



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

FIRST SECTION

CASE OF AMUYEVA AND OTHERS v. RUSSIA

(Application no. 17321/06)

JUDGMENT

STRASBOURG

25 November 2010

FINAL

15/09/2011

*This judgment has become final under Article 44 § 2 (c) of the Convention.
It may be subject to editorial revision.*

In the case of Amuyeva and Others v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyeu,
Dean Spielmann,
Giorgio Malinverni,
George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 4 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 17321/06) 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 the four Russian nationals listed below (“the applicants”), on 27 April 2006.

2. The applicants were represented by lawyers of the NGO EHRAC/Memorial Human Rights Centre. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 23 October 2008 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application and to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1). The Government objected to the joint examination of the admissibility and merits of the application. Having considered the Government’s objection, the Court dismissed it.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicants are:

- (1) Mrs Imani Amuyeva, born in 1972;
- (2) Mr Eti Dzhabrailov, born in 1932;

(3) Mr Uvays Israilov, born in 1918; and

(4) Mrs Liza Makhmutmirzayeva, born in 1977.

5. On 6 July 2008 the third applicant died. His son Mr Abdul-Rakhim Israilov, born in 1959, provided a letter of authority expressing his intention to continue the application in his name. For the sake of convenience, he will hereinafter be referred to as “the fifth applicant”.

6. The applicants live in Gekhi-Chu, Urus-Martan district, Chechnya.

A. The killing of the applicants’ four relatives on 7 February 2000

7. The first, third, fourth and fifth applicants belong to the same extended family. The third applicant was the father of Adam (also spelled Adlan) Israilov, born in 1965; Turpal Israilov, born in 1972; and Aslambek Israilov, born in 1971. His son, the fifth applicant, is the brother of Adam, Turpal and Aslambek Israilov. The first applicant is Adam Israilov’s wife. The fourth applicant is Aslambek Israilov’s wife.

8. The second applicant is the father of Aslanbek (also spelled Alik) Dzhabrailov, born in 1968.

9. In the autumn of 1999 military operations by the Russian military and security forces started in Chechnya. According to the applicants, the village of Gekhi-Chu in the Urus-Martan district came under full control of the Russian military forces in December 1999. A military unit was stationed at the outskirts of the village, the state authorities were functioning and there were no clashes in the area. For these reasons the residents had considered that their lives were no longer endangered by the hostilities.

10. In the evening of 6 February 2000 the village came under fire by automatic weapons from the position of the Russian forces about fifty metres away from the edge of the village. The residents were aware that a large group of Chechen fighters had entered the village from the direction of Katyr-Yurt and many had taken shelter in the basements of their houses.

11. In the morning on 7 February 2000 two military helicopters fired missiles upon the village. The village then came under shelling by artillery and from planes.

12. The first, third and fourth applicants live at 72 Shkolnaya Street in Gekhi-Chu in a large residential compound comprised of several houses. One house belonged to the third applicant and another one belonged to his elder son, the fifth applicant. A large number of neighbours and relatives took shelter in their compound. According to them, there were about twenty-five people in the basement of only one of the houses.

13. The second applicant lives at 76 Shkolnaya Street. On 6 and 7 February 2000 he, together with his son Aslanbek Dzhabrailov, was also taking shelter in the basement of the first applicant’s house.

14. At about 2 p.m. on 7 February 2000 the shelling stopped. One of the men looked into the courtyard and saw a group of military servicemen. The

soldiers ordered everyone to come out and lined up the men, women and children in the courtyard.

15. After the residents came out, one serviceman threw a hand-grenade into the basement of the third applicant's house. The explosion damaged the house.

16. The servicemen, who behaved in an aggressive manner, took aside four young men: the third applicant's three sons Aslambek, Adam and Turpal Israilov, and Aslanbek Dzhabrailov, the second applicant's son. The third applicant approached the group because he feared for his sons. The military servicemen told him that they would check whether the young men had participated in illegal armed groups.

17. The servicemen then ordered some of the residents to descend into the basement of a house situated further down in the Shkolnaya Street. Others remained in the courtyard.

18. The fifth applicant also remained in the courtyard. He and other witnesses saw that the servicemen had checked the passports of the four young men, examined their torsos in order to see if they had signs of wearing weapons and then allowed them to get dressed.

19. At that time, there was an exchange of gunfire from the neighbouring house at 74 Shkolnaya Street. A tank and an armoured personnel carrier drove up to that house. The residents later learned that a fighter had taken shelter in the basement of that house and had shot at a Russian soldier and killed him. He was shot dead in response.

20. The military servicemen separated the men, including the fifth applicant, from the remaining group of residents and led them away towards Centralnaya Street. The four young men remained in the courtyard of the first applicant's house, under the guard of military servicemen. Before leaving, the fifth applicant saw his three brothers and Aslanbek Dzhabrailov being escorted into the courtyard at 74 Shkolnaya Street where the exchange of gunfire had taken place. In the meantime, the second and third applicants joined the group of women and children who remained in the third applicant's courtyard. The military assured them that their sons would be released after a check.

21. Ten or fifteen minutes later the people in the courtyard, including the first, third and fourth applicants, heard shots fired in the courtyard of the house at 74 Shkolnaya Street. Some five minutes later the military ordered the residents to go into the fifth applicant's house and wait there.

22. In the meantime, the group of men who had been taken to Centralnaya Street had been examined, one by one, by the military servicemen. The servicemen had led away two brothers from the T. family and another young man, who were later found shot.

23. The fifth applicant was released after the check and returned to his house. The military ordered him to join the other residents inside the house.

24. Sometime later the soldiers left the village. The second applicant went home but did not find his son, Aslanbek Dzhabrailov, there.

25. The fifth applicant went into the courtyard at 74 Shkolnaya Street. There he saw the four bodies of the young men who had been led away by the soldiers. Under the fence-roof (a roof covering part of the courtyard) there were the bodies of Adam Israilov and Aslanbek Dzhabrailov, and further back in the courtyard, face down, Aslambek and Turpal Israilov. The bodies had gunshot wounds. The bodies of Aslanbek Dzhabrailov and Aslambek Israilov also had knife wounds to the back, in the heart area.

26. The fifth body found in the same courtyard was probably that of the fighter who had been killed there earlier.

27. The applicants submitted written statements about the events produced by the first, second, fourth and fifth applicants, as well as by two neighbours, I. A. and Ch. D.

28. The Government did not challenge the facts as presented by the applicants.

B. The official investigation

29. Despite a specific request by the Court, the Government did not disclose any documents from criminal case no. 24037 which had been opened in relation to the matter. The Government stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, because the file contained personal data concerning the participants in the criminal proceedings. They outlined a number of investigative measures taken so far. The parties' submissions in this respect could be summarised as follows.

30. The applicants stated that on 8 February 2000 a group of officials from the Urus-Martan district prosecutor's office ("the district prosecutor's office") and district temporary Department of the Interior (VOVD) arrived in Gekhi-Chu. They questioned several witnesses, examined the site of the shooting and drew up a plan. It also appears that they photographed the bodies.

31. On the following day, 9 February 2000, the four bodies were buried in the local cemetery.

32. One week later an investigator from the district prosecutor's office informed the applicants during a meeting in Gekhi-Chu that a criminal investigation had been opened by that office under Article 105 of the Penal Code (murder). Despite this information, it appears that the criminal investigation was opened only in July 2000 (see below).

33. On 26 February 2000 the Urus-Martan district civil registration office issued death certificates for the four men. The date of death was recorded as 7 February 2000 for all, but the cause of death was noted only for Aslanbek Dzhabrailov - numerous gunshot wounds to the head.

34. On 14 July 2000 an investigator of the Chechnya Prosecutor's Office opened a criminal investigation under Article 105 of the Criminal Code into the deaths of the three Israilov brothers, Aslanbek Dzhabrailov and the unidentified member of the illegal armed group ("the IAG"). According to the Government, this action was prompted by a letter of the deputy Minister of Foreign Affairs, and prior to that date the applicants had not submitted any complaints to the authorities.

35. On 15 July 2000 the file was forwarded for investigation to the district prosecutor's office and assigned number 24037. The decision contained the following passage:

"On 7 February 2000 in Gekhi-Chu... servicemen of the federal forces carried out a special operation with the aim of identifying members of illegal armed groups. At that time [the following] residents of the village, brothers Adlan, Aslambek and Turpal Israilov, Alik Dzhabrailov, and an unidentified member of the IAG stayed in a dugout shelter in the Israilovs' house. In the course of the special operation the member of the IAG committed the murder of a military serviceman, after which the above-mentioned member of the IAG, Adlan, Aslambek and Turpal Israilov and Alik Dzhabrailov were killed".

36. The Government submitted that on an unidentified date the investigation had established the number of the military unit which had taken part in the operation in Gekhi-Chu and had obtained information about two servicemen of that unit who had been killed on 7 February 2000.

37. On 6 October 2000 the second applicant was granted victim status in the criminal investigation concerning the murder of his son. On the same day the fifth applicant was granted victim status. According to the Government, both men had been questioned on the same day. They had confirmed the circumstances of their relatives' deaths, as summarised above.

38. The Government further submitted that on 10 October 2000 the investigator had examined the residential compound of the Israilov family and Z.D.'s neighbouring compound where the bodies had been found. Nothing of relevance to the investigation had been found.

39. The Government submitted that on 10 October 2000 another Israilov brother and Aslanbek Dzhabrailov's mother had been questioned and had given similar testimonies. The investigator had also collected the clothes which the murdered men had been wearing on 7 February 2000 from the family. It appears from the submitted documents that the jackets were returned to the applicants about one month later but it is unclear if any reports or other steps were taken at that time.

40. On 4 December 2000 the investigation was adjourned due to its failure to identify the culprits. The applicants submit that they had only been informed of this decision in November 2005 when they applied to the district prosecutor's office for information while collecting documents required in order to obtain compensation for the deaths of their relatives.

41. On 9 October 2001 the second applicant asked the district prosecutor's office to inform him as to whether a criminal investigation into the murder of his son and the three Israilov brothers by the servicemen had been pending and, if so, who had been in charge of the investigation.

42. On 15 October 2001 the second applicant lodged a request with the district prosecutor's office that he be granted the status of a civil claimant in the criminal proceedings related to the killing of his son by the military servicemen. It does not appear that any answer has been given to the two aforementioned letters.

43. On 18 November 2005, having learnt of the decision to suspend the investigation, the second applicant wrote to the district prosecutor's office. He described in detail the events of 7 February 2000 and asked that the investigation be resumed. In particular, he requested that the serviceman who had been killed on that day be identified and the number of the military unit which had been involved in the operation be disclosed, in order to identify and question the servicemen who had killed the four men and to question the other witnesses of the crime. He also asked the district prosecutor's office to transfer the investigation to the military prosecutor's office.

44. Per the Government's observations, the investigation had been resumed at some point after that. On 28 November 2005 the investigator had again questioned the fifth applicant. On the same day the investigator had collected a statement from the head of the village administration, who had confirmed that the four men had been killed on 7 February 2000 during a security operation.

45. According to the Government, between 30 November and 13 December 2005 the investigator had questioned five relatives of the dead men, including the second and fourth applicant. Their submissions had corroborated the statements previously obtained.

46. On 14 February 2006 the first and fourth applicants wrote to the district prosecutor's office and asked to be granted victim status in the proceedings concerning the murder of their husbands.

47. On 20 February 2006 the first and fourth applicants were granted the status of victims. The Government also submitted that on the same day the first applicant had been questioned. It appears that on 16 March 2006 the investigation was adjourned.

48. Per the Government's observations, the next round of investigation had started in September 2006. On 8 September 2006 the investigator had requested that the commander of the military unit submit a copy of the internal inquiry into the deaths of their two servicemen in Gekhi-Chu on 7 February 2000, as well as copies of forensic reports. According to the Government, this request had been complied with. However, they did not disclose the content or the conclusions of the relevant documents.

49. On 20 September 2006 the investigation questioned a further five witnesses among local residents, including the second and fifth applicants.

50. On 21 September 2006 the investigator again collected the jackets of the murdered men from the fifth applicant. On 22 September 2006 these items were inspected and attached as pieces of evidence to the criminal investigation file. On 24 September 2006 the investigation was again adjourned.

51. A new round of investigation was opened on 1 February 2007. Per the Government's submissions, between 25 February and 10 June 2007 the investigation had collected statements from twelve relatives and neighbours of the dead men, including the applicants. The first applicant had given her consent to the exhumation of her husband's body.

52. On 31 March 2007 the investigator refused to allow the second and fourth applicants to make copies of all the witness statements collected by the investigation. They were allowed to make copies of the decisions to adjourn proceedings.

53. On 20 June 2007 the first and fourth applicants again requested that the district prosecutor's office identify and question the servicemen and commanders of the military units which had taken part in the special operation.

54. According to the Government, the graves of the Israilov brothers and of Aslanbek Dzhabrailov had been inspected on 6 July 2007.

55. The Government further submitted that the progress of the investigation had been supervised by the Investigative Committee of the General Prosecutor's Office. According to the Government, the applicants had been duly informed of all decisions taken during the investigation.

C. Proceedings against law-enforcement bodies

56. On 17 May 2006 the first and the fourth applicants complained to the district prosecutor's office of its failure to effectively investigate the murder of their husbands. They also asked to be granted access to the case file.

57. On 6 July 2006 the first and fourth applicants applied to the Urus-Martan District Court ("the district court"), complaining that the district prosecutor's office had failed to investigate the murder of Adam, Turpal and Aslambek Israilov and Aslanbek Dzhabrailov effectively and had failed to provide a response to their previous complaints. They again asked to be granted access to the case file.

58. On 26 July 2006 the district court partially allowed the complaint against the district prosecutor's office based on the latter's failure to take effective steps to investigate the applicants' relatives' murder. The district court ordered the district prosecutor's office to resume the investigation. The district court noted that the investigators had failed to identify the military and security units responsible for the operation, had failed to

question the commanders of and participants in the operation and to study the documents related to its execution and results, and had failed to question the commanders of the district military and security authorities about the operation. The court granted the applicants access to the case file, stating that the documents in the file were accessible unless they contained secret information and noted that access to the file was essential in order to realise the applicant's right to appeal. As to copying of documents from the case file, the court noted that this right was accorded to victims only upon completion of the investigation, and not when the proceedings were adjourned. On 23 August 2006 the Chechnya Supreme Court upheld the district court's decision.

59. On 19 December 2006 the first and fourth applicants seized the district court with a similar complaint. They noted that the investigation was again adjourned without the necessary steps having been taken. On 2 February 2007 the deputy district prosecutor announced in court that the investigation had been reopened by the district prosecutor's office on 19 December 2006 in order that it be completed. In such circumstances, the district court found that the applicants' complaint had been resolved and dismissed it.

II. RELEVANT DOMESTIC LAW

60. For a summary of the relevant domestic law see *Akhmadova and Sadulayeva v. Russia* (no. 40464/02, §§ 67-69, 10 May 2007).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

61. The applicants complained under Article 2 of the Convention that their four relatives had been deprived of their lives by State agents and that the domestic authorities had failed to carry out an effective investigation of the matter. Article 2 reads:

“1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

A. Admissibility

1. The parties' submissions

62. The Government contended that the complaint should be declared inadmissible. They submitted that the investigation into the murder of the four men had not yet been completed. As victims, the applicants could have challenged any acts or omissions of the investigating or other law-enforcement authorities before a supervising prosecutor, or in court. They also argued that it had been open to the applicants to pursue civil complaints but that they had failed to do so. Accordingly, they argued that the applicants had failed to exhaust domestic remedies.

63. The applicants contested the Government's objection. They stated that the criminal investigation had proved to be ineffective and that complaints to that effect had been futile. With reference to the Court's case-law, they argued that they had not been obliged to apply to the civil courts in order to exhaust domestic remedies. The applicants also argued that they had complied with the six-month time-limit as provided for in Article 35 § 1 of the Convention, because they had only become aware of the ineffectiveness of the domestic investigation in November 2005.

2. The Court's assessment

(a) Compliance with the six-month time-limit

64. The Court reiterates that the purpose of the six-month rule is to promote legal certainty and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. The rule should ensure that it is possible to ascertain the facts of the case before that possibility fades away, making a fair examination of the question at issue next to impossible (see *Kelly v. the United Kingdom*, no. 10626/83, Commission decision of 7 May 1985, Decisions and Reports (DR) 42, p. 205, and *Baybora and Others v. Cyprus* (dec.), no. 77116/01, 22 October 2002). It is not open to the Court to set aside the application of the six-month rule (*Belaousof and Others v. Greece*, no. 66296/01, judgment of 27 May 2004, § 38).

65. The Court further reiterates that in a number of cases concerning ongoing investigations into the deaths of applicants' relatives it has examined the period of time from which the applicant can or should start

doubting the effectiveness of a remedy and its bearing on the six-month time-limit provided for in Article 35 § 1 of the Convention (see *Şükran Aydın and Others v. Turkey* (dec.), no. 46231/99, 26 May 2005; *Elsanova v. Russia* (dec.) no. 57952/00, 15 November 2005; and *Narin v. Turkey*, no. 18907/02, § 50, 15 December 2009). The determination of whether the applicant in a given case has complied with the admissibility criteria will depend on the circumstances of the case and other factors, such as the diligence and interest displayed by the applicants, as well as the adequacy of the investigation in question (see *Narin*, cited above, § 43). The Court has found that in cases concerning instances of violent death, as opposed to disappearances, the ineffectiveness of the investigation will generally be more readily apparent. The requirement of expedition may accordingly require an applicant to bring such a case before the Court within a matter of months, or at most, depending on the circumstances, a very few years after the events (see *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 162, ECHR 2009-...).

66. In the case at issue, the Court notes that the investigation into the applicants' relatives' murder was suspended on 4 December 2000 for failure to identify the suspects. In October 2001 the applicants sought information about the proceedings (see paragraph 40 above) but it does not appear that they received any response. After that, they challenged the decision in question in November 2005, which resulted in the resumption of the investigation. Their application to the Court was lodged on 27 April 2006.

67. The Court notes, first of all, that the applicants were not informed in due time of the decision of 4 December 2000. In the meanwhile, they were aware of the steps taken by the investigation in 2000. Two of the applicants were granted victim status in October 2000 and therefore could expect, by law, to be informed of any significant procedural developments. On two occasions in October 2001 the applicants contacted the district prosecutor's office but received no response. In such circumstances it is reasonable to suggest that in the absence of communication from the investigating authorities, they presumed, at least for some time, that the proceedings remained pending.

68. The Court also considers it important that in November 2005 the applicants successfully lodged a complaint with the district prosecutor's office, following which the investigation was resumed. Per the Government's submissions, between November 2005 and July 2007 more than twenty interviews took place, the remaining applicants were accorded the status of victims, the relevant sites were inspected and other information was obtained (see paragraphs 44-54 above). These measures still failed to bear any fruit as to the outcome of the investigation; however the Court attaches particular weight to the fact that after 2005 the applicants perceived this investigation as effective, as demonstrated by their active stance. Thus,

the applicants successfully challenged the suspension of proceedings in the district court on two occasions in 2006 (see paragraphs 58 -59 above) and demonstrated their willingness to cooperate with the investigation in other important aspects (see, for example, paragraph 51 in fine).

69. It is regrettable that between October 2001 and November 2005 no domestic investigation was pending and that the applicants did not take any steps to remedy this situation. The applicants were eye-witnesses of their relatives' deaths and little doubt persists as to the occurrence of the crime. The Court is of the view that, as the closest relatives of the deceased, the applicants bore a duty to take steps to keep track of the investigation's progress, especially as time is of importance in resolving the issues in such a case. However, in the present case the Court considers that the applicants complied with the requirement to submit their case within "a very few years after the events" (see *Varnava and Others*, cited above, § 162). The Court takes special note of the progress of the investigation and the applicants' conduct after November 2005, and considers that when assessing their compliance with the six-month rule the domestic investigation should be considered as a whole.

70. Finally, the Court would like to stress that the circumstances of the present case should be clearly distinguished from the situations where information purportedly casting new light on the circumstances of a killing may revive the procedural obligation to investigate, even though the substantive claim under Article 2 and the alleged ineffectiveness of the investigation would be out of its temporal jurisdiction (see *Brecknell v. the United Kingdom*, no. 32457/04, § 71, 27 November 2007; *Gasyak and Others v. Turkey*, no. 27872/03, § 60, 13 October 2009). The Court deems it important to reiterate at this juncture that there is little ground to be overly prescriptive as regards the possibility of an obligation to investigate unlawful killings arising many years after the events, since the public interest in obtaining the prosecution and conviction of perpetrators is firmly recognised, particularly in the context of war crimes and crimes against humanity (*Brecknell*, cited above, § 69).

71. In the light of the foregoing, the Court considers that, in the circumstances of the present case, the applicants have complied with the six-month rule in respect of their complaints.

(b) Exhaustion of domestic remedies

72. The Court will examine the arguments of the parties in the light of the provisions of the Convention and its relevant practice (for a relevant summary, see *Estamirov and Others v. Russia*, no. 60272/00, §§ 73-74, 12 October 2006).

73. The Court notes that the Russian legal system provides, in principle, two avenues of recourse for the victims of illegal and criminal acts attributable to the State or its agents, namely civil and criminal remedies.

74. As regards a civil action to obtain redress for damage sustained through the allegedly illegal acts or the unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005, and *Estamirov and Others*, cited above, § 77). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies. The Government's objection in this regard is thus dismissed.

75. As regards criminal law remedies, the Court considers that the Government's objection raises issues concerning the effectiveness of the investigation which are closely linked to the merits of the applicants' complaints. Thus, it decides to join this objection to the merits of the case and considers that the issue falls to be examined below.

(c) Other factors regarding admissibility

76. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The complaint under Article 2 of the Convention must therefore be declared admissible.

B. Merits

1. The parties' submissions

77. The applicants argued that there had been a violation of the right to life in respect of their deceased relatives. They further submitted that the investigation into the murders had been ineffective – both prior to the resumption of proceedings in 2005 and after that date. The prosecutor's office had failed to address numerous omissions noted by the district court. It had also failed to ensure the necessary level of public scrutiny by not informing the applicants of the most important developments in the proceedings.

78. The Government did not dispute the facts as presented by the applicants concerning the deaths of Aslambek, Adam and Turpal Israilov and Aslanbek Dzhabrailov. However they considered that any attribution of guilt was impossible prior to the completion of the domestic investigation. They further contended that the investigation of the incident was pending, that there was no sufficient evidence that the murders had been committed by State agents and that there were therefore no grounds for holding the State liable for the alleged violations of the applicants' rights. As to the

investigation, the Government argued that all possible measures were being taken in order to solve the crime.

2. *The Court's assessment*

(a) **The alleged violation of the right to life**

79. The applicants alleged that the persons who had killed Aslambek, Adam and Turpal Israilov and Aslanbek Dzhabrailov on 7 February 2000 had been State agents. The Government did not dispute any of the factual elements underlying the application and did not provide another explanation of the events. Moreover, they agreed that the documents collected by the domestic investigation supported the applicants' account. However, they stressed that the conclusions as to the identity of the perpetrators should be made by the domestic courts.

80. The Court observes that in its extensive jurisprudence it has developed a number of general principles relating to the establishment of facts in dispute, in particular when faced with allegations under Article 2 of the Convention (for a summary of these, see *Bazorkina v. Russia*, no. 69481/01, §§ 103-109, 27 July 2006). The Court also notes that the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25).

81. The Court notes that despite its request for a copy of the investigation file into the murders, the Government produced no such documents. In previous cases the Court has already found the reference to Article 161 of the Code of Criminal Procedure insufficient to justify the withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-XIII (extracts)).

82. In view of this and bearing in mind the principles referred to above, the Court finds that it can draw inferences from the Government's conduct in respect of the well-founded nature of the applicants' allegations.

83. Having examined the parties' submissions, and drawing inferences from the Government's failure to submit documents which were in their exclusive possession or to provide another plausible explanation for the events in question (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II (extracts)), the Court finds that Aslambek Israilov, Adam Israilov, Turpal Israilov and Aslanbek Dzhabrailov were killed on 7 February 2000 by State servicemen during a security operation.

84. In the absence of any justification in respect of the use of lethal force by State agents, the Court finds that there has been a violation of Article 2 in respect of the four men.

(b) The alleged inadequacy of the investigation

85. The Court has on many occasions stated that the obligation to protect the right to life under Article 2 of the Convention also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. It has developed a number of guiding principles to be followed for an investigation to comply with the Convention's requirements (for a summary of these principles see *Bazorkina*, cited above, §§ 117-119).

86. In the present case, the murder of the applicants' relatives was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

87. The Court notes at the outset that the documents from the investigation file were not disclosed by the Government. It therefore has to assess the effectiveness of the investigation on the basis of the few documents submitted by the parties and the information about its progress presented by the Government.

88. Turning to the facts of the present case, the Court notes a number of serious defects in the investigation, such as delays in the opening of the proceedings and collecting essential statements, securing the evidence and providing information to the next-of-kin. Furthermore, the Court observes that the applicants were not timely informed of the decision to suspend the investigation which was taken in December 2000.

89. However, the Court finds that the investigation's most obvious defect is the absence of any action to identify and question the commanders and servicemen of the military units who had taken part in the security operation in Gekhi-Chu and, eventually, to bring charges against those responsible. These failures were obvious to the supervising prosecutors and courts, who criticised the investigation on several occasions. However, it appears that their orders were ignored. In the Court's view, the astonishing ineffectiveness of the prosecuting authorities in this case can only be qualified as acquiescence in the events.

90. The Government, referring to Article 125 of the Code of Criminal Procedure, argued that the applicants could have sought judicial review of the decisions of the investigating authorities in the context of the exhaustion of domestic remedies. The Court observes that the applicants did, in fact, make use of that remedy on two occasions, which led to the resumption of the investigation. Nevertheless, the district court's interventions did not bring about any tangible results for the applicants. The investigation was repeatedly suspended and resumed, but no significant investigative measures were taken to identify those responsible for the murders. In such circumstances, the Court considers that the applicants could not have been required to challenge every single decision of the district prosecutor's office in court. The Court also recalls its above conclusions that the applicants were not timely informed of the proceedings. Accordingly, the Court

dismisses the Government's preliminary objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

91. In the light of the foregoing, the Court holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the murder of Aslambek, Adam and Turpal Israilov and Aslanbek Dzhabrailov, in breach of Article 2 in its procedural aspect.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

92. The applicants complained that they had been deprived of effective remedies in respect of the aforementioned violation of Article 2, contrary to Article 13 of the Convention, which 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. The parties' submissions

93. The Government contended that the applicants had effective remedies at their disposal as required by Article 13 of the Convention. The applicants had an opportunity to challenge the acts or omissions of the investigating authorities in court pursuant to Article 125 of the Code of Criminal Procedure. They added that participants in criminal proceedings could also claim damages in civil proceedings and referred to cases where victims in criminal proceedings had been awarded damages from state bodies and, in one instance, the prosecutor's office. In sum, the Government submitted that there had been no violation of Article 13.

94. The applicants reiterated the complaint.

B. The Court's assessment

1. *Admissibility*

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

2. *Merits*

96. The Court reiterates that in circumstances where, as here, a criminal investigation into a killing has been ineffective and the effectiveness of any other remedy that might have existed, including civil remedies suggested by

the Government, has consequently been undermined, the State has failed in its obligation under Article 13 of the Convention (see *Khashiyev and Akayeva*, cited above, § 183).

97. Consequently, there has been a violation of Article 13 in conjunction with Article 2 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

98. The applicants complained that they had been discriminated against in the enjoyment of their Convention rights, because the violations of which they complained had taken place because they had been resident in Chechnya and because of their ethnic background as Chechens. This was contrary to Article 14 of the Convention, which reads as follows:

“The enjoyment of the right and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

99. The Court observes that no evidence has been submitted to it that suggests that the applicants were treated differently from persons in an analogous situation without objective and reasonable justification, or that they have ever raised this complaint before the domestic authorities. It thus finds that this complaint has not been substantiated.

100. It follows that this part of the application is manifestly ill-founded and should be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

101. 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

102. The applicants did not submit any claims for pecuniary damage. They asked the Court to award them any sum it deemed appropriate in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family members and the failure to investigate the murders.

103. The Government denied any violations of the applicants' rights and considered that, in any event, the finding of a violation of the Convention would be sufficient.

104. The Court accepts that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the above findings of violations of the Convention. It awards 60,000 euros (EUR) to the first, second, fourth and fifth applicants each, plus any tax that may be chargeable to them thereon.

B. Costs and expenses

105. The applicants were represented by lawyers from the NGO EHRAC/Memorial Human Rights Centre. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to 1,828 pounds sterling (GBP) (EUR 2,212). They submitted a breakdown of costs and translators' invoices.

106. The Government questioned the reasonableness of and justification for the amounts claimed under this heading.

107. The Court is satisfied that these rates are reasonable and reflect the expenses actually and necessarily incurred by the applicants' representatives.

108. Having regard to the details of the claims submitted by the applicants, the Court awards them the amount as claimed, together with any value-added tax that may be chargeable to the applicants, the net award to be paid into the representatives' bank account in the UK, as identified by the applicants.

C. Default interest

109. The Court considers it appropriate that default interest 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. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;
2. *Declares* the complaints under Articles 2 and 13 of the Convention admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Aslambek Israilov, Adam Israilov, Turpal Israilov and Aslanbek Dzhabrailov;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Aslambek Israilov, Adam Israilov, Turpal Israilov and Aslanbek Dzhabrailov were killed;
5. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violations of Article 2 of the Convention;
6. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the date of settlement, save in the case of the payment in respect of costs and expenses:
 - (i) EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable to the applicants, in respect of non-pecuniary damage to the first, second, fourth and fifth applicants each;
 - (ii) EUR 2,212 (two thousand two hundred and twelve euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representatives' bank account in the UK;
 - (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.

Done in English, and notified in writing on 25 November 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach,
Deputy Registrar

Nina Vajić
President