

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

THIRD SECTION

CASE OF KICHIKOVA v. RUSSIA

(Application no. 49139/11)

JUDGMENT

STRASBOURG

19 October 2021

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



In the case of Kichikova v. Russia,

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

Peeter Roosma, *President,*
Dmitry Dedov,
Andreas Zünd, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 49139/11) 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") by a Russian national, Ms Vera Bembeyevna Kichikova ("the applicant"), on 2 June 2011;

the decision to give notice of the application to the Russian Government ("the Government");

the parties' observations

Having deliberated in private on 28 September 2021,

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

INTRODUCTION

1. The application concerns the applicant's complaints about the alleged lack of an effective criminal investigation into the killing of her daughter.

THE FACTS

2. The applicant was born in 1959 and lives in Yashkul, the Republic of Kalmykiya. She was represented by Mr V. Galitrov, a lawyer practising in Elista.

3. The Government were represented by Mr M. Galperin, the then Representative of the Russian Federation to the European Court of Human Rights, and lately by Mr M. Vinogradov, his successor in that office.

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

5. The applicant's daughter, Ms D., born in 1986, died as a result of the events described below. At the time of her death Ms D. was employed as an officer in correctional colony IK-2 in Yashkul.

I. THE EVENTS OF 26-28 AUGUST 2009

6. On 26 August 2009 at 5.10 p.m. Ms D. went home from her work. Her relatives started to look for her after 6 p.m., as the way home normally took about ten minutes. When their attempts to find Ms D. had yielded no result, they asked the IK-2 administration to organise a search. The search lasted until late at night and was resumed in the morning of 27 August 2009. On the

same day, following the applicant's request, criminal proceedings were instituted on suspicion of Ms D.'s murder.

7. On 28 August 2009 at 10.30 a.m. Ms D.'s body with signs of violent death was found in a garbage pit situated on unguarded premises of IK-2 near its back entrance. Her guitar was found on the roof of a nearby garage. A medical expert certified Ms D.'s death and noted numerous wounds, abrasions and bruises on her face and body. The police examined the crime scene and drew up a report.

8. The post-mortem examination established that Ms D. had died of a massive blood loss twenty-four to forty-eight hours prior to her body's examination in the morgue, that is in the period between 6 p.m. on 26 August and 6 p.m. on 27 August 2009. The following injuries were noted: one deep and long cut and one puncture wound on the neck, two cuts, three puncture wounds, eleven abrasions and three bruises on the face, numerous bruises on the head, three puncture wounds on both heels and a forefinger respectively, no less than nineteen bruises and abrasions over the rest of the body.

II. PROCEEDIGS IN RESPECT OF Ms D.'S DEATH

A. Criminal investigation

9. As stated earlier, on 27 August 2009 criminal proceedings concerning Ms D.'s death were instituted. According to the Government, from the outset the investigation had the following three theories regarding the events:

(a) Ms D. may have been murdered by convicts serving their sentences in IK-2;

(b) Ms D. may have been murdered by her ex-boyfriend, D.K., who had allegedly threatened to kill her shortly before her death;

(c) Ms D. may have been murdered by one of the officers of IK-2.

10. The investigation into the above theories could be summarised as follows.

1. Investigative actions in respect of theory (a)

11. On 29 August 2009, that is the next day after the discovery of the body, A.G. and A.K., two convicts who were free to move around the territory of IK-2 without supervision, confessed to having murdered Ms D.

12. Shortly after A.G. and A.K. had confessed, both complained that their confession statements had been obtained under duress. Their requests to open criminal proceedings in this connection were subsequently refused.

13. According to the confession statement of A.G., on 26 August 2009 he attacked Ms D. on the territory of IK-2, acting in concert with A.K., with the intention to rape her. During the ensuing fight A.G., together with Ms D., stumbled and fell into the garbage pit. In the pit, the latter was actively fighting back and screamed. Having heard a car driving by, A.G. stabbed her

three times with a knife in the neck and once in the face and then two times kicked her in the head. A.K. threw Ms D.'s guitar on the garage roof and helped holding her. Then they covered Ms D.'s body with garbage. According to the bill of indictment, the described events had lasted between 5.10 p.m. and 5.32 p.m.

14. A.K. also confessed to having participated in the murder, but his statement partly contradicted the statement of A.G. In particular, A.K. testified that Ms. D. had been first stabbed in the neck and then her body had been thrown into the pit. A.G. then descended into the pit and punched her several times.

15. On the same day both A.G. and A.K. were formally arrested on suspicion of having committed the murder of Ms D.

16. On 5 September 2009 A.G. and A.K. were indicted of having murdered Ms D.

17. The investigative authorities ordered a number of expert examinations in this connection:

(i) on 4 September 2009 a medical examination established no injuries on A.G.'s body except for a minor abrasion on his right shoulder. The same report found no injuries on A.K.'s body;

(ii) on 10 September 2009 an expert examination found fingerprints on the guitar that belonged neither to A.G. and A.K., nor to Ms D.;

(iii) on 11 September 2009 an expert examination identified textile fibres on Ms D.'s clothes similar to the ones from A.G.'s clothes. No traces of fibres from the clothes of A.K. were found;

(iv) between 11 September 2009 and 20 April 2010 the investigator ordered several expert examinations with a view to looking for fingerprints of A.G. and A.K. on Ms D.'s other belongings found at the crime scene. The results were negative;

(v) on 17 September 2009 an expert examination did not find any traces of blood of Ms D., A.G. or A.K. in samples of water taken from a sewage adjacent to the scene of the crime;

(vi) on 18 September 2009 an expert examination found no biological traces of A.G. or A.K. under Ms D.'s fingernails;

(vii) on 21 September 2009 an expert examination established small traces of Ms D.'s blood on A.K.'s slipper. Later A.K. submitted that the blood on his slipper was found after he had participated in the crime reconstruction when he had descended into the garbage pit with traces of Ms D.'s blood all around it wearing those slippers;

(viii) on 9 October 2009 an expert examination did not find traces of A.G.'s or A.K.'s blood on pieces of garbage from the pit;

(ix) on 3 November 2009 an expert examination did not find human scents of A.G. or A.K. on the knife allegedly used for Ms D.'s murder and on her phone which A.G. allegedly had taken after the murder. On 27 April 2010 another expert examination found no traces of blood on the knife;

(x) on 12 January 2010 an expert examination found no traces of Ms D.'s blood on clothes and bed linen of A.G. and A.K.;

(xi) on 7 May 2010 an expert examination did not find blood of A.G. and A.K. on the guitar;

(xii) on 07 June 2010 a linguistic expert report found that "it was possible" that a text message sent from Ms D.'s mobile phone had been written by A.G. Prior examinations found no fingerprints or any other traces of A.G. on the phone.

18. The investigator also questioned some officers of IK-2, Ms D.'s relatives and other persons. No direct oral evidence in support of the theory of A.G.'s and A.K.'s involvement in the events was discovered.

19. On 22 July 2010 the investigation was terminated and the case file was transferred to the prosecutor's office of the Republic of Kalmykiya. The investigation arrived at the conclusion that A.G. and A.K. had murdered Ms D. on 26 August 2009 between 17.10 p.m. and 17.32 p.m. in the garbage pit on the territory of IK-2, essentially in line with A.G.'s confession statements.

20. In the course of the proceedings the applicant on multiple occasions expressed her doubts about A.G.'s and A.K.'s involvement in the murder referring to serious inconsistencies between their statements and other evidence. In particular, from the outset she stated that the garbage pit and the garage roof had been examined during the search of Ms D. and they had found nothing there and that A.G.'s and A.K.'s version of the events failed to explain the great number of specific injuries on Ms D.'s body. Thus, the applicant assumed that Ms D. had been ill-treated and murdered in another place by someone else and her body had been brought to the garbage pit later.

2. Investigative actions in respect of theory (b)

21. In parallel with the above theory, the investigation investigated D.K's possible involvement in the events.

22. On 27 August 2009 the applicant, requesting the opening of the criminal proceedings, expressed her suspicion about D.K.'s possible involvement in Ms D.'s disappearance as they had had a conflict shortly before. Later, a number of other witnesses confirmed that D.K. had repeatedly threatened to kill Ms D.

23. On 29 August 2009, one day after the discovery of Ms D.'s body, the investigator questioned D.K. The latter flatly denied his involvement in Ms D.'s murder with reference to an alibi. In particular, he submitted that he had been undergoing a medical examination in a nearby city between 24 and 29 August 2009. Later some of his relatives supported the alibi. It does not appear that at that time the investigator put any questions about the alleged threats to kill Ms D. or ordered an examination of D.K.'s body with a view to establishing possible injuries or took any other investigative actions in this

respect. It appears that no other steps to investigate this theory took place for the next six months.

24. On 9 March 2010, the investigator ordered that medical documents be produced to confirm D.K.'s alibi following numerous complaints raised by the applicant. According to the documents furnished shortly thereafter, D.K. attended several appointments in the nearby town within the period in question.

25. On 10 March 2010 the investigator for the first time questioned D.K. about the alleged threats to kill Ms D. The latter denied those allegations.

26. On the same day the investigator ordered that blood and saliva samples be taken from D.K. Those samples were collected, but apparently never used for an expert examination.

27. On 21 April 2010 an expert examination did not find D.K.'s fingerprints on the guitar.

28. Between 11 and 14 May 2010 the investigator examined logs of connections and the location of the phone that apparently belonged to D.K. The examination established that the phone had not been in Yashkul during the period in question.

3. Investigative actions in respect of theory (c)

29. While the investigation performed some investigative actions examining possible involvement of officers of IK-2, it does not appear that this hypothesis was a priority.

30. On an unspecified date shortly after the institution of the proceedings four relatives of Ms D. testified to the investigator that at around 4 a.m. on 28 August 2009, i.e. a few hours before the discovery of Ms D.'s body, they had seen the car of E.E., an officer of IK-2. The car entered the territory of the colony and left fifteen minutes later. They allegedly stopped the car and briefly talked to E.E. who acted nervously and quickly left off.

31. It does not appear that the investigator questioned E.E. or took any other investigative actions in his respect at that point.

32. On 24 March 2010 the investigator questioned B.D., a colony officer who was on night sentry duty at the entrance to the territory of IK-2 between 27 and 28 August 2009. It does not appear that the investigator put any questions about the alleged visit of E.E. to the territory of IK-2.

33. On 22 April 2010 an expert examination, having studied fingerprints of dozens of IK-2 officers, including those of E.E., did not match them with the fingerprints found on the guitar.

34. On 2 June 2010, that is more than nine months after the incident and following numerous complaints raised by the applicant, the investigator examined E.E.'s car. On the next day the investigator ordered a biological expert examination of the trunk covers from the car.

35. On 9 June 2010 the expert examination found traces of blood on one of the covers. For an unspecified reason they could not be identified.

36. On 14 June 2010 the investigator questioned E.E. for the first time. The latter stated that the covers were stained with blood of fish or animals. The investigator did not put any questions about E.E.'s alleged visit to the territory of IK-2.

37. In the course of the investigation, the investigator also questioned some other IK-2 officers and ordered a number of expert examinations in their respect, which returned no results.

B. The first acquittal of A.G. and A.K.

38. On 6 August 2010 the criminal case against A.G. and A.K. was transferred to the Supreme Court of the Republic of Kalmykiya for a jury trial.

39. During the trial the applicant argued against the indictment and insisted that other persons had been responsible for the death of Ms D.

40. On 24 August 2010 the jury delivered a verdict finding A.G. and A.K. "not guilty" of having murdered Ms D. In particular, the jury decided that it was not established that Ms D. had been attacked on 26 August 2009 by the accused on the territory of IK-2, as alleged by the prosecution.

41. On 27 September 2010 the Supreme Court of the Republic of Kalmykiya confirmed the acquittal.

42. On 18 November 2010 the Supreme Court of Russia upheld the acquittal on appeal and clarified the findings of the first-instance court. The relevant part of the judgment reads as follows:

> "... the jury essentially found as not established the events, as submitted by the prosecution, which had allegedly taken place on 26 August 2009 between 17.10 p.m. and 17.30 p.m. on the territory of correctional colony IK-2 in Yashkul, the Yashkulskiy district, the Republic of Kalmykiya, This, however, does not exclude the possibility that Ms D.'s death took place in some other circumstances not mentioned in the bill of indictment ...".

C. The applicant's attempts to have criminal investigation resumed

43. After the acquittal of A.G. and A.K., on 23 December 2010 the applicant requested the Investigative Committee of the Republic of Kalmykia to resume the investigation. In particular, she pointed out that the initial investigation had failed to pay due attention to other credible theories concerning Ms D's killing.

44. On 28 December 2010 the applicant filed an identical request to the Investigative Committee of the Republic of Kalmykia.

45. On 19 and 24 January 2011 respectively both requests were dismissed. The decision stated that "since the jury had found that the crime had never taken place, there was no legal basis for further investigation".

46. On 3 February 2011 the applicant again filed a similar request to the Investigative Committee of the Republic of Kalmykia. In particular, she

submitted that the reason for the refusal of her previous requests was implausible. She argued that the finding of the absence of the event of the crime related only to the events as presented by the prosecution at the trial and did not exclude the possibility of Ms D. having been murdered in some other circumstances. Moreover, the event of the crime was obvious due to the manifestly violent nature of Ms D.'s death.

47. On 11 February 2011 the request was dismissed for the same reasons as previously.

48. Thereafter the applicant kept repeatedly requesting the resumption of the investigation. Her requests were dismissed.

D. The second acquittal of A.G. and A.K.

49. On 5 April 2011 a Deputy Prosecutor General, acting of his own motion, lodged a request for supervisory review of the acquittal judgment with the Supreme Court of Russia. He referred to the allegedly "incorrect formulation of the questions to the jury".

50. On 6 July 2011 the Presidium of the Supreme Court granted the Prosecutor General's request for supervisory review, annulled the judgment of 27 September 2010 and the appeal decision of 18 November 2010. The case was remitted for retrial.

51. On 5 August 2011 the case was submitted to the Supreme Court of the Republic of Kalmykiya for retrial.

52. On 27 October 2011 the jury delivered a verdict, again finding A.G. and A.K. not guilty of having murdered Ms D. At the trial, the applicant kept arguing against the indictment.

53. On 28 October 2011 the Supreme Court of the Republic of Kalmykiya confirmed the acquittal.

54. On 18 January 2012 the Supreme Court of Russia upheld the acquittal on appeal.

E. Investigative actions taken after 18 January 2012

55. On 15 February 2012, that is around one year and three months since the first acquittal of A.G. and A.K., the investigation was resumed.

56. According to the Government, the investigation at this stage essentially kept pursuing the initial theories (see paragraph 9 above). It does not appear that any further significant actions were taken in respect of the theory of D.K.'s or other convicts' possible involvement in Ms D.'s murder.

57. The investigation into the theory that Ms D. was murdered by an officer of IK-2 could be summarised as follows below.

58. On 20 and 28 February 2012 the investigator again questioned B.D. (see paragraph 32 above) and U.B., another colony officer who had been on the night sentry duty at the entrance to the territory of IK-2 between 27 and

28 August 2009. They submitted that E.E. had not entered IK-2 during the night.

59. On 4 April 2012 E.E. was questioned about his alleged visit to the territory of IK-2 on 28 August 2009 for the first time. He denied those allegations.

60. On 14 April 2012 the investigator conducted confrontations of E.E. with the witnesses who had testified about his visit to the territory of IK-2. E.E. and the witnesses maintained their prior statements.

61. On 31 May 2012, that is around two years and nine months after the incident, the deputy head of the prosecutor's office of the Republic of Kalmykiya held that there had been a failure to comply with the law and the requirement of promptness in carrying out the investigation. He also deplored the investigation's failure to duly investigate the theories raised by the applicant and ordered to remedy the deficiencies discovered.

62. On 26 July 2013 the car of E.E. was examined again. Brown stains resembling blood were found in an undercover compartment of the trunk. It is not clear if that compartment was checked during the first examination (see paragraph 34 above). The investigator ordered an expert biological examination of the whole surface of the trunk and its compartments and of a part of the car interior.

63. On 30 September 2013 the biological examination found no biological traces of Ms D. in the car of E.E. in part due to the lack of biological material.

64. On 25 November 2013 a psycho-physiological expert examination using a polygraph found that "E.E. knew who had murdered Ms D., but was hiding it".

65. On 9 December 2013 an expert examination found no biological traces of E.E. on Ms D.'s belongings and underwear.

66. On 7 April 2014 the investigation was suspended for the failure to identify those responsible for Ms D.'s death.

67. On 1 July 2014, following a complaint of the applicant, the investigation was resumed.

68. On 1 August 2014 the investigation was again suspended for the failure to identify those responsible for Ms D.'s death.

69. On 12 May 2015 the investigation was resumed.

70. On 13 August 2015 the investigation was suspended for the failure to identify those responsible for Ms D.'s death.

71. After the suspension the authorities conducted a number of additional investigative measures that yielded no result.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

72. For a summary of relevant domestic law see *Keller v. Russia* (no. 26824/04, §§ 54-56 and 67-71, 17 October 2013).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

73. The applicant complained that the authorities failed to conduct an effective investigation of the killing of her daughter, as required by Article 2 of the Convention. She also relied on Articles 3, 6 and 13 of the Convention. The Court will examine her grievances under Article 2 of the Convention, which insofar as relevant reads as follows:

Article 2

"Everyone's right to life shall be protected by law."

A. Admissibility

74. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

75. The general principles concerning the State's obligation inherent in Article 2 of the Convention to investigate cases where there has been a deprivation of life caused by private individuals have been summarised in the case of *Mazepa and Others v. Russia* (no. 15086/07, §§ 69-70, 17 July 2018).

76. Turning to the case at hand, the Court observes that the criminal investigation started on 27 August 2009 (see paragraph 6 above) and, apparently, has not yet been terminated. The Court reiterates in that respect that the protracted nature of proceedings is a strong indication that they were defective to the point of constituting a violation of the respondent State's positive obligations under the Convention, unless the State has provided highly convincing and plausible reasons to justify the length of the proceedings (see *Mazepa and Others*, cited above, § 80).

77. Having observed the time-line of the proceedings and various decisions adopted by the investigative authorities, the Court does not find such reasons. On the contrary, it notes that the conduct of the proceedings was tainted with other shortcomings, which had a serious negative impact on the overall effectiveness of the procedure.

78. At the outset the Court refers to the decision of the prosecutor's office of the Republic of Kalmykiya dated 31 May 2012 (see paragraph 61 above). According to the decision, the authorities failed to plan and carry out necessary investigative measures with reasonable expedition. It was further established that the investigation had not sufficiently elucidated the theories raised by the applicant.

79. Indeed, the Court observes that after having conducted initial interviews with witnesses and discovered the allegations against Ms D.'s ex-boyfriend, D.K. (see, for example, paragraph 22 above), and other IK-2 officers (see, for example, paragraph 30 above), the investigation clearly failed to react appropriately and follow up on this information to uncover all relevant details. Rather, very early on the investigative authorities chose actively to pursue only the theory of A.G.'s and A.K.'s involvement into the events and remained largely inactive in respect of the remaining two (see, respectively, paragraphs 23-26 and 31-36 above).

80. The Court reiterates in that connection that Article 2 of the Convention does not entail the right to have third parties prosecuted or sentenced for a criminal offence or an absolute obligation for all prosecutions to result in conviction, or indeed in a particular sentence (see, *mutatis mutandis*, *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 238, 30 March 2016). Nevertheless, it is expected of national authorities that they pursue all possible leads to establish the circumstances in which a person has been killed, in order to comply with their procedural obligations under Article 2 of the Convention (see *Dobriyeva and Others v. Russia*, no. 18407/10, § 75, 19 December 2013, and *Jelić v. Croatia*, no. 57856/11, § 86, 12 June 2014). Accordingly, the Court considers that, especially after A.G.'s and A.K.'s acquittal on 24 August 2010 (see paragraph 40 above), it was vital for the investigation to pursue other theories, which the authorities themselves found credible(see, for example, *Kolevi v. Bulgaria*, no. 1108/02, § 200-01, 5 November 2009). Yet, they repetitively refused to resume the investigation citing the jury's verdict (see paragraph 45 above). However, the Supreme Court of Russia had earlier clarified that the verdict related only to the events as described in the bill of indictment and did not exclude that Ms D. had been murdered in some other circumstances (see paragraph 42 above). The investigation thus remained inactive for fifteen months without any plausible justification (see paragraph 55 above). The authorities could have used that precious time duly to address the remaining versions and this delay clearly undermined their subsequent efforts (see, *mutatis mutandis*, *Ryabtsev v. Russia*, no. 13642/06, § 80, 14 November 2013, with further references).

81. Regard having been had to the considerations set out in the preceding paragraphs, the Court takes the view that the requirements of the procedural aspect of Article 2 of the Convention were not met in the present case, which may suffice for it to conclude that the investigation in the case was not in compliance with the requirements of Article 2 of the Convention. There has accordingly been a violation of the procedural limb of Article 2 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

83. The applicant requested 150,000 euros (EUR) in respect of non-pecuniary damage and made no claims in respect of costs and expenses.

84. The Government considered that amount to be excessive.

85. The Court observes that the failure of the authorities to give satisfactory answers to the questions raised by Ms D.'s death must have caused the applicant acute mental suffering. At the same time, the Court's findings under Article 2 of the Convention in the present case are of a procedural nature. In the light of all the material in its possession and making its assessment on an equitable basis, the Court awards the applicant EUR 15,000 on account of non-pecuniary damage, plus any tax that may be charged on this amount.

86. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 2 of the Convention under its procedural limb;

3. *Holds*
   (a) that the respondent State is to pay the applicant EUR 15,000 (fifteen thousand euros) within three months, plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (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.

Done in English, and notified in writing on 19 October 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova	Peeter Roosma
Deputy Registrar	President