



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

THIRD SECTION

**CASE OF PUGOYEVA v. RUSSIA**

*(Application no. 43479/14)*

JUDGMENT

STRASBOURG

7 December 2021

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



**In the case of Pugoyeva v. Russia,**

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

Peeter Roosma, *President*,

Dmitry Dedov,

Andreas Zünd, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the application (no. 43479/14) 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, Ms Dibikhan Pugoyeva (“the applicant”), on 6 June 2014;

the decision to give notice of the application to the Russian Government (“the Government”);

the parties’ observations;

Having deliberated in private on 9 November 2021,

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

## INTRODUCTION

1. The applicant alleged that her son had been abducted and then killed by State agents and that the authorities failed to investigate the matter.

## THE FACTS

2. The applicant was born in 1971 and lives in Pliyev. She was represented by lawyers from NGO Stitching Russian Justice Initiative in collaboration with NGO Astreya (SRJI/Astreya).

3. The Government were represented initially by Mr M. Galperin, the then Representative of the Russian Federation to the European Court of Human Rights, and lately by Mr M. Vinogradov, his successor in that office.

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

5. The applicant is the mother of late Mr Magomed Gorchkhanov, who was born in 1993.

### I. THE CIRCUMSTANCES SURROUNDING THE DEATH OF THE APPLICANT’S SON

#### A. Events between 20 and 25 November 2010

6. On 20 November 2010 the applicant’s son Magomed Gorchkhanov, who was seventeen years old at the time, left his house in Pliyev and went

to stay at the house of his friend Mr G. in the outskirts of Nazran. In the morning on 22 November 2010 he telephoned the applicant to tell her he would return home that day.

7. At about 3.30 p.m. on 22 November 2010 Mr Gorchkhanov was driving to Pliyev in a car with this friend Mr A.K. and the latter's acquaintance Mr R.G.

8. When the car was driving in the centre of village of Nasyr-Kort, two armoured personnel carriers (the APCs) and two VAZ-2107 cars surrounded it and forced it to stop. Several officers from those vehicles opened gunfire at the car with the applicant's son, setting it on fire. Mr R.G. returned fire and shot officer A. in the head. Then Mr R.G. was shot dead on the spot, whereas Mr A.K. and the applicant's son got out of the car with their hands up in the air and were immediately forced into the boot of one of the VAZ-2107 cars. After that, the vehicles drove off. The wounded officer subsequently died in the hospital.

9. From the applicant's submission, on 22 November 2010 officers of the Ingushetia Federal Security Service (the FSB) and the Ingushetia Ministry of the Interior (the police) carried out a special operation in Nazran, Ingushetia, under the command of the FSB officer P.Ch. As a result of that operation, Mr R.G., who was wanted by the authorities as a member of an illegal armed group, was lethally wounded and died on the spot, whereas Mr A.K. and the applicant's son were arrested.

10. On 23 November 2010 the applicant went to the Nazran town police station, where she was informed that her son and Mr A.K. were detained in the FSB department in Magas, Ingushetia.

11. On 27 November 2010 the applicant found in her courtyard an envelope with a mobile telephone's memory card which contained video footage of the incident of 22 November 2010. The video showed Mr A.K.'s car burning and surrounded by at least four vehicles and the applicant's son and Mr A.K. being beaten and forced into the boot of a light-coloured VAZ-2107 car. The applicant handed the footage over to the investigators (see paragraph 22 below).

## **B. The press releases and relevant information**

### *1. The FSB press release*

12. On 26 November 2010 the Ingushetia FSB published a press release concerning the special operation carried out in Pliyev on 25 November 2010 by the FSB and the police internal troops. As a result, two unidentified men, who had aided an illegal armed group by supplying it with food, after having offered intense armed resistance including the use of machineguns and a rocket-propelled grenade (RPG), had blown themselves up. Their bodies were fully destroyed.

13. From the documents submitted it transpires that the same FSB officers participated in both special operations; the one carried out on 22 November 2010 and then in the other carried out on 25 November 2010.

*2. The police press release and relevant information*

14. On 1 July 2011 the Ingushetia police published a press-release stating that the two unidentified men who had been killed as a result of the special operation of 25 November 2010, had been identified as Mr A.K. and the applicant's son, Mr Gorchkhanov.

15. On 14 July 2011 the Forensic Bureau in the Stavropol Region carried out the DNA comparative examination and confirmed that the applicant was the mother of the one of the two persons whose remains had been collected at the scene of the self-blowing up on 25 November 2010. The investigators informed the applicant thereof on 12 September 2011.

II. INQUIRY INTO Mr GORCHKHANOV'S ABDUCTION AND DEATH

**A. The applicant's complaints and the main steps taken by the inquiry**

16. On 23 and 24 November 2010 the applicant complained of the abduction of Mr Gorchkhanov by law-enforcement officers to the local prosecutor's office, stressing that the special operation had been carried out by the FSB and police officers who had taken him away in a boot of a Lada-Priora car.

17. On 26 November 2010 the investigators from the Nazran investigative department (the investigators) opened a preliminary inquiry into the applicant's complaint (the inquiry). They examined the scene at the place where the two men had blown themselves up. According to its transcript, the investigators found ten spent bullet casings, one RPG, fragments of human bodies and camouflage uniforms. The investigators did not submit the RPG for fingerprint examination.

18. Then, on 26 November 2010 the investigators asked firearms experts whether the collected casings could be matched with the firearms database. The experts replied that it was impossible due to the inquiry's procedural limitations.

19. When interviewed by the investigators on 1 December 2010 the father of Mr A.K. stated that on 22 November 2010 the eyewitnesses at Nasyr-Kort had told him that his son's car had been under attack of the law-enforcement officers who had been carrying out a special operation and that two of the three men who had been in the attacked car, had gotten out with their hands up and had been immediately forced by the officers into the

boot of one of VAZ-2107 cars and taken away. Then the officers had blown-up the third man who had remained in the car.

20. On 25 November and then on 2 and 21 December 2010 the investigators interviewed the applicant whose statements were similar to her submission before the Court and the complaint of 25 November 2010 (see paragraphs 8 and 9 above).

21. At some point in December 2010 the investigators transferred the inquiry file to the investigative department of military unit no. 68799 (also referred to as the military investigative department no. 507) (the military investigators) as according to the rules of jurisdiction, military investigators investigated crimes committed by the FSB service personnel.

### **B. The main steps taken by the military investigators**

22. On 15 December 2010 the military investigators interviewed the applicant, who reaffirmed her previous statements (see paragraph 20 above) and provided them with the video footage depicting the special operation and her son's abduction on 22 November 2010. The investigators neither commissioned an evaluation of the footage by experts, nor carried out its due examination themselves by preparing relevant procedural report. Subsequently, in their refusals to open a criminal case they stated that the footage's quality allowed neither for identification of the individuals depicted therein nor determination of the licence plates' numbers of the vehicles involved (see also paragraphs 25 and 27 below).

23. On 21 December 2010 the applicant's other son M. identified the bodily fragments presented to him as those of Magomed Gorchkhanov.

24. Between February 2011 and January 2012, the applicant lodged at least three detailed complaints with the military investigators insisting that her son had been abducted by the FSB officers on 22 November 2010, then killed three days later at the staged exchange of fire and requested that a criminal case be opened to investigate her allegations. In reply, she was informed that on 22 December 2010 the refusal to open a criminal case was issued (see paragraph 25 below) and that she was to lodge her complaints with the police.

### **C. The refusals to open a criminal case and the applicant's appeals against them**

#### *1. The initial refusals to open a criminal case*

25. Between 22 December 2010 and 12 December 2012, the military investigators issued four refusals to open a criminal case into the events of 22 November 2010 for the lack of *corpus delicti* in the actions of the FSB officer P.Ch. (the refusals). The decisions, which were almost verbatim, stated, amongst other things, that on 22 November 2010 during a

special operation Mr R.G. had died in the exchange of fire, in the car, while the whereabouts of the two men who had managed to abscond from that car remained unknown. Therefore, not crime of abduction had taken place.

26. The applicant appealed against each of the refusals to the Nalchik Military Garrison Court (the Military Court), which left the appeals unexamined as a new inquiry had been ordered by the military investigators' superiors who had criticised each of the refusals as premature and unsubstantiated.

27. On 5 June 2013 the military investigators' superior overruled the fourth refusal of 12 December 2012 and ordered that the investigators question the residents of Pliyev to confirm the special operation on 25 November 2010 and commission an expert examination of the footage of the incident of 22 November 2010 provided by the applicant. Those orders were not complied with.

## *2. Subsequent refusals to open a criminal case*

28. On 19 June 2013 the military investigators issued the fifth refusal due to the absence of the event of the crime. From its text it transpires that the parents of Mr A.K. and the applicant were interviewed; all of them stated that their sons had been abducted on 22 November 2010 by the FSB officers. The investigators had also interviewed one police officer and four FSB officers. According to their statements, the FSB Officer who had been in charge of the special operation on 22 November 2010 had also commanded the special operation on 25 November 2010. The decision also stated that the investigators' examination of the video footage showed that its quality did not allow to unequivocally establish either the place where the events had taken place, or the identities of the participants and the licence plate numbers of the vehicles involved. The applicant was informed of that refusal in January 2014 and received its copy on 7 February 2014.

29. When the applicant appealed against the above refusal to the Military Court, in March 2014 it refused to examine her appeal as the impugned refusal had already been overruled.

30. To date, no criminal case has been opened into the circumstances of the applicant's son's abduction and death.

## RELEVANT LEGAL FRAMEWORK

31. For relevant domestic provisions see *Dalakov v. Russia*, no. 35152/09, §§ 51-53, 16 February 2016, and *Manzhos v. Russia*, no. 64752/09, §§ 24-27, 24 May 2016.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

32. The applicant alleged under Articles 2 and 13 of the Convention that State agents had abducted her son Magomed Gorchkhanov and then had killed him in a staged special operation and that the authorities had failed to investigate the matter. The Court finds it appropriate to examine the applicant's complaints solely under Article 2 of the Convention, the relevant part of which reads as follows:

“1. Everyone's right to life shall be protected by law ...”

#### A. Admissibility

33. The Government contented in general terms that the applicant had failed to appeal against “decisions taken by the investigative bodies”.

34. The applicant contested the Government's submission.

35. The Court notes that in the circumstances, in view of the lack of fully-fledged investigation within a framework of a criminal case, the only decision of the investigative bodies amenable to court appeal would be the refusal to open a criminal case. The applicant appealed against each of the refusals (see paragraphs 26 and 29 above). Therefore, the Government's objections should be rejected.

36. The Court further notes that the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

#### B. Merits

##### *1. The parties' submissions*

37. The applicant stated that her son had been abducted on 22 November 2010 by the FSB officers and then on 25 November 2010 he had been killed by them in a staged fire exchange and explosion.

38. The authorities failed to carry out an effective investigation into the abduction and death of Magomed Gorchkhanov.

39. The Government stated in general terms that after the clash with the law-enforcement officers on 22 November 2010, Mr Gorchkhanov had absconded from the scene and on 25 November 2010 he had been found in a dugout and killed after offering armed resistance to the FSB officers. The use of lethal force against him therefore was necessary and justified.

40. The inquiry into the circumstances of the death of Mr Gorchkhanov had complied with the Convention standards.



2. *The Court's assessment*

41. It is common ground between the parties that the death of Mr Gorchkhanov resulted from the use of lethal force by State agents. The Court will firstly assess the adequacy of the investigation into his death and then the actions of the State agents who actually administered the force.

**(a) The State's procedural obligation under Article 2 of the Convention**

42. A summary of relevant general principles can be found in *Armani Da Silva v. the United Kingdom* ([GC], no. 5878/08, §§ 229-39, 30 March 2016).

43. No criminal investigation into the circumstances surrounding the death of the applicant's son, either on 22 or 25 November 2010, was carried out, other than the pre-investigation inquiry (see paragraphs 17, 21 and 28 above). Thus, the Court is bound to assess the circumstances based on the documents furnished as part of the inquiry, which resulted in the repeated refusals to open a criminal case.

44. The information collected by the inquiry contained clear indications of the conflicting evidence concerning the circumstances surrounding Mr Gorchkhanov's death. For instance, the applicant's consistent and detailed allegations that her son had been abducted by the FSB officers on 22 November 2010 (see paragraphs 16 and 19-20 above), along with the video footage provided by her to the investigators, should have prompted the authorities to open a criminal case and carry out a fully-fledged investigation into the matter. However, in spite of the evidence showing that the actual circumstances of the special operations of 22 and 25 November 2010 had been in contradiction to the statements of the implicated officers (see paragraphs 19 and 20 above), the authorities limited themselves to taking a few formal steps, and consistently refused to investigate those allegations.

45. As a result of that failure to clarify the matter, none of the residents of Nasyr-Kort who could have witnessed the incident of 22 November 2010 in broad daylight in the village centre and who could therefore have shed light on its circumstances were questioned. Most importantly, no expert examination of such important evidence as the footage of the events was commissioned. The documents submitted contain no indication that any expert examination had been carried out, nor that such findings have been reflected in a report (see paragraph 22 above). Furthermore, it is noteworthy that the inquiry took no steps to identify the military vehicles depicted in the footage, such as the APCs, in order to establish their crew members and obtain their statements concerning the events in question.

46. Meanwhile, the implicated officers gave "an explanation", which did not commit them in the same way as it would have in the context of an opened criminal case as it did not entail the necessary safeguards inherent in

an effective criminal investigation, such as liability for perjury (see *Dalakov*, cited above, § 70).

47. Given that the Court has held that a refusal to open a criminal investigation into credible allegations of such serious nature is indicative of the State's failure to comply with its procedural obligation under Article 2 (see *Dalakov*, cited above, §§ 69-72), the documents submitted indicate that the domestic authorities failed to demonstrate a proper response to the serious allegations of abduction and inappropriate use of lethal force by agents of the State.

48. In view of the foregoing, the Court concludes that there has been a violation of Article 2 of the Convention under its procedural head.

**(b) Alleged violation of the substantive aspect of Article 2 of the Convention**

49. A summary of relevant principles be found in *El-Masri v. "the former Yugoslav Republic of Macedonia"* ([GC], no. 39630/09, §§ 151-53, ECHR 2012), and *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, §§ 180-82, ECHR 2011 (extracts)).

50. The Court observes that it is common ground between the parties that Mr Gorchkhanov had died on 25 November 2010 as a result of a special operation carried out by State agents. However, the parties disagreed on whether he had been abducted on 22 November 2010 by the State agents and whether the circumstances of his ensuing death on 25 November 2010 had been staged by them or whether he had absconded on 22 November 2010 from State agents and subsequently, on 25 November 2010, offered armed resistance provoking justified used of lethal force against him.

51. The key issue, therefore, is to determine whether Mr Gorchkhanov was abducted on 22 November 2010 by State agents or whether he managed to abscond. To this end, the Court notes that its ability to evaluate the circumstances of the incident has been seriously hampered by the absence of a meaningful investigation (see paragraph 48 above). Nevertheless, it will base its assessment on the material available to it undisputed by the parties.

*(i) Whether the applicant's son was abducted on 22 November 2010 by State agents*

52. The Court observes at the outset that the documents submitted contain no indication of Mr Gorchkhanov's involvement in any types of criminal activities. Further, the Government's contention that on 22 November 2010 Mr Gorchkhanov had absconded during the shooting is unspecific and of generic nature. The documents submitted contain neither details of his alleged absconding from the scene, nor statements of any witnesses or other evidence to this end, other than non-specific and undetailed statements of the implicated officers. Even assuming that Mr Gorchkhanov had absconded, there is no indication of any concrete steps

taken to organise the search for him or obtain any information or evidence aimed at his capture. To the contrary, the applicant's assertion of her son's apprehension on that date is supported by a number of prima facie evidence, such as the video footage depicting the abduction of Mr Gorchkhanov, the applicant's consistent and detailed complaints to the authorities and a number of witness statements (see paragraphs 10, 19, 20 and 22 above, for example). The Government did not dispute the authenticity of that footage despite its contradiction to the official version of the events of 22 November 2010.

53. The Court further notes that the circumstances of the discovery of Mr Gorchkhanov's body on 25 November 2010 showed that neither the officers nor their equipment had sustained any injuries or damage despite the allegedly active resistance of the applicant's son and Mr A. K. who had allegedly subjected the officers to intense gunfire from machineguns and the RPG (see paragraph 12 above).

54. In view of the above, the Court finds that it can accept that the applicant's son had been apprehended by State agents during the special operation on 22 November 2010 in the circumstances as alleged by the applicant.

*(ii) Whether the use of lethal force against Mr Gorchkhanov was justified*

55. Considering that it has been established that that Mr Gorchkhanov was apprehended on 22 November 2010 by State agents, the Court finds that the Government's version did not tally with the circumstances of the incident of 25 November 2010. Therefore, it does not find it necessary to examine whether the use of lethal force against the applicant's son on 25 November 2010 was necessary and justified as alleged by the Government.

56. There has accordingly been a violation of the substantive aspect of Article 2 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

57. The applicant complained that her son Mr Magomed Gorchkhanov was unlawfully deprived of his liberty by State agents between 22 and 25 November 2010 contrary to Article 5 of the Convention, the relevant part of which reads as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...”

### **A. Admissibility**

58. The Court notes that the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

### **B. Merits**

59. The Government submitted that there was no proof that the applicant's son had been detained or arrested by State agents.

60. The applicant maintained her complaint.

61. The Court finds that since it has been established that Mr Magomed Gorchkhanov was detained by State agents on 22 November 2010 (see paragraph 54 above), apparently in the absence of any legal grounds or acknowledgement of such detention, this constitutes a particularly grave violation of the right to liberty and security of persons enshrined in Article 5 of the Convention in respect of him (see *Luluyev and Others v. Russia*, no. 69480/01, § 122, ECHR 2006-XIII (extracts)).

62. There has accordingly been a violation of Article 5 of the Convention.

## **III. APPLICATION OF ARTICLE 41 OF THE CONVENTION**

63. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention ... the Court shall, if necessary, afford just satisfaction to the injured party.”

### **A. Damage**

64. The applicant claimed 1,762,981 Russian roubles (about 25,000 euros (EUR)) for pecuniary damage referring to official subsistence levels and the UK Ogden Actuarial Tables. She left the determination of the amount of the award for non-pecuniary damage to the Court.

65. According to the Government, the claim was unsubstantiated.

66. The Court awards the applicant EUR 10,000 for pecuniary damage and EUR 60,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to her on those amounts.

### **B. Costs and expenses**

67. The applicant was represented by lawyers from the NGO SRJI/Astreya. Her claim in respect of costs and expenses amounted to EUR 4,820, which was to be paid into the representatives' bank account in the Netherlands.

68. According to the Government, the amount claimed was unreasonable.

69. The Court considers it reasonable to award the applicant EUR 2,500 covering costs under all heads, plus any tax that may be chargeable to her, to be paid into the representatives' bank account in the Netherlands.

### **C. Default interest**

70. 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 the substantive and procedural aspects of Article 2 of the Convention in respect of Mr Magomed Gorchkhanov;
3. *Holds* that there has been a violation of Article 5 of the Convention in respect of Mr Magomed Gorchkhanov;
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 at the rate applicable at the date of settlement, except for the payment in respect of costs and expenses:
    - (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
    - (ii) EUR 60,000 (sixty 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 into the bank account of the applicant's representatives in the Netherlands 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.

PUGOYEVA v. RUSSIA JUDGMENT

Done in English, and notified in writing on 7 December 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova  
Deputy Registrar

Peeter Roosma  
President