



Russia was not responsible for the death of Chechen separatist President but it should not have automatically refused to return his body, as well as those of insurgents, to their families

In today's Chamber judgments in the cases of [Maskhadova and Others v. Russia](#) (application no. 18071/05) and [Sabanchiyeva and Others v. Russia](#) (application no. 38450/05), which are not final¹, the European Court of Human Rights held:

by, five votes to two, that there had been **a violation of Article 8 (right to respect for private and family life) and Article 13 (right to an effective remedy) taken in conjunction with Article 8** of the European Convention on Human Rights and, unanimously, that there had been no violation of **Article 14 (prohibition of discrimination) taken in conjunction with Article 8** in both cases as concerned the authorities' refusal to return to the applicants the bodies of their deceased relatives;

unanimously, in the case of **Maskhadova and Others** that there had been **no violation of Article 2 (right to life and investigation)** as concerned the death of Aslan Maskhadov, the Chechen separatist President, or the investigation into his death; and,

unanimously, in the case of **Sabanchiyeva and Others** that there had been **no violation of Article 3 (prohibition inhuman or degrading treatment)** as concerned the conditions in which the bodies of the applicants' relatives had been stored for identification, and **no violation of Article 38 § 1 (a) (obligation to provide necessary facilities for the examination of the case)**.

Both cases essentially concerned the Russian authorities' refusal to return the bodies of the Chechen separatist President and Chechen insurgents to their families.

In the first case, the Court held in particular that the authorities had not been the direct cause of the death of the Chechen separatist President and that the investigation into the circumstances of his death had been adequate. **In the second case**, it considered that the authorities could not be held responsible for the suffering caused to the applicants by the storage conditions of their relatives' bodies, which had been the result of logistical difficulties. However, **in both cases**, it found that the automatic refusal to return the bodies to their families had not struck a fair balance between, on the one hand, the legitimate aim of preventing any disturbance which could have arisen during the burials as well as protecting the feelings of the relatives of the victims of terrorism and, on the other hand, the applicants' right to pay their last respects at a funeral or at a grave. The Court fully acknowledged the challenges faced by a State from terrorism but found that the automatic refusal to return the bodies had contravened the authorities' duty to take into account the individual circumstances of each of the deceased and those of their family members. In the absence of such an individualised approach, the measure had appeared to switch the blame from the deceased for their terrorist activities on to the applicants.

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

Principal facts

Maskhadova and others v. Russia

The applicants in the first case are Kusama Maskhadova and her two children, Fatima Maskhadova and Anzor Maskhadov. They are Russian nationals who were born in 1950, 1983 and 1975, respectively, and live in Azerbaijan, Norway and Sweden. The case concerned their husband and father, Aslan Maskhadov, born in 1951, who was one of the military and political leaders of the Chechen separatist movement during and after the armed conflict of 1994-96. He was accused of a number of terrorist offences, and notably of masterminding the Beslan school terrorist attack in September 2004, which left 334 people – including 86 children – dead. He lived in hiding until 8 March 2005 when his body was found in an underground shelter by the Russian security forces during a special operation.

Aslan Maskhadov's death was subsequently investigated by the authorities in the context of the criminal case against him. Although further evidence was found confirming his active involvement in masterminding the Beslan school terrorist attack, the criminal case was closed owing to his death. The authorities also decided not to bring criminal proceedings into the death. Relying on various items of evidence obtained from the scene of the incident, including interviews with witnesses and a number of forensic examinations, it was found that Aslan Maskhadov had died from gunshot wounds to the head fired accidentally by an armed insurgent, who had been in hiding with him, when the security forces had blown up the underground shelter's entrance.

In a decision of 25 March 2005, the authorities decided to bury his corpse, delegating the task to the Government of the Chechen Republic. In April 2005, the authorities rejected the applicants' request for the body to be returned. Referring to a 2003 Decree governing the burial of terrorists (the 2003 Decree) and the Suppression of Terrorism Act, they notified the applicants that the bodies of terrorists who had died as a result of their terrorist actions were not to be returned to their families and that the location of burial could not be disclosed.

Sabanchiyeva and Others v. Russia

The applicants in the second case are 50 Russian nationals who live in the town of Nalchik (the Republic of Kabardino-Balcaria). They submitted that they were relatives of 55 insurgents who had been killed during an attack on law-enforcement agencies in Nalchik in October 2005. The authorities acknowledged that all of the deceased referred to by the applicants had been among those killed as a result of the attack.

Immediately after the attacks, some of the applicants signed collective petitions requesting the return of their relatives' bodies for burial, to no avail. Finally, in a decision of 15 May 2006, the authorities decided not to return the insurgents' bodies and cremated them. The applicants' initial attempts to obtain judicial review of the decision were unsuccessful since the courts refused to examine their arguments. Some of the applicants contested the Suppression of Terrorism Act and the 2003 Decree before the Constitutional Court. In a 2007 ruling, the Constitutional Court upheld the legislation as being in conformity with the Constitution. However, it interpreted it as preventing the authorities from burying bodies unless a court had confirmed the competent authority's decision.

Complaints, procedure and composition of the Court

The applicants **in the first case** relied in particular on Articles 2 (right to life) and alleged that Aslan Maskhadov had been trapped, detained and killed by the Russian

security forces and not found dead as alleged. They also complained that the investigation into his death had been inadequate.

The applicants **in the second case** relied in particular on Article 3 (prohibition of inhuman and degrading treatment) and complained about the conditions in which the authorities had stored their relatives' bodies for identification. They alleged in particular that, for the first four days after the attack, some bodies had been stored outside the town morgue due to lack of space and, after that, had been piled on top of one another in refrigerator wagons. Further relying on Article 38 § 1 (obligation to furnish necessary facilities for the examination of the case), the applicants alleged that the Government withheld documents in their case-file relevant for their case before the European Court of Human Rights.

In both cases, all the applicants also complained about the authorities' refusal to return to them their relatives' bodies under terrorism legislation and alleged that that legislation had been discriminatory as it was aimed exclusively at followers of the Islamic faith and the Chechen ethnic community. They relied in particular on Articles 8 (right to respect for private and family life), 13 (right to an effective remedy) and 14 (prohibition of discrimination).

The judgments were given by a Chamber of seven judges, composed as follows:

Isabelle **Berro-Lefèvre** (Monaco), *President*,
 Elisabeth **Steiner** (Austria),
 Khanlar **Hajiyev** (Azerbaijan),
 Linos-Alexandre **Sicilianos** (Greece),
 Erik **Møse** (Norway),
 Ksenija **Turković** (Croatia),
 Dmitry **Dedov** (Russia),

and also André **Wampach**, *Deputy Section Registrar*.

Decision of the Court

Article 2 (death of Chechen separatist President)

The Court considered that the investigation, launched immediately after the discovery of the body, had lasted only about four months and had been concluded promptly with a decision reaching specific conclusions on the factual circumstances of Aslan Maskhadov's death. It had also been carried out by the Prosecutor General's Office, an authority institutionally independent from the officials in charge of the operation of 8 March 2005. Moreover, the cause of Aslan Maskhadov's death had been established by a forensic expert and the applicants had not disputed his conclusion. Finally, the evidence collected by the investigating authorities, including repeated examinations and interviews of witnesses, had been generally consistent with the version of the facts as submitted by the Government. Hence, the Court concluded that the authorities had acted in good faith and that the investigation into the death of Aslan Maskhadov had complied with the requirements of the procedural aspect of Article 2.

As regards the alleged responsibility of Russia for the death of Aslan Maskhadov, the Court noted that the authorities could not have known in advance that he and other armed insurgents had been hiding in the underground shelter before blowing up its entrance, resulting in his accidental shooting. Accordingly, the applicants' allegations of conspiracy or collusion involving the authorities and the witnesses remained speculative, indeed implausible. There was therefore no proof that the authorities' actions had been the direct cause of the death of Aslan Maskhadov and the Court concluded that there had been no violation of the substantive aspect of Article 2.

Article 3 (storage conditions of insurgents bodies following attack on Nalchik)

In the case **Maskhadova and Others**, the Court found that there was no cause for a separate examination of the same facts from the standpoint of Article 3.

In the case **Sabanchiyeva and Others**, the Court acknowledged that the conditions of storage of their relatives' bodies might have caused the applicants suffering, as the Government had admitted that the local facilities for refrigerated storage had been insufficient to contain all of the corpses for the first four days after the attack and that even thereafter they had to be piled on top of one another for storage in refrigerator wagons. However, those shortcomings had been the result of logistical difficulties caused by the events of October 2005 as well as by the high number of casualties. There had been no purposeful intention to subject the applicants to inhuman treatment or to cause them psychological suffering. In other words, the emotional distress of the applicants had been comparable to that of any family member of a deceased person, which could not be analysed as a violation of Article 3.

Article 8 (refusal to return bodies)

In both cases, the Court noted that in Russia the relatives of deceased people willing to organise interment generally enjoy a statutory guarantee of having the bodies returned promptly to them for burial after the cause of the death has been established. Therefore, the authorities' refusal to return the bodies had constituted an exception from the general rule. Moreover, it had clearly deprived the applicants of an opportunity to organise and take part in the burial of their relatives as well as to know the location of the gravesite for potential visits. Therefore, the decisions not to return the bodies to their families had constituted an interference with the applicants' private and family life, with the exception of the 19th applicant in the case of **Sabanchiyeva and Others** – who was not officially married to one of the victims but had lived with him since February 2005 – where the decision was found to have constituted an interference with her private life only.

The Court also considered that the refusal of the authorities to return the bodies, based on the Suppression of Terrorism Act and the 2003 Decree, had had a legal basis in Russian law. That decision had a legitimate aim, namely the prevention of disorder during the burials by supporters or opponents of Aslan Maskhadov or the insurgents and protecting the feelings of the relatives of the victims of terrorism as well as minimising the psychological impact on the population.

The Court reiterated that it was aware that States faced particular challenges from terrorism and terrorist violence. However, the Court found it difficult to agree that the goals referred to by the Government, albeit legitimate, had been a viable justification for denying the applicants any participation in the funeral ceremonies or at least some kind of opportunity for paying their last respects. Indeed, the complete ban on disclosing the location of the graves permanently cut any link between the applicants and their deceased relatives' remains.

Moreover, when deciding not to return the bodies, the authorities had neither used a case-by-case approach nor taken into account the individual circumstances of each of the deceased and those of their family members. On the contrary, those decisions had been purely automatic, and ignored the authorities' duty under Article 8 to ensure that any interference with the right to respect for private and family life be justified and proportionate in the individual circumstances of each case. In the absence of such an individualised approach, the refusal had mainly appeared to have a punitive effect on the applicants by shifting the burden of blame from the deceased for their terrorist activities on to the applicants. The Court therefore concluded that the refusal to return the bodies to their families had amounted to a violation of the applicants' rights to respect for their private and family life, with the exception of the 19th applicant in the case of

Sabanchiyeva and Others, where the refusal was found to have constituted a violation of her private life only.

Article 9 (freedom of religion)

In both cases, the Court found that there was no cause for a separate examination of the same facts from the standpoint of Article 9.

Article 13 taken in conjunction with Article 8 (effective remedy)

In both cases, the Court noted the absence of effective judicial supervision concerning the decisions by the authorities not to return the bodies to their families. Although the 2007 Ruling adopted by the Constitutional Court had improved the situation of the applicants, the Russian courts had remained competent to review only the formal lawfulness of the measures and not the need for the measure as such. Therefore, the legislation had not provided the applicants with sufficient procedural safeguards against arbitrariness. Indeed, they had not enjoyed an effective possibility of appealing the decisions owing to the authorities' refusal to provide them with a copy of those decisions and the limited competence of the courts in reviewing such decisions. Hence, the Court concluded that there had been a violation of Article 13, taken together with Article 8.

Article 14 in conjunction with Article 8 (discrimination)

The Court found no indication in either of the **two cases** which would have enabled it to conclude that the legislation had been directed exclusively against followers of the Islamic faith or, as had also been claimed by the applicants **in Maskhadova and Others**, against members of the Chechen community. Hence, the Court concluded that there had been no violation of Article 14 read in conjunction with Article 8.

Article 38 § 1 (provision of documents in the case **Sabanchiyeva and Others**)

The Court observed that the Government had submitted copies of documents which had considerably facilitated the examination of the case. The Court therefore concluded that there had been no violation of Article 38 § 1.

Article 41 (just satisfaction)

In both cases, the Court held unanimously that the finding of a violation constituted sufficient just satisfaction for the non-pecuniary damage sustained by the applicants. It further held that Russia was to pay the applicants 18,000 euros (EUR) in the case of **Maskhadova and Others** and EUR 15,000 in the case of **Sabanchiyeva and Others** in respect of costs and expenses.

Separate opinion

In both cases, judges Hajiyev and Dedov expressed a joint dissenting opinion. Their opinion is annexed to the judgments.

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.