



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

FIRST SECTION

DECISION

Application no. 36367/09
Ziyavdi Deniyevich KAGIROV
against Russia

The European Court of Human Rights (First Section), sitting on 27 August 2013 as a Chamber composed of:

Isabelle Berro-Lefèvre, *President*,

Mirjana Lazarova Trajkovska,

Julia Laffranque,

Linos-Alexandre Sicilianos,

Erik Møse,

Ksenija Turković,

Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having regard to the above application lodged on 8 July 2009,

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

1. The applicant, Mr Ziyavdi Kagirov, is a Russian national, who was born in 1969 and lives in the village of Zakan-Yurt, in the Chechen Republic. He was represented before the Court by lawyers of the Memorial Human Rights Centre, an NGO registered in Moscow. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

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

1. The background to the case

3. The applicant is the brother of Mr Rustam Kagiroy, born in 1979. Rustam Kagiroy had been classed as category 1 disabled because he suffered from tuberculosis and had had his left lung removed.

4. According to the applicant, his brother had held strong religious beliefs and had studied at an “Islamic Institute” in Grozny. In the applicant’s opinion, Rustam Kagiroy’s religious convictions could have led the Chechen and Russian authorities to consider him a follower of Wahhabism, an Islamic fundamentalist movement, whose members had been blamed for supporting armed insurgents in the Chechen Republic.

5. In the applicant’s submission, on an unspecified date in autumn 2004 officers from the 7th Company of the 2nd Regiment of the Chechen Republic traffic police allegedly took Rustam Kagiroy from his home. Upon his release two days later he told his relatives that the policemen had tortured him with electric shocks, demanding that he confess to involvement in illegal armed groups. The officers had suspected him because of a photograph depicting two men, one of them thought to be a leader of an illegal armed group and another looking like Rustam Kagiroy. Rustam Kagiroy’s ill-treatment had allegedly consisted of torture by electricity because the policemen knew that he had health problems and that he would not survive being beaten.

2. Abduction of Rustam Kagiroy

(a) The applicant’s account

6. At the time of the events described below, the Kagiroy family, including the applicant and Rustam Kagiroy, resided at 50 Sovetskaya Street, Zakan-Yurt, their house being located about a hundred metres from the village administration office.

7. On 17 May 2009 Mr R. Kadyrov, President of the Chechen Republic, was supposed to take the Kavkaz (also referred to as the Rostov-Baku) highway, and the section of the road between Grozny and Zakan-Yurt was heavily guarded by traffic police officers, who were stationed at every intersection and who would not let any vehicle through without checking the drivers’ and passengers’ identity documents. On that day the applicant returned to Zakan-Yurt from Grozny via the same highway and police officers had stopped his car and checked his identity papers on three occasions.

8. At about 6 p.m. on 17 May 2009, while the applicant was in front of his house, he saw a black VAZ Priora vehicle with licence plate no. A 720

AT 95 parked at the local administration office on Sovetskaya Street. When Rustam Kagirov and his friend Mr Kh.Kh., who were walking along Sovetskaya Street, passed by the Priora vehicle, three armed men in black uniforms emerged from it. They were of Chechen ethnic origin. Two of them grabbed Rustam Kagirov and forced him into the back seat. The third man pointed his gun at Kh.Kh. and shouted at him in Chechen: “Turn around or I will shoot you!”. Immediately thereafter the armed men got into the car and drove off at high speed.

9. Several moments later the applicant, accompanied by Kh.Kh., got into his car to follow the abductors. They saw that the abductors had passed, unimpeded, a roadblock which was located on the road into Zakan-Yurt that led off the Kavkaz highway and which was guarded by several traffic police officers. The kidnappers’ car then took the Kavkaz highway and headed east, in the direction of Grozny. At the roadblock the applicant asked the police officers who the occupants of the Priora vehicle they had just let through were and whether their identity papers had been checked. The policemen replied that they had not checked their papers because the occupants of the vehicle had been in a hurry. Although the applicant immediately told them that they had abducted his brother, the policemen disregarded that information and continued checking other vehicles. Despite being equipped with walkie-talkies and phones, they did nothing to alert their colleagues to the abduction or ask them to stop the abductors’ car.

10. The applicant then called a local police officer named Magomed and told him about the abduction. However, it subsequently turned out that this officer did not take any further action.

11. On the following days and until 20 May 2009 the applicant and his relatives searched for Rustam Kagirov and verbally reported the abduction to various State bodies and sought their assistance. However, their attempts to find him did not lead to positive results.

12. The applicant has had no news of Rustam Kagirov since his abduction.

(b) Information submitted by the Government

13. The Government submitted that, according to the findings of the domestic investigation, on 17 May 2009 unidentified persons had abducted Rustam Kagirov in Zakan-Yurt.

3. Official investigation

(a) The applicant’s account

14. On 20 and 21 May 2009 the applicant reported the abduction of Rustam Kagirov to the Department of the Interior and the Prosecutor’s Office of the Achkhoy-Martanovskiy District (hereinafter “the ROVD” and “the district prosecutor’s office”).

15. On 21 May 2009 a group of ROVD officers came to the applicant's house and inspected the crime scene. They also questioned the applicant, his relatives and neighbours.

16. On 19 June 2009 the Achkhoy-Martanovskiy Inter-District Investigating Department of the Prosecutor's Office of the Russian Federation in the Chechen Republic (hereinafter "the investigating department") opened an investigation into the abduction of Rustam Kagirot under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case was assigned the number 74024.

17. On 6 July 2009 the applicant was granted victim status in case no. 74024.

18. In response to a query from the applicant regarding the progress of the investigation, on 7 July 2009 the investigator in charge of case no. 74024 informed him that the investigating authorities had not yet interviewed the traffic policemen from the Zakan-Yurt roadblock or identified the owner of the abductors' vehicle.

(b) Information submitted by the Government

(i) As regards the case file

19. The Government were invited to provide an entire copy of the case file opened into the abduction of Rustam Kagirot. In response to an enquiry by the Court of 9 July 2009 and when submitting their observations, they did not specify whether they were furnishing an entire copy of case file no. 74024. The documents submitted by them had double numbering. The information contained in those documents may be summarised as follows.

(ii) Opening of the investigation

20. On 19 and 20 May 2009 the ROVD and the district prosecutor's office received the applicant's complaints about the abduction of Rustam Kagirot.

21. On 22 May 2009 the prosecutor's office for the Chechen Republic (hereinafter "the republican prosecutor's office") received a further complaint by the applicant about the abduction of his brother. In his complaint the applicant indicated the licence plate number of the Priora vehicle, the name and full address of its owner and stated that Kh.Kh. had witnessed the abduction of Rustam Kagirot.

22. On 19 June 2009 the investigating department instituted an investigation into the abduction of Rustam Kagirot under Article 126 § 2 of the Criminal Code (aggravated kidnapping).

(iii) Interviewing of witnesses

23. On 6 July 2009 the investigators granted the applicant victim status and interviewed him about the circumstances of his brother's abduction. On the same day they interviewed Kh.Kh. as a witness. According to their

interview records, the applicant and Kh.Kh. stated that at about 6 p.m. on 17 May 2009, while Kh.Kh. and Rustam Kagiroy had been heading in the direction of the local administration office, a man wearing a black uniform and high boots and armed with a Makarov pistol had emerged from a black Priora vehicle with the licence plate no. A 730 AT 95 RUS. He had pointed his pistol at Rustam Kagiroy and Kh.Kh. and ordered them in Chechen not to move, threatening to shoot them. Shortly thereafter another man in a black uniform and high boots, armed with an AK-74 5.45-mm assault rifle, had leapt out of the car and ordered Kh.Kh. to turn away. After that a third man, wearing a similar uniform, had gotten out of the vehicle and, together with the first, had grabbed Rustam Kagiroy and pushed him into the back seat. Immediately after that the abductors had driven off, taking the main road out of the village. Kh.Kh. and the applicant had followed the kidnappers. On the Rostov-Baku highway they had encountered some traffic police officers, who had told the applicant that they had stopped the Priora vehicle. Its passengers had been law-enforcement officials who had produced their service certificates and had stated that they were in a hurry. The traffic policemen had let them through. They had not paid attention to the particulars of the service certificates. In the records of their interviews it was noted that the applicant and Kh.Kh. had also provided a description of two of the abductors.

24. Between 15 July and 6 November 2009 the investigators interviewed as witnesses fifteen of Rustam Kagiroy's neighbours and relatives. Overall, they confirmed the account of the events given by the applicant and Kh.Kh. S.Kh., interviewed as a witness, stated that he had sold a white Priora vehicle with licence plate number A 720 AT 95 to M.T. in 2006. According to the record of M.T.'s interview, he had stated that he was the only person driving the white Priora vehicle, with licence plate no. A 720 AT 95, which he had bought from S.Kh. in 2006. M.T. denied knowing anything about the abduction.

(iv) Further investigative steps

25. On 20 May 2009 ROVD officers inspected the crime scene. Nothing of interest to the investigation was discovered during that inspection.

26. Between 31 July and 7 December 2009 the investigators asked a number of State authorities and detention facilities to inform them whether they had arrested or detained Rustam Kagiroy. From the documents submitted by the Government it transpires that those requests yielded no relevant information.

27. On 31 July 2009 the investigators asked the head of the Chechen Republic traffic police force to provide information on the owner of the Priora vehicle and the traffic police officers who had been on duty on the Rostov-Baku highway on 17 May 2009. In reply, the head of the traffic police informed them, among other things, that on that date the traffic

policemen had only been stationed at the permanent checkpoint at the entry to Grozny.

28. On 6 August 2009 the investigators instructed the ROVD to obtain information concerning the mobile phone communications of unspecified persons in the area of the abduction on 17 May 2009. The outcome of that investigative step remains unclear.

29. On 12 November 2009 the investigators asked the ROVD to identify the police officers who had been stationed on the Rostov-Baku highway on 17 May 2009; to verify whether a black Priora vehicle, with licence plate no. A 720 T 95 RUS, was on the books of a number of State authorities in the Chechen Republic, including the police and the FSB, and to provide the relevant logs. The request also averred that the investigators' earlier instructions had not been complied with.

30. On 17 November 2009 the Ministry of the Interior of the Chechen Republic informed the investigating department that they had compiled photofit pictures of the three presumed abductors of Rustam Kagirov.

31. On 18 November 2009 the investigating department instructed the ROVD to put up copies of the photofits in public places.

32. According to an undated certificate issued by the head of the ROVD, Rustam Kagirov had participated in illegal armed groups together with another individual, R.B., which was proven by a picture of those two men that was in the possession of the ROVD. The certificate also stated that "according to recent operational information, at present [Rustam Kagirov] is in the mountains, having joined an illegal armed group led by I.A." The sources or nature of that information were not specified.

(v) Information concerning the pace of the investigation

33. On 20 August 2009 the investigation in case no. 74024 was entrusted to Investigative Committee Department no. 2 (Serious Crimes) of the Prosecutor's Office of the Russian Federation in the Chechen Republic, owing to the fact that the applicants had lodged a complaint with the European Court of Human Rights.

34. On 19 November 2009 the investigation in case no. 74024 was suspended because of failure to identify the perpetrators. A letter to that effect was sent to the applicant on the same day.

35. On 7 December 2009 the investigation was resumed. The decision referred to the need to carry out a number of investigative steps, such as:

- re-interviewing the applicant and witnesses about the circumstances of the abduction;
- questioning ROVD officers as to the source of the information concerning Rustam Kagirov's alleged membership in illegal armed groups;
- inspecting the Priora vehicle with licence plate no. A 720 T 95 RUS, interviewing its owner M.T. and verifying whether he had been implicated in the abduction;

- verifying the information concerning Rustam Kagirot's arrest by officers of the Shatoyskiy Department of the Interior (hereinafter "the Shatoy ROVD") and his detention in its detention ward;
- interviewing police officers of the Shatoy ROVD who had been on duty on 17-20 May 2009, and seizing the registration log of the detainees held in the Shatoy ROVD's detention ward on those dates.

36. According to the Government, the investigation in case no. 74024 is pending.

B. Relevant domestic law

37. For a summary of the relevant domestic law see *Aslakhanova and Others v. Russia* (nos. 2944/06, 8300/07, 50184/07, 332/08 and 42509/10, §§ 43-59, 18 December 2012).

COMPLAINTS

38. The applicant complained under Article 5 of the Convention that his brother's arrest and ensuing detention by State agents, as well as the domestic authorities' failure to take effective measures to safeguard him against the risk of disappearance by properly investigating his abduction, had violated Article 5 of the Convention, taken as a whole.

39. He also complained under Article 13 of the Convention that he had not had effective remedies in respect of his complaints under Article 5.

THE LAW

40. The applicant complained under Articles 5 and 13 of the Convention about the disappearance of his brother and of a lack of effective remedies. Upon giving notice of the application to the Government the Court decided, of its own motion, to put questions as to whether the above set of facts had given rise to a violation of Articles 2 and 3 of the Convention and Article 13 taken in conjunction with Article 2. These provisions read 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.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

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:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

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. Submissions of the parties

41. The Government argued that the investigation into the abduction of Rustam Kagiroy had not been completed and that the applicant had complained to the Court one month after the criminal proceedings in case no. 74024 had been initiated. They further submitted that under Articles 124 and 125 of the Code of Criminal Procedure (hereinafter “the CCrP”), it had been open to the applicant to challenge any acts or omissions of the investigating authorities before higher-ranking prosecutors or national courts. However, he had not done so. They concluded that the applicant had not exhausted domestic remedies.

42. The applicant maintained that he had complied with the admissibility requirements set out in Article 35 of the Convention. In particular, he had reported the abduction of his brother to the competent national authorities immediately after it had occurred. Accordingly, it had been for them to conduct an effective investigation into the circumstances in which Rustam Kagiroy had been kidnapped. Having realised that the investigation was ineffective, he had lodged his complaint with the Court within six months after the abduction.

43. As to the substance of the applicant’s complaints, the Government argued that the national investigation had obtained no evidence to the effect that the applicant’s brother had been arrested or detained by State agents. There existed no proof “beyond reasonable doubt” that Rustam Kagiroy was dead. His body had not been discovered. Moreover, there existed operational information that he had joined the rebels. The investigation into his disappearance conducted by the national authorities had satisfied the Convention requirement of “effectiveness”, which was “not an obligation of result, but of means”. While acknowledging that the applicant must have suffered emotional distress because of his brother’s disappearance, the Government emphasised that the conduct of the national authorities and their reactions to the applicant’s complaints had been in full compliance with national legislation and the Convention requirements concerning the protection of the rights of the next-of-kin of a disappeared person.

44. Referring to the abductors’ acting in broad daylight, their unimpeded passage through the checkpoint, their showing of service certificates to police officers and to the documents from the criminal file suggesting that Rustam Kagiroy had been detained at the Shatoy ROVD’s premises, the applicant argued that there existed evidence “beyond reasonable doubt” that his brother had been arrested by State agents during an unacknowledged security operation and that he was to be presumed dead. The applicant also submitted that although it was clear from the numbering of the documents in case file no. 74024 that it contained at least 212 pages, only 169 of them had been furnished to the Court. He therefore invited it to draw inferences from the Government’s failure to provide the information requested from them. He also claimed that the Government’s thesis that his brother had

joined the rebels was not based on any evidence. In the applicant's submission, the investigation in case no. 74024 had been plagued with serious defects. There had been unjustified delays in the opening of the proceedings, the interviewing of witnesses and the compiling of photofits of the abductors. The traffic policemen had not been identified and interviewed. The applicant further asserted that the authorities' handling of the investigation had caused him mental suffering in breach of the Convention.

B. The Court's assessment

45. The Court considers that the question of exhaustion of domestic remedies raised by the Government is closely linked to the merits of the case and cannot be determined at the present stage of the proceedings. Accordingly, the Court decides to join this objection to the merits. Furthermore, in the light of the parties' submissions, the Court finds that the application raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It concludes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring them inadmissible have been established.

For these reasons, the Court unanimously

Decides to join to the merits the Government's objection regarding non-exhaustion of domestic remedies;

Declares the application admissible, without prejudging the merits of the case.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President