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CRIMEA: Family denied body for Islamic burial

By Felix Corley, Forum 18 (<https://www.forum18.org>)

The Russian Investigative Committee refuses to release the body of Nabi Rakhimov for burial. Investigator Aleksei Skorin refused to explain why. The Russian FSB shot Rakhimov dead on 11 May in disputed circumstances while allegedly trying to arrest him.

"Under the norms of Islam, in any circumstances the deceased must be buried within 24 hours before the setting of the sun," the lawyer Lutfiye Zudiyeva notes. Russian law denies the return of bodies of those killed in "terrorist" operations. In 2007, Russian Constitutional Court Judge Anatoly Kononov described this provision as "absolutely immoral, reflecting the most uncivilised, barbaric and base views of previous generations".

Three months after the Russian FSB security service shot dead Nabi Rakhimov on 11 May in disputed circumstances, the Russian authorities are still refusing to return his body. The Investigative Committee cites a Russian law that denies the return of bodies of those killed in "terrorist" operations. The family and supporters deny that Rakhimov was a terrorist and insist they want to give him a burial in accordance with Islamic ritual.

"Under the norms of Islam, in any circumstances the deceased must be buried within 24 hours before the setting of the sun," the lawyer and human rights defender Lutfiye Zudiyeva told the Ukrainian news website Fakty. Local people have also expressed fear that the Russian authorities could cremate Rakhimov's body, which would violate the Islamic prohibition on cremation (see below).

On 9 August, a court in the Crimean capital Simferopol rejected Rakhimov's widow's challenge to the Investigative Committee's refusal to return her husband's body. Her lawyer Siyar Panich said they would be appealing against the court decision to Crimea's Supreme Court (see below).

Senior Investigator Aleksei Skorin of the Investigative Committee's Department for Especially Important Cases would not discuss with Forum 18 why he refuses to hand back Rakhimov's body for burial (see below).

December 2002 amendments to Russia's Burial and Funeral Law introduced the provision in cases of individuals killed in "terrorist" operations: "Bodies of such individuals are not handed over for burial and the place of burial is not communicated." A 2007 Constitutional Court decision upheld the provision (see below).

But in a dissenting opinion, Judge Anatoly Kononov described the refusal to return bodies or specify the place of burial as "absolutely immoral, reflecting the most uncivilised, barbaric and base views of previous generations" (see below).

Russian law violates international law

Russia began to impose in Crimea its restrictions on the exercise of freedom of religion or belief – including its anti-"extremism" laws – following its March 2014 annexation of Crimea from Ukraine. Russia's illegal annexation of Crimea (<https://www.nhc.no/en/qa-breaches-of-international-law-and-human-rights-issues-2/>) is not recognised by Ukraine or internationally.

In cases from Belarus and Russia, international bodies have repeatedly ruled that refusing to hand over a body or revealing the place of burial amount to "inhuman treatment" of surviving relatives. In 2012 the United Nations (UN) Human Rights Committee made such a finding in the case of an executed prisoner in Belarus. This referred to earlier rulings in cases from Belarus, Uzbekistan and Tajikistan (see below).

The European Court of Human Rights in Strasbourg has issued several judgments in cases from Russia – most recently in April 2021 - where officials have refused to return the bodies of individuals killed in "anti-terrorist" operations (see below).

December 2002 amendments to Russia's Burial and Funeral Law introduced a new Article 14.1, which declared: "The burial of individuals whose criminal cases were halted because of their death in connection with their participation in terrorist activity, which occurred as a result of the prevention of such terrorist acts, is carried out in the procedure established by the government."

Article 14.1 added: "Bodies of such individuals are not handed over for burial and the place of burial is not communicated."

A 20 March 2003 Russian government Decree implementing the provisions of the new Article 14.1 specified that "special burial services" appointed by the local administration conduct any burial or cremation, including preparation of the body, providing a coffin and transporting the body to the place of burial or cremation.

In its October 2012 ruling against state refusals to hand over a body and disclose a place of burial, the UN Human Rights Committee ruled that: "The State party is also under an obligation to prevent similar violations in the future" by amending laws (see below).

Shot dead in disputed circumstances

On the morning of 11 May 2021, the Russian FSB security service and Rosgvardiya (National Guard) raided a half-built home in the village of Dubki on the western edge of the Crimean capital Simferopol. A 49-year-old Uzbek national, Nabi Rakhimov, who had lived with his family in Crimea since 2015, was working on the house. FSB security service officers shot him dead as they tried to arrest him. That same day, the FSB detained for questioning the home owner and family in Dubki.

That morning officers also searched the Rakhimov family home in the village of Zavetnoe in eastern Crimea, detaining his widow, Sokhiba Burkhanova.

Imam Dilyaver Khalilov, who lives in the same village and knows the family, complained that the FSB "came for the house search as if on purpose in this blessed month of Ramadan, when people were not sleeping, were praying, when it was the Night of Power [Qadr Night, when Muslims believe the Koran was sent down from heaven]", he told the Ukrainian news website Fakty on 27 May.

The FSB security service insisted that Rakhimov was offering armed resistance when its officers tried to arrest him. "In the course of the exchange of fire, the fighter was neutralised," the Crimean FSB told the Russian news agency Izvestiya on 11 May. Rakhimov's family and their supporters strongly dispute the claim that he was armed or would have fought the FSB.

Refusal to hand over body for Islamic burial

"Under the norms of Islam, in any circumstances the deceased must be buried within 24 hours before the setting of the sun," the lawyer and human rights defender Lutfiye Zudiyeva told Fakty.

On 12 May, the day after Rakhimov was shot dead, Muslims gathered at the family home in the village of Zavetnoe expecting the funeral to take place. Only then did they find out that the Investigative Committee was refusing to hand over the body.

The lawyer Siyar Panich appealed on 12 May to Major-General Vladimir Terentyev, head of Crimea's Investigative Committee, to get access to Rakhimov's body so that it could be handed over to relatives for an Islamic burial. Rakhimov's widow, Sokhiba Burkhanova, lodged a similar request to Major-General Terentyev on 15 May.

The Crimean Investigative Committee ignored the lawyer's written request, human rights group Crimean Solidarity noted on 6 July. Panich then took a case to Simferopol's Kiev District Court.

The Investigative Committee then responded on 1 June, saying that a "judicial medical expert examination" of Rakhimov's body was still underway.

On 24 June, considering that the Investigative Committee had had enough time to complete the medical examination, Panich again wrote to the Investigative Committee requesting the return of Rakhimov's body for burial.

Senior Investigator Aleksei Skorin of the Investigative Committee's Department for Especially Important Cases responded on 25 June that the body could not be released under Russian Article 14.1 of the Burial and Funeral Law.

Senior Investigator Skorin refused to discuss with Forum 18 on 12 August why he refuses to hand back Rakhimov's body for burial. He then put the phone down.

Another lawyer involved in the case, Edem Semedlyayev, told Crimean Solidarity that the defence was angered by the response "as no one has cancelled the presumption of innocence" and that no court verdict finding Rakhimov guilty of participating in terrorist activity was known.

Lawyers have repeatedly sought access to any case materials against Rakhimov, but the Investigative Committee has refused to release them.

Local people have also expressed fear that the Russian authorities could cremate Rakhimov's body, which would violate the Islamic prohibition on cremation.

Court rejects widow's challenge

On 9 August, Judge Mikhail Belousov of Simferopol's Kiev District Court rejected Burkhanova's appeal against Senior Investigator Skorin's decision that Rakhimov's body cannot be handed over for burial, according to the decision seen by Forum 18.

Senior Investigator Skorin, who was present in court for the hearing, told the court that "the initial investigation in the case is still underway and it is possible in the case that additional or a second examination of Rakhimov's body might be conducted".

Lawyer Panich complained that Judge Belousov's decision contains "absolutely no reasoning". "As reasoning, the judge in one paragraph indicates that 'the appeal was considered and, on the basis of materials provided by the investigator, no violations were observed'," he told Crimean Solidarity after the hearing.

The Lawyer said that Investigator Skorin had failed to justify his written refusal to return Rakhimov's body by failing to explain the circumstances of who or what he was investigating.

Panich added that an appeal against the 9 August decision would be lodged to Crimea's Supreme Court in Simferopol.

Threatened deportation

Meanwhile, following her detention on the day her husband was shot dead, the Russian authorities have held Burkhanova as they seek her deportation to her native Uzbekistan.

On 12 May, Soviet District Court found her guilty under Russian Administrative Code Article 18.8 ("Violation by a foreign citizen or stateless person of the residence regime of the Russian Federation, taking the form of the absence of documents confirming the right to residence in the Russian Federation"), fined her 2,000 Russian Roubles and ordered her deportation. They then took her to a deportation centre in Russia's Krasnodar Region. Russia's Crimean Supreme Court rejected her appeal on 28 May.

In an interim decision in a case lodged by Burkhanova against Russia on 27 May (Application No. 26760/21), the European Court of Human Rights in Strasbourg that same day instructed Russia to refrain from deporting her to Uzbekistan while the ECtHR is considering the case, which it will do as a priority.

Earlier failed Russian challenge to denial of bodies

Following the October 2005 killing of armed insurgents in Nalchik (<https://www.rferl.org/a/1062095.html>), in Kabardino-Balkariya in southern European Russia, and their subsequent secret cremation, several relatives of those killed tried to challenge Russian Article 14.1 of the Burial and Funeral Law, which had been added in December 2002 amendments.

On 28 June 2007, Russia's Constitutional Court finally rejected their challenge to the legality of the provision.

"The burial of those who have taken part in a terrorist act," the Constitutional Court ruling declared, "in close proximity to the graves of the victims of their acts, and the observance of rites of burial and remembrance with the paying of respects, as a symbolic act of worship, serve as a means of propaganda for terrorist ideas and also cause offence to relatives of the victims of the acts in question, creating the preconditions for increasing inter-ethnic and religious tension."

The Constitutional Court said it was therefore lawful for parliament to prescribe "special arrangements governing the burial of individuals whose death occurred as a result of the interception of a terrorist act in which they were taking part".

"Absolutely immoral, reflecting the most uncivilised, barbaric and base views"

One Constitutional Court Judge issued a dissenting opinion, which was attached to the ruling. "The impugned norms banning the return of the deceased's bodies to their relatives and providing for their anonymous burial are," Judge Anatoly Kononov wrote, "in our view, absolutely immoral, reflecting the most uncivilised, barbaric and base views of previous generations."

Judge Kononov added: "The right of every person to be buried in a dignified manner in accordance with the traditions and customs of their family hardly requires special justification or even to be secured in written form in law. This right is clearly self-evident and stems from human nature as, perhaps, no other natural right."

And Judge Kononov continued: "Equally natural and uncontested is the right of every person to conduct the burial of a person who is related and dear to them, to have an opportunity to perform one's moral duty and display one's human qualities, to bid farewell, to grieve, mourn and commemorate the deceased, however they may be regarded by society and the state, to have the right to a grave,

which in all civilisations represents a sacred value and the symbol of memory."

UN Human Rights Committee: Refusing to hand over body "inhuman treatment"

In Belarus the regime refuses to hand over bodies of those sentenced to death and executed (https://www.forum18.org/archive.php?article_id=2612). Article 175, Part 5 of the Criminal Enforcement Code states: "Bodies are not handed over for burial and the place of burial is not communicated."

Vladislav Kovalev was executed in March 2012 after being sentenced to death for alleged involvement in the April 2011 bombing in the Minsk metro. He, his family and human rights defenders rejected the charges. After his execution, his mother, Lyubov Kovaleva, tried to claim her son's body for a Christian burial, telling Forum 18 that "it is important to give Vladislav - like other people - a Christian burial". The authorities refused (https://www.forum18.org/archive.php?article_id=1969).

In response to Lyubov Kovaleva's and her family's complaint, in October 2012 the UN Human Rights Committee found (CCPR/C/WG/106/DR/2120/2011 (<https://juris.ohchr.org/Search/Details/1465>)) that, among other violations, Belarus had violated Article 7 ("Freedom from torture and cruel, inhuman or degrading treatment or punishment") of the International Covenant on Civil and Political Rights (ICCPR).

The Committee stated: "The complete secrecy surrounding the date of the execution and the place of burial, as well as the refusal to hand over the body for burial in accordance with the religious beliefs and practices of the executed prisoner's family have the effect of intimidating or punishing the family by intentionally leaving it in a state of uncertainty and mental distress".

"The State party," the UN Human Rights Committee ruled, "is under an obligation to provide the authors with an effective remedy, including appropriate compensation for the anguish suffered, and disclosure of the burial site of Mr. Kovalev."

The Human Rights Committee added that: "The State party is also under an obligation to prevent similar violations in the future" by amending laws "so as to bring it in line with the State party's obligations under article 7 of the Covenant".

The Committee did not examine Kovaleva's and her family's claim that the Belarusian authorities had also violated the ICCPR's Article 18 ("Freedom of thought, conscience and religion").

ECtHR decisions

The European Court of Human Rights (ECtHR) in Strasbourg has issued several judgments in cases from Russia – most recently in April 2021 - where officials have refused to return the bodies of individuals killed in "anti-terrorist" operations.

Zarema Gatsalova, the widow of one of those killed by Russian security forces in Nalchik in 2005 and whose body was not returned but cremated in secret (see above), brought a case to the ECtHR in 2010 (Application No. 41318/10). In a decision of 20 April 2021 (<http://hudoc.echr.coe.int/eng?i=001-209318>), which became final on 20 July 2021, the Court found that Russia had violated her rights in its refusal to return her late husband's body and its failure to provide an effective remedy to challenge this denial.

Gatsalova also stated that the denial of the return of the body was a violation of Article 9 of the European Convention on Human Rights ("Freedom of thought, conscience, and religion"). However, given its findings that Russia had violated Gatsalova's other rights, the ECtHR chose not to examine the specific claim under Article 9.

In an individual partly dissenting opinion appended to the judgment, one of the ECtHR Judges, Darian Pavli, referred to Gatsalova's submission to the Court and declared that "the Respondent Government's refusal to swiftly release the corpse [of the applicant's husband] and its choice to cremate instead of burying the corpse constitute[d] a serious interference with her freedom of religion". Judge Pavli quoted Gatsalova's submission: "According to the Caucasian traditions and Islam this [cremation] is categorically unacceptable."

Judge Pavli argued that the ECtHR should have examined the case under Article 9 also. "It is one thing not to return the body to the family; it is something else to dispose of the body in a manner which the applicant alleges is incompatible with the basic tenets of her religion," he wrote. "The practice of forced cremation raises serious issues from the standpoint of religious freedom, as demonstrated by the recent controversies on the disposal of the bodies of COVID-19 victims." (END)

Full reports on freedom of thought, conscience and belief in Crimea (<https://www.forum18.org/archive.php?query=&religion=all&country=86>)

For more background, see Forum 18's Crimea religious freedom survey (https://www.forum18.org/archive.php?article_id=2051)

Forum 18's reports and analyses on freedom of thought, conscience and belief in Russia within its internationally-recognised territory (<https://www.forum18.org/archive.php?query=&religion=all&country=10>)

Forum 18's compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion and belief commitments (https://www.forum18.org/archive.php?article_id=1351)

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