



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

FIRST SECTION

Application no. 35152/09
Magomed Kerimovich DALAKOV
against Russia
lodged on 30 May 2009

STATEMENT OF FACTS

The applicant, Mr Magomed Dalakov, is a Russian national, who was born in 1933 and lives in the town of Karabulak, the Republic of Ingushetiya. He is represented before the Court by lawyers of EHRAC/Memorial Human Rights Centre, NGOs with offices in London and Moscow.

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

The applicant is an uncle of Mr Aпти Dalakov, born in 1986. Aпти Dalakov's parents and brother died in a car accident in 1998.

A. The circumstances of the case

1. Killing of Aпти Dalakov

At about 5 p.m. on 2 September 2007 Aпти Dalakov and his friend I.D. left a computer club in Karabulak. While they were walking down the Oskanova Street, two Gazel minivans with blackened windows and without licence plates stopped by and a group of men armed with assault rifles and pistols emerged from the vehicles. Two armed men wore plainclothes, while the others wore camouflage uniforms and masks. Without introducing themselves or giving any explanations, they pointed their guns at Aпти Dalakov and I.D. and opened fire. Aпти Dalakov ran away. The armed men pursued him, continuing shooting.

At Dzhabagiyeva Street, in the presence of a number of persons, including I.M., A.Ts. and F.Ts., Aпти Dalakov was hit by a car and fell on the ground. He got up and limped to the courtyard of the adjacent nursery school. A man from the car, which had hit Aпти Dalakov, ran after him and shot at him several times with his pistol, after which Aпти Dalakov fell on the ground with his face down. Several other armed men ran towards the scene and one of them shot at Aпти Dalakov several times while he was

lying on the ground. After having ascertained that Apti Dalakov was dead, one of the armed men lifted his body and placed an object under it.

Shortly thereafter a group of officers of the local police and the special police forces (hereinafter “the OMON”) arrived at the scene. A number of civilians present on the premises and the adjacent streets alerted the police officers to the fact that Apti Dalakov had not offered any resistance to his pursuers, that he had not been armed and that his pursuers had placed an object under his body, which turned out to be a hand grenade with its pin pulled out. The police officers requested the pursuers, who turned out to be officers of the Department of the Federal Security Service in the Ingushetiya Republic (hereinafter “the Ingushetiya FSB”) to identify themselves which the latter refused to do. In the ensuing scuffle the police officers arrested the FSB officers and brought them to the Karabulak Town Police (hereinafter “the town police”). I.D., arrested by FSB officers in the chase, was also brought to the town police on that day but was then released.

After the bomb disposal experts had deactivated the grenade, Apti Dalakov’s body was taken for a post mortem examination and was returned to his relatives for burial at midnight on 2 September 2007.

The above account of the events is based on the information contained in the application form; written statements by I.B.M., A.I.Ts. and F.Kh.Ts. dated 26 September and 2 October 2007, and a written statement by the applicant made on 31 July 2009.

2. Proceedings concerning Apti Dalakov’s death

On 5 September 2007 a certain M.Kh., relative of Apti Dalakov, complained to the Karabulak town prosecutor (hereinafter “the town prosecutor”) about the killing of Apti Dalakov and requested the latter authority to institute criminal proceedings into his death.

On 20 September 2007 the Memorial NGO forwarded the applicant’s complaint about the killing of his nephew to the Prosecutor of the Republic of Ingushetiya (hereinafter “the republican prosecutor”). That complaint was forwarded to the town prosecutor on 29 September 2007.

By a letter of 10 October 2007 the town prosecutor informed the NGO that on 2 September 2007 officers of the Ingushetiya FSB had “liquidated” Apti Dalakov because he had offered armed resistance and that criminal case no. 27520028 had been opened against him under Articles 317 and 222 § 1 of the Criminal Code (assault on a law-enforcement official and unlawful possession of arms and explosives).

On 2 November 2007 the Karabulak investigating department of the Investigating Committee with the Prosecutor’s Office of the Russian Federation in the Ingushetiya Republic (hereinafter “the investigating department”) terminated the proceedings in case no. 27520028. The decision referred to statements by FSB officers V.L., I.K. and P.Ch. They submitted, among other things, that on 2 September 2007 they had gone to Karabulak to arrest members of illegal armed groups Apti Dalakov and I.D. When the officers had spotted the two men, they had got outside their Gazel vehicle and had shouted: “FSB! Lie down!”. I.D. had complied with the order but Apti Dalakov had run off. Officers A.B. and A.Ch. had followed Apti Dalakov, while V.L., I.K. and P.Ch. had secured I.D.’s placement into their vehicle. After that they had heard the shooting and had gone to

Dzhabagiyeva Street, where they had found FSB officers and Apti Dalakov, lying face down and with a grenade in his hand. The officers had checked his pulse, ascertained that he was dead, called bomb disposal experts and secured the area. The decision stated that officers A.B. and A.Ch. “had given similar statements”, without providing any further details in that respect. The examination of the grenade seized at the scene established that it was capable of exploding. The decision concluded that there existed sufficient evidence to prove that Apti Dalakov had been guilty of assault on law-enforcement officials and unlawful possession of arms but that, in view of his death in the return fire, the criminal case against him was to be closed.

On 27 November 2007 the applicant’s lawyer filed a repeated query with the town prosecutor, asserting that the applicant had not been informed of any decisions in respect of his complaint about the killing of his nephew.

By a letter of 6 December 2007 the town prosecutor informed the applicant that the prosecutor’s decision to terminate criminal proceedings in case no. 27520028, issued on 2 November 2007, had been unlawful and premature and that additional investigative steps were under way. The letter stated that the applicant would be apprised of any important developments.

On 6 March 2008 the applicant wrote to the investigating department, reiterating the circumstances of the killing of Apti Dalakov and stressing that, according to numerous witnesses, his nephew had not been armed and had not offered resistance to FSB officers. However, none of the eyewitnesses had been interviewed and no criminal proceedings had been instituted into his death. The applicant further stated that he had been meanwhile provided with the decision of 2 November 2007 and that the town prosecutor had set it aside as unfounded. The applicant requested the investigating department to institute criminal proceedings into the killing, to interview the FSB officers who had participated in the arrest of his nephew, the OMON and police officers and other eyewitnesses. He also sought to be granted victim status. The applicant’s complaint was received by the investigating department on 19 March 2008 but no reply followed.

On 14 August 2008 the applicant complained to the Karabulakskiy Town Court under Article 125 of the Code of Criminal Procedure about the inaction of the investigating department. He submitted, among other things, that his complaints about the killing of Apti Dalakov had been left without reply and that the investigators had failed to institute criminal proceedings into his death and to take the basic investigative steps to establish the circumstances in which his nephew had been killed. The Town Court received the complaint on the same day.

On an unspecified date in September 2008 the Town Court, presided by judge B., held a hearing on the applicant’s complaint. At the hearing a representative for the investigating department submitted that they had transferred the materials concerning the applicant’s complaint about the killing of Apti Dalakov to a military prosecutor’s office, without providing any evidence in support of that assertion. Judge B. requested him to furnish the relevant documents for the next hearing, fixed for the end of September 2008. However, that hearing was adjourned owing to the absence of the representative of the investigating department. The ensuing hearings were adjourned for the same reasons or because of the absence of the judge.

In the ensuing months the applicant's lawyer repeatedly enquired with the Town Court about the hearings in the case concerning the applicant's complaint and was assured that he would be advised of the date and venue of its examination but no further hearings took place.

On 9 April 2009 the applicant wrote to the military investigating department of military base no. 68799, seeking information on whether the investigating department had transferred to the former authority any materials concerning the killing of Aпти Dalakov. No reply followed.

On 16 April 2009 the applicant complained to the Supreme Court of the Ingushetiya Republic that the Town Court had failed to examine his complaint lodged on 14 August 2008, requesting it to speed up the proceedings. The applicant did not receive a reply to that complaint.

B. Relevant domestic law

The Russian Code of Criminal Procedure provides that every report of a crime must be accepted, verified and decided upon within three days by an inquiry officer, inquiry agency, investigator or prosecutor (Article 144 § 1). The period of three days may be extended to ten and thirty days in certain circumstances (Article 144 § 3). Upon an examination of a report of a crime an investigating authority decides to open a criminal case, to refuse to institute criminal proceedings or to transfer the information to another competent authority (Article 145 § 1). A criminal investigation may be initiated by an investigator or a prosecutor following a complaint by an individual or on the investigating authorities' own initiative, where there are reasons to believe that a crime has been committed (Articles 146 and 147).

Decisions by an investigator or a prosecutor refusing to institute criminal proceedings or terminating a criminal case, as well as other orders and acts or omissions which are liable to infringe the constitutional rights and freedoms of the parties to criminal proceedings or to impede a citizen's access to justice, may be appealed against to a district court, which examines such complaints within five days upon their receipt (Article 125).

COMPLAINTS

The applicant complains under Article 2 of the Convention about the killing of his nephew and the national authorities' failure to carry out an effective investigation into the matter.

He also complains that he had no effective remedies in respect of his above-mentioned grievances, contrary to Article 13 of the Convention.

QUESTIONS TO THE PARTIES

1. What was the outcome of the proceedings concerning the applicant's complaint about the inaction of the investigating authorities, lodged with the Karabulakskiy Town Court on 14 August 2008? The parties are requested to submit copies of all relevant documents, including but not limited to, copies of hearing records.

2. Has the right to life, as guaranteed by Article 2 of the Convention, been violated in respect of Mr Apti Dalakov in the present case?

- In particular, did Mr Apti Dalakov's death result from a use of force which was absolutely necessary for the purposes of paragraph 2 (a) and/or (b) of this Article?

3. Having regard to the procedural protection of the right to life under Article 2 of the Convention (see *Salman v. Turkey* [GC], no. 21986/93, § 104, ECHR 2000 VII), have the national authorities conducted an effective investigation into the matter, sufficient to meet their obligations under this Convention provision?

4. The Government are requested to provide an entire copy of
(a) case file no. 27520028, and
(b) any other case files opened in connection with the death of Apti Dalakov

5. Has the applicant had at his disposal effective remedies in respect of the above alleged violations, as required by Article 13 of the Convention?