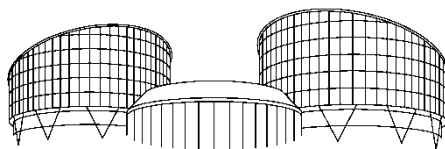


La Corte EDU sull'inadeguato svolgimento delle indagini in un caso di rapimento ed esecuzione delle vittime

(CEDU, sez. III, sent. 10 gennaio 2023, ric. n. 45900/19)

Nel caso deciso dalla Corte EDU, i ricorrenti hanno lamentato la violazione degli articoli 2 e 13 della Convenzione per le patite sofferenze morali derivanti dalla mancanza di informazioni sulla sorte dei loro parenti rapiti da agenti dello Stato e poi giustiziati in uno scontro a fuoco organizzato. Gli stessi hanno altresì denunciato l'inadeguatezza e l'inefficienza delle indagini svolte. Proprio questo secondo profilo è stato esaminato dalla Corte e, in primo luogo, essa ha verificato se l'indagine condotta abbia rispettato o meno i requisiti della Convenzione. Per questa via, i giudici di Strasburgo hanno appurato una serie di elementi in forza dei quali hanno dichiarato la violazione dell'obbligo procedurale dello Stato ai sensi dell'articolo 2 CEDU. In particolare, essi hanno constatato il notevole ritardo col quale l'istruttoria è stata avviata nonché l'omissione di taluni atti dovuti, come interrogatori e identificazione degli agenti di polizia, ed ancora la mancanza di un apparato probatorio plausibile e congruente rispetto alla causa del decesso delle vittime. Tra le questioni più dubbie che le indagini non hanno chiarito vi è, come sottolineato dalla Corte, quella relativa alle informazioni – ottenute nel 2016 – sull'esatta identità dei deceduti, ancorché la loro effettiva identificazione, tramite rilevazione del DNA, sia avvenuta nel 2018.

Il suddetto quadro ha lasciato emergere, pertanto, l'ingiustificato e non assolutamente necessario uso della forza letale contro le vittime e, di conseguenza, la Corte ha dichiarato la violazione dell'articolo 2 della Convenzione anche sotto il suo aspetto sostanziale.



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

THIRD SECTION

CASE OF XXX v. RUSSIA

(Application no. 45900/19)

JUDGMENT
STRASBOURG

10 January 2023

This judgment is final but it may be subject to editorial revision.

In the case of XXX v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Yonko Grozev, *President,*

Peeter Roosma,

Ioannis Ktistakis, *judges,*

and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 45900/19) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 19 August 2019 by 27 Russian nationals listed in Appendix I (“the applicants”), who were represented by lawyers from a non-governmental organisation (NGO), Stichting Russian Justice Initiative;

the decision to give notice of the application to the Russian Government (“the Government”), represented by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights, and lately by his successor in that office, Mr M. Vinogradov;

the parties’ observations;

Having deliberated in private on 29 November 2022,

Delivers the following judgment, which was adopted on that date:

SUBJECT-MATTER OF THE CASE

1. Invoking Articles 2 and 13 of the Convention, the applicants alleged that their eight relatives had been abducted by State agents and then executed in a staged fire exchange and that the authorities had failed to investigate the matter effectively. Under Article 3 of the Convention, the applicants complained of moral suffering caused by the lack of information concerning their abducted relatives’ fate until their bodies had been identified. The relevant details of the incidents and the ensuing investigations are summarised in Appendix II.

THE COURT’S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

2. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

3. A summary of relevant principles concerning allegations of abduction and murder by State agents in the North Caucasus can be found in *Estemirova v. Russia*, no. 42705/11, §§ 63-64, 31 August 2021.

4. According to the applicants, they made a prima facie case of abduction of their relatives by the police in Dagestan and their ensuing execution in a staged fire exchange in Chechnya. The Government did not dispute the facts and their explanation of allegedly justified use of lethal force

against their abducted relatives was an attempt to cover-up the grouped murder. In support of their allegations, the applicants referred to witness statements and other evidence collected by them and by the investigation in four criminal cases. In the applicants' opinion, that investigation failed to comply with the Convention standards.

5. The Government contended that the applicants' relatives had staged their abductions to collude for an attack on law-enforcement officers, which they had tried to carry out on the night between 8 and 9 October 2016. The use of lethal force against them during the incident had been necessary and proportionate. The findings of the official investigation, which was in compliance with the Convention standards, supported that theory. The Government furnished partial copies of four relevant criminal case files amounting to about twenty thousand pages.

6. The Court will examine firstly, whether the investigation complied with the Convention requirements, and then whether lethal force used against the applicants' relatives had been no more than absolutely necessary and whether the applicants' relatives had been abducted by State agents as alleged. Upon examination of the documents submitted, it notes the following elements.

1) The investigation has been opened with a significant delay and a number of most important steps have been delayed or never taken;

2) the total number and identities of officers who had participated in the incident and had opened fire at the applicants' relatives had not been established and they had not been questioned; their service weapons had not been matched with the casings found on the site;

3) there is no evidence showing any traces of impact of the grenade explosion mentioned by the four officers questioned on the clothing, equipment, service guns or vehicles;

4) the exact cause of the eight men's death remains unknown, as it has not been established whether they had died as a result of use of force or of the burns. The investigation failed to clarify the origin of the fire; for how long the cars had been burning, whether any of the men had tried to get out and whether any steps had been taken by the police officers to intervene. It has not been explained how both of the alleged attackers' cars had suffered such a strong fire that it had completely incinerated the vehicles with all of the men inside;

5) the investigation failed to clarify how in November 2016 the Chechen police had obtained information concerning the exact identities of their eight relatives, given that their remains had been identified only in January 2018 via DNA examination.

7. In view of the foregoing, and having regard to its previous well-established case-law in this respect (see, for instance, *Abdulkhonov v. Russia*, no. 35012/10, § 87, 6 July 2021), the Court finds a breach of the State's procedural obligation under Article 2.

8. The Court notes that the Government do not deny that the applicants' eight relatives had been killed by State agents. In view of the above findings on the deficiencies of the investigation, the Government's allegation of absolute necessity of the use of lethal force against the applicants' relatives is not supported by the evidence submitted to the Court. The information available does not suggest that the use of lethal force against the applicants' relatives was absolutely necessary, nor that the actions of the authorities in respect of the planning, control and execution of the operation were sufficient to safeguard the life of the applicants' relatives (see *Dalakov v. Russia*, no. 35152/09, § 87, 16 February 2016, and *Khayauri and Others v. Russia*, nos. 33862/17 and 2 others, § 82, 19 October 2021).

9. Considering its findings above and the particular circumstances of the case, there is no need to determine whether the applicants' eight relatives had been abducted prior to the incident.

10. There has accordingly been a violation of Article 2 of the Convention under its substantive head, too.

II. OTHER ALLEGED VIOLATIONS UNDER WELL-ESTABLISHED CASE-LAW

11. The applicants also raised other complaints which are covered by the well-established case-law of the Court. These complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor are they inadmissible on any other grounds. Accordingly, they must be declared admissible. Having examined all the material before it, the Court concludes that they disclose a violation of Articles 3 and 13 of the Convention in the light of its findings in the judgments *Turluyeva v. Russia*, no. 63638/09, 20 June 2013, and *Alikhanov v. Russia*, no. 17054/06, 28 August 2018.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

12. The applicants' claims in respect of pecuniary damage for the loss of breadwinner and the amounts awarded are provided in Appendix I. The award for non-pecuniary damage was left to the Court's discretion. The applicants also claimed 17,334 euros (EUR) in respect of costs and expenses.

13. The Government submitted that the claims were unsubstantiated and unreasonable.

14. Having regard to the documents in its possession, the Court awards the amounts for pecuniary and non-pecuniary damage as indicated in Appendix I. As for costs and expenses, the Court awards the applicants jointly EUR 15,000, plus any tax chargeable to them on that amount, to be paid to the representatives' bank accounts as indicated by the applicants.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of the substantive and procedural aspects of Article 2 of the Convention;
3. *Holds* that there has been a violation of Articles 3 and 13 of the Convention as regards the other complaints raised under the well-established case-law of the Court;
4. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months,
 - (i) in respect of pecuniary and non-pecuniary damage, the amounts indicated in Appendix I. Those amounts are to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (ii) in respect of costs and expenses EUR 15,000 (fifteen thousand euros) jointly, plus any tax that may be chargeable to the applicants, to be paid to the representatives' bank accounts as indicated by the applicants;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 10 January 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar

Yonko Grozev President