



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

THIRD SECTION

DECISION

Application no. 33264/03
by Leonid Ramzesovich YAKOVLEV
against Armenia

The European Court of Human Rights (Third Section), sitting on 14 October 2008 as a Chamber composed of:

Josep Casadevall, *President*,

Elisabet Fura-Sandström,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Ineta Ziemele,

Luis López Guerra,

Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having regard to the above application lodged on 29 September 2003,

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 Leonid Ramzesovich Yakovlev, was an Armenian national who was born in 1964 and lived in Yerevan. He was represented before the Court by Mr V. Hayrapetyan, a lawyer practising in Yerevan. The Armenian Government (“the Government”) were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia at the European Court of Human Rights.

A. The circumstances of the case

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

The applicant alleged that on 25 September 2002 at around 11 p.m. he had been taken to the Shahumyan District Police Department on suspicion of having murdered his common-law partner.

The Government contested the applicant's allegation and submitted that he had been taken to the Police Department on 26 September 2002.

According to the applicant, upon his arrival at the Police Department the police officers started to question him about the circumstances of his partner's death. When he denied having killed her, the police officers started to beat, club and threaten him, demanding him to confess.

On 26 September 2002 from 4.10 p.m. to 5.20 p.m. the applicant was questioned by an investigator, during which he confessed to having killed his partner.

On the same date criminal proceedings were instituted.

On 28 September 2002 the applicant was charged with premeditated murder.

On 11 and 12 December 2002 the applicant was questioned by another investigator. The applicant revoked his confession statement, claiming that it had been made under strong psychological and physical duress.

On 12 March 2003 the Malatia-Sebastia District Court of Yerevan (*Երևան քաղաքի Մալաթիա-Սեբաստիա համայնքի առաջին աստիճանի դատարան*) found the applicant guilty as charged and sentenced him to seven years in prison, relying, *inter alia*, on the applicant's confession statement.

This conviction was upheld by the Criminal and Military Court of Appeal (*ՀՀ քրեական և զինվորական գործերով վերաքննիչ դատարան*) and the Court of Cassation (*ՀՀ վճարելի դատարան*) on 25 April and 13 June 2003 respectively.

B. Events that took place after the case had been communicated

On 16 March 2007 the applicant was released on parole.

By a letter of 17 March 2008 the applicant's representative informed the Court that the applicant had died on 23 January 2008. The representative did not inform the Court whether any of the applicant's relatives wished to pursue the application on his behalf. Nor were any such requests received from any of the applicant's relatives directly.

By a letter of 18 March 2008 the applicant's representative was, nevertheless, asked to inform the Court by 21 April 2008 whether the

applicant had an heir or a close relative who wished to pursue the application on his behalf.

No reply was received to this inquiry so an additional one was sent by a letter of 29 April 2008, extending the deadline until 27 May 2008.

By a letter of 27 May 2008 the applicant's representative informed the Court that, with the help of the applicant's university friends, he was able to establish contact with the applicant's cousin, Mr D.Y., who lived in a suburb of Moscow. The representative asked the Court to set a new deadline in order to be able to brief him about the case.

By a letter of 28 May 2008 the Court fixed a new deadline until 18 June 2008, asking the applicant's representative to inform whether and on what grounds Mr D.Y. wished to pursue the application.

By a letter of 17 June 2008 the applicant's representative informed the Court that Mr D.Y. had expressed his wish to pursue the application. He promised to send shortly a power of attorney signed by Mr D.Y.

The applicant's representative was informed in reply that a statement signed by Mr D.Y., in which he would express his wish to pursue the application, or at least a power of attorney signed by him was required for the Court to consider the question of his *locus standi*.

No power of attorney or any reply to the above inquiry followed.

COMPLAINTS

The applicant complained under Article 3 of the Convention that he had been tortured in the Police Department on 26 September 2002 and that there had been no effective investigation into his allegation of torture. He further complained under Article 6 § 1 of the Convention that his conviction had been based mainly on his confession statements made under torture.

THE LAW

The Court notes that in a number of cases in which an applicant died in the course of the proceedings it has taken into account the statements of the applicant's heirs or of close family members expressing the wish to pursue the proceedings before the Court (see, among other authorities, *Deweer v. Belgium*, judgment of 27 February 1980, Series A no. 35, pp. 19-20, § 37; *Vocaturo v. Italy*, judgment of 24 May 1991, Series A no. 206-C, p. 29, § 2; *Pandolfelli and Palumbo v. Italy*, judgment of 27 February 1992, Series A no. 231-B, p. 16, § 2; *Raimondo v. Italy*, judgment of 22 February 1994, Series A no. 281-A, p. 8, § 2; *Malhous v. the Czech Republic* (dec.), no. 33071/96, ECHR 2000-XII; and *Dalban v. Romania* [GC],

no. 28114/95, § 39, ECHR 1999-VI). However, there is no sufficient evidence to show that the same situation obtains in the present case.

The Court notes that the applicant died on 23 January 2008. None of his close relatives, if any, informed the Court of their own motion about their wish to pursue the application on the applicant's behalf (see, by contrast, all the cases cited above). After repeated inquiries the deceased applicant's representative informed the Court that the applicant's cousin, Mr D.Y., allegedly wished to pursue the application. The applicant's representative failed, however, to submit a power of attorney signed by that person despite having been expressly requested to do so. Furthermore, no statement was ever received by the Court from Mr D.Y. himself. In such circumstances, the Court is not convinced that it has been sufficiently demonstrated that any of the applicant's heirs or close family members, who could have a legitimate interest in pursuing his application, wished to do so. The representative's statement without any supporting documents or at least a duly signed power of attorney cannot be considered as sufficient evidence.

In this respect, the Court reiterates that it has been its practice to strike applications out of the list of cases in the absence of any heir or close relative who has expressed the wish to pursue an application (see *Scherer v. Switzerland*, judgment of 25 March 1994, Series A no. 287, pp. 14-15, § 31; *Karner v. Austria*, no. 40016/98, § 23, ECHR 2003-IX; and *Thevenon v. France* (dec.), no. 2476/02, ECHR 2006-...). The Court therefore considers that it does not have to examine the present application and that Article 37 § 1 of the Convention should be applied. That provision, in its relevant part, reads:

“1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

(a) the applicant does not intend to pursue his application;...

Furthermore, the Court finds no reasons of general interest concerning respect for human rights, within the meaning of the final sentence of Article 37 § 1, which would require the continued examination of the case (see, by contrast, *Karner*, cited above, § 27).

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Santiago Quesada
Registrar

Josep Casadevall
President