

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

THIRD SECTION

CASE OF KURIYEVA v. RUSSIA

(Application no. 34205/17)

JUDGMENT

STRASBOURG

19 October 2021

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



In the case of Kuriyeva 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. 34205/17) 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 Layla Kuriyeva ("the applicant"), on 3 May 2017;

the decision to give notice to the Russian Government ("the Government") of the complaints concerning Articles 2, 8 and 13 of the Convention and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 28 September 2021,

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

INTRODUCTION

1. The present case concerns killing of the applicant's son by State agents during the search of their house in Pliyevo, Ingushetia, on 22 March 2014 and the ineffectiveness of the ensuing investigation into the incident.

THE FACTS

2. The applicant was born in 1955 and lives in Nazran. She was represented by lawyers of Memorial Human Rights Centre, an NGO practising in Moscow.

3. The Government were represented initially by Mr G. Matyushkin, 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, partially disputed by the Government, may be summarised as follows.

5. The applicant is the mother of Mr Maxim (also known as Muslim) Kuriyev, who was born in 1982.

I. KILLING OF THE APPLICANT'S SON AND SURROUNDING EVENTS

A. The applicant's submission

1. Background information

6. At the material time, the applicant lived with her son, Mr Kuriyev, in a two-room mobile home in the village of Pliyevo next to Nazran in Ingushetia.

7. On an unspecified date prior to 22 March 2014 the Main Directorate of the Investigative Committee of the Russian Federation in the North Caucasus ("the investigators") opened criminal case no. 13540060 to investigate an illegal armed group, Viayyat Galgayche, which was involved in the preparation of terrorist attacks. Maxim Kuriyev was suspected of the involvement in their activities.

8. No official charges were pending against Mr Kuriyev. He had no criminal record and did not own a gun.

2. Search of the applicant's home and the killing of Mr Kuriyev

9. On 22 March 2014 the investigator in criminal case no. 13540060, Mr A.A., decided to carry out a search of the applicant's home.

10. Early in the morning of 22 March 2014 a group of about a hundred servicemen from the Federal Security Service (the FSB) cordoned off the applicant's mobile home and several other houses in the vicinity.

11. Between 4 a.m. and 5 a.m. the servicemen asked the applicant and her son to come outside. There were about twenty to thirty servicemen in the courtyard and a number of servicemen on the roof of the neighbouring house.

12. After the Kuriyevs came out, the servicemen went inside, without neither showing a search warrant nor explaining the reasons for their actions. In about ten to fifteen minutes the servicemen asked Mr Kuriyev to go inside the mobile home. The applicant remained outside, about 10 metres away. A number of the applicant's neighbours, including Ms Kh.P. and Mr M.P., and other locals observed the events from the street.

13. At about 6.30 a.m. two servicemen demanded that the applicant go with them to the Centre for Counter-Extremism – a unit of the Ingushetia police ("the CCE") – in Nazran for questioning. There she provided written replies to questions concerning her son's job, social circle and habits.

14. Immediately thereafter, at about 8.30 a.m. on 22 March 2014, the applicant returned home by taxi. Her mobile home had been surrounded by the police and she was not allowed to enter. At about 9 a.m. she saw an ambulance arrive, and two or three minutes later her son's body was carried out in a plastic bag.

15. Shortly thereafter, the police left, and the applicant went to the morgue at the Ingushetia Clinical Hospital, where she was not allowed to see her son's body. Then she went to the Pliyevo village administration, where a meeting of residents had gathered to discuss the killings of the applicant's son and another local resident, Mr B.D. (see paragraph 17 below), in the same circumstances.

16. At about 4 p.m. on 22 March 2014 the applicant returned to her home and was allowed to go inside. There, next to the entrance, she found a large bloodstain; a small piece of roof had been cut out and taken away.

B. The Government's submission

17. The Government stated in general terms that no search of the applicant's home had taken place on 22 March 2014. Their version of the events could be summarised as follows.

18. At about 6 a.m. on 22 March 2014 a group of the Ingushetia FSB officers arrived in Pliyevo to "maintain public order and safety". They warned Mr Kuriyev and Mr B.D. and their relatives that they would be carrying out "investigative activities" within the framework of criminal case no. 13540060. The officers demanded that Mr Kuriyev and Mr B.D. allowed them to "inspect the premises" and showed their identity documents. In reply, both men opened fire on the officers: Mr Kuriyev had opened gunfire and had been killed by the officers' return fire, whereas Mr Dyshnoyev blew himself up by activating an explosive device.

19. The Government did not dispute the other facts as presented by the applicant and stated in general terms that the use of the lethal force against her son had been necessitated by his attack on the officers.

II. INVESTIGATION INTO THE INCIDENT

20. In reply to the Court's request, the Government furnished a partial copy of the contents of the inquiry file opened into Mr Kuriyev's death (the inquiry), which ran up to 274 pages.

21. From the documents submitted it appears that the inquiry was carried by the civilian and then by the military investigators. Besides, copies of the documents submitted from the inquiry file contained several documents from criminal cases nos. 1450013 (see paragraphs 23-27 below) and 13540060 (see paragraphs 28-29 below).

22. The contents of the documents submitted can be summarised as follows.

A. Documents from criminal case no. 14500013

23. On 22 March 2014 the investigators examined the crime scene, collected several bullet casings, a Makarov pistol and ordered a forensic examination of Mr Kuriyev's body (see paragraph 26 below).

24. On 25 March 2014 they opened criminal case no. 14500013 into the "attempted murder of Captain D.T. of the Ingushetia FSB by an unidentified person, [...] who fired three gunshots at [him]."

25. On the same date, 25 March 2014, Captain D.T. was granted victim status and was questioned. He stated that he had conducted the search of the applicant's home with "several officers of a special unit". During the search, at about 5.50 a.m. on 22 March 2014, Mr Kuriyev, who had been in the mobile home while the applicant had been outside, had been asked to show his passport. He had gone to a dresser, squatted and taken out an object which had turned out to be a Makarov pistol. Mr Kuriyev had fired three shots at him and had been shot dead on the spot by the other officers. The three bullets that had missed him had made three holes in the ceiling. Captain D.T. stated that he could not say which officer had opened fire on Mr Kuriyev, but that it was not him.

26. On 9 April 2014 the forensic examiners concluded that Mr Kuriyev had sustained three gunshot wounds to the torso and one to the left temple. Entrance of two wounds to the torso was in the back.

27. The documents submitted do not contain information on the outcome of the investigation in the criminal case.

B. Documents from criminal case no. 13540060

28. On various dates between April 2014 and July 2016 the forensic experts concluded that it was impossible to identify the traces of sweat on the Makarov pistol for the lack Mr Kuriyev's DNA for comparison. They did not examine whether the pistol could have been shot from at the scene.

29. On 29 July 2016 the applicant's lawyer, Mr M.G., requested that the investigators provide him with a copy of the documents reflecting the discovery of Mr Kuriyev's body. The investigators refused his request, as the investigation was being carried out by the military investigators given that the special operation had been carried out by the FSB officers.

C. Steps taken by the military investigators and relevant information

30. On 1 April 2014 the investigators from military unit no. 507 ("the military investigators") took the applicant's statement about the incident. Her submission was similar to her account before the Court.

31. Then, on 11 April 2014 the military investigators interviewed the deputy head of the Ingushetia FSB, who had been in charge of the special

operation on 22 March 2014. He confirmed that a special operation had been conducted but denied that a search had been carried out in the applicant's home. He did not provide any information concerning either the officers who had been in the mobile home and their actions or the circumstances of the use of lethal force against Mr Kuriyev.

32. On 6 April 2014 the military investigators questioned the investigator in criminal case no. 13540060. He stated that he had not been responsible for the search of the applicant's home and that he had not drafted the search warrant on 22 March 2014.

33. Upon the applicant's repeated requests and complaints, on 22 July 2015 and then 16 July 2016 the military investigators requested that the Ingushetia FSB provide information regarding the number and the identities of the officers who had participated in the search of the applicant's home and had been present during Mr Kuriyev's killing. The Ingushetia FSB refused to provide any information.

D. The refusals to open a criminal case

1. The refusals to open a criminal case

34. Between August 2015 and July 2016, the military investigators issued four refusals to open a criminal case (the refusal) into the actions of the deputy head of the Ingushetia FSB for lack of *corpus delicti*. The decisions referred to the statements of the implicated officers and the conclusions of the forensic reports, but contained no information concerning either the number or the identities of the FSB officers who had participated in the search and had been present in the mobile home during the killing of Mr Kuriyev. The investigators' superior overruled the first three of the refusals as premature and unsubstantiated and ordered that a new inquiry be carried out. The last refusal, of 7 July 2016, was not overruled and the applicant appealed against it (see below).

2. The applicant's appeals

35. In July or August 2016, the applicant appealed to the Nalchik Garrison Court against the refusal of 7 July 2016. She pointed out the investigators' failure to question the officers who had opened fire on Mr Kuriyev, stressed that the search had been unlawful and that the circumstances of the use lethal force against her son remained unclarified.

36. On 12 September 2016 the court rejected her appeal, ruling that all of the necessary steps had been taken and on 3 November 2016 that decision was upheld on appeal.

RELEVANT LEGAL FRAMEWORK

37. For a summary of relevant domestic law, see *Dalakov v. Russia*, no. 35152/09, §§ 51-53, 16 February 2016.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

38. The applicant complained under Articles 2 and 13 of the Convention that the State agents had unlawfully deprived her son Mr Maxim Kuriyev of his life, and that the investigation into the matter was ineffective. The Court finds it appropriate to examine the applicant's complaints solely under Article 2 of the Convention, the relevant part of which reads as follows:

> "1. Everyone's right to life shall be protected by law. ...
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary: ..."

A. The parties' submissions

1. The Government

39. The Government submitted in general terms that the use of lethal force had been justified: the officers had had to shoot Mr Kuriyev to protect themselves, and that the refusal to open a criminal case had been justified by the findings of the inquiry.

2. The applicant

40. The applicant submitted that the authorities failed to provide any plausible explanations to the use of the lethal force against her son. The circumstances of the incident were not duly investigated as no fully-fledged investigation had been carried out. The domestic law did not provide for the assessment of the proportionality and necessity of use of lethal force by State agents.

B. Admissibility

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

C. Merits

1. The State's procedural obligation under Article 2 of the Convention

42. A summary of the principles relevant to the assessment of use of lethal force by State agents can be found in *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, §§ 229-39, 30 March 2016.

43. The inquiry carried out by the military investigators resulted in the refusal to open a criminal case. The Government furnished only partial contents of the inquiry file. Thus, the Court makes its assessment on the basis of the limited number of documents (see paragraphs 20-22 above), which does not preclude it from examination of the case on its merits (see *Gaysanova v. Russia*, no. 62235/09, § 146, 12 May 2016).

44. As regards allegations concerning deprivation of life by State agents, an inquiry alone is not capable of leading to the punishment of those responsible as it, if not followed by a fully-fledged investigation, is unable to elucidate the circumstances of the use of lethal force, especially where there are conflicting versions of events. For instance, statements given to the inquiry, did not commit their authors in the same way as it would have been in the context of a criminal case as the inquiry did not entail the necessary safeguards inherent in an effective criminal investigation, such as liability for perjury (see *Dalakov*, cited above, §§ 69-72, and, for application of these principles in similar circumstances, *Tsoroyev v Russia* [Committee], no. 13363/11, §§ 42-46, 24 March 2020).

45. The refusal was based on the statements of the implicated officers and the conclusions of the forensic reports (see paragraph 34 above). The forensic reports failed to examine whether the Makarov pistol had indeed belonged to Mr Kuriyev and whether it had actually been used to make the shots at the officers (see paragraphs 28 above). It appears that such an examination would have been crucial, with a view to verifying the officer's statements concerning Mr Kuriyev's alleged pulling of the gun and opening the fire during the search (see paragraph 25 above). That important examination was not carried out or commissioned at a later stage. Furthermore, the investigators failed to examine the casings which had been collected in order to determine which bullets had caused Mr Kuriyev's death (see paragraph 23 above) and from whose firearm they had been fired. They had also failed to establish whether it would have been at all possible for Mr Kuriyev to fire the three shots at the FSB officers whilst having his back turned to them (see paragraph 26 above). Most importantly, the investigators neither identified nor questioned the other servicemen present in the applicant's mobile home during the shooting; none of the applicant's neighbours, who had witnessed the events and could have provided relevant information, except for one, had been identified and questioned (see paragraphs 12 and 15 above).

46. When deciding to dismiss the applicant's complaint as unsubstantiated, the military courts – without exercising their own independent scrutiny – satisfied themselves with the information provided by the military investigators, and disregarded the applicant's arguments and the evidence referred to in her complaints (see paragraph 36 above).

47. Despite the information collected by the inquiry and the applicant's credible and consistent complaints, the authorities failed to provide a proper response to the serious allegations of the inappropriate use of lethal force by agents of the State (see *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 167, ECHR 2011).

48. In view of the foregoing, the Court concludes that there has been a violation of Article 2 of the Convention under its procedural limb.

2. The State's responsibility for the death of Mr Kuriyev

49. For a summary of principles relevant to the assessment of the use of lethal force by State agents see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, §§ 93-97, ECHR 2005-VII.

50. It is common ground between the parties that Mr Kuriyev was shot and killed on 22 March 2014 by State agents. However, the parties disagreed on whether his behaviour and actions had necessitated the use of lethal force against him.

51. The Court has to determine whether the way in which the special operation was conducted showed that the FSB officers had taken appropriate care to ensure that any risk to the life was kept to a minimum (see *Tagayeva and Others v. Russia*, nos. 26562/07 and 6 others, §§ 562-63, 13 April 2017). It will assess the organisation of the operation on the basis of the undisputed evidence submitted by the parties.

52. The Court notes that the operation was planned, as the well-equipped large group of the FSB officers arrived at the applicant's address in Pliyevo and cordoned off the area (see paragraphs 10-11, 18, 25, 31 and 32 above). However, there is nothing in the documents reviewed by the Court to suggest that, at the planning stage of the operation, any serious consideration was given to the possibility that Mr Kuriyev might try to resist, escape or take active steps against the officers, bearing in mind the information concerning his alleged involvement in the illegal armed group (see paragraphs 7 and 18 above).

53. Furthermore, at the time of his death Mr Kuriyev was alone with several FSB officers. According to the only officer interviewed, Mr Kuriyev had opened fire on the officers who had been searching the applicant's home (see paragraph 25 above). Given the lack of a due investigation into the events (see paragraph 48 above), it is impossible to establish whether Mr Kuriyev did indeed open fire as alleged. In any event, the officer's version of the events did not reflect the actual circumstances of the incident: even assuming that Mr Kuriyev had opened fire, it is highly unlikely that

that he would have been able to fire three times with his back turned to the officers and without hitting anything around him other than the patch of the roof (see paragraph 26 above). Thus, the implicated State agents failed to provide a plausible and corroborated explanation regarding the events in question.

54. Given that the Government failed to submit to the Court any materials concerning the operation carried out in respect of Mr Kuriyev, the Court does not deem it necessary to examine whether there was an appropriate legal framework defining the circumstances in which use of lethal force was permissible (compare to *Arapkhanovy v. Russia*, no. 2215/05, § 122, 3 October 2013).

55. Bearing in mind its conclusions concerning the investigation into the incident (see paragraph 48 above), the Court concludes that the actions of the authorities in respect of the planning, control and execution of the special operation carried out on 22 March 2014 were not sufficient to safeguard the life of Mr Kuriyev.

56. There has accordingly been a violation of the substantive limb of Article 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

57. The applicant complained of a violation of her right to respect for home as a result of the unlawful search carried out on 22 March 2014. Article 8 of the Convention, as far as relevant, provides as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence ..."

A. Admissibility

58. The Government submitted that the complaint was manifestly ill-founded as no search of the applicant's home had taken.

59. The applicant stated that the search of her mobile home on 22 March 2015 had been unlawful.

60. The Court observes that contrary to the Government's submission, the search of the applicant's home on 22 March 2014 is confirmed by the documents submitted. In particular, according to the statement of Captain D.T., the killing of Mr Kuriyev had taken place during the search of the mobile home (see paragraph 25 above) and, according to the investigator, the search carried out by the FSB officers had indeed taken place (see paragraphs 9 and 32 above). In addition, the gunfire allegedly open on the officers by Mr Kuriyev, had been shot inside of the mobile home (see paragraph 25 above). No explanations, other than carrying out the search, were given to the officers' presence inside the applicant's home during the incident.

61. In the light of the above, the Court finds that the search of the applicant's home had taken place on 22 March 2014.

62. The Court notes that this complaint 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

63. The Court has established that on 22 March 2014 the applicant's home was searched. Accordingly, there was an interference with her right to respect for home. It now remains to be seen whether this interference was permissible under Article 8 § 2 of the Convention and, more particularly, if it was "in accordance with the law" for the purposes of that paragraph.

64. No search warrant was produced to the applicant before or during the search and no details were given of what was being sought. It appears that no such warrant was drawn up at all, either before or after the search, assuming that the FSB officers acted in a situation which required urgency. The Government neither submitted any details about the reasons for the search, nor referred to any record of its legitimisation or its procedural significance. Moreover, the domestic authorities denied that such an operation had taken place at all (see paragraphs 17 and 31 above). The Court is struck by this lack of accountability or any acceptance of direct responsibility by the officials involved in the events in the present case.

65. The Court thus finds that the search of the applicant's home on 22 March 2014 was carried out without any authorisation or safeguards. Therefore, it concludes that the interference in question was not "in accordance with the law" and that there has been a violation of Article 8 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto ... the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

67. The applicant did not claim pecuniary damage. As for non-pecuniary damage, she left the determination of the amount to the Court. According to the Government, the compensation should comply with the case-law.

68. The Court awards the applicant 60,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Request for investigation

69. The applicant requested that "an independent investigation which would comply with the requirements of the Convention be conducted" into her son's death.

70. The Government did not comment on this request.

71. The Court has already decided that it was most appropriate to leave it to the respondent Government to choose the means to be used in the domestic legal order to discharge their legal obligation under Article 46 of the Convention (see *Tsakoyevy v. Russia*, no. 16397/07, § 160, 2 October 2018). It does not see any exceptional circumstances which would lead it to reach a different conclusion in the present case.

C. Costs and expenses

72. The applicant was represented by lawyers from EHRAC/Memorial Human Rights Centre. She submitted a breakdown of the relevant costs, including copies of invoices and schedule of payments made. The aggregate claim amounted to 128,262 roubles (RUB), EUR 15,637 and 15,855 British pounds sterling (GBP). She requested that the payment to be made in GBP into the representative's account in the United Kingdom.

73. According to the Government, the award should comply with the case-law.

74. In the present case, the Court considers it reasonable to award the applicant the sum of EUR 3,000 covering costs under all heads, together with any tax that may be chargeable to her. The award is to be converted into GBP and paid directly into the bank account of the applicant's representative in the United Kingdom, as identified by the applicant.

D. Default interest

75. 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 the procedural limb of Article 2 of the Convention;

3. *Holds* that there has been a violation of the substantive limb of Article 2 of the Convention in respect of Mr Kuriyev;

4. *Holds* that there has been a violation of Article 8 of the Convention;

5. *Holds*

(a) that the respondent State is to pay the applicant, within three months, the following amounts:

(i) EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; the award to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses; the award is to be converted into GBP and paid directly into the bank account of the applicant's representative in the United Kingdom;

(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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

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Olga Chernishova
Deputy Registrar

Peeter Roosma
President