

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

THIRD SECTION

CASE OF TASHUYEV v. RUSSIA

(Application no. 12981/15)

JUDGMENT

STRASBOURG

19 January 2021

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



In the case of Tashuyev v. Russia,

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

Darian Pavli, *President,*
Dmitry Dedov,
Peeter Roosma, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 12981/15) 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, Mr Leonid Isufovich Tashuyev ("the applicant"), on 29 January 2015;

the decision to give notice to the Russian Government ("the Government") of the complaints concerning the refusal to return the body of the applicant's deceased son and the lack of an effective domestic remedy to complain in this connection;

the parties' observations;

the absence of the Government's objection against the examination of the case by a Committee;

Having deliberated in private on 8 December 2020,

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

INTRODUCTION

1. The case concerns the Russian authorities' refusal to return the body of the applicant's deceased son, who had allegedly participated in terrorist attacks in the Republic of Kabardino-Balkariya and was killed on 29 April 2011, and the lack of an effective domestic remedy to complain in this connection.

THE FACTS

2. The applicant, Mr Leonid Isufovich Tashuyev, is a Russian national who was born in 1953 and lives in the town of Baksan in the Baksanskiy District of the Republic of Kabardino-Balkariya. The applicant is the father of Mr K.T.

The applicant was represented by Ms V. Kogan and Mr E. Vesselink, lawyers from Russian Justice Initiative and Legal Assistance – Astreya, practising in Moscow.

3. The Government were represented by their Agent, Mr M. Galperin, Representative of the Russian Federation at the European Court of Human Rights.

I. THE CIRCUMSTANCES OF THE CASE

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

5. The national authorities suspected the applicant's son, Mr K.T., of involvement in a terrorist attack in Nalchik on 1 May 2010 and placed him on the wanted list. On 1 May 2010 the Main Investigative Department of the Investigative Committee in the North-Caucasus Federal District opened criminal case no. 70/20-10 into the events of 1 May 2010.

A. Events of 29 April 2011

6. On 29 April 2011 law enforcement officers carried out a special operation in Progress village in the Stavropol Region. According to the authorities, Mr K.T. was in Progress village with nine other armed individuals and offered armed resistance to the officers. As a result of the operation, Mr K.T. and the nine other individuals were killed. As stated by the expert examination, the applicant's son's death was caused by an explosion. On the same date the authorities opened criminal case no. 2917 on account of traffic and storage of weapons.

7. It follows from the case file that on 6 June 2012 criminal case no. 2917 was merged with case no. 70/20-10.

B. The proceedings concerning the refusal to return the body of Mr K.T. for burial

8. On 17 April 2012 the applicant complained to the court of the refusal to return the body of his son.

9. After several judicial refusals in 2012, on 27 February 2013 the Nalchik City Court granted the applicant's complaint and found the continued withholding of the body unlawful.

10. The decision of 27 February 2013 was not enforced with reference to the ongoing investigation into the terrorist attack in Baksanskiy and Elbrusskiy Districts of Kabardino-Balkariya on 9 May 2011. It appears that Mr K.T. was suspected of having been involved. For this reason the Investigative Committee in the North-Caucasus Federal District refused to return the body of Mr K.T. On 23 May 2013 criminal case no. 76/17-13 was merged with case no. 70/20-10 and the investigation deadlines were extended.

11. On 27 November 2013 the Essentukskiy City Court dismissed the applicant's complaint regarding the Committee's refusal to return the body. On 15 May 2014, upon the applicant's appeal, the Stavropol Regional Court quashed the decision and sent the complaint for new consideration.

12. On 3 June 2014 the Essentukskiy City Court, relying on Article 14.1 of the Law "On internment and burial" and paragraph 5 of the Government's Decree of 20 March 2003 no. 164, dismissed the applicant's complaint. According to the court, the investigation was ongoing and "it was necessary to conduct numerous investigative actions in order to establish whether Mr K.T. was guilty or not". The decision on Mr K.T.'s burial would therefore be taken upon the termination of the criminal investigation. On 31 July 2014 the decision was upheld by the Stavropol Regional Court.

13. On 5 February 2015 the applicant appealed against the termination of the criminal investigation against Mr K.T. He was allowed to participate in the criminal case as the representative of his deceased son on the ground of the Ruling of the Constitutional Court of the Russian Federation no. 16-P dated 14 July 2011.

14. On 13 May 2015 the criminal case was transferred to the North-Caucasus Military District Court.

15. On 17 July 2015 Mr K.T. was found to have been involved in the preparation and execution of the terrorist attacks of 1 May 2010 and 9 May 2011 in Kabardino-Balkariya and the criminal investigation was discontinued due to his death. On 22 September 2016 the Supreme Court upheld the decision.

16. On 25 April 2016 an investigator decided to bury Mr K.T. without returning his body to his relatives, pursuant to the Interment and Burial Act no. 8-FZ, dated 12 January 1996 and a judgment of the Constitutional Court no. 8-P dated 28 June 2007.

17. According to the applicant, he was not notified of the decision of 25 April 2016.

II. RELEVANT DOMESTIC LAW AND PRACTICE

18. For a summary of the relevant domestic law, see *Sabanchiyeva and Others v. Russia*, no. 38450/05, §§ 33-37 and 65-90, ECHR 2013 (extracts) and *Maskhadova and Others v. Russia*, no. 18071/05, §§ 116-46, 6 June 2013.

III. OTHER RELEVANT SOURCES

19. For a summary of other relevant sources referred to by the applicants, see *Sabanchiyeva and Others*, cited above, §§ 91-96 and also *Maskhadova and Others*, cited above, §§ 147-50.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

20. Relying on Article 8 of the Convention, the applicant complained of the authorities' refusal to return the body of Mr K.T. This provision reads as follows:

Article 8 of the Convention

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

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The submissions by the parties

21. The Government maintained that the decision of 25 April 2016 had been taken pursuant to the Suppression of Terrorism Act, the Interment and Burial Act and the decree on combating terrorism and was justified in view of the reasons provided by the Constitutional Court in its ruling of 28 June 2007 (see *Maskhadova and Others*, *v. Russia*, no. 18071/05, § 125, 6 June 2013). In their additional observations of 13 September 2017 the Government submitted that the applicant had requested that the authorities continue the proceedings in the criminal case against his son. The decision not to return the body of the applicant's son was taken as a result of the criminal investigation, which had established Mr K.T.'s guilt in preparing and committing terrorist attacks.

22. The applicant stated that the authorities' refusal to return the body of Mr K.T. had been unlawful and disproportionate. He considered that the authorities had violated the principle of legal certainty since, on the date of the decision to return the body taken in the applicant's favour in February 2013, the investigation against his son was still pending. His son was found guilty of a terrorist attack only on 17 July 2015. Therefore, the applicant concluded that his son's death was not caused by the interception or suppression of a terrorist act. He further submitted that he had not received the decision of 25 April 2016 from the authorities and was notified of this decision by the Court. The applicant argued that criminal proceedings no. 76/17-13 were opened deliberately in order to prevent him from recovering the body of his son.

23. The applicant submitted that the law contained vague notions such as "terrorist" and "terrorist act". He also complained that the domestic legal

system afforded no effective remedy to complain about the refusal to return the body of Mr K.T.

B. The Court's assessment

1. Admissibility

24. On the basis of the material submitted, the Court observes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that this part of the case is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

25. The Court observes that both parties to this case relied in their written submissions on the Court's findings in its judgment in the case of *Sabanchiyeva and Others v. Russia*, no. 38450/05, ECHR 2013 (extracts). The Court further notes that the cited judgment, as well as the judgments in the cases of *Zalov and Khakulova*, no. 7988/09, 16 January 2014 and *Arkhestov and Others*, no. 22089/07, 16 January 2014, concerned the terrorist attacks in the Republic of Kabardino-Balkariya, and that the applicants in the cited cases raised similar complaints under Article 8 of the Convention with regard to the domestic authorities' refusal to return the bodies of their deceased relatives.

26. In previous cases the Court has already found that the measure in question constituted an interference with the applicants' "private life" and "family life" within the meaning of Article 8 of the Convention, and that it could be considered as having been taken in the interests of public safety, for the prevention of disorder and for the protection of the rights and freedoms of others. However, having regard to the automatic nature of the measure and the authorities' failure to give due consideration to the principle of proportionality, the Court has concluded that the measure in question did not strike a fair balance between the applicants' right to the protection of private and family life, on the one hand, and the legitimate aims of public safety, prevention of disorder and the protection of the rights and freedoms of others on the other, and that the respondent State had overstepped any acceptable margin of appreciation in this regard (see *Sabanchiyeva and Others,* §§ 117-47; *Zalov and Khakulova*, §§ 67-96; and *Arkhestov and Others*, §§ 73-102, all three cited above).

27. The Court finds no reason to arrive at a different conclusion in the present case.

28. It follows that there has been a violation of the applicant's right to respect for his private and family life, as guaranteed by Article 8 of the Convention, as a result of the decision of 25 April 2016.

II. ALLEGED VIOLATION OF ARTICLE 13 TAKEN IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

29. Relying on Article 13 read in conjunction with Article 8 of the Convention, the applicant also complained of the lack of an effective remedy in respect of the authorities' refusal to return the body of Mr K.T.

Article 13 of the Convention

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The submissions by the parties

30. The Government submitted to the Court a copy of the decision in question, denying access to the body, in their observations of 11 April 2017.

31. The applicant maintained his grievances and stated that he had received the decision of 25 April 2016 for the first time from the Court and was therefore unable to challenge it.

B. The Court's assessment

1. Admissibility

32. On the basis of the material submitted, the Court observes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that this part of the case is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

33. The Court notes that the relevant general principles have been summarised in its judgments in the cases of *Sabanchiyeva and Others*, §§ 151-52, and *Maskhadova and Others*, §§ 242-43, both cited above.

34. The Court further observes that both parties to the present case referred in their written submissions to the Court's findings in its judgment in the case of *Sabanchiyeva and Others,* cited above.

35. The Court considers that the domestic courts in the present case could not review the need for application of the measures set out in section 14 (1) of the Interment and Burial Act and Decree no. 164 of 20 March 2003 (see paragraphs 19-20 above). It further reiterates its findings made in respect of the same legislative provisions in the *Sabanchiyeva and Others* (cited above, §§ 153-56) and *Maskhadova and Others* cases (cited above, §§ 244-46) to the effect that it "did not provide the applicants with sufficient procedural safeguards against arbitrariness"

both before and after the adoption by the Constitutional Court of its Rulings no. 8-P of 28 June 2007 and no. 16-P of 14 July 2011. This conclusion was made, in particular, on account of the courts' limited competence to review the merits of such decisions.

36. In such circumstances, the Court finds that the Government was unable to demonstrate that the domestic legal system provided for an effective judicial supervision in respect of the decision of 25 April 2016 and finds that the applicant did not have any effective remedy in respect of the Convention violations alleged by him.

37. Accordingly, the Court finds that there has been a violation of Article 13, taken together with Article 8.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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."

A. Damage

39. The applicant submitted that he had sustained non-pecuniary damage and asked for compensation in the amount of 20,000 euros (EUR).

40. The Government submitted that this claim was unfounded.

41. The Court considers that, in the circumstances of the present case, the finding of a violation of Article 8 of the Convention, taken alone and in conjunction with Article 13, constitutes sufficient just satisfaction for the applicant (see *Sabanchiyeva and Others*, § 171, and *Maskhadova and Others*, § 258, both cited above).

B. Costs and expenses

42. The applicant also claimed EUR 3,092.25 for the legal and other costs and expenses incurred in the Strasbourg proceedings.

43. The Government submitted that the amount claimed was unjustified.

44. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Having regard to the material in its possession, the Court considers it reasonable to award the applicant EUR 2,000, plus any tax that may be chargeable to the applicant. The amount awarded shall, as requested by the applicant, be payable to Stichting Russian Justice Initiative directly.

C. Default interest

45. 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 8 of the Convention on account of the decision of 25 April 2016;

3. *Holds* that there has been a violation of Article 13 of the Convention taken together with Article 8, on account of the lack of an effective remedy in respect of the decision of 25 April 2016;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 2,000 (two thousand euros), in respect of costs and expenses plus any tax that may be chargeable to the applicant on the above amount, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, and to be paid into the bank account indicated by the applicant's representative organisation;
   (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 applicant's claim for just satisfaction.

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

Olga Chernishova	Darian Pavli
Deputy Registrar	President