

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

THIRD SECTION

CASE OF GORDANOVY v. RUSSIA

(Application no. 7434/18)

JUDGMENT

STRASBOURG

4 October 2022

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



In the case of Gordanovy v. Russia,

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

Georgios A. Serghides*, President,*
Anja Seibert-Fohr*,*
Peeter Roosma*, judges,*
and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the application (no. 7434/18) 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 2 February 2018 by two Russian nationals, Mr Akhmed Gordanov and Ms Liza Gordanova, both born in 1952. Prior to their deaths in 2020 and 2022 respectively they lived in Pliyevskiy. The applicants were represented by lawyers of Stichting Russian Justice Initiative, an NGO practising in Moscow;

the decision to give notice of the application to the Russian Government ("the Government"), who were initially represented by Mr M. Galperin, former Representative of the Russian Federation to the European Court of Human Rights, and later by his successor in this office, Mr M. Vinogradov;

the parties' observations;

Having deliberated in private on 13 September 2022,

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

SUBJECT-MATTER OF THE CASE

1. The applicants alleged that State agents had killed their sons Salman and Dzhuneyd Gordanov by using unjustified lethal force against them and that the authorities failed to investigate the matter effectively.

2. According to the applicants, on 3 April 2012 Salman and Dzhuneyd Gordanov drove from work together with three of their colleagues; the only female passenger was seated in the front passenger seat. Suddenly, in a street in Nazran their car was subjected to unprovoked gunfire by officers of the Federal Security Service (the FSB). After the shooting the officers towed the car, with all five persons inside, to the other side of the street. During the towing, the body of Salman Gordanov fell out. The officers pushed it back inside and then blew the vehicle up. The incident was witnessed by a number of local residents.

3. Shortly thereafter, the authorities opened a preliminary inquiry into the incident, which resulted in twelve refusals to open a criminal case for the lack of *corpus delicti*. Each of those refusals, except for the last one of 4 August 2017, was overruled by the investigators' superiors as being based only on the statements of the implicated FSB officers.

4. For instance, according to the second refusal of 31 May 2012, the bomb disposal officer A.E. stated that the passengers of the car had opened gunfire

at the FSB officers and the latter had had to protect themselves by shooting back; it had been the man seated on the passenger front seat who had opened machine-gun gunfire at the officers. On-the-spot chemical analysis of the object found inside of the attackers' car had established that it had been highly explosive substance of triacetate triperoxide. Given its danger, it had been decided to blow the vehicle up on the spot by way of "controlled explosion". Nothing had fallen out of the car during the towing.

5. According to the seventh refusal to open a criminal case issued in July 2013, officer A.E. changed his previous statement saying that he had established by the smell that the object in the car had been the explosive substance. Then one of the officers, not him, had decided to tow the car away and during the process Salman Gordanov's body had fallen out. After that the vehicle with the bodies inside had been blown up by a specialised device with a cord. Officer A.E. could recall neither how exactly the blowing up had been carried out nor the identity of the officer who had ordered the towing.

6. The tenth refusal to open a criminal case issued in February 2014 stated that in his third statement to the inquiry, officer A.E. had indicated that he had been the only officer who had examined the car and he had been unable to assess whether the five persons inside the attackers' car had been alive. According to the officer, it had been impossible to take them out of the vehicle due to the explosive found inside of it. To save the lives of those five persons, it had been decided to clear the car of the explosive; however, during that process the latter had suddenly ignited and blown up.

7. The last refusal to open a criminal case issued in August 2017 failed to clarify whether the explosive had been located in the vehicle or whether it had been attached to the passengers; it remained unclear whether the five persons in the car had been armed and whether the FSB officers had issued a warning before opening gunfire at the vehicle; it remained unclear why Salman Gordanov's body had been pushed back into the car after it had fallen out during the towing. The reasons for the blowing up of the vehicle remained unelucidated and no explanation was given to the lack of forensic examination of the attackers' firearms allegedly found at the scene.

8. No criminal case into the death of the applicants' sons has been opened to date. At the same time, the criminal case opened on 3 April 2012 against Salman and Dzhuneyd Gordanov for unlawful possession of firearms, was terminated and then re-opened on a number of occasions, for the last time on 29 September 2016. No meaningful steps had been taken therein.

9. The applicants complained under Article 2 of the Convention that the authorities had failed to effectively investigate the unjustified use of lethal force by State agents against their sons Salman and Dzhuneyd Gordanov.

10. On 8 May 2020 the second applicant informed the Court of the death of her husband, the first applicant, on 15 April 2020 and expressed her wish to pursue the proceedings in his stead. On 2 May 2022 the applicants' daughter, Ms Zaira Yandiyeva, born in 1982, informed the Court of the death

of her mother, the second applicant, on 10 March 2022. Ms Yandiyeva expressed her wish to pursue the proceedings in her parents' stead. The Government did not object.

THE COURT'S ASSESSMENT

I. PRELIMINARY ISSUE

11. Having regard to the close family ties of Ms Zaira Yandiyeva with the applicants and her legitimate interest in pursuing the application concerning fundamental human rights, the Court accepts that she may pursue the applications in their stead (see *Tagayeva and Others v. Russia*, nos. 26562/07 and 6 others, § 476, 13 April 2017).

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

12. 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.

13. The principles concerning relevant procedural and substantive obligations under Article 2 of the Convention have been summarized in *Armani Da Silva v. the United Kingdom* ([GC], no. 5878/08, §§ 229-39, 30 March 2016, and *Tagayeva and Others*, cited above, §§ 562-63 and 601, respectively.

14. No fully-fledged criminal investigation into the circumstances surrounding the death of the applicants' sons was carried out, other than the preliminary inquiry, which resulted in the twelve refusals to open a criminal case. The evidence collected by the inquiry was conflicting and pointed to glaring inconsistencies in the statements of the implicated State agents. It, therefore, should have prompted opening of a fully-fledged criminal investigation into the matter. However, the authorities took statements from only a few of the concerned officers and none from local residents who had witnessed the incident. Meanwhile, those officers gave "an explanation", which absolved them from the liability for perjury. The Court has already found that a preliminary inquiry alone was not capable of elucidating the circumstances of the use of the lethal force or leading to punishment of those responsible when it comes to allegations of the use of lethal force by State agents in comparable circumstances (see, for a similar situation, *Uzhakhov and Albagachiyeva*, no. 76635/11, § 75, 23 June 2020 [Committee], and the authorities cited therein).

15. In view of the foregoing, the Court concludes that there has been a violation of Article 2 of the Convention under its procedural limb on account of the failure to effectively investigate the circumstances surrounding the death of Salman and Dzhuneyd Gordanov.

16. As to whether the use of force against the Gordanov brothers was no more than "absolutely necessary", the Court observes that the implicated officers implied that the behaviour of the applicants' sons had necessitated the use of lethal force against them. However, there is no evidence in the case file to sufficiently support this hypothesis. Firstly, it is open to doubt whether the passengers of the car opened the gunfire at the officers as alleged, as no firearms were attributed to them as having been used to open that fire. Secondly, according to the statements of the implicated officers, the gunfire was opened by the male passenger in the front seat of the car whereas there was information that the female passenger was seated there. Thirdly, the Court notes conspicuous inconsistencies in the statements of officer A.E. who had played the key role in the incident (see paragraphs 4-6 above), in the absence of any statements from other witnesses, other than from his implicated colleagues. In sum, while bearing in mind the limitations on the scope of its review, the Court neither finds elements to conclude that the conduct by the State agents was compatible with the requirement to minimise the risk to life of individuals concerned, nor can it support the conclusion that the use of lethal force was absolutely necessary, as the Government seem to suggest.

17. In the light of the foregoing, the Court finds that it has not been demonstrated that the lethal force used, which brought about the death of the applicants' sons, was absolutely necessary, as required by Article 2 of the Convention.

18. There has accordingly been a violation of the substantive limb of Article 2 of the Convention in respect of Salman and Dzhuneyd Gordanov.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. The applicants claimed jointly 407,300 roubles (about 4,600 euros (EUR)) in respect of pecuniary damage. They also claimed EUR 5,569 for costs and expenses and enclosed copies of relevant documents. They left determination of the award for non-pecuniary damage to the Court.

20. The Government contested the claims as unsubstantiated.

21. Having regard to the documents in its possession and it's relevant practice (see, among other authorities, *Imakayeva v. Russia*, no. 7615/02, § 213, ECHR 2006-XIII (extracts) and compare with *Pugoyeva v. Russia* [Committee], no. 43479/14, §§ 64-66, 7 December 2021, *Tatayev and Others v. Russia* [Committee], no. 51928/15, §§ 111-14, 19 October 2021, and *Turayeva v. Russia* [Committee], no. 36255/16, §§ 12-14, 21 June 2022), the Court awards the applicants jointly EUR 2,000 in respect of pecuniary damage and EUR 120,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on those amounts. Both awards are to be paid to Ms Zaira Yandiyeva.

22. In respect of costs and expenses, the Court awards the applicants EUR 2,500 together with any tax that may be chargeable to them, the net award to be paid into the representatives' bank account, as identified 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 limbs of Article 2 of the Convention in respect of Salman and Dzhuneyd Gordanov;

3. *Holds*
   (a) that the respondent State is to pay Ms Zaira Yandiyeva, within three months, the following amounts, to be converted into the currency of the respondent State, save for the payment for costs and expenses, at the rate applicable at the date of settlement:
      (i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 120,000 (one hundred twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid to the account of the applicants' representatives 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;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 4 October 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Georgios A. Serghides President