



11-year old boy killed when Russian servicemen opened fire on his home during special operation in Chechnya

In today's Chamber judgment in the case [Khashuyeva v. Russia](#) (application no. 25553/07), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

Violations of Article 2 (right to life and lack of effective investigation) of the European Convention on Human Rights; and,

Violation of Article 13 (right to an effective remedy).

Principal facts

The applicant, Kameta Khashuyeva, is a Russian national who was born in 1969 and lives in Shali (Chechnya).

According to Ms Khashuyeva her 11-year old son, Mamed Bagalayev, was killed on 1 August 2003 when a group of Russian servicemen opened fire on her neighbours as well as her own home. The servicemen, carrying out a special operation in Shali, had arrived in an armoured personnel carrier ("APC") and GAZ-53 lorry. Mamed, who had been playing with his brother and sister in the yard of the family home, noticed that he was bleeding when he ran inside the family's summer house to hide. He fell unconscious while the servicemen carried out a search of the summer house and the shooting continued. His sister asked the servicemen for help but was told that her brother could wait and was ordered to stay inside. An hour later when the shooting had stopped, a local policeman arrived on the scene and took Mamed, still unconscious, to hospital. Once there he was declared dead. The GAZ-53 lorry apparently lost its tailgate when the servicemen left and was later collected by investigators inspecting the crime scene.

In support of her allegations Ms Khashuyeva submitted witness accounts by her husband and daughter as well as neighbours. She also submitted statements by the director and driver of the Shali food factory where Russian servicemen were stationed alleging that the GAZ-53 lorry had been requisitioned from them just before the security operation and was returned to them about a month later.

The Government deny any involvement of the Russian military in the death of Ms Khashuyeva's son and suggest that members of illegal armed groups could have been responsible for the killing.

A criminal investigation was immediately opened into the incident with the scene of the crime examined, evidence (bullet cartridges and the GAZ-53 tailgate, which later

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

disappeared) collected and two witnesses – the applicant’s neighbours – questioned. A preliminary examination of Mamed’s body was carried out which found two gunshot wounds to the chest. Subsequently, in June 2006 Mamed’s sister and brother were questioned. Suspended and resumed on numerous occasions, the investigation has so far failed to identify those responsible for Mamed’s death. On a number of occasions, the supervising prosecutors criticised the progress of the investigation and ordered further investigative steps such as: identifying the military unit stationed on the premises of the former food factory in Shali; questioning a number of other witnesses including police officers from the Shali district department of the interior, the military command in Shali and Ms Khashuyeva’s neighbours; carrying out an autopsy; ordering an expert ballistic examination of the cartridges collected; and, clarifying how the tailgate had disappeared from the investigation file and the lorry had been returned to its owners. These orders have so far not been carried out.

Ms Khashuyeva alleges that she has barely been informed of the investigation’s developments or even given access to the case file. Despite specific requests by the Court, the Government did not provide the full contents of the criminal investigation file into her son’s death, claiming that public disclosure of documents in an investigation which was still in progress could be detrimental to the proceedings.

Complaints, procedure and composition of the Court

Relying in particular on Articles 2 and 13, Ms Khashuyeva alleged that her son had been killed by Russian servicemen and that the ensuing investigation into her allegation had been inadequate.

The application was lodged with the European Court of Human Rights on 17 May 2007.

Judgment was given by a Chamber of seven, composed as follows:

Nina **Vajić** (Croatia), *President*,
 Anatoly **Kovler** (Russia),
 Peer **Lorenzen** (Denmark),
 George **Nicolaou** (Cyprus),
 Mirjana **Lazarova Trajkovska** (“the Former Yugoslav Republic of Macedonia”),
 Julia **Laffranque** (Estonia),
 Linos-Alexandre **Sicilianos** (Greece), *Judges*,

and also Søren **Nielsen**, *Section Registrar*.

Decision of the Court

Article 2 (right to life and investigation)

Death of Mamed Bagalayev

Ms Khashuyeva consistently alleged that her son had been killed by unknown servicemen and that had been corroborated both by witness statements she had collected herself as well as by the prosecuting authorities during the criminal investigation.

On the contrary, the Court considered it highly unlikely, as suggested by the Government, that the GAZ-53 lorry – requisitioned by servicemen on the day that Ms Khashuyeva’s son had been killed – could have been stolen by members of an illegal armed group and then driven around freely in Shali with an APC without being noticed. Indeed, the fact that a large group of armed men in uniform had been able to drive

around the town in broad daylight in a lorry and APC and open fire without fearing being heard by local law-enforcement authorities strongly supported the allegation that those men had been Russian servicemen carrying out a security operation.

The Court was therefore satisfied that Ms Khashuyeva's son had been killed by Russian servicemen as alleged. Further drawing inferences from the Government's failure to submit documents in its exclusive possession, despite specific requests from the Court, or to provide any other plausible explanation for the incident, the Court concluded that there had been a violation of Article 2 in respect of Ms Khashuyeva's son.

Investigation

Despite the investigation having been opened promptly with the crime scene examined without delay, evidence collected and certain witnesses questioned, a number of very important steps had either been delayed or not taken at all. In particular, the key witnesses to the incident, Mamed's brother and sister, had only been interviewed three years after the investigation had been launched. As could be seen from the supervising prosecutors' criticism of the proceedings and recommendations to remedy these deficiencies, the investigators had failed to take the most essential measures, measures which, if they were to produce any meaningful results, should have been taken immediately. Repeatedly suspended and resumed and undermined by lengthy periods of inactivity on the part of prosecutor's office, the investigation is still pending with the applicants not being kept informed of its progress or even given access to the case file. The Court therefore found that there had been a further violation of Article 2 on account of the Russian authorities' failure to carry out an effective criminal investigation into the circumstances in which Ms Khashuyeva's son had been killed.

Article 13 (right to an effective remedy)

The criminal investigation into the murder of Ms Khashuyeva's son had been ineffective, and the effectiveness of any other remedy that might have existed had consequently been undermined. Russia had therefore failed in its obligation under Article 13 of the Convention. As a result, there had been a violation of Article 13 in conjunction with Article 2.

Article 41 (just satisfaction)

The Court held that Russia was to pay Ms Khashuyeva 45,000 euros in respect of non-pecuniary damage.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.