



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

FIRST SECTION

CASE OF UDAYEVA AND YUSUPOVA v. RUSSIA

(Application no. 36542/05)

JUDGMENT

STRASBOURG

21 December 2010

FINAL

20/06/2011

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

In the case of Udayeva and Yusupova v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 2 December 2010,

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

PROCEDURE

1. The case originated in an application (no. 36542/05) 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 two Russian nationals, Ms Zulikhan Udayeva and Ms Zulpa Yusupova (“the applicants”), on 12 October 2005.

2. The applicants were represented by lawyers of the Stichting Russian Justice Initiative (“SRJI”), an NGO based in the Netherlands with a representative office in Russia. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants complained that their sons had been killed by military servicemen in October 2000 in Chechnya and that there had not been an adequate investigation into the events. They invoked, in particular, Articles 2 and 13 of the Convention.

4. On 5 May 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. Under the provisions of the former Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. 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

6. The applicants were born in 1963 and 1960 respectively and live in Urus-Martan. The first applicant is the mother of Ali Udayev, who was born in 1990. The second applicant is the mother of Ramzan Yusupov, who was born in 1988.

A. The deaths of the applicants' sons

1. Information submitted by the applicants

7. In October 2000 Urus-Martan was under the full control of the Russian military forces. The military troops were stationed in the town and its vicinity, in the settlement of Michurina (also spelled as Michurino). The applicants' families lived in the same neighbourhood on the outskirts of Urus-Martan. Their sons, Ali Udayev and Ramzan Yusupov, attended the same school.

8. In the afternoon of 17 October 2000 Ali Udayev and Ramzan Yusupov were walking home from school down Obyezdnaya Street, which was situated between the local cemetery and a field. At about 3.45 p.m. they were seen walking by Ramzan Yusupov's brother, Mr T. Yusupov. He was next to his house when at about 4 p.m. he saw an explosion in the vicinity.

9. The applicants' neighbour Ms D.M. was at home and heard the sound of a flying projectile coming from the Michurina settlement. Then she heard an explosion, saw clouds of black smoke coming from the road next to the cemetery and rushed to the place. A number of the applicants' relatives and neighbours also rushed to the place, where they found fragments of the bodies of Ali Udayev and Ramzan Yusupov.

10. About half an hour later a group of military servicemen arrived at the scene. One of them said that it must have been an explosion of a landmine. But a number of local residents told the officers that they had heard the sound of a flying projectile, and that therefore the explosion could not have been caused by a landmine. The head of the Urus-Martan town administration also arrived at the scene. In the evening of 17 October 2000 the local TV station reported the events in a news programme.

11. On 18 October 2000 the applicants buried their sons. Many residents of Urus-Martan attended the funeral. One of them, Ms Z.G., told the second applicant that on 17 October 2000 she had been working at the wheat processing plant located next to the road from Urus-Martan to Michurina.

Russian military troops were stationed nearby. At about 4 p.m. she heard a projectile being launched from a tank.

12. According to another local resident, Ms L.M., on 17 October 2000 she was walking from Michurina to Urus-Martan. About 500 metres from Michurina she saw a group of servicemen on a tank. They told her that the roads to Urus-Martan were blocked and nobody was allowed to go into the town. About 200 metres from the place she met a fellow villager. He told her that drunken soldiers were down the road and that she should return to Michurina. At about 4 p.m., when Ms L.M. was at home, she heard a projectile being launched from a tank and the sound of an explosion on the outskirts of Urus-Martan.

13. Three residents of Michurina, Ms Z.P., Ms D.A and Ms Ay.T., informed the applicants that at about 4 p.m. on 17 October 2000 they had heard a projectile being launched from the area where the Russian military troops had been stationed and they had heard it explode on the outskirts of Urus-Martan.

14. On 30 October 2000 the Urus-Martan district hospital issued two statements certifying the deaths of Ali Udayev and Ramzan Yusupov on 17 October 2000 from numerous missile wounds.

2. Information submitted by the Government

15. The Government did not challenge the facts as presented by the applicants. At the same time they pointed out that, according to the information provided by the domestic investigation, on 17 October 2000 the military unit Don-100 stationed in Urus-Martan had been subjected to shelling by an illegal armed group under the command of Mr M.Ts. and that on that date the military unit had not used large-calibre weapons. They also stated that the deaths of the applicants' sons could have been caused by the shelling opened by the illegal armed group.

B. The official investigation of the incident

1. Information submitted by the applicants

16. On 17 October 2000 the Urus-Martan district prosecutor's office (the district prosecutor's office) initiated an investigation into the deaths of Ali Udayev and Ramzan Yusupov. The case file was given the number 24045. In the submitted documents it was also referred to under no. 24005.

17. On 17 October 2000 the investigators examined the crime scene. Nothing was collected from the scene. The investigators briefly examined the boys' remains on the spot. No forensic analysis of the remains was carried out by the investigation. Shortly after the events the applicants

collected fragments of the explosive device which had caused the deaths of their sons and submitted them to the investigators.

18. On 30 October 2000 the applicants' relatives wrote to the Urus-Martan district military commander's office (the district military commander's office) requesting the authorities to conduct an effective investigation into the deaths of Ali Udayev and Ramzan Yusupov. No reply was given to this request.

19. On 10 November 2000 the head of the Urus-Martan district department of the interior (the ROVD) provided the investigators with a statement to the effect that Ali Udayev and Ramzan Yusupov had died as a result of the explosion of a projectile of the Shmel type; that on 17 October 2000 the military units Don-100 and regiment no. 245 stationed in the vicinity of Urus-Martan did not use such large-calibre projectiles, and that on 17 October 2000 the military units had been subjected to shelling by an illegal armed group under the command of Mr M.Ts.

20. On 30 November 2000 (in the submitted documents the date was also referred to as 14 December 2000) the district prosecutor's office granted the applicants victim status in the criminal case.

21. From 30 November 2000 to 11 February 2005 the applicants did not receive any information from the investigative authorities about the developments in the criminal proceedings.

22. On 11 and 15 February 2005 the applicants wrote to the district prosecutor's office requesting information about the progress in the criminal investigation and asking for access to the investigation file. On 16 February 2005 the investigators refused to grant access to the file and informed the applicants that the investigation had been resumed.

23. On 10 March 2005 the applicants requested the district prosecutor's office to inform them about the date of the reopening of the criminal investigation. No reply was given to this request.

24. On 16 March 2005 the district prosecutor's office suspended the investigation in criminal case no. 24045.

25. On 9 June 2005 the applicants requested the investigators to inform them about the progress in the criminal case. No response was given to this request.

26. On 19 June or July 2005 the supervising prosecutor overruled the decision to suspend the investigation as premature, and ordered the investigators to resume the proceedings and take a number of investigative steps. The applicants were not informed about this decision.

27. Between March and July 2005 the applicants complained about the ineffectiveness of the investigation to domestic courts (see paragraphs 46-47 below).

28. On 1 June 2007 the applicants were informed orally by an investigator, Mr K., that on an unspecified date the fragments of the

projectile collected by the applicants from the crime scene had been sent for an expert examination.

29. On 23 July and 7 August 2008 the Chechnya prosecutor's office informed the applicants that their office was investigating the deaths of their sons and that on 7 August 2008 the investigation had been suspended.

30. According to the applicants, throughout the investigation the authorities consistently failed to inform them about its progress and deprived them of access to the investigation file.

2. Information submitted by the Government

31. On 17 October 2000 the district prosecutor's office opened criminal case no. 24045 under Article 105 § 2 of the Criminal Code (murder) in connection with the discovery on the eastern outskirts of Urus-Martan of the bodies of minors Ramzan Yusupov and Ali Udayev.

32. On 17 October 2000 the investigators examined the crime scene and the fragments of the bodies on the spot. Nothing was collected from the scene.

33. On 17 October 2000 the investigators questioned Ms G.M., who stated that she had been in her courtyard when she had heard the sound of a flying projectile coming from the outskirts of the town and then the sound of an explosion. The witness and her sister had rushed out into the street and next to the district hospital they had seen a hole in the ground and the remains of two bodies. The witness asserted that the explosion had been caused by the projectile which had arrived from the direction of the collective farm, and not by a mine, as she had clearly heard the distinctive sound of a projectile.

34. On unspecified dates the investigators questioned witnesses Mr Kh.Kh. and Ms Kh.O., whose statements concerning the events were similar to that given by Ms G.M.

35. Between 18 October and 10 November 2000 the law-enforcement agencies conducted checks in respect of thirty-two residents of Urus-Martan to find out whether they had been involved in the deaths of the applicants' sons.

36. On 10 November 2000 the head of the Urus-Martan ROVD provided the investigators with a statement to the effect that the applicants' sons had died as a result of the explosion of a projectile of the Shmel type.

37. On 30 November 2000 the investigators granted both applicants victim status in the criminal case and questioned the second applicant, who stated that she had found out about the events from her neighbours and that she had been prevented by them from approaching the scene of the incident. From the eyewitnesses she had learnt that her son and Ali Yudayev had been killed by a projectile which had arrived from the eastern part of Urus-Martan.

38. On an unspecified date the investigators questioned the first applicant's husband, Mr I.U., who stated that on 17 October 2000 he had been in the Urus-Martan ROVD when he had been informed that his son Ali had been killed by a projectile. He had rushed to the place of the incident and found the remains of his son and those of Ramzan Yusupov. According to the witness, it was clear that the boys had died from a projectile which had arrived from the eastern part of Urus-Martan.

39. On an unspecified date the investigators questioned Mr L.M. who stated that on 17 October 2000 he had heard a powerful explosion and rushed into the street. Next to the cemetery he had seen clouds of thick black smoke and had run to the place, where he had found a hole in the ground measuring between 1.5 and 2 metres, school textbooks and the bodies of the two boys. He found out the boys' names from their school books.

40. On an unspecified date the investigators questioned Ms Z.P., who stated that on 17 October 2000 she had been on the eastern outskirts of Urus-Martan. At about 4.15 p.m. she had heard a projectile flying from the direction of the Michurina settlement and then an explosion. She had rushed to the place, where she had found the hole in the ground and the remains of two boys next to it. The witness stated that an acquaintance of hers, Ms Liza, had seen military tanks stationed in Michurina turning towards Urus-Martan and one of them firing a projectile in the town's direction. The witness further stated that at the scene she had not seen any wires or devices which could have indicated a landmine.

41. On an unspecified date the investigators questioned Ms D.M., who stated that on 17 October 2000 she had been at home. At about 4.15 p.m. she had heard a flying projectile and then an explosion. She had run out into the street and seen Ms Z.P. running to the place of the explosion. When the witness had arrived at the scene, she had found a hole in the ground of about one metre in diameter and the remains of two boys. From the shape of the hole it had been clear that the projectile had arrived from the direction of the Michurina settlement.

42. On an unspecified date the investigators questioned the applicants' neighbour, Mr Sh.U., who stated that on 17 October 2000 he had been at home. At about 4 p.m. he had heard an explosion and seen clouds of smoke and the neighbours running to the scene. There they had found the remains of the applicants' sons. After that military servicemen had arrived at the scene. The witness had heard some people saying that the explosion had been caused by a projectile; others had thought that it must have been a landmine. He also stated that at the material time landmines quite often exploded on that street.

43. On an unspecified date the investigators questioned Ms Z.B., whose statement concerning the events of 17 October 2000 was similar to the one given by Mr Sh.U.

44. On an unspecified date the investigators obtained information to the effect that on 17 October 2000 the military unit Don-100 stationed in Urus-Martan had been shelled by an illegal armed group under the command of Mr M.Ts., and that on that date the military unit had not used large-calibre weapons.

45. Despite specific requests by the Court the Government did not disclose any documents from criminal case no. 24045, stating that an investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained information concerning participants in criminal proceedings.

C. Proceedings against law-enforcement officials

46. On 24 March 2005 the applicants complained to the Urus-Martan town court that there was no effective investigation in the criminal case. On 6 April 2005 the court allowed their complaint in part. It instructed the prosecutor's office to resume the investigation and take a number of investigative steps. The court rejected the applicants' complaint in the part concerning their request for access to the investigation file. On 11 May 2005 the Chechnya Supreme Court upheld this decision on appeal.

47. On 13 July 2005 the applicants again complained to the Urus-Martan town court that the investigation in the criminal case was ineffective and requested that the suspended proceedings be resumed. On 26 July 2005 the court rejected their complaint as groundless, stating that the prosecutor's office had resumed the criminal proceedings (see paragraph 26 above).

II. RELEVANT DOMESTIC LAW

48. For a summary of the relevant domestic law see *Khatsiyeva and Others v. Russia* (no. 5108/02, §§ 105-107, 17 January 2008).

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. The parties' submissions

49. The Government contended that the application was inadmissible for failure to comply with the six-month rule. They stated that the relevant

time-limit should be counted from the decision of the Chechnya Supreme Court of 6 April 2005. At the same time they contended that the application was inadmissible for non-exhaustion of domestic remedies, as the investigation into the deaths of Ali Udayev and Ramzan Yusupov had not yet been completed and no final decision had yet been taken. They further stated that the applicants had the right to appeal against the investigators' decisions to domestic courts and that they could have claimed damages through civil proceedings. The Government pointed out that the absence of a desirable outcome did not mean that the remedies used by the applicants had been ineffective.

50. The applicants stated that the only potentially effective remedy in their case was the criminal investigation, which had proved to be ineffective, and that their complaints to that effect, including their applications to the local court in 2005, had been futile. With reference to the Court's practice, they argued that they were not obliged to claim damages through civil proceedings in order to exhaust domestic remedies.

B. The Court's assessment

1. Compliance with the six-month rule

51. Turning to the Government's argument concerning the applicants' alleged failure to comply with the six-month rule, the Court notes that the Government on one hand pleaded that the applicants had missed the six-month limit, calculating it from the final domestic decision of 6 April 2005 and at the same time, in the very same text, they stated that the applicants have not yet exhausted domestic remedies as the final decision had not yet been taken and that it was premature to make any conclusions at this stage of the proceedings.

52. In such circumstances, taking into account that the decision of the Chechnya Supreme Court of 6 April 2005 was not the final decision taken as a result of the completion of the criminal investigation, but an interim procedural decision taken in response to the applicants' complaint that the pending proceedings were ineffective, the Court dismisses the Government's objection.

2. Exhaustion of domestic remedies

53. As to the Government's non-exhaustion plea, 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).

54. 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.

55. As regards a civil action to obtain redress for damage sustained through the alleged illegal acts or 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.

56. As regards remedies in the criminal law, the Court observes that the applicants complained to the law-enforcement authorities immediately after the deaths of their sons and that an investigation has been pending since 17 October 2000. The applicants and the Government dispute the effectiveness of the investigation of the events.

57. 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.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

58. The applicants alleged that the authorities had breached both their negative and positive obligations under Article 2 in respect of their sons and that no proper investigation of the incident had taken place. 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. The parties' submissions

59. The applicants maintained that it was beyond reasonable doubt that Ali Udayev and Ramzan Yusupov had been deprived of their lives by the Russian military. They also alleged that the authorities had failed to protect the lives of their sons. The applicants further submitted that the investigation into the events was unjustifiably lengthy and ineffective. In particular, the investigators had failed to collect evidence from the crime scene and submit it for the relevant expert examination; they had failed to identify all the witnesses to the events and failed to provide any plausible explanation for the events. The applicants stressed that throughout the proceedings they were not provided with any meaningful information on the progress of the investigation.

60. The Government denied State responsibility for the deaths of Ali Udayev and Ramzan Yusupov and stated that the domestic investigation had not obtained any evidence proving that the Russian military could have been responsible for the deaths of the applicants' sons. At the same time they stated that the investigation was looking into the theory that the deaths of the applicants' sons had been a result of "incorrect use" of artillery by the Russian military. The Government further pointed out that the applicants had not informed the domestic authorities about the witnesses whose statements they had provided to the Court and stated that the deaths of Ali Udayev and Ramzan Yusupov could have been caused by actions of members of illegal armed groups. Finally, they stated that the investigation into the deaths of the applicants' sons was in full compliance with the Convention standards and the domestic legislation. The Government did not comment on the applicants' allegation concerning the authorities' failure to protect the lives of their sons.

B. The Court's assessment

1. Admissibility

61. 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. Further, the Court has already found that the Government's objection concerning the alleged non-exhaustion of domestic remedies should be joined to the merits of the complaint. The complaint under Article 2 of the Convention must therefore be declared admissible.

2. *Merits*

(a) **The alleged inadequacy of the investigation of the incident**

62. 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 v. Russia*, no. 69481/01, §§ 117-119, 27 July 2006).

63. In the present case, the deaths of Ali Udayev and Ramzan Yusupov were investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

64. The Court notes at the outset that none of the documents from the investigation file were disclosed by the Government. It therefore has to assess the effectiveness of the investigation on the basis of the few documents submitted by the applicants and the information about its progress presented by the Government.

65. The Court observes that the authorities were immediately made aware of the crime by the applicants' submissions. The investigation in case no. 24045 was instituted on 17 October 2000, that is, on the date of the events. On the same date the investigators examined the crime scene. The Court notes that even though the crime scene was examined, no evidence was collected by the investigators, in spite of the remaining fragments of the explosive device (see paragraph 17 above) and the fragments of the applicants' sons' bodies (see paragraphs 17 and 32 above). The investigators' failure to collect such crucial evidence demonstrates a lack of diligence on the part of the authorities in investigating the incident as these measures are obviously basic and important steps at the very beginning of the criminal proceedings. It is clear that the subsequent actions of the investigators did not redeem the initial failures, but, on the contrary, they seem to have remained inadequate throughout the proceedings: according to the Government, during the first weeks of the investigation the investigators questioned a number of local residents, who consistently stressed that the explosion had been caused by a flying projectile launched from the direction of the Michurina settlement (see paragraphs 33-34, 37, 40 and 41 above). Nevertheless, the investigators did not take steps to substantiate this information, such as questioning any members of military forces about the possible launch of a projectile from their military equipment. Nor did the investigators request any other detailed information from the military units concerning their whereabouts and operations in the Urus-Martan area on 17 October 2000. From the information submitted by the parties, it does not

follow that the investigators took any steps to verify the theory advanced by the Government that the deaths of the applicants' sons could have been a result of an accident caused by "incorrect use" of artillery by the Russian military (see paragraph 60). In the Court's opinion, such omissions in the investigation of the incident and the absence of explanations as to the authorities' failure to establish the very basic circumstances of the events, demonstrate a failure to act of their own motion and constitute a breach of the obligation to exercise diligence and promptness in dealing with such a serious crime (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII).

66. The Court also notes that even though the applicants were granted victim status in the criminal case, they were only informed of the suspension and resumption of the proceedings, and not of any other significant developments. No information was provided to the applicants between the end of 2000 and the beginning of 2005 (see paragraph 21 above). Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings.

67. Finally, the Court notes that the investigation was suspended and resumed on several occasions and that there were lengthy periods of inactivity on the part of the prosecutor's office when no proceedings were pending.

68. The Government 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, which eventually led to the resumption of the investigation (see paragraph 46). Nevertheless, the effectiveness of the investigation had already been undermined in its early stages by the authorities' failure to take the essential investigative measures and establish the crucial circumstances of the incident. Moreover, the town court's instructions to the prosecutor's office to investigate the crime effectively did not produce any tangible results for the applicants. The investigation was repeatedly suspended and resumed, but it appears that no significant investigative measures were taken to identify those responsible for the deaths of the applicants' sons. Accordingly, the Court finds that the remedy cited by the Government was ineffective in the circumstances and dismisses their objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

69. 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 deaths of Ali Udayev and Ramzan Yusupov, in breach of Article 2 in its procedural aspect.

(b) The alleged violation of the right to life of Ali Udayev and Ramzan Yusupov

70. It was not disputed by the parties that Ali Udayev and Ramzan Yusupov had died as a result of an explosion. The question to decide in the present case is whether the State authorities were responsible for the death of the applicant's sons, as the applicants alleged.

71. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-47, Series A no. 324, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

72. In cases where there are conflicting accounts of events, the Court is inevitably confronted when establishing the facts with the same difficulties as those faced by any first-instance court. When, as in the instant case, the respondent Government have exclusive access to information able to corroborate or refute the applicants' allegations, any lack of cooperation by the Government without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Taniş and Others v. Turkey*, no. 65899/01, § 160, ECHR 2005-VIII).

73. The Court points out that a number of principles have been developed in its case-law as regards cases where it is faced with the task of establishing facts on which the parties disagree. As to the facts that are in dispute, the Court reiterates its jurisprudence requiring the standard of proof "beyond reasonable doubt" in its assessment of evidence (see *Avşar*, cited above, § 282). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (see *Taniş and Others*, cited above, § 160).

74. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Articles 2 and 3 of the Convention, the Court must apply a particularly thorough scrutiny (see, mutatis mutandis, *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336, and *Avşar*, cited above, § 283) even if certain domestic proceedings and investigations have already taken place.

75. The Court reiterates that it has noted the difficulties for applicants to obtain the necessary evidence in support of allegations in cases where the respondent Government are in possession of the relevant documentation and fail to submit it. Where the applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to the lack of such documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicants, or to provide a satisfactory and convincing explanation of how the events in question occurred. The burden of proof is thus shifted to the Government and if they fail in their arguments, issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II).

76. The Court notes that despite its request for a copy of the entire investigation file into the deaths of Ali Udayev and Ramzan Yusupov, the Government did not produce any of the documents from the file, on the grounds that they were precluded from providing them by Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has found this explanation insufficient to justify the withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-XIII (extracts)).

77. The Court has found the Russian military responsible for deaths of civilians in the Chechen Republic in a number of cases (see *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, § 200, 24 February 2005 and *Isayeva v. Russia*, no. 57950/00, § 201, 24 February 2005). It has done so primarily on the basis of a number of pieces of evidence and the information demonstrating the authorities' awareness of the military operations conducted in the area.

78. However, in the present case, the Court notes the lack of information and evidence pertaining to the nature of the incident and the lack of persuasive evidence supporting the applicants' allegations. In addition, there was no indication that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the lives the applicants' sons and that they failed to take measures to avoid that risk (see *Osman v. the United Kingdom*, 28 October 1998, § 116, *Reports of Judgments and Decisions* 1998-VIII).

79. To sum up, it has not been established to the required standard of proof "beyond reasonable doubt" that the military forces were implicated in the deaths of Ali Udayev and Ramzan Yusupov; nor does the Court consider that the burden of proof can be entirely shifted to the Government (see *Abdurashidova v. Russia*, no. 32968/05, §§ 71-72, 8 April 2010 and *Shakhgiriyeve and Others v. Russia*, no. 27251/03, §§ 158-159, 8 January 2009).

80. In such circumstances the Court finds no State responsibility, and thus no violation of the substantive limb of Article 2 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

81. The applicants relied on Article 3 of the Convention, submitting that as a result of their sons' deaths and the State's reaction thereto, they had endured psychological suffering in breach of Article 3 of the Convention. Article 3 reads:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Admissibility

82. The Court notes that the present case concerns the instantaneous deaths of the applicants' sons as a result of an explosion. In this regard, the Court refers to its practice by which the application of Article 3 is usually not extended to the relatives of persons who have been killed by the authorities in violation of Article 2 (see *Yasin Ateş v. Turkey*, no. 30949/96, § 135, 31 May 2005) or to cases of unjustified use of lethal force by State agents (see *Isayeva and Others*, cited above, § 229), as opposed to the relatives of the victims of enforced disappearances. The latter approach is exercised by the Court in view of the continuous nature of the psychological suffering of the applicants whose relatives disappeared and the applicants' inability for a prolonged period of time to find out what happened to them (see, among many other authorities, *Bazorkina*, cited above, § 141; *Imakayeva v. Russia*, no. 7615/02, § 166, ECHR 2006-XIII (extracts); and *Luluyev and Others v. Russia*, no. 69480/01, § 115, ECHR 2006-XIII (extracts)). As for the present case, even though the Court does not doubt that the tragic deaths of their sons caused the applicants profound suffering, it nonetheless, due to the instantaneous nature of the incident, does not find that it amounts to a violation of Article 3 of the Convention.

83. It therefore follows that this part of the application should be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

84. The applicants complained that the court proceedings brought by them against the investigators in 2005 were unfair. They relied on Article 6 § 1 of the Convention, the relevant parts of which provide:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

Admissibility

85. The Court finds that Article 6 § 1 of the Convention is inapplicable to the proceedings in question, as they did not involve the determination of the applicants' civil rights or obligations or a criminal charge against them within the meaning of the Convention (see, for example, *Magomadova v. Russia*, no. 2393/05, § 163, 18 June 2009, and *Abayeva and Others v. Russia*, no. 37542/05, § 126, 8 April 2010).

86. It follows that these complaints are incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4 thereof.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

87. The applicants complained that they had been deprived of effective remedies in respect of the alleged 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

88. The Government contended that the applicants had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using those remedies. The applicants had an opportunity to challenge the acts or omissions of the investigating authorities in court. They added that participants in criminal proceedings could also claim damages in civil proceedings. In sum, the Government submitted that there had been no violation of Article 13.

89. The applicants maintained the complaint.

B. The Court's assessment

90. The Court observes that the complaint made by the applicants under this Article has already been examined in the context of Article 2 of the Convention. Having regard to the findings of a violation of Article 2 in its procedural aspect (see paragraph 69 above), the Court considers that, whilst the complaint under Article 13 taken in conjunction with Article 2 is admissible, there is no need for a separate examination of this complaint on its merits (see *Khumaydov and Khumaydov v. Russia*, no. 13862/05, § 141, 28 May 2009; *Zakriyeva and Others v. Russia*, no. 20583/04, § 108,

8 January 2009; and *Shaipova and Others v. Russia*, no. 10796/04, § 124, 6 November 2008).

VI. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

91. The applicants complained under Article 14 that the violation of their rights under Article 2 occurred because of their Chechen ethnic origin and residence in Chechnya. The respective Article 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.”

92. The Court observes that no evidence has been submitted 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 (see, for example, *Suleymanova v. Russia*, no. 9191/06, §§ 106-108, 12 May 2010).

93. 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.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

94. 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

95. The applicants did not submit any claims for pecuniary damage. As regards non-pecuniary damage, the applicants claimed 70,000 euros (EUR) each for the suffering they had endured as a result of the loss of their sons, the indifference shown by the authorities towards them and the failure to conduct an ineffective investigation into the incident.

96. The Government found the amounts claimed excessive and stated that finding a violation would be adequate just satisfaction in the applicants' case.

97. The Court has found a violation of the procedural limb of Article 2 of the Convention. The Court thus accepts that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the

finding of violations. Having regard to these considerations, the Court awards EUR 30,000 to each applicant plus any tax that may be chargeable thereon.

B. Costs and expenses

98. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews in Chechnya and Moscow, at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic authorities, at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff and experts. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 6,354.

99. The Government did not dispute the amounts claimed.

100. The Court has to establish first whether the costs and expenses indicated by the applicants' representatives were actually incurred and, second, whether they were necessary (see *McCann and Others*, cited above, § 220).

101. Having regard to the details of the contract, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representatives.

102. Further, as to whether the costs and expenses were necessary, the Court notes that due to the application of former Article 29 § 3 in the present case, the applicants' representatives submitted their observations on admissibility and merits in one single set of documents. The Court also notes that it found the application partially admissible and that no violation of the substantive aspect of Article 2 was established.

103. Having regard to the details of the claims submitted by the applicants and ruling on an equitable basis, the Court awards the amount of EUR 4,000 together with any value-added tax that may be chargeable, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

C. Default interest

104. The Court considers it appropriate that the 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

1. *Decides*, unanimously, to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;
2. *Declares*, unanimously, the complaints under Articles 2 and 13 of the Convention admissible;
3. *Declares*, by a majority, the remainder of the application inadmissible;
4. *Holds*, unanimously, 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 Ali Udayev and Ramzan Yusupov died;
5. *Holds*, unanimously, that there has been no violation of Article 2 of the Convention in its substantive limb in respect of Ali Udayev and Ramzan Yusupov;
6. *Holds*, unanimously, that no separate issues arise under Article 13 in conjunction with Article 2 of the Convention;
7. *Holds*, unanimously,
 - (a) that the respondent State is to pay, within three months of 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 on the date of settlement, save in the case of the payment in respect of costs and expenses:
 - (i) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to each of the applicants;
 - (ii) EUR 4,000 (four thousand 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 Netherlands;
 - (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;
8. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 21 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President