

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

THIRD SECTION

CASE OF SHIRVANIYEV v. RUSSIA

(Application no. 22470/18)

JUDGMENT

STRASBOURG

21 June 2022

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



In the case of Shirvaniyev 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. 22470/18) 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 9 May 2018 by a Russian national, Mr Kuri Shirvaniyev, born in 1969 and living in Selmentauzen ("the applicant") who was represented by NGO Memorial Human Rights Centre in Moscow;

the decision to give notice of the application 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 this office, Mr M. Vinogradov;

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 case concerns the applicant's wounding during a counterterrorist operation in Chechnya and the authorities' failure to investigate the matter.

2. On 31 May 2016 the applicant was tending to his cattle at a pasture. Without any warnings of an ongoing special operation, a group of servicemen opened gunfire at him and severely wounded him. Between July 2016 and April 2017 the authorities, having carried out a preliminary inquiry into the matter, repeatedly refused to open a criminal case for the lack of *corpus delicti*. These decisions were repeatedly overruled by the investigators' superiors as unsubstantiated due to being based on the statements of seven out of thirteen implicated servicemen, while the other six officers had not been interviewed at all; the statements given had not been verified and key elements of the incidents, such as the number of civilians and servicemen present at scene during the shooting and provenance of the bullets that had wounded the applicant, remained unelucidated.

3. According to the Government, the use of lethal force against the applicant was justified and the ensuing inquiry complied with the Convention standards of an effective investigation.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

4. 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.

5. The relevant principles concerning the State's substantive and procedural obligations under Article 2 of the Convention have been summarised respectively in *Tagayeva and Others v. Russia*, nos. 26562/07 and 6 others, §§ 562-63 and 601, 13 April 2017, and *Armani Da Silva v. the United Kingdom* ([GC], no. 5878/08, §§ 229-39, 30 March 2016.

6. Assessing the compliance with the procedural obligation, the Court observes that the documents submitted and undisputed by the parties show that no fully-fledged criminal investigation into the applicant's wounding was carried out, despite the fact that the information collected by the inquiry contained clear indications of the conflicting evidence concerning the circumstances of the incident. No timely steps were taken to elucidate those contradictions; the repeated decisions of the investigators' superiors to overrule the refusals to open a criminal case were indicative of the inquiry's inability to obtain and secure key evidence. The implicated servicemen gave "an explanation" to the inquiry, which did not commit them in the same way as it would have in the context of an opened criminal case and did not entail the necessary safeguards inherent in an effective criminal investigation, such as liability for perjury.

7. The Court has already found that as regards serious allegations concerning use of lethal force under Article 2 of the Convention, an inquiry alone is not capable of leading to the punishment of those responsible, if not followed by a fully-fledged investigation, especially where there are conflicting versions of events, as in the present case (see *Abdulkhanov v. Russia*, no. 35012/10, § 88, 6 July 2021, with further references).

8. Therefore, the Court concludes that there has been a violation of Article 2 of the Convention under its procedural head.

9. As for the justification of the use of lethal force under the substantive obligation of Article 2 of the Convention, the information available does not suggest that resorting to lethal force against the applicant was absolutely necessary and that the actions of the authorities in respect of the planning, control and execution of the operation were sufficient to safeguard the life of the applicant (see *Dalakov v. Russia*, no. 35152/09, § 97, 16 February 2016). Most importantly, the exact circumstances under which fire had been opened at the applicant had not been elucidated; in the absence of such basic information the Court is unable to subscribe to the position that the use of lethal force had been justified, as the Government submit.

10. In such circumstances, the Court finds that it has not been demonstrated that the lethal force used, which brought about the applicant's wounding, was absolutely necessary, as required by Article 2 of the Convention.

11. There has accordingly been a violation of Article 2 of the Convention under its substantive head.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

12. The applicant claimed 75,615 euros (EUR) in respect of pecuniary damage. No documents substantiating the claim were enclosed. As for non-pecuniary damage, he left the determination of its amount to the Court. He also claimed EUR 9,000 for costs and expenses.

13. The Government submitted that the claims were excessive.

14. Given the lack of details substantiating the claim, the Court rejects the claim for pecuniary damage. As for non-pecuniary damage, it awards the applicant EUR 40,000 plus any tax chargeable on that amount.

15. The Court also awards the applicant EUR 2,500, together with any tax that may be chargeable to him, in respect of costs and expenses. The net award to be paid into the representatives' bank account as indicated by the representatives.

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 and substantive limbs;

3. *Holds*
   (a) that the respondent State is to pay the applicant, 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 40,000 (forty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicant, 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;

4. *Dismisses* the remainder of the applicant's 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