



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

FIFTH SECTION

Application no. 27240/09
Vaid Isayevich GISAYEV and others
against Russia
lodged on 27 April 2009

STATEMENT OF FACTS

The applicants, Vaid Isayevich Gisayev born in 1938 (“first applicant”), Birlant Pashayeva Gisayeva born in 1948 (“second applicant”), Zarema Vakhodovna Gisayeva born in 1973 (“third applicant”) and Zareta Vaidovna Gisayeva born in 1978 (“fourth applicant”) are Russian nationals and live in Nalchik, Kabardino-Balkaria, Russia. They are the father, the mother and sisters, respectively, of Imran Gisayev.

A. The circumstances of the case

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

In 1990 Imran Gisayev took part in a brawl in which a certain S. was fatally wounded and died shortly afterwards. While nobody was convicted for his death, S’s relatives considered that Imran Gisayev was responsible for it.

In 1992 Imran Gisayev was shot several times but survived. According to the applicants, the attack was perpetrated by a brother of S. in an attempt to avenge his death. Nobody was prosecuted for this attack.

On 11 December 1998 an unknown person shot several times and killed Imran Gisayev. The attack happened on a street around noon while the victim was taking his three year old nephew to a children’s playground. According to the applicants, the murder was committed by somebody from the family of S. as a vengeance.

On 14 December 1998 an investigation was opened into the murder. The crime scene was inspected and three cartridges were found and sent to a ballistics expert. Several people, including the first and fourth applicant, were questioned.

U.S., the father of S., testified on 29 December 1998 that his second son had unsuccessfully tried to kill Imran Gisayev in 1992 in vengeance for the death of S. Yet it had been his nephew, K.S., who had killed Imran Gisayev because his second son had died in 1995. In his view the killing had been just as part of a blood feud. He added that he had the gun which had been used in the killing at home.

On 7 February 1999 U.S. was questioned again. This time he testified that he was unsure who killed Imran Gisayev but confirmed that it must have been one of his relatives as revenge for the killing of his son. On 9 February 1999 he testified in a similar way that he did not know who exactly had killed Imran Gisayev but that it must have been his relatives as part of a blood feud by applying the principle a death for a death.

On 11 February 1999 an investigator who led the initial stages of the investigation was questioned after the first applicant had alleged that he had promised the family of S. that he would not arrest the murderer. The investigator admitted that it was true that he had spoken to the family of S. and asked them to tell him who had killed Imran Gisayev. He had promised in exchange not to arrest the murderer. However, that, in his view, did not absolutely mean that he would not have arrested the murderer and, moreover, he would always act according to the law.

On 20 February 1999 the investigator issued an arrest warrant for K.S. as a witness because he had not reacted to several previous requests to appear for questioning.

On 4 May 1999 the first applicant was granted victim status in the criminal case.

On 23 May 1999 U.S. was charged with inducing K.S. and another unidentified person to murder Imran Gisayev as a vengeance for the death of his son.

On 24 May 1999 U.S. was questioned as a charged person. He again reiterated that he had asked K.S. to kill Imran Gisayev as a vengeance for his son. With that purpose he had bought a gun that he had given to K.S. After the killing he had visited K.S. who informed him that he had fulfilled the blood feud. U.S., however, denied that he had incited any other person to commit the killing.

On 26 May 1999 the investigator separated the case against U.S. from the rest of the investigation because that part of the case was ready for trial. The decision noted that the other suspect, K.S., was in hiding.

On 2 July 1999 the case against U.S. was sent to the Supreme Court of the Chechen Republic for trial.

After hostilities began in Chechnya in autumn 1999 the first applicant collected the criminal file from the Prosecutor's Office in order to save it from destruction. The applicants also fled from the hostilities and moved away from Chechnya.

In November 2006 the first applicant resubmitted his criminal complaint regarding his son's killing.

On 29 November 2006 the Grozny District Prosecutor newly opened criminal proceedings regarding the death of Imran Gisayev. On 30 November 2006 the first applicant was again granted victim status.

On 1 December 2006 K.S. was arrested and on 11 December 2006 he was charged with the murder of Imran Gisayev.

K.S. denied any participation in the crime. He said that he had been approached by U.S. and another person to help them to revenge S.'s death, which he had however refused. According to his knowledge, Imran Gisayev had been killed by U.S.

K.K., a daughter of U.S., testified that her father had taken responsibility for the killing of Imran Gisayev and that K.S. had had nothing to do with it.

A.V., a friend of Imran Gisayev, stated that he had witnessed the killing, which had been committed by two young men. Due to the passage of time since then, he would be unable to recognise them. When he was shown a photo of K.S. he did not recognise him.

On 20 December 2006 M.B., a local imam and a relative of the Gisayev family, testified that Imran Gisayev had been killed in a blood feud for the death of S. by members of S.'s family. The vengeance had been in accordance with traditional practices and local customs, so they had decided not to make any claims against S.'s family. U.S., who had died in the meantime, had taken upon himself the responsibility for the killing; there had therefore been no reason to suspect K.S. to be the killer. On the following day, a similar testimony was given by V.G., the first applicant's brother who was the elder of the family in 1998, and A.D., another relative of the applicants. A.D. added that he had tried to discourage the first applicant from continuing the case as it was not in accordance with their customs because the killing of Imran Gisayev had been justified as part of a blood feud. The records of these three interviews submitted by the applicants contain no signatures.

On 18 May 2007 the investigator of the Grozny District Prosecutor's Office terminated the prosecution of K.S. and released him from pre-trial detention. He held that the evidence collected proved that K.S. had not participated in the killing of Imran Gisayev.

On 7 August 2007 the prosecutor dismissed a complaint of the first applicant that the investigation to that date was biased in favour of the suspects.

In the following months the first applicant sent several complaints to various bodies, mostly the prosecutor's office, that the investigation was ineffective.

On 14 March 2009 the first applicant lodged an action with the Grozny District Court under Article 125 of the Code of Criminal Procedure complaining of inactivity in the investigation into his son's killing.

On 26 March 2009 the District Court rejected the claim.

On 2 April 2009 the investigator once again closed the investigation holding that the murderer of Imran Gisayev had not been identified.

On 17 June 2009 the Supreme Court of the Chechen Republic quashed the decision of the District Court of 26 March 2009.

On 30 June 2009 the District Court, deciding anew, rejected the claim.

On 12 August 2009 the Supreme Court of the Chechen Republic again quashed the decision.

On 5 October 2009 the District Court granted the claim, considering the inactivity of the investigators illegal. It held that the prosecutor had closed the investigation on 2 April 2009 without having taken testimony from several witnesses and conducting other investigative steps ordered by the Prosecutor of the Chechen Republic.

B. Relevant domestic law

For a summary of the relevant domestic law see *Kukayev v. Russia*, no. 29361/02, §§ 67-68, 15 November 2007.

COMPLAINT

The applicants complain under Articles 2 and 13 of the Convention that the investigation into the death of Imran Gisayev has not been effective and that the perpetrators have not been tried.

QUESTION TO THE PARTIES

Having regard to the procedural protection of the right to life (see paragraph 104 of *Salman v. Turkey* [GC], no. 21986/93, ECHR 2000-VII), was the investigation in the present case by the domestic authorities in breach of Article 2 of the Convention? And more generally were there in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions (see paragraph 115 of *Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports* 1998-VIII)?