

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

THIRD SECTION

CASE OF SAVEYKINY v. RUSSIA

(Application no. 65774/11)

JUDGMENT

STRASBOURG

21 June 2022

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



In the case of Saveykiny 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. 65774/11) 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") on 12 October 2011 by two Russian nationals, Ms Lyudmila Vladimirovna Saveykina and Mr Viktor Konstantinovich Saveykin, born in 1951 and 1948 respectively, and living in Oktyabrskiy ("the applicants"), who were represented before the Court by Ms O.A. Sadovskaya and Mr A.I. Ryzhov, lawyers from the Committee Against Torture, a non-governmental organisation based in Nizhniy Novgorod;

the decision to give notice of the complaints under Article 2 of the Convention to the Russian Government ("the Government"), initially represented by Mr G. Matyushkin and Mr M. Galperin, former Representatives of the Russian Federation to the European Court of Human Rights, and later by their successor in that office, Mr M. Vinogradov; and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 31 May 2022,

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

SUBJECT MATTER OF THE CASE

1. The applicants are the parents of Mr A.S. The case concerns the death of A.S. as a result of the use of force during a police operation.

2. According to the official account of the events, on 10 September 2008 officers of the Bashkortostan Drug Control Service ("the DCS") planned to arrest one Mr P., suspected of heroin trafficking in Oktyabrskiy. On the evening of 11 September 2008 DCS officers attempted to arrest P. but the latter managed to escape in a car. According to the records of tapped telephone calls, P. called his acquaintances and asked them to meet him at a car park, apparently to resist the pursuers. P. and his acquaintances, including A.S., arrived at the car park shortly after 11 p.m., forming a group of ten to twenty people armed with metal bars and bats. A few minutes later the officers arrived in several cars. They were wearing uniforms with the "Special Unit" insignia on the back, introduced themselves as DCS officers and ordered those present to stay back. The crowd started moving towards the officers, who fired warning shots upwards. One person, subsequently

identified as A.S., jumped into a VAZ-2108 car. Officer S. unsuccessfully attempted to stop the car and to break its window. A.S. drove the car abruptly towards the road and drove away. The officers believed that it could have been P. who was attempting to escape. Two officers stood in the car's path, attempting to block it. Officer T. saw an object resembling a gun in the driver's hands and shouted "Gun!" He and another officer, S. fired shots at the car's body and wheels. The car kept moving, brushing against officer T.'s elbow and causing him minor bodily harm. As T. fell to the ground, A.S. continued driving towards officers Ya. and M. They first fired warning shots upwards and then fired a few times "in the direction of the car", including two shots fired by Ya. into the front right window of the car, which caused two penetrating wounds to A.S.'s right shoulder. A.S. was taken to hospital.

3. According to the applicants' version of events, on that date, A.S. met his brother at the car park. Eight to ten other people were present, unarmed. A few cars arrived at the car park, masked men got out of the cars and started shooting upwards. They did not identify themselves, and P. and his acquaintances thought those were "bandits". A.S. got into his car together with V.E. (who ducked down in the passenger seat). The masked men started breaking the windows of the car with objects resembling baseball bats. A.S. drove off. He was unarmed. The front window of his car was tinted, and, as the events were unfolding in the dark of night, T. could not have seen if there was a weapon in A.S.'s hands. The officers fired several shots into the car. One of the bullets fired by officer Ya. hit a passenger bus driving by the scene.

4. The next day A.S. died of gunshot wounds which had damaged his lungs and heart.

5. On 2 December 2008, after a preliminary inquiry and three refusals to open a criminal case, the Investigative Committee initiated criminal proceedings against Ya. on suspicion of involuntary manslaughter. Numerous witnesses, including the officers, P., A.S.'s acquaintances, a bus driver and a bus controller, an assistant in a shop near the car park, were interviewed; several expert examinations (ballistics, traceology, forensic and others) were performed; and on-site inspections and other investigative activities were conducted. In particular, the following evidence was obtained:

– Officers M., S. and Ya. testified that they had not been shown a photograph of P. prior to the operation and had not known who had ordered the arrest of P. at the car park; they claimed that they had acted to avert an imminent danger to their and their colleagues' life and limb.

– T. named one of his superiors as the person who might have decided to launch the arrest operation, and another colleague of his stated that officer Sit. had ordered P.'s arrest.

– During an investigative experiment, attesting witnesses were unable to see a weapon in a driver's car in comparable visibility conditions.

– A pneumatic pistol was found (or, according to the applicants, planted) under the passenger seat of A.S.'s car immediately after the events.

According to fingerprint and ballistics expert reports, no fingerprints were found on it and no shots had been fired from it since the pistol had last been cleaned.

– The driver and the controller of a bus which had passed near the scene as the events unfolded stated that they had heard several shots, and that a window of the bus had been damaged.

– According to the ballistics reports, fifteen bullets hit the car, including three which followed a horizontal trajectory at the driver's level, and there were eight ricochet marks.

6. On 29 December 2010 the investigator decided to terminate the criminal proceedings for lack of *corpus delicti* in Ya.'s actions, concluding that Ya. had fired at the driver of the VAZ-2108 car in order to protect the life and limb of others in response to the driver's failure to obey the officers' lawful orders to stop, thus acting in compliance with instructions and domestic law.

7. On 28 February 2011 the Leninskiy District Court of Ufa dismissed an appeal by Ya. against the investigator's decision and upheld it as lawful. On 12 May 2011 the Supreme Court of Bashkortostan upheld the first-instance court's ruling as reasoned and lawful, thus dismissing an appeal by the first applicant. The appellate court found that the first-instance court had correctly established the circumstances of the case.

8. Subsequent complaints to a higher investigative authority in 2011-2014 were rejected, including by reference to the above court proceedings.

9. The applicants complained under Articles 2 and 13 of the Convention that their son had been killed as a result of poor planning of the police operation and the excessive use of lethal force and that the investigation into the killing had not been effective.

THE COURT'S ASSESSMENT

10. As regards the Government's argument concerning non-exhaustion of domestic remedies and non-compliance with the six-month rule, the Court notes that the applicants did indeed fail to appeal to the first-instance court against the investigator's decision of 29 December 2010. However, the first applicant did appeal against the first-instance judgment. According to the summary of the statement of appeal by the appellate court, she disputed the judgment as unfounded and as being in breach of various requirements of criminal procedure. Furthermore, domestic courts at two levels of jurisdiction reviewed the decision of 29 December 2010 and upheld it as lawful and well-founded. Accordingly, the Court considers that the courts examined the substance of the claim and dismisses the Government's objections.

11. The complaint under Article 2 of the Convention 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.

12. Relevant general principles are summarised in *Dalakov v. Russia* (no. 35152/09, §§ 61-65, 16 February 2016).

13. As to the procedural limb of Article 2, although several investigative steps were taken immediately after the incident, they did not lead to the opening of criminal proceedings until three months after A.S.'s death. Whilst relevant evidence was secured despite the delay, the investigation was hampered by the following shortcomings.

14. Firstly, the authorities did not assess in detail the planning of the police operation and the chain of command. The issue of whether A.S. could have been perceived as armed did not receive a detailed assessment, which is all the more regrettable, as the pneumatic pistol seized from the car did not have A.S.'s fingerprints on it, and as the investigative experiment prompted doubts as to T.'s ability to see a gun in the driver's hand.

15. Secondly, whilst the investigator summarised the ballistics expert report with regard to the arms used, his decision did not contain any analysis of the bullets' trajectories and the position of those who had fired them – circumstances crucial for establishing whether the officers had attempted to minimise the risk to the driver's life. Instead, the authorities accepted Ya.'s statement that he had fired "in the direction of the car".

16. Thirdly, important testimonies collected during the investigation did not receive any assessment in the final domestic decisions. Even though the passenger (V.E.), the bus driver and the controller, and an officer identified by one of his subordinates as the person who had ordered P.'s arrest at the car park (Sit.) had been interviewed during the inquiry, their statements were not analysed or even summarised in the decision of 29 December 2010, despite their importance for the establishment of the facts relevant to the planning of the operation, the chain of command at the scene and the circumstances preceding and during the fatal shooting.

17. Therefore, despite the extensive and relevant evidence collected by the investigators, the authorities in their final decisions failed to provide a proper response to the serious allegations of the inappropriate use of lethal force by State agents.

18. Accordingly, there has been a violation of the procedural limb of Article 2 of the Convention.

19. As to the substantive limb of Article 2, the police operation had been planned one day in advance. Accordingly, the officers should have had at least some prior knowledge about P.'s profile and been well-equipped to deal with various possible scenarios of the arrest, and they were under an obligation to minimise the risk of the use of lethal force. However, the officers who fired gunshots at A.S.'s car admitted that they had not seen any photograph of P., so they had not known whom they were supposed to arrest, despite the arrest being carried out in a crowded area. Furthermore, P. had not been suspected of having committed a violent offence. In principle there can be no "absolute necessity" justifying putting human life at risk, where it is

known that the person to be arrested poses no threat to life or limb and is not suspected of having committed a violent offence, even if a failure to use lethal force may result in the opportunity to arrest the fugitive being lost (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 97, ECHR 2005-VII). Therefore, the authorities did not take appropriate care to ensure that any risk to life was minimised.

20. As regards the arresting officers' actions, the Court cannot substitute its own assessment of the situation for that of an officer who was required to react in the heat of the moment to avert an honestly perceived danger to his life (see *Bubbins v. the United Kingdom*, no. 50196/99, § 95, ECHR 2005-II (extracts)). However, important inconsistencies in the parties' accounts – which were not properly addressed in a domestic inquiry (as shown in paragraphs 14-16 above) – raise doubts as to the credibility of the official account. Against this background, the Court notes the nature of A.S.'s wounds, which – in the absence of a detailed domestic assessment – raises doubts as to whether the officers had intended to simply stop the car (for instance, by aiming at the car's tyres or otherwise damaging the vehicle as permitted by law) and apprehend the driver, and had not shot to kill.

21. Therefore, neither the manner in which the police responded to the rapidly unfolding events nor the degree of force used cannot be considered to have been strictly proportionate to the aim of preventing A.S.'s – or, as the officers believed, P.'s – escape, or averting the perceived threat posed by the VAZ car driver. The Court is not persuaded that the killing of A.S. constituted a use of force which was no more than absolutely necessary in pursuit of the aims provided for in Article 2 § 2 of the Convention (see *Dalakov*, cited above, § 85).

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

23. In view of the above findings, the Court does not consider it necessary to examine separately the admissibility and merits of the complaint under Article 13.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. The applicants claimed 35,000 euros (EUR) each in respect of non-pecuniary damage and EUR 7,000 in respect of costs and expenses incurred at the domestic level and before the Court.

25. The Government contested the claims.

26. The Court awards the applicants, jointly, EUR 60,000 in respect of non-pecuniary damage, plus any tax that may be chargeable, and rejects the remainder of the claims under this head.

27. The Court further awards the applicants EUR 3,000 covering costs under all heads, plus any tax that may be chargeable to them, and rejects the remainder of the claims.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 2 of the Convention admissible;

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

3. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicants, jointly, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
   (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;

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

Done in English, and notified in writing on 21 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Georgios A. Serghides President