



Karimov and Others v. Russia

Application No. 29851/05; (2012) 54 EHRR 28

Country: Russia

Region: Europe

Year: 2009

Court: European Court of Human Rights European Court of Human Rights

Health Topics: Violence

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Right to due process/fair trial, Right to family life, Right to liberty and security of person, Right to life, Right to privacy

Facts

The applicants were Russian nationals who resided in the district of Grozny in Chechnya, which was under curfew and the control of Russian federal forces. The applicants are the relatives of Arbi Karimov, the victim in this case. In the early morning of January 11th 2003, a group of armed and masked men broke into their house. The armed men took the victim, as well as some of the applicants'™ property and personal documents including their passports.

The applicants made a number of efforts to locate the victim by complaining and explaining the abduction to official authorities. None of the investigations were sustained, and no proper steps were taken in order to determine who had been responsible for the disappearance of the victim.

The Applicants alleged that Articles 2, 3, 5, 8, and 13 of the European Convention of Human Rights had been violated.

Decision and Reasoning

The Court found the application was admissible and found the state violated multiple rights.

The Court found that there was a violation of Article 2 (right to life) on the ground that because of the unacknowledged detention by servicemen Arbi Karimov should be considered dead, with his death being attributed to the State. The court also found that no proper investigation had commenced and that the investigators had failed to take the necessary investigative measures.

The Court noted that having witnessed the abduction and facing only denials from the authorities for five years had caused the applicants to undergo psychological suffering that amounted to a violation of Article 3 (prohibition of torture).

The Court found that there had been a violation of Article 5 (right to liberty and security) due to the arbitrary detention and the authorities'™ failure to take effective measures to prevent his complete disappearance.

The Court found the unannounced search and seizure of property from the home and the resultant inability to enjoy family life amounted to a violation of Article 8 (right to private and family life) as a single issue.

The Court found that two violations of Article 13 (right to an effective remedy), one in conjunction with Article 2 regarding the ineffective criminal investigation and the other in conjunction with Article 8 and Article 1 of Protocol No. 1 (right to private property) regarding the intrusion into the house and taking of property.

Decision Excerpts

¶111. The Court has already found that the applicants'™ relative must be presumed dead following unacknowledged detention by State servicemen. In the absence of any justification put forward by the Government, the Court finds that his death can be attributed to the State and that there has been a violation of Article 2 in respect of Arbi Karimov.

¶124. The Court has found on many occasions that in a situation of enforced disappearance close relatives of the victim may themselves be victims of treatment in violation of Article 3. The essence of such a violation

does not mainly lie in the fact of the “disappearance” of the family member but rather concerns the authorities’ reactions and attitudes to the situation when it is brought to their attention.”

132. The Court has found that Arbi Karimov was abducted by State servicemen on 11 January 2003 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and there exists no official trace of his subsequent whereabouts or fate. In accordance with the Court’s practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see Orhan, cited above, ¶ 371).

142. Accordingly, there was an interference with the applicants’ right to respect for their home and for the protection of their property. In the absence of any reference on the part of the Government to the lawfulness and proportionality of these measures, the Court finds that there has been a violation of the applicants’ right to respect for home guaranteed by Article 8 of the Convention and their right to protection of property guaranteed by Article 1 of Protocol No. 1 to the Convention.

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