



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

FIRST SECTION

Application no. 41318/10
Zarema Akhmedovna GATSALOVA
against Russia
lodged on 16 July 2010

STATEMENT OF FACTS

The applicant, Ms Zarema Akhmedovna Gatsalova, is a Russian national, who was born in 1981 and lives in the town of Nalchik. She is represented before the Court by Ms V. Kogan, Mr R. Lemaitre, Mr A. Nikolayev, Mr A. Sakalov and Mr D. Itslyayev, lawyers of Stichting Russian Justice Initiative, practising in Moscoz.

A. The circumstances of the case

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

1. Events of 13 and 14 October 2005

Early in the morning on 13 October 2005 the law-enforcement agencies of the town of Nalchik were attacked by a number of armed people, apparently local insurgents. The ensuing fight between the Governmental forces and the insurgents lasted until 14 October 2005 and supposedly left several dozens of unidentified bodies.

The applicant refers to the death of her husband Timur Dzankhotovich Gatsalov, born on 7 October 1982, who participated in the attack on the side of the insurgents.

It appears that on 13 October 2005 the authorities instituted criminal proceedings no. 25/78-05 in connection with the events of 13-14 October 2005.

2. The submissions in respect of the conditions of storage of the bodies

According to those who took part in identification of the bodies, during several days following the events of 13 and 14 October 2005 the corpses were kept in the morgue and in a few other locations in wholly unsatisfactory conditions. In particular, there was an intense smell owing to the lack of proper refrigeration and the bodies were chaotically piled on top of each other.

The applicant did not take part in the identification in question.

3. The applicant's initial requests to return the body filed to various officials and courts

It appears that on several occasions the applicant requested various officials, including the prosecutors, to return the bodies of her husband for burial.

The requests either remained unanswered or were refused.

On 13 April 2006 the investigation authority terminated the proceedings in respect of the 95 deceased because of their deaths. It appears that the deceased referred to by the applicant was among those concerned by this decision.

The Prosecutor General's Office notified the applicant of the above decision on 14 April 2006. It appears that no copy of the decision in question was attached to the notification.

It appears that on 22 June 2006 ninety five corpses of the presumed terrorists were cremated. The cremation took place pursuant to the decision not to return the bodies of the deceased to their families dated 15 May 2006. The authorities had apparently not notified the applicants of the decision of 15 May 2006.

The applicant contested the actions of the authorities in courts.

By judgment of 17 February 2009 the Nalchik Town Court of the Republic of Kabardino-Balkariya partly granted the claims of the applicant in respect of her husband. In particular, the court quashed the decision dated 13 April 2006 to terminate criminal proceedings in respect of the applicant's husband because of his death and the decision dated 15 May 2006 not to return the body to his family. The court noted that the decision of 13 April 2006 had failed to take account of the new law on terrorism adopted on 6 March and 27 June 2006 and that therefore the decision of 15 May 2006 had been premature. The court ordered the prosecution authorities to examine the relevant issues afresh.

The judgments were appealed against by both parties.

The Supreme Court of the Republic of Kabardino-Balkariya upheld the judgment on 21 April 2009.

By letters of 8 and 10 February 2010 the investigative authorities informed the applicant that she had no status in criminal proceedings and therefore had no right to be informed about it.

The eventual outcome of the proceedings is unclear.

B. Relevant domestic law

1. Legal definitions of terrorist activity and terrorism

Section 3 of Law of the Russian Federation no. 130-FZ “On the struggle against terrorism” defines terrorism as:

“violence or the threat of its use of physical persons or organisations, and also destruction of (damage to) or the threat of destruction of (damage to) property and other material objects that create danger to people’s lives, cause significant loss of property, or entail other socially dangerous consequences, perpetrated with the aim of violating public safety, intimidating the population, or exerting pressure on state bodies to take decisions favourable to the terrorists or to satisfy their unlawful property and (or) other interests; an attempt on the life of a state or public figure, committed with the aim of halting his state or other political activity or in revenge for such an activity; or an attack on a representative of a foreign state or on an official of international organisation who is under international protection, or on the official premises or means of transportation of persons under international protection, if this act is committed with the aim of provoking war or of complicating international relations.”

Terrorist activity within the meaning of the said law encompasses:

- “1) organisation, planning, preparation and commission of a terrorist act;
- 2) incitement to a terrorist act, to violence against physical persons or organisations, or to the destruction of material objects for terrorist purposes;
- 3) organisation of an illegal armed formation, criminal association (criminal organisation), or organised group for the commission of a terrorist act, or participation therein;
- 4) recruitment, arming, training and use of terrorists;
- 5) intentional financing of a terrorist organisation or terrorist group or other assistance to it.”

Section 3 defines terrorist act as:

“the direct commission of a crime of a terrorist character in the form of an explosion, an act of arson, the use or threat of the use of nuclear explosive devices or of radioactive, chemical, biological, explosive, toxic, or strong-acting poisonous substances; destruction of, damage to, or seizure of means of transportation or of other object; an attempt on the life of a state or public figure or of a representative of national, ethnic, religious, or other population groups; seizure of hostages or abduction of a person; creation of danger to the life, health or property of an indefinite number of persons by creating conditions for accidents or disasters of a technogenic character or a real threat to create such a danger; the spreading of threats in any form or by any means; other actions that endanger people’s lives, cause significant loss of property, or lead to other socially dangerous consequences.”

By the same Section a terrorist is defined as:

“a person who takes part in carrying out terrorist activity in any form.”

2. Legislation governing the interment of terrorists

On 26 October 2002 a terrorist attack took place in the Nord-Ost Theatre in the city of Moscow, resulting in a hostage incident with serious casualties, including the death of several dozens of hostages.

Shortly after the attack, on 11 December 2002 Russia passed changes to the Law “On the struggle against terrorism” by adding Section 16.1 stating that:

“the interment of terrorists who die as a result of interception of a terrorist act is carried out in accordance with a procedure established by the Government of the Russian Federation. Their bodies are not handed over for burial and the place of their burial remains undisclosed.”

On the same date Russia also adopted changes (FZ - no. 170) in Law “On interment and burial matters” by adding Section 14.1. It states that:

“the interment of persons, against whom criminal investigation in connection with their terrorist activities has been closed because of their death, which took place as a result of interception of the said terrorist act, will take place in accordance with a procedure established by the Government of the Russian Federation. Their bodies are not handed over for burial, and the place of their burial is not revealed.”

Decree of the Government of the Russian Federation of 20 March 2003 no. 164 adopted in accordance with Section 16.1 of the Law “On the struggle against terrorism” defines the procedure for the internment of persons whose death was caused by the interception of terrorist acts carried out by them:

“... 3. Interment of [these] persons will take place at the location of the occurrence of death and will be carried out by special agencies on funeral matters created by organs of the executive branch of the subjects of the Russian Federation or by organs of the local government ...

4. Services provided by the special agency on funeral matters in connection with the interment of [these] persons include: processing of documents necessary for interment; clothing of the body; provision of grave; transfer of body (remains) to the place of burial (cremation); burial.

The transfer of the body (remains) to the place of burial (cremation) by railroad or aviation transport is carried out with a transfer permission, provided by an established procedure.

Determination of the burial location is carried out with regard to limitations prescribed by Law ‘On interment and burial matters.’

5. To execute the burial an official carrying out a preliminary investigation sends to the relevant special agency on funeral matters necessary documents, including a copy of the decision to close the criminal case and the criminal investigation with regard to [these] persons, and to the civilian registry office in the last place of permanent residence of the person, a statement of death.

6. The relatives of [these] persons are notified by an official conducting a preliminary investigation about the location of the registry office in which they can receive a certificate of death.

7. At the decision of an official carrying out the preliminary investigation, the relatives of [these] persons can be presented with copies of the document about death, produced by a medical organisation, and the document of the autopsy (if conducted), and personal belongings are also returned if they are not subject to confiscation.

8. The special agency on funeral matters produces document about the completed burial, which is sent to the official person who conducts the preliminary investigation, and the document becomes part of the criminal case.”

COMPLAINTS

1. The applicant complains under Articles 8 and 9 of the Convention that the State authorities unnecessarily interfered with her right to family and private life and freedom of religion by denying her access to the body of her killed relative for religious burial according to Islam traditions and customs.

2. The applicant further complains that she has no effective remedy within the meaning of Article 13 of the Convention in respect of the allegedly unnecessary interference with her rights under Articles 8 and 9 of the Convention.

3. In addition, she complains that the law applied in her case is deliberately discriminating against Muslims in breach of Article 9 taken in conjunction with Article 14 of the Convention.

4. Under Article 3 of the Convention the applicant complains that she has suffered inhuman and degrading treatment by the authorities in that the latter refused to return the body of her husband, had an allegedly indifferent attitude towards her requests and failed properly to answer these requests.

QUESTIONS

1. Were the authorities able to identify Mr Timur Gatsalov among the deceased after the events of 13 October 2005?
2. Do the Russian authorities retain possession of the body of the applicant's relative, Mr Timur Gatsalov? If so, on what grounds do they refuse to return the body? Did the decisions of the authorities not to return the body of the applicants' relative describe him as a terrorist who had died as a result of suppression of terrorist activities? The authorities are requested to furnish copies of the relevant decisions in this respect.
3. Does the refusal to return Mr Gatsalov's body to the applicant constitute degrading and/or inhuman treatment within the meaning of Article 3 of the Convention? Does this refusal constitute an interference with her rights protected under Articles 8 and 9 of the Convention? If so, was there a violation of those provisions?
4. Did the applicant have an effective remedy for her grievances under Articles 3, 8 and 9 of the Convention, as required by Article 13 of the Convention?