



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

THIRD SECTION

CASE OF TSECHOYEVA AND OTHERS v. RUSSIA

(Application no. 52325/15)

JUDGMENT

STRASBOURG

5 October 2021

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

In the case of Tsechoyeva and Others 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. 52325/15) 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 four Russian nationals, listed below (“the applicants”), on 16 October 2015;

the decision to give notice to the Russian Government (“the Government”) of the complaint concerning Article 2 and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 14 September 2021,

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

INTRODUCTION

1. The case concerns the applicants’ allegation of the authorities’ failure to carry out an effective investigation into the circumstances surrounding the killing of their relative in Ingushetia in 2010.

THE FACTS

2. The applicants are:

- 1) Ms Zalikhan Tsechoyeva, who was born in 1976,
- 2) Ms Zhanna Dudurgova, who was born in 1980,
- 3) Ms Sharifa Tsechoyeva, who was born in 1945 and
- 4) Ms Zukhra Tsechoyeva, who was born in 2001.

The applicants live in the town of Sunzha (former Ordzhonikidzevskaya), Ingushetia. They are represented before the Court by lawyers from the Stichting Russian Justice Initiative in collaboration with NGO Astreya (SRJI/Astreya).

3. The Russian Government (“the Government”) were represented initially by Mr G. Matyushkin and Mr M. Galperin, former Representatives of the Russian Federation to the European Court of Human Rights, and lately by Mr M. Vinogradov, their successor in that office.

4. The applicants are the sister, wife, mother and the daughter of the late Mr Gilani Tsechoyev.

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

I. KILLING OF Mr TSECHOYEV

6. On an unspecified date in the beginning of April 2010 Mr Gilani Tsechoyev was driving next to the checkpoint in the village of Galashki in the Sunzhenskiy district in Ingushetia when he was stopped by a group of law-enforcement officers, who were carrying out a special operation against members of illegal armed groups. The officers, who were in a convoy of armoured personnel carriers and military trucks, ordered that Mr Tsechoyev showed them his identity documents. After his refusal to comply immediately with the order, they tried to force him in one of their armoured vehicles. At this moment, a car from the Sunzhenskiy district police station with a police officer S. Kh. pulled over and he requested that Mr Tsechoyev be left alone. The officers said that they had confused Gilani Tsechoyev with someone else and let him go.

7. In the evening on 24 June 2010 Mr Tsechoyev and his friends Mr B. and Mr Kh. were working in an apiary about 15 km away from Ordzhonikidzevskaya (later renamed to Sunzha) in Ingushetia, in the area bordering Chechnya. Their hives were located at the apiary along with hives of a number of other local residents who were working on them that evening. At about 7.40 p.m. two men in special camouflage cloaks and balaclavas arrived at the apiary in a black Lada Priora car with blackened windows and without a licence plate. One of them was armed with a special silent sniper rifle, whereas another one with a machinegun. The one with the sniper rifle shouted, "Don't move, identity check, show your identity documents. We will shoot to kill!" After that Mr Tsechoyev told them that his identify documents were in his car. The man with the sniper rifle told him that he would take him to the car, and when they were next to it, he opened gunfire at Mr Tsechoyev and killed him. Meanwhile, the other man held Mr B. and Mr. Kh. at gunpoint and then, after Mr Tsechoyev had been shot, opened fire at their cars parked nearby.

8. Immediately after the shooting, the perpetrators drove off in the direction of Ordzhonikidzevskaya. It appears that on the way they passed unhindered through Kerch-57 checkpoint located in the vicinity. Mr B. and Mr. Kh. immediately called the police and reported the incident. A number of local residents from adjacent apiaries, in addition to Mr B. and Mr. Kh., witnessed the incident.

II. THE INVESTIGATION INTO THE KILLING AND RELEVANT PROCEEDINGS

9. On 24 June 2010, the investigators from the Sunzhenskiy district investigative committee (the investigators) examined the crime scene and collected the bullet casings.

10. On the following day, 25 June 2010, the investigators opened criminal case no. 10600068 into the murder of Mr Tsechoyev.

11. On 26 June 2010 the investigators questioned Mr B. whose statement concerning the incident was similar to the applicants' submission before the Court. In addition, he stated that at the time of the incident many local residents had been working on the adjacent patches with the hives.

12. On 29 June 2010 the investigators questioned Mr. Kh., whose statement was similar to the applicants' submission before the Court and to the statement given by Mr B. In addition, he stated that two witnesses who had witnessed the incident from an adjacent patch at the apiary had been Mr Tsch. from the village of Alkun, and the other man had been from Ordzhonikidzevskaya.

13. On 30 June 2010 the investigators questioned Gilani Tsechoyev's brother Mr A. Ts., who stated that the officers who had tried to abduct his brother in April 2010 had been involved in the incident at the apiary and requested that the investigators established their identities.

14. On 5 July 2010 the investigators granted victim status to the second applicant and questioned her. She stated that her husband Gelani Tsechoyev had not had any enemies, unpaid debts and had not been involved in blood feud.

15. On 22 July 2020 the investigators questioned three of the policemen who had manned checkpoint Kerch-57 on the day of the incident. According to their statements, that day they had started their shift in the evening, after the receipt of the information about the killing, and they had not seen any black Priora cars passing through.

16. On 25 October 2010 the investigators granted victim status to the first applicant and questioned her. She stated that her brother Gelani Tsechoyev had not had any enemies, unpaid debts and had not been involved in a blood feud.

17. On 25 November 2010 the investigators suspended the investigation for failure to identify the perpetrators. Then, on 6 December 2010 they resumed the proceedings upon their superiors' order and on 5 January 2011 they suspended them again. The applicants were not informed of those decisions.

18. On an unspecified date in 2011 the first applicant complained about the suspension of 25 November 2010 to the Sunzhenskiy District Court in Ingushetia (the District Court). She stated that the suspension was premature and asked that the investigators be obliged to provide her with access to the case file. Referring to Mr Tsechoyev's abduction attempt of April 2010, she argued, *inter alia*, that the investigators had not taken steps to verify the involvement of those law-enforcement officers in her brother's killing and requested that personnel who had manned the nearby checkpoint Kerch-57 be questioned.

19. On 14 November 2011 the District Court dismissed the complaint having found that all necessary investigative steps had been taken. At the same time, it granted the applicant's request for access to the case file. On 2 December 2011 the investigators allowed the first applicant to access the file.

20. On or before 24 January 2012 the applicants requested that the investigators resumed the investigation and took a number of steps to have the crime resolved, but to no avail. Therefore, on 31 January 2012 the first applicant lodged another complaint with the District Court but withdrew it on 5 March 2012 as the investigation had been resumed (see the paragraph below). According to the applicants, their subsequent request for access to the contents of the criminal case file was rejected and they complained about it to the investigators' superiors.

21. On 28 February 2012 the investigators' superior ordered that the investigation be resumed as it had been suspended prematurely. Following the order, on 5 March 2012 the proceedings were resumed, and the applicants were informed thereof. However, on 5 April 2012 the investigation was suspended again, and the applicants were not informed thereof.

22. On 22 May 2012 the investigators' superior ordered that the proceedings be resumed and the investigators took a number of steps including "identification of the law-enforcement officers who had attempted to abduct Mr Tsechoyev [in April 2010]", questioning of the individuals who had been in the vicinity of the apiary on the date of the murder, and examination of the logbook of the vehicles crossing Kerch-57 checkpoint on 24 June 2010.

23. On 22 May 2012 the investigators again questioned Mr B. who did not provide any new information. On the same date, they also asked the police to assist them in carrying out the above orders. On 29 May 2012 the police replied that they had been unable to identify either the law-enforcement officers or any other witnesses to the murder at the apiary.

24. On an unspecified date in June 2012 the investigator examined the logbook of vehicles that had crossed the checkpoint on 24 June 2010. No Lada Priora car was registered therein.

25. On 22 June 2012 the investigators suspended the investigation again. The applicants were informed thereof on 16 November 2012. Shortly thereafter the first applicant complained about this suspension to the District Court. On 1 December 2012 her appeal was dismissed, as meanwhile, on 27 November 2012, the investigators had resumed the proceedings again without informing the applicants about it.

26. On 28 October 2013 the first applicant complained to the District Court about the investigators' failure to identify the State servicemen who could have been involved in the murder and requested that she be allowed to access the entire contents of the case file to assess the progress in the

investigation. On 1 November 2013 the court dismissed her request, noting that she had been provided with access to the case file in December 2011 (see paragraph 19 above).

27. On 4 April 2014 the first applicant asked the investigators to grant her access to the case file. No reply was given. On 10 November 2014 she reiterated her request for access to the case file. In reply, on 3 December 2014 the investigators informed her that the investigation had been suspended.

28. On 10 March 2015 the first applicant complained to the District Court about the above suspension. On 18 March 2015 the court again dismissed the complaint as on the same date the investigators had resumed the investigation. On 16 April 2015 that decision was upheld by the Ingushetia Supreme Court.

29. It appears that the investigation in the criminal case has been pending to date and the perpetrators of Mr Tsechoyev's killing have not been identified.

RELEVANT LEGAL FRAMEWORK

30. For a summary of the relevant domestic regulations see *Turluyeva v. Russia*, no. 63638/09, §§ 56-64, 20 June 2013.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

31. The applicants complained that the investigation into the murder of their relative Mr Gelani Tsechoyev was ineffective, contrary to Article 2 of the Convention, which reads as follows:

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

A. Admissibility

1. The parties' submissions

32. The Government submitted that the application should be rejected as lodged out of time. In particular, they stated that the applicants failed to justify the five-year delay in lodging of their application with the Court and that in view of the lulls in the criminal proceedings they should have realised that the investigation was ineffective long before the lodging of their application with the Court.

33. The applicants submitted that there were no unjustified or inexplicable delays in lodging of their application. In particular, they stated that they had maintained regular contact with the authorities despite the lack

of information on their part concerning the investigation and that they had taken all steps possible to induce the authorities to carry out an effective investigation into the circumstances of the killing of their family member. For instance, their hopes that the investigation would yield results had been spurred by the decision of 22 May 2012, when upon their requests, the investigators had been instructed to take a number of steps, including the identification of the servicemen who had attempt to abduct Mr Tsechoyev. They applied to the Court as soon as they had realised the ineffectiveness of the investigation and lost hopes that it would elucidate the circumstances of their relative's killing.

2. *The Court's assessment*

34. For a summary of principles concerning compliance with six-month criteria in cases of alleged killings by State agents, see *Khadzhimuradov and Others v. Russia*, nos. 21194/09 and 16 others, §§ 61-67, 10 October 2017.

35. The application was lodged with the Court in about five years and three months after the killing of Mr Tsechoyev and the initiation of the criminal investigation into his murder. The investigation was still formally pending and had not identified any suspects or attained any other tangible results.

36. From the documents submitted by the parties it can be seen that contrary to the Government's submission, the applicants took active steps to inform themselves of the proceedings (see paragraphs 17, 19, 20, 25, 26, 26-27 above). Moreover, their persistent requests spurred the proceedings and prompted the authorities to take steps to investigate the death of Mr Tsechoyev (see paragraphs 18 and 22 above). In such circumstances, it is not unconceivable that the applicants expected the investigation to yield results.

37. The Court observes that were no significant gaps in the communication between the applicants and the authorities that could have spoken to a lack of proper diligence on the part of the former (see, by contrast, *Doshuyeva and Yusupov v. Russia* (dec.), no. 58055/10, 31 May 2016, and *Gisayev and Others v. Russia* (dec.), no. 27240/09, 29 August 2017). The applicants took an active stance in the proceedings and made genuine efforts to cooperate with the authorities (compare to *Shamsudinova and Others v. Russia* [Committee], no. 4635/08, §§ 162-65, 5 February 2019, and *Dagalayeva v. Russia* [Committee], no. 19650/11, §§ 67-69, 12 March 2019). The Court thus considers that an investigation, albeit a sporadic one, was being conducted during the period in question, and that the applicants explained the delay in their application to the Court. In the light of the foregoing, the Court finds that they complied with the six-month time-limit.

38. The Court notes that this 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

39. The applicants submitted that the authorities, despite their consistent complaints and the evidence given by them and the witnesses to the incident, had failed to take a number of crucial steps to have the crime resolved. The proceedings had been suspended and resumed on several occasions and the applicants had not been informed thereof.

40. The Government did not comment on the merits of the complaint.

41. For a summary of general principles reflecting the Court's approach to the examination of allegations of a violation of the procedural aspect of Article 2 of the Convention, see *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, §§ 169-82, 14 April 2015, and *Mazepa and Others v. Russia*, no. 15086/07, §§ 69-70 and 74, 17 July 2018.

42. The Court observes that at the very beginning of the investigation, the eye-witnesses provided detailed statements concerning the incident and stated that a number of local residents had been working nearby at the apiary during the commission of the murder; those eye-witnesses even provided names of two of those local residents to the investigators (see paragraphs 11 and 12 above). However, the investigators followed up on that information only two years later, in June 2012, and only upon the superiors' direct order to this end (see paragraph 23 above). Further, the information provided by the victim's brother at the very beginning of the investigation concerning the possible identities of the perpetrators (see paragraph 13 above) was never checked, despite the applicants' subsequent requests (see paragraphs 18 and 26 above) and the investigators' superiors' direct order to this end (see paragraph 22 above). Despite the direct orders of their superiors, the investigators failed to question the officers who had manned the checkpoint at the time of incident, while questioning the officers who had manned it after the events in question (see paragraph 15 above). Furthermore, despite the applicants' consistent requests, the investigators failed to question the local law-enforcement officials, including officer S. Kh. who had been involved in the incident with Mr Tsechoyev in April 2010 (see paragraph 6 above). The materials in the Court's possession reveal that crucial steps, which should have been taken as soon as the relevant information had been obtained, were never taken. The repeated suspensions in the proceedings, while the necessary steps had not been taken, exacerbated the unnecessary protraction and the loss of time.

43. The Court further observes that the first and second applicants were granted victim status in the criminal case (see paragraphs 14 and 16 above).

However, they could not effectively pursue their legitimate interests in those proceedings as they had not been informed of the main procedural decisions taken by the investigators or provided with timely access to the investigation file (see paragraphs 18, 20 and 26 above).

44. Given the shortcomings of the investigations indicated above and the Government's lack of comment on the matter, the Court holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the killing of Mr Gelani Tsechoyev, in breach of Article 2 of the Convention in its procedural aspect.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicants did not claim pecuniary damage. As for non-pecuniary damage, they left the determination of the amount to the Court.

47. The Government stated that the award should be made in line with the Court's case-law on the matter.

48. The Court awards the applicants 20,000 euros (EUR) jointly in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

49. The applicants also claimed EUR 4,797 for the costs and expenses incurred before the Court.

50. The Government made no comment under this head.

51. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicants the sum of EUR 2,000, plus any tax that may be chargeable to the applicants.

C. Default interest

52. 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 procedural aspect of Article 2 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicants jointly, within three months, the following amounts:
 - (i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid to the applicants' representatives' account as indicated by the applicants;
 - (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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 5 October 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Peeter Roosma
President