

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

THIRD SECTION

CASE OF TURAYEVA v. RUSSIA

(Application no. 36255/16)

JUDGMENT

STRASBOURG

21 June 2022

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



In the case of Turayeva 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. 36255/16) 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 14 June 2016 by a Russian national, Mr Malika Turayeva, born in 1959 and living in Katar-Yurt ("the applicant") who was represented by NGO Stichting Russian Justice Initiative 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 explosion of a mine at a construction site in Chechnya in 2014 as a result of which the applicant's husband Mr Zila Turayev, who was born in 1956, received lethal injuries and the domestic authorities' failure to investigate the incident effectively.

2. According to the applicant, the State violated its positive obligation to take appropriate steps to safeguard the life of her husband, who on 20 October 2014 had been working in his lorry at a construction site in Bamut, Chechnya, when a mine left there by a military unit stationed in the vicinity between 2000 and 2009 had exploded. Moreover, a number of other officially confirmed incidents of blowing up on mines had taken place in that area after the military had left it in 2009. Despite those incidents, no warning signs marking the area had been put up by either military or civilian authorities. As a result of the dispute over the jurisdiction between the military and civilian investigators, the criminal case into the applicant's husband's death had been opened only on 3 October 2018. Meanwhile, the inquiry opened on 20 October 2014 had failed to elucidate such key questions as which military units had been stationed in the area previously and under whose command.

3. According to the Government, the pending investigation into the incident would clarify the issue of the State's alleged responsibility for the

death of Mr Turayev. They invited the Court to dismiss the complaint as premature.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

4. The Court considers that the Government's objection (see the paragraph above) is closely linked to the question of whether the authorities carried out an effective investigation into the death of Mr Turayev. The Court therefore decides to join it to the merits, which are to be examined below. 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 principles concerning the relevant procedural and substantive aspects of Article 2 of the Convention have been summarized in *Albekov and Others v. Russia*, no. 68216/01, § 94, 9 October 2008, and *Tsechoyev v. Russia*, no. 39358/05, § 136, 15 March 2011, respectively.

6. The death of Mr Turayev occurred on 20 October 2014 and shortly thereafter the inquiry was initiated. At the outset the investigators took a number of steps to clarify the circumstances of the incident and then transferred the inquiry file to the military investigators having found that the evidence collected indicated the involvement of the military. The military investigators, in turn, found that the involvement of the military had not been confirmed and returned the inquiry file back to their civilian counterparts. Within the following four years the file was sent back and forth between the two investigative bodies on at least ten occasions, which led to the taking of the first procedural decision– to open the criminal case - only on 3 October 2018.

7. The civilian investigators interviewed a number of witnesses to establish the circumstances of the explosion and clarify whether the landmine which had caused it could have been left behind by the military. Based on the evidence obtained, they forwarded the file to the military investigators, who returned it, without taking any steps to either confirm or refute the evidence collected by their civilian counterparts. Moreover, the military investigators inexplicably failed to take such basic steps as identifying the military unit stationed at the explosion site between 2000 and 2009 and its commanding officers. The absence of this crucial information precluded taking further steps to either confirm or refute the possibility of the military's involvement in the incident.

8. The fact that the fully - fledged investigation was opened only after the lodging of the application with the Court and in four years after the initiation of the inquiry, shows manifest lack of diligence on the part of the authorities, which is contrary to such requirements of an effective investigation as its

promptness, thoroughness and expedition. Considering that the effectiveness of the investigation had already been undermined by the authorities' failure to take urgent steps for four years prior to the opening of the criminal case, it is highly doubtful that the pending criminal proceedings would become more effective with further passage of time. In such circumstances, the Court dismisses the Government's objection that the complaint is premature.

9. Therefore, there has been a violation of the procedural aspect of Article 2 of the Convention on account of the authorities' failure to investigate the circumstances surrounding the death of Mr Turayev.

10. As to the applicant's allegation that the State failed in its positive obligation to protect Mr Turayev's life by failing to clear the construction site of landmines and failing to put up warning signs, the Court observes that the pending investigation has not produced any results to date. However, the undisputed evidence in the parties' submissions is sufficient to establish that the authorities were aware that mines had been laid in the area and that after the military had left that area, incidents of blowing up had taken place. The Court observes that the State could have discharged its positive obligation under Article 2 of the Convention at least by marking the area and restricting access to it, and by comprehensively warning the residents of the location of the mines and the risks involved (see *Albekov and Others*, cited above, §§ 88-89). The Government did not allege or dispute that any such efforts had been made.

11. Therefore, the Court finds that the State has failed to comply with its positive obligation under Article 2 of the Convention to protect the life of Mr Turayev.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

12. The applicant claimed 1,304,393 Russian roubles (about 17,400 euros (EUR)) in respect of pecuniary damage, basing her calculations on her late husband's official earnings and the UK Ogden Actuarial Tables. As for non-pecuniary damage, she left the determination of its amount to the Court. She claimed EUR 2,613 in respect of costs and expenses, to be paid directly to the account of her representatives.

13. The Government stated that the claims were unsubstantiated and unreasonable.

14. Having regard to the violations found and the documents submitted, the Court awards the applicant EUR 15,000 in respect of pecuniary damage (see, among other authorities, *Imakayeva v. Russia*, no. 7615/02, § 213, ECHR 2006-XIII (extracts), and compare with *Pugoyeva v. Russia* [Committee], no. 43479/14, §§ 64-66, 7 December 2021, and *Tatayev and Others v. Russia* [Committee], no. 51928/15, §§ 111-14, 19 October 2021), EUR 26,000 in respect of non-pecuniary damage and EUR 2,500 for costs

and expenses, plus any tax that may be chargeable on the applicant on those amounts.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join to the merits the Government's objection concerning non-exhaustion of domestic remedies and *rejects* it;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of the procedural and substantive aspects of Article 2 of the Convention;

4. *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, save for the payment for costs and expenses, at the rate applicable at the date of settlement:
      (i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 26,000 (twenty-six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly to the representatives' account as indicated by the applicant;
   (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 21 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Georgios A. Serghides President