



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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 67797/01  
by Adam ZUBAYRAYEV  
against Russia

The European Court of Human Rights (First Section), sitting on 28 September 2006 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 9 March 2001,

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

The applicant, Mr Adam Zoubairayev, is a Russian national, who was born in 1967. He was a resident of Starye Atagi in Chechnya. Currently he resides in France. He is represented before the Court by Mr J. Mouraux, a lawyer practising in Brussels, Belgium. The complaint is brought by the applicant also on behalf of his mother, Malika Zubayrayeva, brother Khasan

(also spelled Khasin) and sisters Aset and Petimat Zubayrayeva. The respondent Government are represented by Mr P.A. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

#### **A. The circumstances of the case**

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

##### *1. Killing of the applicant's father*

In October 1999 the applicant applied for asylum in Belgium. He currently lives in France. He submits that before that he served in the national security service of the "Chechen Republic of Ichkeria".

The applicant's parents, brothers and sisters remained in Chechnya. His family lived in their house in the village of Starye Atagi, at 103 Nagornaya Street.

The applicant's mother, Malika Zubayrayeva, testified that in the early hours of the night on 17 September 2000 the family was woken up by loud screams. A large group of men dressed in camouflage, some of them masked, whom she identified as belonging to the Russian special services ("*spetsnaz*"), entered the house and forced all the inhabitants outside. They were not allowed to dress and no reasons were given for the intervention. The intruders wore insignia of the Russian army and spoke unaccented Russian.

The inhabitants of the house were lined up in the courtyard facing the wall and their passports were collected. The servicemen read the names in the passports one by one. One of the applicant's brothers, Magomed, was not at home that night and the soldiers asked about his whereabouts. The applicant's father Salaudi (also spelled Salavdi) Zubayrayev replied that he was not at home. The soldiers hit the applicant's other brother, Khasan Zoubayrayev (born in 1977), with a rifle butt on the head and led the applicant's father away. They then forced the women into one of the rooms. In the meantime other servicemen opened all the rooms in the house and searched them. They collected valuables and all the family photos.

Once the military left the women went outside and found Khasan in the courtyard. The body of the applicant's father was found about 100- 200 metres away from the house. He was shot in the back of his head from an automatic rifle.

On the same night and in similar circumstances four other persons were killed in Starye Atagi, all of them neighbours or members of the extended family (kin) of the applicant's father: Musa Abubakarov (aged about 70), Abubakar Demilkhanov (born in 1982), Vakha Elmurzayev (aged about 70) and Isa Elmurzayev (aged about 30).

### *2. Prosecutor's visit of 17 September 2000*

The applicant submits that on 17 September 2000 the family was preparing for Salaudi Zubayrayev's funeral. One of the villagers who came to show sympathy told the family that there were investigators at the crime scene.

The applicant's younger brother Khasan went to see them. He took along a plastic bag with cartridges collected by him around his father's body – nine cartridges from a Kalashnikov automatic rifle calibre 5,45 mm and three cartridges from a Makarov pistol calibre 9 mm.

At the place where his father's body had been found the applicant's brother saw a group of Russian military surrounded by villagers. He inquired who was the most senior and gave him the bag with cartridges. The officers stated that they came from the Grozny District Prosecutor's Office. The applicant's brother tried to explain that he was the son of the person killed and a witness of the crime, and that other members of the family were at home preparing the body for the burial. As the officers did not seem to be interested in his statements, he tried to obtain their names and ranks. In response one of the officers asked rudely if he also wanted to know his home address in Russia. The officers shouted at him and at other villagers, ordered them to disperse and threatened. The prosecutors did not come to their house. None of the family members were questioned that day or later about the circumstances of the murders, nor did anyone come to their house to take pictures of the body or to collect other relevant evidence.

The applicant submits that his father was buried on 17 September 2000 at the village cemetery. The family members did not contact a medical doctor or take pictures of the body before burial. Nor did they contact any representatives of the authorities, military or investigative bodies in relation to the murder, considering this useless in view of the prosecutors' attitude. They were never contacted by the authorities in relation to the murder either.

### *3. Subsequent events*

The applicant submits that on 18 September 2000 the Russian TV news announced that several persons had been killed the previous night in Starye Atagi, including the applicant's father, by religious extremists – the "wahhabists".

On 17 October 2000 the civil registration office of the Grozny district issued death certificate for Salavdi Dzhamilovich Zubayrayev, born in 1935. Death occurred on 17 September 2000 in Starye Atagi.

In the end of September 2000 the applicant wrote to the Council of Europe Commissioner for Human Rights, complaining about the murder of his father and other persons in Starye Atagi and the absence of an investigation. In response given on 5 December 2000 the Commissioner for

Human Rights expressed his sympathy and promised to raise the issue with the Special Representative of the Russian President in the Chechen Republic for rights and freedoms, Mr Kalamanov, during a meeting which was to take place on the same day. The applicant is not aware of any attempts by the office of the Special Representative to help with the investigation.

The applicant's mother submits that on 10 December 2000, early in the morning, three armoured personnel carriers (APCs) and one Ural truck with soldiers arrived to their family house at 103 Nagornaya Street. The applicant's two brothers, Magomed and Khasan, ran away through the backyard when they heard the noise of the military vehicles. The applicant's mother with her daughters and daughters-in-law remained at home.

Several servicemen wearing balaclava masks entered the house, while the rest remained outside and warded off the neighbours. The servicemen asked the women about the whereabouts of the men, and then asked if anyone has complained "to Europe". They also asked them about electronic equipment found in the house, if they had any weapons and money. The military stocked in the truck and took away audio and video equipment, computer, fax machine and other devices, as well as golden jewellery, carpets and other valuables. The applicant's mother was hit on her back with a rubber truncheon; the servicemen talked to them in a rude and offensive manner. They then left, having closed the gates from the outside. The neighbours later told the Zubayrayev family that the hull and registration numbers of the APCs and the Ural truck were covered with mud and that they were not allowed to come any closer to note them.

The raid on the Zubayrayevs' house on 10 December 2000 was reported by NGO Memorial in their monthly monitor of human rights violations in Chechnya. In February 2001 the applicant again wrote to the Council of Europe Human Rights Commissioner, to inform him of further pressure on his family following his complaint.

On 14 January 2001 early in the morning the house at 103 Nagornaya Street was again raided by servicemen. They asked about the whereabouts of the men of the family, threatened and cursed and said that they would return and arrest the women next time if the men did not return. After that the applicant's remaining family left their house. The applicant submits that his family members feared for their lives and security and did not trust the Russian authorities any more.

The applicant submits that their house was searched twice by the Russian military during February 2001. His mother tried to let refugees from Grozny into the house but they were afraid and went to a tent camp in Ingushetia instead.

The applicant presented his mother's written account of these events, countersigned by her and by her other children who lived in the same household.

In February 2001 Obyedinennaya Gazeta published an open letter of the residents of Starye Atagi to Mr Aslakhonov, member of the State Duma. The letter, signed by the head of the village council and 150 villagers, complained of several “mopping-up” operations in the village in 2000 – 2001, including on 14 January 2000, when the family house of Zubayrayevs was raided and robbed. The letter listed 57 inhabitants of the village who had lost their lives since October 1999, among them the applicant’s father and four other men killed on the night of 17 September 2000 by unknown persons wearing camouflage and masks and speaking Russian.

In March 2001 the applicants’ remaining family fled Russia and sought asylum abroad.

The applicant submits that he is unable to present any witness statements or further documents related to his claims because the whole family has left Russia, because the searches of the house were not legal and no papers were produced. He further submits that any attempts to seek justice in Russia would be futile in the circumstances of the conflict and absence of responsibility for the actions of the military.

#### *4. The Government’s position*

The application was communicated to the Russian Government in September 2004. In their observations submitted in response, the Government stated that the applicant’s father, S.D. Zubayrayev, had been killed in Starye Atagi on 17 September 2000 by unidentified men wearing camouflage uniforms and masks and armed with automatic weapons. Four other persons were killed in the village on the same day. Also on 17 September 2000 the Grozny District Prosecutor’s Office opened criminal investigation into the murders under Article 105 § 2 of the Criminal Code (murder of two or more persons). The investigation was assigned case file number 18040.

On the same day an investigative team inspected the site of the crime and collected cartridges and bullets size 5.45 mm, 7.62 mm and 9 mm. Forensic medical and criminalistic expert reports were ordered and conducted.

The Government further stated that the relatives of the persons killed had not been interviewed and no victim status had been granted to them in the proceedings in view of their departure outside from Russia.

The investigation failed to establish the culprits and no one was charged with the crimes. However, the Government stated, the implication of the servicemen or representatives of other state authorities in the crime had not been established. The investigation focused on the main version that the murders had been committed by members of the illegal armed groups in order to intimidate the civilians and to destabilise the situation in the district. The Government stressed that all the persons killed had been loyal to the federal authorities, openly expressed their negative attitude towards

the “wahhabists” and that one of the persons killed had been an officer of the Ministry of the Interior.

The Government submit that the investigation was adjourned and reopened on several occasions. It was last reopened on 16 October 2004 and the Grozny District Prosecutor’s Office was taking the necessary measures to resolve the crime.

The Government did not submit any copies of the documents to which they referred.

The Government denied that there was any information to conclude that the members of the applicant’s family had been ill-treated or that there had been searches or confiscations in their household.

## COMPLAINTS

1. The applicant submits that his father, Salaudi Zubayrayev, was unlawfully killed by the Russian servicemen. Under Article 2 of the Convention he also complains about failure to effectively investigate the killing.

2. On behalf of his mother and sisters, the applicant complains about ill-treatment during the raids. The applicant submits that the level of violence used against them, taken in conjunction with the feelings of anxiety, fear and distress, amounted to a violation of Article 3 of the Convention.

3. The applicant complains that illegal raids and searches of their family house amounted to a violation of the right to respect of one’s home and private life, guaranteed by of Article 8 of the Convention.

4. The applicant submits that his family possessions were illegally seized by the Russian servicemen, in violation of Article 1 of Protocol No. 1.

5. Under Article 13, the applicant complains that he had no effective remedies against the above violations.

## THE LAW

### **A. Exhaustion of domestic remedies**

#### *1. The arguments of the parties*

The Government requested the Court to declare the case inadmissible as the applicant had failed to exhaust domestic remedies. They referred to the Constitution and other legal acts which permitted individuals to appeal to the courts actions of the administrative bodies which infringed the citizens’ rights. The applicant did not apply to a court in Chechnya or further in the

Northern Caucasus with any complaints, and therefore failed to use the domestic remedies available.

The applicant disagreed with the Government's objection. He insisted that special circumstances in his case absolved him of the obligation to exhaust domestic remedies. In any event, he pointed to the fact that on the day of his father's murder his brother had approached the prosecutors, but they had shown no interest in interviewing them as witnesses or as victims or in collecting other evidence. They did not come to the house to examine and take pictures of his father's body, to record the injuries or to conduct an autopsy.

The applicant stressed that the Government's assertion that his relatives could not be interviewed in view of their departure abroad is unfounded, because his relatives had been forced to leave only in March 2001. No one attempted to interview them before that date. They received no official papers related to the investigation, or to the investigators' visit to the village on 17 September 2000.

The applicant referred to the violence and reprisals to which his family had been subjected and which had eventually led to their leaving Russia. He also referred to the special circumstances which had existed in Chechnya until the end of 2000 and had been marked by the absence of any effective remedy against the actions of the military or security personnel. He asked the Court to dismiss the Government's preliminary objection.

## *2. The Court's assessment*

The Court considers that the question of exhaustion of domestic remedies is so closely linked to the merits of the case that it is inappropriate to determine it at the present stage of the proceedings.

The Court therefore decides to join this objection to the merits.

## **B. As to the merits of the applicant's complaints**

### *1. Complaints under Articles 2 and 13 of the Convention*

The Government submitted that no evidence had been collected to support the applicant's allegations that the authorities were responsible for the death of Salaudi Zubayrayev. The identity of the persons who had committed the murders on 17 September 2000 remained unknown. The investigation was being carried out in accordance with the domestic legislation and continued to take steps to solve the crime. The applicant did not avail himself of the existing domestic remedies, thus no violation of Article 13 could be found.

The applicant maintained his complaints. Under Article 2 he argued that there was enough evidence to conclude that the Russian servicemen deprived Salaudi Zubayrayev of his life and that the authorities had failed to

conduct an effective investigation into the circumstances of his father's murder. He argued that the investigation had fallen short of the standards of the European Convention and those of the national legislation. He contended that the authorities had been immediately informed of the killings and that the officers of the law-enforcement bodies had been present at the site already on 17 September 2000, which had given rise to an *ipso facto* obligation to carry out an effective investigation (the applicant referred to *Salman v. Turkey* [GC], no. 21986/93, § 104, ECHR 2000-VII). Despite that, they failed to question the witnesses and victims of the crimes, to collect and secure important evidence and to carry out an autopsy or a forensic report on the body. The authorities failed to inform the victim's family members of the proceedings. The fact that the investigation had been going on for such a long time without producing any known result and that it had been reopened just a few weeks after the communication of the present complaint to the Russian authorities served, in the applicant's view, as a further proof of its inefficiency. He also argued that he had no recourse to effective remedies against the said violations, contrary to Article 13.

The Court considers, in the light of the parties' submissions, that the complaints brought under Articles 2 and 13 of the Convention raise complex issues of law and fact, the determination of which should depend on an examination of the merits of the application. Consequently, the Court concludes that these complaints cannot be declared manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

*2. Complaints under Articles 3 and 8 of the Convention and Article 1 of Protocol No. 1, in conjunction with Article 13*

The Government stated that the investigation had obtained no information to support the applicant's allegation that his family members had been subjected to treatment in violation of Article 3, that their household had been searched or that some items had been confiscated, in violation of Article 8 of the Convention and Article 1 of Protocol No. 1. The applicant or his family members had never applied to any domestic authorities with the relevant complaints and there was nothing to support the applicant's allegations about a violation of Article 13.

The applicant contended that his family members had been subjected to inhuman and degrading treatment in violation of Article 3 during the raids on their family house on 10 December 2000, 14 January 2001 and in February 2001. He also argued that these raids and the seizure of property had constituted a violation of their rights to respect for private and family life and to peaceful enjoyment of possessions, under Article 8 and Article 1 of Protocol No. 1. They had no effective remedies against the said violations, contrary to the requirements of Article 13 of the Convention.



The Court notes that the applicant brings these complaints on behalf of his mother Malika Zubayrayeva, his brother Khasin Zubayrayev and his sisters Aset and Petimat Zubayrayeva. He does not allege that he is a victim of the alleged violations himself, unlike the situation with the complaint concerning the killing of his father brought under Article 2 of the Convention. His relatives did not apply directly to the European Court with a complaint nor submitted a power of attorney to the applicant or to his representative, authorising them to represent them in the proceedings before the Court.

The Court therefore recalls that, in order to rely on Article 34 of the Convention, two conditions must be met: an applicant must fall into one of the categories of petitioners mentioned in Article 34, and he or she must be able to make out a case that he or she is the victim of a violation of the Convention. According to the Court's established case-law, the concept of "victim" must be interpreted autonomously and irrespective of domestic concepts such as those concerning an interest or capacity to act. In addition, in order for an applicant to be able to claim to be a victim of a violation of the Convention, there must be a sufficiently direct link between the applicant and the harm which they consider they have sustained on account of the alleged violation (see, *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, § 35, ECHR 2004-III, with further references).

In this connection, it reiterates that in certain cases it may be open to a close relative of the victim to make a complaint concerning allegations of a violation of the Convention, in particular when the victim is in a vulnerable position, for example, when he or she may claim to be a victim of severe ill-treatment in violation of Article 3 (see *İlhan v. Turkey* [GC], no. 22277/93, § 55, ECHR 2000-VII). Under the same principle, the Court has allowed the husband to bring a complaint about forced gynaecological examination of his wife (see *Y.F. v. Turkey*, no. 24209/94, § 31, ECHR 2003-IX). In certain cases the applicant may be allowed to continue a complaint after the death of the victim, if his or her interests are directly affected (see, for example, concerning the reputation of the deceased in the context of the impartiality of the tribunal under Article 6 § 1, *Brudnicka and Others v. Poland*, no. 54723/00, § 31, ECHR 2005-...; for the protection of the interest of the deceased under Article 10, *Dalban v. Romania* [GC], no. 28114/95, § 39, ECHR 1999-VI).

The Court notes that in the present case the applicant does not claim that his relatives were affected by the violations alleged to such an extent that they could not apply to the Court in their own right. They did not formally entrust the applicant with the authority to represent their interests before the Court either. Nor can it be said, in view of the applicant's departure from Chechnya in 1999, that he himself can claim to be directly affected by the events which occurred there in 2000 and 2001. The Court further notes that

the applicant has never pursued any domestic proceedings in his own name or in the name of his relatives in respect of the alleged violations.

In these circumstances the Court concludes that the applicant can not be said to be a victim of the violations alleged under Articles 3 and 8 of the Convention, Article 1 of Protocol No. 1 and Article 13, within the meaning of Article 34 of the Convention. In the absence of a formal complaint lodged by the persons affected, this part of the complaint should be declared inadmissible.

In view of this conclusion the Court does not find it necessary to examine the Government's preliminary objection concerning non-exhaustion of domestic remedies in respect of these complaints.

For these reasons, the Court unanimously

*Joins to the merits* the Government's preliminary objection in respect of the complaints brought under Articles 2 and 13;

*Declares* the complaints concerning the death of the applicant's father and the absence of an effective investigation brought under the substantive and procedural aspects of Article 2 and under Article 13 admissible, without prejudicing the merits of the case;

*Declares* inadmissible the remainder of the application.

Søren NIELSEN  
Registrar

Christos ROZAKIS  
President