appeal, commence a civil claim for damages or to seek compensation under Government Decree no. 510 of 30 April 1997.

10. It appears that the applicants made a further application to the prosecutor's office for a criminal investigation to be opened into the complaint relating to the 1999 attack; however, this was dismissed on 26 April 2002. The applicants were again given the option to appeal or to commence a civil claim for damages.

C. Court proceedings

11. The applicants sued the Government, the Ministry of Finance and the Ministry of Defence, with a view to obtaining compensation for the destruction of their property and possessions as a result of the events of 1995 and 1999.

12. On 8 April 2003 the Basmanny District Court of Moscow delivered its judgment. It held that under Article 1069 of the Civil Code, the State was only liable for damage caused by the unlawful conduct of its agents. The District Court noted that the military operation in Chechnya had been authorised by Presidential Decree no. 2166 dated 30 November 1994 and Government decree no. 1360 of 9 December 1994. Both decrees had been considered compatible with the Constitution by the Constitutional Court on 31 July 1995. The court thus found that no unlawful conduct by a State body had taken place which could justify payment of compensation. The court further dismissed the applicants' claim that the damage had been caused by a particularly hazardous State-owned object, since the applicants had not submitted any conclusive evidence to substantiate their allegations about the manner in which their property had been destroyed.

13. On 2 October 2003 the Moscow City Court upheld the first-instance court's judgment.

COMPLAINTS

14. The applicants complained under Articles 2 and 8 of the Convention that, during the counterterrorist operations, the State had failed to protect their right to life and to safeguard their home and family life.

15. The applicants complained under Article 1 of Protocol No. 1 to the Convention about the destruction of their property and possessions in 1995 and 1999 and the State's failure to compensate them.

16. They complained under Article 6 of the Convention that the domestic courts had dismissed their compensation claim. They further claimed that the courts' findings had been arbitrary.

17. Relying on Article 13, the applicants asserted they had no effective remedy in respect of their complaint about the alleged violation of their property rights.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

18. The applicants complained that their right to respect for their private life and property had been breached, in violation of Article 8 of the Convention and Article 1 of Protocol No. 1, which read as follows:

Article 8

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

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.”

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

19. The Government contested those arguments. They referred, in particular, to the absence of any reliable evidence pointing to the State as perpetrator of the alleged incidents. They argued that the applicants' complaint about the events of 1995 should be dismissed as incompatible *ratione temporis* with the provisions of the Convention, in line with the Court's settled practice. They also disputed the applicants' ownership of the claimed properties.

A. Complaints relating to the events of 1995

20. In so far as the applicants complained about the destruction of their property in 1995, the Court reiterates its findings reached in previous similar cases, namely that complaints about the refusal or rejection of compensation claims based on acts that occurred prior to the entry into force of the Convention in respect of the respondent State are outside its temporal jurisdiction (see *Dunayev v. Russia* (dec.), no. 70142/01, 2 February 2006, and *Sarnatskaya v. Russia* (dec.), no. 71676/01, 23 May 2006). The Convention entered into force in respect of Russia on 5 May 1998.

21. Accordingly, the Court finds that in the instant case the applicants' complaint about the destruction of their property in 1995 is incompatible *ratione temporis* with the provisions of the Convention, within the meaning of Article 35 § 3. It must be rejected in accordance with Article 35 § 4.

B. Complaints relating to the events of 1999

22. In so far as the applicants complained about the breach of their rights owing to the events of 1999, the Court points out that it has examined a number of similar cases. It has found that violent confrontations took place between the federal armed forces and rebel fighters in the region, particularly in the period between late 1999 and early 2000. This violence ensuing from the acts of both parties to the conflict resulted in the destruction of the property of many residents of Chechnya. The Court has not been convinced that in such circumstances the State could or should be presumed responsible for any damage inflicted during the military operation, and that the State's responsibility was engaged on account of the mere fact that the applicant's property had been affected (see *Umarov v. Russia* (dec.), no. 30788/02, 18 May 2006, and *Trapeznikova v. Russia*, no. 21539/02, § 108, 11 December 2008). Where the domestic courts in the course of civil proceedings did not establish that the applicants' property had been destroyed by the State and the applicant himself had not provided any additional evidence to convince the Court that such evaluation had been arbitrary or unreasonable, the Court relied on the appropriate conclusions and dismissed such claims as unsubstantiated (see *Umarov*, cited above).

23. Turning to the present case, the Court notes that at domestic level the applicants failed to provide reliable evidence as to the damage caused. For instance, there were no witness statements, including from the applicants themselves, regarding the manner in which the property had been destroyed, and no other independent evidence to support their version of events. In such circumstances, and taking into the account the general situation in Chechnya at the time, the conclusions of the domestic courts do not appear to be arbitrary or unreasonable.

24. The Court further observes that in the context of the damage caused to the residents' property during the counterterrorist operations in Chechnya, it has found that the only potentially effective domestic remedy would be an appropriate criminal investigation (see *Khamzayev and Others v. Russia*, no. 1503/02, § 154, 3 May 2011). The present case can be distinguished from the *Umarov* case (cited above) as the applicants applied to the prosecutor's office. However, they failed to appeal against the prosecutor's decisions of 24 December 2001 and 26 April 2002 not to open a criminal investigation. Accordingly, the remedy which could potentially have been effective was not pursued. As a result, the fundamental facts underlying the complaint have not been established, which, in turn, could have an effect on the success of the civil proceedings.

25. But even in the absence of corresponding conclusions from the domestic investigation, the Court could draw its own inferences about the occurrence of the interference or its proportionality, relying directly on the evidence submitted by the parties, if the applicants had no effective remedies in this regard (see *Dibirova v. Russia* (dec.), no. 18545/04, 31 May 2011, and *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, § 232, 24 February 2005). For the same reasons as given above in relation to the civil proceedings, the Court does not find that the applicants in the present case have supplied sufficient evidence to prove their allegation of State interference. In addition, it does not appear that the extent of the applicants' ownership rights to the properties in question has been completely clarified.

26. The Court regrets that the facts of the present case, where the parties disagreed over fairly serious allegations, remain not entirely elucidated. However, the Court must reach its decision on the basis of the available evidence submitted by the parties (see *Dibirova* (dec.), cited above; *mutatis mutandis*, *Aksakal v. Turkey*, no. 37850/97, §§ 35 and 38, 15 February 2007; and *Luluyev and Others v. Russia*, no. 69480/01, § 93, ECHR 2006-XIII).

27. In view of the above considerations, the Court finds that the applicants have failed to pursue the potentially effective remedy – a criminal investigation – and failed to provide the domestic civil courts, or the Court, with sufficient evidence as to the extent and origin of the damages. Against this background, the Court is unable, in the circumstances of the present case, to depart from the findings of the domestic courts and reach a conclusion that the applicants' home and possessions were destroyed, as alleged, by the State. It therefore finds that these complaints have not been substantiated (see *Umarov*, cited above). In such circumstances, the complaint under Article 8 of the Convention and Article 1 of Protocol No. 1 should be dismissed as manifestly ill-founded, in accordance with Article 35 §§ 3 (a) and 4.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

28. Lastly, the applicants complained under Articles 2, 6 and 13 of the Convention (see the Complaints section above). In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President