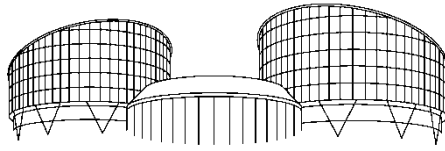


La Corte EDU sul rispetto della vita privata e familiare (CEDU, sez. III, sent. 20 aprile 2021, ric. n. 41318/10)

La decisione resa al caso che si segnala ha ad oggetto il ricorso presentato contro la Federazione russa da una cittadina che ha lamentato la violazione dell'art. 8 CEDU. In particolare, la norma convenzionale che, come noto, tutela il rispetto della vita privata e familiare è stata considerata violata in seguito alla negata restituzione – da parte del governo russo – alla ricorrente del corpo del coniuge defunto, deceduto durante un attacco armato contro le autorità nazionali. L'avvenuto decesso era stato notificato alla famiglia ed era stata disposta, altresì, la cremazione collettiva di tutte le persone decedute in quell'occasione, prescindendo dalle diverse decisioni individuali. Del resto, ha osservato la ricorrente, di tale decisione non vi era stata nessuna comunicazione. Altrimenti detto, per le autorità nazionali la decisione presa era non solo fondata sulla necessità di tutelare l'interesse della sicurezza pubblica e la prevenzione del disordine, ma anche conforme alla legge nazionale.

La Corte EDU sulla dedotta violazione dell'art. 8 CEDU ha constatato che il caso di specie si inserisce nel solco di decisioni analoghe e rese per i medesimi profili qui lamentati. In ogni caso, il rifiuto di restituire ai familiari il corpo del defunto ai fini della sepoltura ha integrato senz'altro un'interferenza dell'autorità pubblica nella vita privata e familiare ai sensi dell'art. 8 CEDU. La decisione di non restituire il corpo del deceduto e, per conseguenza, quella della cremazione collettiva avrebbe potuto anche trovare giustificazione in base alla norma convenzionale, ma qui per i giudici di Strasburgo la natura automatica del provvedimento non ha lasciato alle autorità nazionali quel margine di apprezzamento circa la sua reale e concreta opportunità. In effetti, in assenza di un dovuto test di proporzionalità tra gli interessi in gioco e, in specie, tra il diritto al rispetto della vita familiare e privata e l'obiettivo legittimo di sicurezza pubblica era stato sacrificato ed oltremodo leso l'art. 8. Nella medesima direzione, la Corte si è pronunciata sulla dedotta violazione dell'art. 13 della Convenzione. Per questo profilo, essa ha ritenuto il Governo russo incapace di dimostrare e di assicurare un'effettiva supervisione giudiziaria della decisione di non restituire il corpo del defunto e, perciò, era stato impedito di fatto ai parenti del defunto l'esperimento di un ricorso effettivo. In virtù di tutto quanto stabilito, la Corte ha dichiarato la violazione dell'art. 13 CEDU in combinato disposto con l'art. 8 e disposto il pagamento delle spese ai sensi dell'art. 44 par. 2 CEDU.



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

THIRD SECTION

CASE OF XXX v. RUSSIA

(Application no. 41318/10)

JUDGMENT
STRASBOURG

20 April 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of XXX v. Russia,

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

Paul Lemmens, *President,*

Dmitry Dedov,

Georges Ravarani,

María Elósegui,

Darian Pavli,

Anja Seibert-Fohr,

Peeter Roosma, *judges,*

and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 41318/10) 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 Zarema Akhmedovna XXXa (“the applicant”), on 16 July 2010;

the decision to give notice to the Russian Government (“the Government”) of the complaints concerning the refusal to return the body of the applicant’s deceased husband and the lack of an effective domestic remedy in that regard, and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 23 March 2021,

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

INTRODUCTION

1. The case concerns the Russian authorities’ refusal to return the body of the applicant’s deceased husband, who had allegedly participated in the attack on XXX in the Republic of Kabardino-

Balkariya on 13 October 2005 and was killed shortly thereafter, and the lack of an effective domestic remedy in that regard.

THE FACTS

2. The applicant was born in XXX and lives in XXX. She was represented by lawyers from Stichting Russian Justice Initiative, a non-governmental organisation (NGO) based in Utrecht, the Netherlands, in collaboration with another NGO, Astreya.

3. The Government were represented by Mr G. Matyushkin, the former Representative of the Russian Federation to the European Court of Human Rights.

4. The facts of the case are for the most part identical to those described in the Court's judgments in *Sabanchiyeva and Others v. Russia* (no. 38450/05, ECHR 2013 (extracts)), *Arkhestov and Others v. Russia* (no. 22089/07, 16 January 2014) and *Zalov and Khakulova v. Russia* (no. 7988/09, 16 January 2014), and may be summarised as follows.

I. THE ATTACK OF 13 OCTOBER 2005 AND SUBSEQUENT EVENTS

5. The applicant submitted that she was the wife of Mr XXX, who was born on XXX and who had participated in the attack on the law-enforcement authorities in the town of XXX on 13 October 2005 and died on the same date or shortly afterwards.

6. The events of 13 and 14 October 2005 were summarised by the Court in its judgment in *Sabanchiyeva and Others* (cited above, §§ 6-7).

7. According to the documents submitted by the applicant, the body of Mr XXX was identified by his mother on 21 October 2005. On 18 January 2006 his identity was confirmed by the results of a DNA test ordered on 10 November 2005.

8. On an unknown date, the applicant was furnished with her husband's death certificate, which indicated 13 October 2005 as the date of death and 10 November 2005 as the date of issue.

9. It appears that following the events described, on several occasions the applicant and the parents of her late husband requested various officials to return his body for burial. The requests either remained unanswered or were refused.

II. CRIMINAL CASE No. 25/78-05

10. On 13 October 2005 the authorities instituted criminal proceedings no. 25/78-05 in connection with the attack in XXX.

11. The course of the investigation was summarised by the Court in *Sabanchiyeva and Others* (cited above, §§ 16-17).

12. The applicant did not have any procedural status in the criminal proceedings in case no. 25/78-05.

13. On 13 April 2006 the investigating authority terminated the criminal proceedings in respect of the ninety-five deceased on account of their deaths, having taken an individual decision in respect of each of them.

14. The decision of 13 April 2006 in respect of Mr XXX stated that his body, together with the bodies of some of the other participants in the attack of 13 October 2005, had been located on 15 October 2005 in the courtyard of the Republican Department of the Federal Service for the Execution of Penalties at 2A Gazovaya Street, XXX. The investigators had found several Kalashnikov assault

rifles, an IZH-79 gas pistol converted to fire 9 mm ammunition, multiple cartridges and spent casings, and other ammunition near the corpses. The subsequent expert report identified the cause of death as a gunshot wound to the chest which had damaged the fifth and seventh ribs, diaphragm and liver, leading to massive loss of blood and haemorrhagic and traumatic shock.

15. In view of the evidence collected, the investigation concluded that at around 9 a.m. on 13 October 2005 the deceased, acting in concert with other participants, had carried out a pre-planned and armed attack on the Republican Department of the Federal Service for the Execution of Penalties. The attack had resulted in the deaths of at least four persons and the wounding of nine others.

16. The Prosecutor General's Office notified the mother of the deceased of the above decision on 14 April 2006, but no copies of the decision in question were attached to the notification.

17. On 22 June 2006 the bodies of ninety-five presumed terrorists were cremated. The cremations took place pursuant to a decision of 15 May 2006 not to return the bodies of the deceased to their families. In contrast to the individual decisions of 13 April 2006, the decision of 15 May 2006 referred to the deceased persons collectively. The text of the decision is reproduced, *inter alia*, in *Sabanchiyeva and Others* (cited above, § 27).

18. According to the applicant, neither she nor any other relatives of her late husband were notified of the decision of 15 May 2006 or of the cremation that had taken place on 22 June 2006.

III. JUDICIAL REVIEW OF THE DECISIONS OF 13 APRIL AND 15 MAY 2006

19. It appears that initially the applicant did not attempt to challenge the decisions of 13 April and 15 May 2006. Attempts by the relatives of some of the other deceased to obtain judicial review of the respective decisions proved to be futile, as the courts refused to examine their arguments.

20. The relatives of some of the other deceased participants in the attack contested the legislation governing the interment of terrorists before the Constitutional Court. Their initial complaints were rejected as premature. Eventually, some of the complaints were accepted for examination.

21. On 28 June 2007 the Constitutional Court delivered a judgment (no. 8-P), in which, in essence, it rejected their complaints alleging that section 14(1) of the Interment and Burial Act and Decree no. 164 of the Government of the Russian Federation of 20 March 2003 were unconstitutional. The ruling stated, in particular, that the impugned legal provisions were, in the circumstances, necessary and justified.

22. The ruling further noted that applying the measures prescribed in the legislation could be regarded as justified if proper procedural safeguards, such as effective judicial review, were in place to protect individuals from arbitrariness. The court noted that Articles 123 to 127 of the Code of Criminal Procedure provided for such a review.

23. In sum, the Constitutional Court upheld the impugned provisions as being in conformity with the Constitution but at the same time interpreted them as requiring that the authorities refrain from burying bodies unless a court had confirmed the competent authority's decision.

24. The relevant extracts from the ruling of the Constitutional Court are reproduced, *inter alia*, in the Court's judgment in *Sabanchiyeva and Others* (cited above, §§ 33-37).

25. After the Constitutional Court's judgment of 28 June 2007, the domestic courts agreed to review the formal lawfulness of the decisions of 13 April and 15 May 2006. However, the domestic courts were still not able to review the need to apply the measures set out in section 14(1) of the Interment and Burial Act and Decree no. 164 of 20 March 2003 in individual cases.

26. The applicant did not contest the decision of 15 May 2006 before the domestic courts. Instead, she referred in her submissions to the judgment of 3 July 2008 of the XXX Town Court upon an application lodged by one of the applicants in the case of *Zalov and Khakulova* (cited above). In that case, the court had quashed, *inter alia*, the decision of 15 May 2006 and held that it had been premature. On 12 August 2008 the Supreme Court of the Republic of Kabardino-Balkariya upheld that judgment on appeal (*ibid.*, §§ 35-40).

27. The applicant subsequently challenged the actions of the authorities and the decision of 13 April 2006 before the courts.

28. By a judgment of 17 February 2009, the XXX Town Court partly granted the applicant's claims. In particular, the court quashed the decision of 13 April 2006 to terminate the criminal proceedings in respect of the applicant's husband because of his death. The court noted that the decision of 13 April 2006 had failed to take account of the new legislation on terrorism, adopted on 6 March and 27 June 2006. The court ordered the prosecution authorities to examine the relevant issues afresh.

29. Both parties appealed against the judgment.

30. The Supreme Court of the Republic of Kabardino-Balkariya upheld the judgment of 17 February 2009 on 21 April 2009.

31. On 30 December 2009 the applicant lodged an application with the investigative authorities, asking them to provide her with information about the execution of the judgments of 3 July 2008 and 17 February 2009.

32. On 8 February 2010 the Chief Investigation Directorate in the Southern Federal Circuit of the Investigation Committee of the Russian Federation replied that the decision of 13 April 2006 was neither unlawful nor unfounded. The applicant was informed that the secret burial of her husband's body had been performed in full compliance with the domestic law and in accordance with the decision of 15 May 2006. The investigative authority also explained that the applicant could not be granted access to the material in the criminal case file as she had no procedural status in the relevant criminal proceedings.

33. On 10 February 2010 the Prosecutor General's Office of the Russian Federation replied that on 8 February 2010 the republican prosecutor's office had lodged a request for supervisory review of the judgment of 17 February 2009 and the subsequent appellate decision of 21 April 2009. They also noted that the applicant had not lodged any complaint against the decision of 15 May 2006, and that she could request information about the outcome of criminal case no. 25-78-05 from the Investigation Committee.

34. The parties have not submitted any information about subsequent developments in the relevant domestic cases.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

35. For a summary of the relevant domestic law and other relevant sources, see *Sabanchiyeva and Others* (cited above, §§ 33-37 and 65-96) and *Maskhadova and Others v. Russia* (no. 18071/05, §§ 116-50, 6 June 2013).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

36. Relying on Article 8 of the Convention, the applicant complained about the authorities' refusal to return the body of her deceased husband. Article 8 of the Convention reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

37. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

38. The Government did not contest the applicant's allegations and referred to the Court's findings in its judgment in *Sabanchiyeva and Others* (no. 38450/05, ECHR 2013 (extracts)). The Government suggested that the applicant's complaint be examined in the same manner and admitted that there had been a violation of Article 8 of the Convention.

39. In her reply to the Government's observations, the applicant also relied on the Court's findings in *Sabanchiyeva and Others*, and insisted on the disproportionate character of the measure applied by the authorities.

40. The Court observes that both parties to the case relied in their written submissions on the Court's findings in *Sabanchiyeva and Others* (cited above). The Court further notes that that judgment, as well as the judgments in *Zalov and Khakulova v. Russia* (no. 7988/09, 16 January 2014), and *Arkhestov and Others v. Russia* (no. 22089/07, 16 January 2014), concerned the same attack that took place in XXX on 13 October 2005 and the events that followed, and that the applicants in those cases raised similar complaints under Article 8 of the Convention with regard to the domestic authorities' refusal to return the bodies of their deceased relatives pursuant to the decision of 15 May 2006.

41. In those cases the Court found that the measure in question had constituted an interference with the applicants' "private life" and "family life" within the meaning of Article 8 of the Convention, and that it could be considered as having been taken in the interests of public safety, for the prevention of disorder and for the protection of the rights and freedoms of others. However, having regard to the automatic nature of the measure and the authorities' failure to give due consideration to the principle of proportionality, the Court concluded that the measure in question had not struck a fair balance between the applicants' right to the protection of their private and family life, on the one hand, and the legitimate aims of public safety, prevention of disorder and the protection of the rights and freedoms of others on the other, and that the respondent State had overstepped any acceptable margin of appreciation in this regard (see *Sabanchiyeva and Others*, §§ 117-47; *Zalov and Khakulova*, §§ 67-96; and *Arkhestov and Others*, §§ 73-102, all cited above).

42. The Court finds no reason to arrive at a different conclusion in the present case.

43. It follows that there has been a violation of the applicant's right to respect for her private and family life, as guaranteed by Article 8 of the Convention, as a result of the decision of 15 May 2006.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 8

44. Relying on Article 13 of the Convention taken in conjunction with Article 8, the applicant also complained about the lack of an effective remedy in respect of the authorities' refusal to return the body of her deceased husband. Article 13 of the Convention provides:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

45. On the basis of the material submitted, the Court observes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that this part of the case is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

46. The Government referred to the Court's findings in *Sabanchiyeva and Others* (cited above) and suggested that the applicant's complaint be examined in the same manner and a violation of Article 13 of the Convention taken in conjunction with Article 8 be found in the present case.

47. In her reply to the Government's observations, the applicant maintained her complaint and also relied on the Court's findings in *Sabanchiyeva and Others*.

48. The Court notes that the relevant general principles were summarised in its judgments in *Sabanchiyeva and Others* (cited above, §§ 151-52) and *Maskhadova and Others v. Russia* (no. 18071/05, 6 June 2013, §§ 242-43).

49. The Court further observes that both parties to the present case referred in their written submissions to the Court's findings in *Sabanchiyeva and Others*. The Court further notes that that judgment, as well as the judgments in *Zalov and Khakulova* and *Arkhestov and Others* (both cited above), concerned the same attack in XXX on 13 October 2005 and the events that followed, and that the applicants in those cases raised similar complaints under Article 13 of the Convention taken in conjunction with Article 8 with regard to the lack of an effective remedy in respect of the authorities' refusal to return the bodies of their deceased relatives pursuant to the decision of 15 May 2006.

50. In the above-mentioned judgments the Court found that the Government had been unable to demonstrate that the domestic legal system provided for effective judicial supervision in respect of the decision of 15 May 2006 and that the relatives of the deceased had not had an effective remedy in respect of the Convention violations they had alleged (see *Sabanchiyeva and Others*, §§ 153-56; *Zalov and Khakulova*, §§ 102-05; and *Arkhestov and Others*, §§ 108-11, all cited above).

51. Having examined all the material submitted to it, the Court does not find any fact or argument capable of persuading it to reach a different conclusion as to the merits of this complaint.

52. Accordingly, the Court concludes that there has been a violation of Article 13 of the Convention taken in conjunction with Article 8.

III. ALLEGED VIOLATION OF ARTICLES 3 AND 9 OF THE CONVENTION

53. The applicant complained in addition to her submissions under Article 8 of the Convention that the refusal of the authorities to return the body of her deceased husband had been contrary to Articles 3 and 9 of the Convention.

54. On the basis of the material submitted, the Court observes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that this part of the case is not inadmissible on any other grounds. It must therefore be declared admissible.

55. Regard being had to the particular circumstances of the present case and to the reasoning which led it to find a violation of Article 8 and Article 13 of the Convention taken in conjunction with Article 8, the Court finds that there is no cause for a separate examination of the same facts from the standpoint of Articles 3 and 9 (see also *Sabanchiyeva and Others*, § 158, and *Maskhadova and Others*, §§ 248-49, both cited above).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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

57. The applicant alleged that she had sustained non-pecuniary damage and claimed compensation in the amount of 10,000 euros (EUR). The applicant also requested that the Court order the respondent State to disclose the information regarding the circumstances of her husband’s burial, including the whereabouts of his grave, and to allow unrestricted access to the gravesite for the applicant and other relatives of her deceased husband.

58. The Government submitted that those claims were unfounded and generally excessive, and requested that the Court follow the approach it had taken in its judgment in *Sabanchiyeva and Others* (cited above).

59. The Court considers that, in the circumstances of the present case, the finding of a violation of Article 8 of the Convention, taken alone and in conjunction with Article 13, constitutes sufficient just satisfaction for the applicant (see *Sabanchiyeva and Others*, § 171, and *Maskhadova and Others*, § 258, both cited above).

B. Costs and expenses

60. The applicant also claimed EUR 5,271.95 for the legal and other costs and expenses incurred in the Strasbourg proceedings. She requested that any award under this head be paid directly to Stichting Russian Justice Initiative. In support of her claim, the applicant submitted a conditional fee agreement signed between her and Stichting Russian Justice Initiative and an invoice for the above-mentioned sum.

61. The Government submitted that the amounts claimed were excessive and unjustified. In particular, they noted that the applicant had not incurred any costs and expenses, as the obligation to pay for the services of her representative was conditional on the conclusions reached by the Court.

62. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum.

63. Having regard to the material in its possession, the Court considers it reasonable to award the applicant EUR 2,000 in respect of costs and expenses, plus any tax that may be chargeable to her on that amount, to be paid directly into the bank account of Stichting Russian Justice Initiative.

C. Default interest

64. 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

1. *Declares*, unanimously, the application admissible;
2. *Holds*, unanimously, that there has been a violation of Article 8 of the Convention on account of the decision of 15 May 2006;
3. *Holds*, unanimously, that there has been a violation of Article 13 of the Convention taken in conjunction with Article 8 on account of the lack of an effective remedy in respect of the decision of 15 May 2006;
4. *Holds*, by six votes to one, that in view of its conclusions under Articles 8 and 13 of the Convention, no separate examination is required under Articles 3 and 9 of the Convention;
5. *Holds*, unanimously,
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant on the above amount, to be converted into the currency of the respondent State at the rate applicable at the date of settlement and to be paid into the bank account indicated by the applicant's representatives;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 April 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Paul Lemmens
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Pavli is annexed to this judgment.

P.L.
O.C.

PARTLY DISSENTING OPINION OF JUDGE PAVLI

1. I voted in favour of the unanimous findings of violations of the applicant's rights under Articles 8 and 13 of the Convention. I regret, however, that I cannot agree with the majority's conclusion that no separate examination is required under Article 9 of the Convention.

2. In her complaint under Article 9, the applicant alleged 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”. While the authorities’ refusal to return the body for burial was raised by the applicant under both Articles 8 and 9, the authorities’ decision to cremate the body was only raised as part of her complaint under Article 9. To substantiate the latter complaint, the applicant provided a description of burial rituals prescribed by her Islamic religion. The claim based on the strict rejection of cremation in the Muslim tradition is also clear from the applicant’s statements made in the context of her complaint under Article 3: “According to the Caucasian traditions and Islam this [cremation] is categorically unacceptable” (§ 18 of the applicant’s observations of 22 April 2014). Thus, the applicant raised a genuine and sufficiently argued Article 9 claim with respect to the cremation of her husband’s remains.

3. The majority’s decision not to carry out a separate examination of the Article 9 complaint follows the approach adopted in previous cases concerning substantially the same events, in which the Court examined the Russian authorities’ refusal to return the bodies of the applicants’ relatives under Article 8. The Article 9 complaints based on the same grounds were, in effect, subsumed under the Article 8 examination (see *Sabanchiyeva and Others v. Russia*, no. 38450/05, § 158, ECHR 2013 (extracts); *Arkhestov and Others v. Russia*, no. 22089/07, § 114, 16 January 2014; and *Zalov and Khakulova v. Russia*, no. 7988/09, § 108, 16 January 2014).

4. In my view, however, the current applicant’s Article 9 claim, insofar as it concerns the authorities’ decision to cremate her husband’s body, raises a different issue. 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.

5. In the Islamic tradition (as well as in certain other religions), cremation is considered to violate the dignity of the human body and is therefore strictly forbidden.[1] 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. For example, the International Committee of the Red Cross expressed its concern “about the impact on bereaved families whose loved ones have been cremated against their religious beliefs due to fear of the spread of COVID-19”. [2] In the same vein, four United Nations special rapporteurs concluded in a joint statement that “[t]he imposition of cremation as the only option for handling the bodies confirmed or suspected of COVID-19 amounts to a human rights violation”, calling on States to respect and protect the dignity of the dead and their cultural and religious traditions or beliefs.[3] In particular, the objections of the Jewish and Muslim religious communities in March 2020 led the United Kingdom Government to amend a bill that would have allowed cremations against the express wishes of the deceased and their next of kin.[4]

6. As regards Article 9 itself, it is settled case-law that an act of worship or devotion that forms part of the practice of a religion or belief in a generally recognised form constitutes a “manifestation” of religion or belief within the meaning of Article 9 (see *S.A.S. v. France* [GC], no. 43835/11, § 55, ECHR 2014 (extracts), and *Eweida and Others v. the United Kingdom*, no. 48420/10, § 82, 15 January 2013). As to the manner of burying the dead, the Court dealt specifically with that issue in *Johannische Kirche and Peters v. Germany* ((dec.), no. 41754/98, 10 July 2001). In that case, the applicants, who wished to

build a cemetery with a specific layout in line with their religious beliefs, argued that the refusal to authorise the construction of the cemetery violated their rights under Article 9. The Court held that a refusal to authorise the construction of a cemetery can be construed as a restriction of the right to manifest one's religion within the meaning of Article 9 § 2 of the Convention in so far as the manner of burying the dead and cemetery layout represented an essential aspect of the religious practice of the applicant religious community and its members. It seems obvious that the manner of disposal of mortal remains could give rise to an even more significant interference with religious beliefs.

7. In view of the above, I am unable to agree with the majority's decision to dismiss the genuine Article 9 claim raised by the applicant, and to do so without explanation. Such an approach sits ill with the Court's mandate under Article 19 of the Convention to "ensure the observance of the engagements undertaken" by the States Parties and to uphold *all* the fundamental rights guaranteed by the Convention.

