



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

FIRST SECTION

Application no. 13363/11
Khasan Aliyevich TSOROYEV against Russia
and 2 other applications
(see list appended)

STATEMENT OF FACTS

1. The applicant in the first case, Mr Khasan Aliyevich Tsoroyev, is a Russian national, who was born in 1959 and lives in Ordzhonikidzevskaya, Ingushetia. He is represented before the Court by lawyers of Memorial Human Rights Centre practising in Moscow and London.

2. The applicant in the second case, Mr Magomet Garsolovich Israilov, is a Russian national, who was born in 1961 and lives in Grozny.

3. The applicant in the third case, Ms Ayzat Abdulmuslimovna Bakayeva, is a Russian national, who was born in 1968 and lives in Allonnes, France. She is represented before the Court by Mr I.Y. Timishev, a lawyer practising in Nalchik, Kabardino-Balkaria.

4. A list of the applicants with further details is set out in the appendix.

The circumstances of the case

5. The facts of the case, as submitted by the applicants, may be summarised as follows.

1. 13363/11 Tsoroyev v. Russia

6. On 7 December 2009 at 7:15 a.m. the applicant's residence was encircled by the agents of the FSB (*Федеральная служба безопасности*). The applicant was at home with his wife Ms A. and his son Mr B. They were ordered to leave the house.

7. Outside of the house they observed around two hundred armed FSB agents wearing camouflage uniform and black masks, three armoured personnel carriers, three minivans, and one off-road vehicle.

8. The applicant and his family were ordered to identify themselves and to present their identity documents. Then they were put next to the wall with their hands raised and searched. Nothing was found on them.

9. The applicant inquired the agents whether his relative Mr D., who was the head of the Sunzhenskiy District Police Department, had been informed about the operation. He was told that Mr D. was aware of it.

10. The applicant and his wife were subsequently taken to one of the minivans, where they were questioned by two FSB agents about their and their sons' personal details and occupation.

11. The applicant alleges that in about twenty minutes another FSB agent took from the trunk of the minivan two large boxes covered in camouflage fabric, a package, and two stretchers.

12. After one hour the boxes were returned to the trunk of the minivan and the applicant and his wife were ordered to move to the backseat of the off-road vehicle. From the backseat the applicant could see that FSB agents were moving in and out of the front yard of his house.

13. The applicant was free to make as many phone calls as he wanted. He used this opportunity to contact several persons, including his older brother, who shortly arrived at the scene with Mr D. (the head of district police department) and his deputy. They were not allowed to enter the encircled area.

14. For the whole duration of the operation the residents of the neighbourhood were not allowed to leave their houses.

15. Around 9 a.m. FSB agents exited the applicant's house and left the scene. The applicant, against the advice of the local policemen present in the house, entered and saw the corps of his dead son in a bedroom.

16. One of the local policemen told Mr D. that according to FSB agents the applicant's son was requested to lift the seat of an unfolding couch for inspection, but he pulled an automatic gun from under the couch and shot at the agents. He was immediately killed with three defensive shots to the head.

17. The body of the applicant's son Mr B. was taken to a morgue for forensic examination and returned two hours later. In the evening of the same day he was buried by the relatives.

18. On the same day the applicant filed his complaint concerning the death of his son and an allegedly unlawful search of his house with the Sunzhenskiy District Police Department. Subsequently, the complaint was transferred according to the jurisdictional rules to the Prosecutor's Office of Ingushetia.

19. On 8 December 2009 similar complaint was filed with Military Investigations Department of the Military Division No. 68799, but on 11 December 2009 the decision was taken no to initiate criminal investigation due to absence of the elements of a crime in the actions of FSB agents Mr P. and Mr A.

20. Subsequently the applicant lodged a number of complaints regarding the events of 7 December 2009 with various governmental authorities and non-governmental organizations.

21. On 7 January 2010 the Prosecutor's Office of the Sunzhenskiy District of Ingushetia refused to open criminal investigation upon the complaint, because it had been concluded that the applicant's son died from defence fire during his attempt to kill FSB agents. However, on 3 February 2010 the decision was annulled and further inquiry was ordered. The applicant was notified of these developments on 1 March 2010.

22. On 27 February 2010 the applicant lodged a complaint under Article 125 of the Criminal Procedure Code with military courts regarding refusal of the Military Investigations Department of the Military Division No. 68799 to institute criminal proceedings.

23. On 12 April 2010 the complaint was dismissed by the Military Court of Nalchikskiy Garrison, because in the opinion of the court the use of deadly force by the FSB agents was justified by self-defence.

24. The applicant's appeal highlighting several alleged deficiencies of the inquiry was dismissed on 22 June 2010 by the Military Court of Severo-Kavkazskiy Command.

2. 20436/11 Israilov v. Russia

25. On 5 April 2002 the applicant's sister Ms K.G. went from Grozny to Gamurziyevo village in Ingushetia to visit her son in a hospital. She had been travelling by taxi with some other passengers.

26. Around 10 a.m. at the outskirts of Sernovodsk village the taxi went under fire and due to multiple gunshot wounds the taxi driver and all of the passengers died.

27. On 6 April 2002 the Achhoy-Martanovskiy Interdistrict Prosecutor's Office opened criminal investigation of the event. The applicant's sister was listed as unidentified victim.

28. On the same day the crime scene was observed and photographed. The traces of the wheeled armoured vehicle were discovered near the crime scene. Two bullet cartridges were recovered and appended to the case-file as evidence.

29. Later on the same day Mr U. and Mr M. were questioned as witnesses. They stated that on 5 and 6 April 2002 two armoured personnel carriers with military servicemen dressed in camouflage uniform could have been observed in the vicinity of Sernovodsk and Samashki villages. Soon after they passed Sernovodsk one of the witnesses had heard automatic and under-barrel-launcher gunshots. Later a car damaged by gunshots and several dead bodies were found on the road.

30. On 7 April 2002 the applicant was informed by his niece about the death of Ms K.G.

31. On the same day the investigator requested the police to question the inhabitants of Sernovodsk and Samashki villages, to locate the persons, who had seen or heard armoured vehicles and gunshots, and to inquire with the inhabitants of the houses in the immediate proximity to military divisions about the movements of armoured vehicles.

32. On 15 April 2002 the applicant's other sister Ms I. was admitted as a victim to the investigation, on the ground of being a relative of the deceased. She was questioned on the same day.

33. On 25 April 2002 the Achhoy-Martanovskiy Interdistrict Prosecutor's Office upon a request of the investigator issued an instruction to the head of the local police department to immediately take the investigative measures mentioned above in paragraph 31 and to apply disciplinary sanctions to the persons responsible for the delay.

34. The investigator suspended the criminal investigation on 6 June 2002 due to impossibility to identify the guilty persons, but on 29 August 2002 it was resumed by the decision of Achhoy-Martanovskiy Interdistrict

Prosecutor. The prosecutor mentioned that the following necessary actions had to take place: 1) the bodies of the victims should be submitted for forensic medical examination; 2) the witnesses Mr U. and Mr M. should be questioned in respect of possible involvement of military servicemen in the incident; 3) the information about involvement of Ms K.G. (the applicant's sister) in unlawful transit of goods from Chechnya to Ingushetia should be verified; 4) an inquiry is necessary into whether the car in which Ms K.G. died was escorting a freight vehicle transporting allegedly illegal goods and whether the murder might have been triggered by lucrative motives.

35. On 1 September 2002 Ms K.G.'s sister Ms I. was questioned in relation to the abovementioned allegations.

36. Between 2 October 2002 and 6 October 2002 a forensic medical examination of Ms K.G.'s body took place. The death was found to have been caused by penetrating gunshot wounds to the head, abdomen, and waist.

37. On 29 September 2002 the investigation was suspended due to impossibility to identify the guilty persons.

38. On 10 October 2007 Ms I. (the sister of the deceased Ms K.G.) alleging her poor physical condition requested the investigation authorities to admit the applicant to the criminal investigation as a victim. On the next day the request was granted.

39. On 22 October 2007 the criminal investigation was resumed.

40. On 23 October 2007 the applicant's status as a victim of the crime was officially recognized and he was questioned by the investigator.

41. On 1 November 2007 the Achhoy-Martanovskiy Interdistrict Investigation Department suspended the preliminary investigation, but on 15 January 2008 it was resumed.

42. On 15 February 2008 the investigation was suspended due to impossibility to identify the guilty persons, but it was resumed on 20 May 2008.

43. On 27 May 2008 the witness Mr M. was repeatedly questioned. He gave statement essentially similar to his statement in 2002.

44. On 18 June 2008 the investigation was suspended due to impossibility to identify the guilty persons, but it was resumed on 24 September 2008.

45. On 24 October 2008 the investigation was suspended due to impossibility to identify the guilty persons.

46. On 21 October 2010 the applicant filed a complaint with a court challenging the actions and inaction of the investigating authorities, seeking annulment of the decision to suspend the investigation and identification of the guilty persons.

47. On 29 October 2010 the Achhoy-Martanovskiy District Court of Chechen Republic annulled the decision to suspend the investigation and ordered rectification of defects in investigation. The court indicated that the investigation was frequently suspended and resumed, but certain facts remained unverified, including the precise time of death, involvement of military servicemen, connection between activities of Ms K.G. and the freight vehicle.

48. The investigation was resumed and appears to be pending to day.

3. 24776/11 *Bakayeva v. Russia*

49. Until 1999 the applicant with her family resided in Grozny.

50. After they had become aware that the new military operation to liquidate separatist Chechen government was initiated by the Russian authorities, they fled to Ingushetia on 23 September 1999.

51. On 4 February 2000 the applicant returned to Grozny to visit her relatives. She discovered that her parents were missing and their house had been looted. The applicant was informed by her acquaintances that her parents might have been relocated to a refuge settlement in Znamenskoye village.

52. In Znamenskoye she did not find her parents, but Mr A. alleged that her father Mr B.A. was killed by a Russian sniper and her mother's (Ms B.Z.'s) whereabouts were unknown. The applicant returned to Ingushetia.

53. On 9 February 2000 the applicant returned to Grozny. During a visit to her uncle Mr B.D. she was told that her father is dead and her mother's fate was unknown.

54. On the next day she met Mr Kh., who alleged that he was hiding from fighting on the streets together with her mother in the basement of School No. 54. Approximately on 6 January 2000 the applicant's mother went to look for her husband, but she never came back. The applicant returned to Ingushetia.

55. Several days later she came back to Grozny to look for her parents. During her visit she allegedly requested the Military Command of Staropromislovskiy District of Grozny to clear the mines in the building opposite to her parent's house, because she believed that their bodies might be found there. Allegedly she was chased away from the Military Command with threats and curses and subsequently went back to Ingushetia.

56. In April 2000 the applicant returned to Grozny with her cousin Ms Khas. They were informed by their acquaintance Mr Kh. that the applicant's mother was allegedly shot and her body was burned by the Russian soldiers, who she had tried to stop from looting her house. Allegedly a young man was killed together with the applicant's mother. Mr Kh. became aware of these facts from two women identified only by their first names.

57. The remnants of the applicant's mother and the young man were buried near a mosque in Katayama village. The applicant and Mr Kh. uncovered the remnants with the purpose of re-burial.

58. Subsequently, the applicant with her cousin visited the house in which her mother was allegedly killed and recovered charred bone fragments. They had observed that the walls of the house had traces of damages caused by bullets.

59. The collected remnants were buried in Martan-Chu village.

60. On unspecified date the Staropromislovskiy District Police Department of Grozny upon the applicant's request issued certificates attesting that her parents died of gunshot wounds. Mr O., a doctor in the Clinic No. 6 of Grozny, subsequently issued medical certificates confirming the death of the applicant's father and mother. The certificates stated respectively 'gunshot wound to the head' and the applicant's father and

mother stated respectively ‘gunshot splinter wound to abdomen’ and ‘gunshot wound to the head’ as the causes of deaths.

61. After these documents were submitted to the Civil Records Office of Grozny, on 2 October 2000 the registered was updated with the death records No. 352 and No. 353 and the death certificates were issued.

62. In the end of April 2000 the applicant lodged a complaint with the police. Subsequently, police officers visited and questioned some residents in the vicinity of the house, which belonged to the applicant’s parents. Allegedly, no other investigative action took place.

63. On 25 February 2003 the applicant with her family came to Allonnes, France and lodged asylum applications. It appears that subsequently they were granted asylum.

64. In 2010 the applicant hired a legal counsel Mr T. to pursue investigation of her parents’ deaths. On 4 June 2010 Mr T. requested the investigation authorities to open criminal inquiry into the homicide of Mr B.A. and Ms B.Z.

65. On 30 July 2010 and 9 August 2010 an investigator of the Leninskiy Interdistrict Investigation Department of Grozny informed the applicant’s legal counsel that a criminal inquiry had been opened in respect of the killings.

66. On 2 August 2010 the investigator informed Mr T. that the deputy prosecutor of the Staropromislovskiy District of Grozny annulled the decision to open the criminal inquiry without informing him of the relevant reasons.

67. On 9 August 2010 the applicant’s legal counsel was informed that the inferior prosecutor’s decision was annulled by the Deputy Prosecutor of Chechen Republic.

68. Subsequently, the time-limits for both investigations were extended on 24 September 2010. The applicant alleges that no investigative action had taken place.

69. On 16 October 2010 the applicant’s legal counsel filed a complaint with a court alleging inaction of the investigator, failure to inform the applicant about the progress of investigation, failure to forward to the applicant copies of the procedural decisions, and failure to transfer the investigation to military investigation authorities, while the killings were allegedly committed by military servicemen.

70. On 29 October 2010 the Staropromislovskiy District Court of Grozny dismissed the complaint. In particular the first instance court mentioned that the investigation may not be transferred to military investigation authorities until involvement of military servicemen is proven. On 1 December 2010 the Supreme Court of Chechen Republic dismissed the appeal against the lower court’s decision.

71. On 30 October 2010 the criminal investigation of Mr B.A.’s death was suspended due to impossibility to identify the guilty person. The decision in particular stated:

“The preliminary investigation established that approximately on 4 January 2001 presumably at 10 a.m. on the crossroad ... in Grozny unidentified persons with the use of firearms inflicted gunshot wounds on Mr B.A. ... Mr B.A. died of these wounds on the spot ...

During the preliminary investigation the person who had committed this crime could not be identified...”

72. On 9 November 2010 the criminal investigation of Ms B.Z.’s death was suspended due to impossibility to identify the guilty person. The decision in particular stated:

“The preliminary investigation established that approximately on 9 or 10 January 2001 at time which could not be established unidentified persons, who transported themselves on an armoured personnel carrier, in the house ... in Grozny inflicted gunshot wounds on Mr B. ... and subsequently set the house on fire. As a result Ms B.Z. died on the crime scene ...

During the preliminary investigation the person who had committed this crime could not be identified ...”

73. On 15 January 2011 upon the request of the legal counsel the applicant was provided with copies of certain procedural documents (the decision to institute criminal proceedings in respect of homicide of Mr B.A., the decisions to extend the time-limits for the investigation and to adjourn the investigation).

COMPLAINTS

74. The applicant in the first case complains under Article 2 of the Convention about an alleged homicide of his son by FSB agents and failure of the national authorities to investigate his death.

75. The applicant in the second case complains under Article 2 of the Convention about an alleged homicide of his sister by unidentified military servicemen and failure of the national authorities to investigate her death.

76. The applicant in the third case complains under Article 2 of the Convention about an alleged homicide of her parents by unidentified military servicemen and failure of the national authorities to investigate their deaths.

77. Also, the applicants submitted other complaints under Articles 1, 5, 8, and 13 of the Convention.

QUESTIONS TO THE PARTIES

1. Has the applicants’ relatives’ right to life, ensured by Article 2 of the Convention, been violated in the present cases?

In particular, did the applicants’ relatives’ deaths result from a use of force which was absolutely necessary for the purposes of paragraph 2 of this Article?

Having regard to the procedural protection of the right to life (see paragraph 104 of *Salman v. Turkey* [GC], no. 21986/93, ECHR 2000-VII),

was the investigation in the present case by the domestic authorities in breach of Article 2 of the Convention?

2. In respect of the applications by Mr Israilov and Ms Bakayeva, have the applicants complied with the six-month time-limit laid down in Article 35 § 1 of the Convention? In particular, did they demonstrate “necessary expedition” in submitting their complaints to the Court after the deaths of their relatives? Have there been considerable lapses of time or significant delays in the investigative activity which could have an impact on the application of the six-month time-limit (see, *mutatis mutandis*, *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, §§ 160 and 162, ECHR 2009)?

3. In connection with the above questions, the Government are requested to submit copies of the entire investigation files in criminal cases in respect of the deaths of Mr Israilov’s sister and Ms Bakayeva’s parents, as well as the copy of the entire inquiry file in respect of the death of Mr Tsoroyev’s son.

APPENDIX

No	Application No	Lodged on	Applicant Date of birth Place of residence Nationality	Represented by
1.	13363/11	22/01/2011	Khasan Aliyevich TSOROYEV 25/02/1959 Ordzhonikidzevskaya, Ingushetia, Russia	MEMORIAL HUMAN RIGHTS CENTRE
2.	20436/11	16/02/2011	Magomet Garsolovich ISRAILOV 16/12/1961 Grozny, Chechnya, Russia	
3.	24776/11	02/04/2011	Ayzat Abdulmuslimovna BAKAYEVA 13/06/1968 Allonnes, France	Ilyas Yakubovich TIMISHEV