

The Third Section of the European Court of Human Rights (ECHR), with a judgement of October 5th 2021, ruled against Russia for a violation of art. 2 and 3 of the European Convention on Human Rights which respectively guarantee the right to life and the prohibition of torture.

The applicants – the parents and wife of a Russian citizen – accused the respondent State of the abduction of their relative, Mukhamed Khutiyev, by state agents in Dagestan in 2010, his subsequent disappearance and the ineffectiveness of the investigation into the case. In particular, it was argued that there had been a violation of the substantive and procedural limbs of art. 2 of the Convention.

The European Court noted that it has already adjudicated a series of cases concerning allegations of disappearances in the Russian North Caucasus: the facts of the case in question, as highlighted by the applicants, suggest that State agents were the perpetrators of the abduction of Khutiyev; the documents submitted do not contain any indication that he could have disappeared for other reasons or became victim of a crime perpetrated by third parties. The documents from the criminal case file show only that the victim was last seen when he was stopped at a checkpoint not far from his place of work and from the place of the special counter-terrorism operation that took place that same day. The local residents, who had witnessed the incident, had told the applicants and their relatives about it, but the investigators took no steps to verify that information or the applicant's and their relatives' consistent submissions of Mr. Khutiyev's arrest by law-enforcement officers.

Strasbourg judges pointed out that the documents submitted show the reluctance of the authorities to actively investigate the matter: drawing inferences from the Government's failure to provide a plausible explanation as to what happened to Khutiyev after his detention at the checkpoint, the Court found that it has been proven beyond reasonable doubt that he was abducted by State agents in the circumstances alleged by the applicants. There has been no reliable news of Mr. Khutiyev since his arrest in October 2010 and this configured a life-threatening scenario for the man, who is now believed to be dead following his unacknowledged detention by State agents. In the absence of any submission to the contrary or any explanations put forward by the Government, it was thus concluded that the death of Khutiyev can be attributed to the respondent State and that the substantive limb of art. 2 of the Convention has been violated.

Regarding the violation of the procedural limb of the same article, the ECHR highlighted that the significant delays in taking the most basic steps to verify the information received and follow the most obvious lines of inquiry show the investigators' failure to take timely and effective steps to have the crime resolved, which is confirmed by the investigators' superiors' criticism who had pointed out those deficiencies. Moreover, the documents submitted also show that the investigators consistently failed to provide the applicants with information on the progress in the investigation.

In light of the foregoing, the European Court found that the national authorities were unable to carry out an effective criminal investigation into the circumstances of Khutiyev's disappearance and this led to the violation of the procedural limb of art. 2 of the Convention.

In conclusion, the applicants alleged the violation of art. 3 of the Convention (Prohibition of torture) as the disappearance of Khutiyev caused them severe mental suffering. The Court has found on many occasions that a situation of enforced disappearance gives rise to a violation of Article 3 of the Convention in respect of the close relatives of those who disappear. In this case, the applicants must be considered victims of a violation of this article on account of the distress and anguish they have suffered, and continue to suffer, as well as because of their inability to ascertain Khutiyev's whereabouts, given the way their complaints were dealt with and the inability of national authorities to carry out an effective investigation into the abduction.



The ineffective investigation into the abduction and subsequent disappearance of a person violates the art. 2 of the European Convention on Human Rights

Diritto processuale penale Indagini preliminari

Denise Campagna

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Riferimenti Normativi:

- art. 2 Convenzione Europea dei Diritti dell'Uomo
- art. 3 Convenzione Europea dei Diritti dell'Uomo