



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

Communicated on 17 March 2014

FIRST SECTION

Application no. 1441/10
Inna Vladimirovna RAMAZANOVA and
Vladimir Aleksandrovich ALEKSEYEV against Russia
lodged on 17 December 2009

STATEMENT OF FACTS

The applicants, Ms Inna Vladimirovna Ramazanova and Mr Vladimir Aleksandrovich Alekseyev, are Russian nationals, who were born in 1968 and 1944 respectively and live in Kazan.

A. The circumstances of the case

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

The applicants are the widow and father-in-law of R.

1. The applicants' version of the events

On 29 November 2007 R. came to his parents-in-law who lived in flat no. 87 in a block of flats.

At about 4.45 p.m. the second applicant and R. stood talking in the entrance hall inside the flat. The entrance door was not locked. Suddenly, two men in civilian clothes rushed into the flat brandishing guns. Without saying a word, they pounced on R. who, frightened, pushed them away and run towards the bedroom. Each of the men fired a shot. R., wounded, fell on the floor and the men started kicking him. The second applicant was told to lie down on the floor with his hands behind his head. After he complied, one of the men showed him a police card.

An ambulance was then called. R. was carried to the ambulance where he died on the way to hospital.

2. The police officers' version of the events

On 29 November 2007 police officers T. and D. were carrying out surveillance on flat no. 86 as the police had information that the residents of that flat were growing cannabis. That flat had a shared vestibule with

neighbouring flats nos. 85 and 87. The vestibule was separated from the landing by a metal door.

At about 4.30 p.m. T. and D. saw a man enter the shared vestibule. The vestibule door remained open. They telephoned their superior Kh. for instructions. Kh. told them to find out which of the flats the man had entered and whether there was someone in flat no. 86. They entered the shared vestibule and saw that the door of flat no. 86 was locked, while the door of flat no. 87 was half open.

At that moment two men went out of flat no. 87. They were drunk and were holding hammers. Wanting to ask the men questions about the residents of flat no. 86, T. and D. named themselves and showed their police cards. The younger man, R., stepped ahead and started insulting them. T. and D. pulled out their guns and ordered that the men put down their hammers.

R. attempted to hit T. on the head with his hammer. T. dodged and the hammer slipped on his arm making him drop the gun. R. grabbed the gun. A fight started between R. and T. During the fight, R. pulled the trigger and wounded D. at his left flank. D. then fired back at R. He aimed at R.'s thigh. However, R. twitched and the bullet hit his back. T. and D. carried R. into the flat, provided him first aid and called an ambulance.

3. The investigation

On 29 January 2007 the Interior Department of the Tatarstan Republic conducted an internal inquiry into the incident and concluded that T. and D. had acted in compliance with the rules governing the conduct of the police.

Meanwhile, on the same day the prosecutor's office of the Kirovskiy District of Kazan opened criminal proceedings into R.'s death.

Immediately after that the investigator inspected the scene of the incident. He collected a cartridge case and fragments of the bullets and noted the places where the bullets had hit the walls. He also received written explanations from T. about the incident.

On 30 January 2007 an autopsy was performed on R.'s body.

On the same day D. was questioned by the investigator and gave his version of the incident.

On 31 January 2007 T. was also questioned and gave the same version of the incident as D.

On 1 February 2007 the investigator questioned Kh. who stated that he had charged T. and D. with carrying out surveillance on flat no. 86. At about 4.15 p.m. he had received a call from D. who had reported a use of weapon. Kh. had immediately went to the scene of the incident. Later on that day flat no. 86 had been searched and substantial amounts of cannabis had been found there. The residents of that flat had been arrested.

On 2 and 7 February 2007 the investigator questioned the second applicant who gave his version of the incident.

On 6 February 2007 swabs from R.'s hands were analysed. Traces of iron, antimony and cadmium were discovered.

On 7 February 2007 T. was questioned again. He confirmed his previous statements. He was also examined by a medical expert who found no injuries on his body.

On 8 February 2007 the investigator questioned Kh.'s driver. He stated that on 29 January 2007 Kh. had received a call from D. informing him about the incident. Kh had then immediately gone to the scene of the incident.

On 9 February 2007 the first applicant was granted victim status.

On the same day D. was questioned again. He stated that he was not sure whether the second applicant had been holding a hammer.

On the same day the investigator visited the second applicant's flat. The second applicant showed to him how the incident had taken place.

On 12 February 2007 the investigator questioned R.'s friend who stated that there were numerous injuries on R.'s body. In particular, there was an abrasion on his left brow and bruises on his jaw, torso and right arm. He had taken photographs of the injuries which he had given to the investigator.

The investigator also questioned the first applicant, R.'s step-daughter, his mother-in-law and his brother. They all stated that R. had been calm and even-tempered and that he had not had any negative feelings against the police. The step-daughter and the mother-in-law also stated that they had come to the flat immediately after the incident. They saw R. lying on the floor and T. and D. walking about the flat. T. and D. had not provided any first-aid to R. The step-daughter overheard T. and D. discussing what to say about the incident. They had decided to accuse R. of snatching T.'s gun. She had also heard D. saying that the bullet had merely hit his coat.

On 22 February, 5 and 13 March and 26 April 2007 ballistic expert examinations were performed. The experts found that the cartridge case and the fragments of the bullet found at the scene of the incident had been fired from T.'s gun. The traces found on the entrance door and on the wall were bullet traces. The shot at R. had been fired from the distance between 70 and 100 cm. The shot at D. had been fired from the distance between 80 and 100 cm. In both cases the bullet trajectory was straight, there was no evidence of a ricochet.

On 15 March 2007 a medical expert noted that D. had a firearm wound on his left flank.

On 19 March 2007 the expert who had performed the autopsy issued a medical expert report. The report concluded that R. had died of a firearm wound. The bullet had entered the left side of his back and came out of his abdomen. The body also had the following injuries: an abrasion on the left brow, a bruise on the left shoulder and a bruise on the right leg. No alcohol was found in R.'s blood.

On 4 April 2007 T. and D. were brought to the scene of the incident and showed how the incident had taken place.

On 11 and 12 April 2007 confrontations was held between the second applicant on the one hand and T. and D. on the other hand.

On 2 May 2007 a medical expert examined D. He noted a scar on his left flank.

On 28 June 2007 a comprehensive forensic medico-legal and ballistic examination was performed. The experts studied all expert reports prepared before and found that on 29 January 2007 two shots had been fired. They found that D.'s and R.'s injuries, the locations of the bullet traces on the walls, of the cartridge case and of the bullet fragments corresponded to the

second applicant's version of the incident. T.'s and D.'s version was at variance with the findings of the expert reports.

On 4, 27 and 30 July 2007 D. was questioned and repeated his previous statements.

On 27 July 2007 the second applicant was granted victim status.

On 30 July 2007 T. and D. were formally charged with murder, abuse of office associated with the use of violence or weapons or entailing serious consequences, and breach of the inviolability of the home, offences under Articles 105 § 1, 286 § 3 and 139 § 3 of the Criminal Code.

On 8 August 2007 T. and D. were temporarily suspended from police service.

On 10 August 2010 the prosecutor's office of the Tatarstan Republic drew up a bill of indictment against T. and D. It analysed the collected evidence and concluded that the use of lethal force against R. had not been justified by the circumstances. It found it established that, without having sufficient grounds to believe that a criminal offence had been or was being committed in flat no. 87, T. and D. had unlawfully entered that flat and had attempted to carry out an unlawful arrest of R. Given that they had not named themselves, R. could not have known that they belonged to the police. Frightened, he had pushed them away, which had caused T.'s gun to fire and wound D. Having no legal grounds for using his weapon, D. had then fired at R., aiming at his vital organs. After R. had fallen on the floor, T. and D. had kicked him at least seven times. The prosecutor's office concluded that T. and D. had entered flat no. 87 and had used physical force and weapons in breach of the rules set out in sections 11, 13 and 15 of the Police Act. By unlawfully entering the flat and by shooting R., T. and D. had abused their office, had breached the inviolability of a home and had committed murder. They had committed criminal offences punishable by Articles 286 § 3, 139 § 3 and 105 § 1 of the Criminal Code.

On the same day T. and D. were committed for trial before the Kirovskiy District Court of Kazan.

On 4 October 2010 the Kirovskiy District Court declared the expert report of 28 June 2007 inadmissible as evidence.

On 1 November 2010 the Kirovskiy District Court ordered a new a comprehensive forensic medico-legal and ballistic examination.

On 25 December 2008 a new comprehensive forensic medico-legal and ballistic examination was performed. The experts studied photographs of R.'s body, the medical documents prepared following the autopsy, D.'s medical records and all medical and ballistic expert reports prepared before. They also visited the scene of the incident, fired test shots and verified different possible positions of all participants with the aid of scaled models. They analysed the above material and found that two shots had been fired during the incident. One of them had been fired from the shared vestibule, had ricocheted off the metal entrance door and had then hit D. who had been at that moment standing in the shared vestibule at the distance of about 1.5 m from the entrance door. The other shot had hit R. and had then ricocheted off a wall. Given that the angle under which the bullet had hit R. had not been recorded during the autopsy, it was impossible to establish the exact positions of D. and R. and the distance between them. The most probable position for R. had been either on the threshold of the entrance

door or in its immediate vicinity inside the flat. It was impossible that R. had been running towards the bedroom as described by the second applicant. By contrast, the participants' positions as described by D. and T. could be possible. T.'s and D.'s version was further confirmed by the fact that there was gun-shot residue on R.'s hands.

The experts also noted that the difference of findings between the present expert report and the expert report of 28 June 2007 was due to the shortcomings of the expert examination of 28 June 2007. The experts who had made the report of 28 June 2007 had not conducted any examinations except studying previous expert reports and some low-quality photographs. They had not visited the scene of the incident or performed any tests. They had not taken into account certain relevant facts. The report did not contain any analysis of the available materials. Nor did it describe with any precision the possible positions of all those involved at the moment of the shots.

During the hearing all the witnesses confirmed their previous statements.

On 30 April 2009 the Kirovskiy District Court acquitted T. and D. of all charges. Referring to the expert report of 25 December 2008, the court found it established that the first shot had been fired while T. and R. had been fighting for the possession of T.'s gun after R.'s attempt to grab it. That shot had wounded D. who had then fired back at R. Given that R. had attacked T. and D., took possession of T.'s gun and put their lives in danger, the use of lethal force had been necessary in the circumstances. The court found that T.'s and D.'s lives had been in peril and that D. had therefore acted in reasonable self-defence and in compliance with the Police Act.

On 19 June 2009 the Supreme Court of the Tatarstan Republic examined the prosecutor's and the applicants' appeals and dismissed them. It endorsed the reasoning of the trial court and upheld the acquittal.

B. Relevant domestic law

The Police Act (no. 1026-I of 18 April 1991 with further amendments, in force at the material time) provided that the duties of the police were, among others, the prevention and suppression of criminal and administrative offences and the protection of public order and public safety (section 2).

Section 11 of the Police Act provided that when discharging their duties the police was entitled, in particular:

(4) to obtain from citizens or officials necessary explanations, information or documents;

(7) to arrest persons suspected of a criminal offence or persons who was remanded in custody by a judicial order;

(18) to enter property or land belonging to citizens or companies and search it in pursuit of a person suspected of a criminal offence or if there were sufficient grounds to believe that a criminal offence was or was being committed there or an accident happened there, or in order to protect public order and the personal security of citizens in cases of natural or anthropogenic disaster, or epidemic, epizootic or public disorder. A prosecutor had to be informed within twenty-four hours of any entry into

private premises or land performed against the will of the owner (section 11).

The police was entitled to use physical force, special equipment or a weapon only in the circumstances specified in the Police Act and in accordance with the rules prescribed by that Act. Police officers had to undergo specific training and be periodically tested for their fitness to act in conditions requiring use of physical force, special equipment or a weapon (section 12(1) and (2))

Before using physical force, special equipment or a weapon the police officer had to:

- warn of his intention to use physical force, special equipment or a weapon and give the person concerned sufficient time to comply with his order, except in cases where the delay in using physical force, special equipment or a weapon created an immediate danger for the life and health of citizens and police officers, was likely to cause other serious consequences or where the warning was impossible or impracticable in the circumstances;

- endeavour to minimise the damage caused by the use of physical force, special equipment or a weapon, to the extent possible depending on the nature and seriousness of the offence, dangerousness of the person who committed it and degree of resistance offered;

- ensure that anyone who was injured as a result of use of physical force, special equipment or a weapon received first aid and that their relatives were informed without delay;

- inform a prosecutor of any use of physical force, special equipment or a weapon involving injuries or death (section 12(3)).

Abuse of the power to use physical force, special equipment or a weapon was punishable by law (section 12(4)).

Police officers was entitled to use physical force, including martial arts, to stop a criminal or administrative offence being committed, arrest persons who committed a criminal or administrative offence or overcome resistance to a lawful order, if non-violent methods were insufficient to ensure discharge of the police duties (section 13).

Special equipment (truncheons, handcuffs, tear gas, electroshock devices, equipment for destroying barriers, etc.) could be used, inter alia, to overcome a person's resistance to the police, arrest a person caught in the act of committing a crime against life, health or property and attempting to escape, or a person who was reasonably suspected of intending to offer armed resistance to the police (section 14).

Police officers were entitled to use weapons, inter alia, to repel an attack on a police officer if his life and health were in danger (section 15(1)(2)) or to arrest a person caught in the act of committing a serious crime against life, health or property and attempting to escape or a person offering armed resistance (section 15(1)(4)). The head of the relevant police station had to be informed, within twenty-four hours, of any use of a weapon (section 15(4)). It was prohibited to use weapons which might cause unnecessarily serious injuries or involve unjustifiably high risks (section 15(6)).

A police officer was entitled to pull out his weapon and prepare it for use if he believed that circumstances referred to in section 15 might arise in the situation. If the arrestee attempted to come closer to the armed police officer

than the latter allowed or attempted to touch his weapon, the police officer was entitled to use his weapon in accordance with section 15(1)(2) (section 16).

Police officers were not liable for any physical, pecuniary or non-pecuniary damage caused to the offender as a result of the use, in accordance with this Act, of physical force, special equipment or a weapon if that damage was proportionate to the resistance offered (section 23(3)).

The provisions of the Criminal Code concerning exemption from criminal liability for damage caused, in particular, in legitimate defence, when arresting a person who committed a criminal offence or in pursuance of a lawful order were applicable to police officers (section 24).

COMPLAINTS

1. The applicants complain under Articles 2 and 13 of the Convention about the killing of their husband and son-in-law R. by the police, the allegedly ineffective investigation into the incident and the acquittal of the police officers who shot him.

2. The second applicant complains under Article 5 of the Convention that the police unlawfully entered his flat and thereby violated his right to respect for his home.

QUESTIONS TO THE PARTIES

1. The parties are requested to submit a copy of the decision of 4 October 2010 by the Kirovskiy District Court of Kazan declaring the expert report of 28 June 2007 inadmissible as evidence.

2. Was R.'s right to life, ensured by Article 2 of the Convention, violated in the present case? In particular, did R.'s death result from a use of force which was absolutely necessary for the purposes of paragraph 2 of this Article?

3. Was the investigation into R.'s death thorough and effective, as required by Article 2 of the Convention?

4. Did the applicants have at their disposal an effective domestic remedy for their complaint under Article 2, as required by Article 13 of the Convention?

5. Was there a violation of the second applicant's right to respect for his home, guaranteed by Article 8 of the Convention? In particular, did the police enter his flat unlawfully?