



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

FIRST SECTION

CASE OF KHAMZATOV AND OTHERS v. RUSSIA

(Application no. 31682/07)

JUDGMENT

STRASBOURG

28 February 2012

FINAL

24/09/2012

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

In the case of Khamzatov and Others v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyeu,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 7 February 2012,

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

PROCEDURE

1. The case originated in an application (no. 31682/07) 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 six Russian nationals, listed in paragraph 7 below (“the applicants”), on 18 June 2007.

2. The applicants were represented by Mr D. Itslyayev, a lawyer practising in Grozny. 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 alleged that Mr Movsar Khamzatov had been killed by Russian servicemen, that the investigation into his killing had not been effective and that they had been deprived of effective remedies.

4. On 20 May 2009 the President of the First Section 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 former Article 29 § 3 of the Convention he decided to examine the merits of the application at the same time as its admissibility.

5. The President of the Chamber acceded to the Government’s request not to make publicly accessible the documents from the criminal investigation file deposited with the Registry in connection with the application (Rule 33 of the Rules of Court).

6. The Government objected to the joint examination of the admissibility and merits of the application and to the application of Rule 41 of the Rules of Court. Having considered the Government’s objection, the Court dismissed it.

THE FACTS

7. The applicants are:

- 1) Mr Salman Khamzatov, born in 1935;
- 2) Mrs Ayna Khamzatova, born in 1948;
- 3) Mr Salamu Khamzatov, born in 1966;
- 4) Mr Saypudi Khamzatov, born in 1968;
- 5) Mrs Yakha Sadulayeva, born in 1982, and
- 6) Mr Abdul-Malik Khamzatov, born in 2002.

8. The first and second applicants reside in the village of Starye Atagi, the Chechen Republic. The third to sixth applicants are residents of Grozny, the Chechen Republic.

9. The first and second applicants are the parents of Mr Movsar Khamzatov, born in 1972. The third and fourth applicants are Movsar Khamzatov's brothers and the fifth and sixth applicants are his wife and son.

A. The events of 23 October 2001

1. The applicants' account

10. The following account of events is based on the information contained in the application form; a written statement made by the first applicant on 22 November 2006; a written statement made by the third applicant on 20 November 2006 and a written statement made by the first applicant's neighbour, Mr M.K., on 25 October 2007.

(a) The background information

11. The first and second applicants reside in Starye Atagi in their own house, at no. 32 Shosseynaya Street. Shosseynaya Street lies parallel to the "Grozny-Shatoy" highway (hereafter "the highway") and is separated from it by the Argunskiy canal. The distance between the first applicant's house and the highway being about 50 metres, the residents of the house can see what is going on on the adjacent part of the highway.

12. According to the applicants, in October 2001 servicemen from an engineering unit of the federal forces were stationed on the grounds of a mill located on the northern outskirts of Starye Atagi. Throughout October 2001 they inspected the highway, on a daily basis, in order to locate and disarm landmines. The servicemen used three infantry battle vehicles ("IBVs") with registration plates "NR 312", "NR 351" and "NR 327" and a URAL truck with a white stripe on its body, equipped with an anti-aircraft gun. The first and second applicants and M.K. were able to memorise those details because every day in October 2001 the vehicles drove down the

highway in the direction of the grounds of the 205th brigade of the federal troops stationed in the village of Malye Varandy, to the south-west of Starye Atagi.

13. On 21 October 2001 Movsar Khamzatov, who otherwise resided in Ingushetiya as a refugee, came to Starye Atagi to visit his relatives.

(b) The events of 23 October 2001

14. On 23 October 2001 the first, second and third applicants were at home.

15. At about 7.30 p.m. on 23 October 2001 the first and second applicants were in the courtyard in front of the house. From there they saw two IBVs, an armoured personnel carrier (“APC”) and the Ural truck with the white stripe. Those vehicles were parked on the highway on the opposite side of the first applicant’s house. In the applicants’ submission, a number of servicemen were repairing the vehicles, using sledgehammers. The first applicant and M.K., who could also see that part of the highway from the window of his house at no. 41 Shosseynaya Street, recognised the vehicles by their number plates as those used by the engineering unit on previous days.

16. At some point in the evening on 23 October 2001 the electricity in the entire village was cut off. Shortly thereafter the first and second applicants and M.K. saw a civilian vehicle moving from north to south on Shosseynaya Street with its headlights turned on. When the car passed by the house of M.K. and prepared to turn into Pochtovaya Street, the servicemen on the highway started firing at it with their submachine and anti-aircraft guns. According to the first and second applicants and M.K., the shooting at the vehicle had not been provoked by any act on the part of its passengers.

17. Following the outbreak of the shooting, M.K. crossed his garden and ran to the crossing of Sheripova and Pochtovaya streets. At Pochtovaya Street, he saw a VAZ-2109 vehicle which had just driven past his house. The car headlights were turned on and the engine was running. According to M.K., the spot where he saw the car was clearly visible from the part of the highway where the servicemen were stationed.

18. Having heard the shooting, the third applicant also went outside and ran to the intersection of Sheripova and Pochtovaya streets. There he noticed M.K. and also, at a distance of about 40-45 metres, the VAZ-2109 car with its headlights on and its engine running. The shooting continued for about five to ten minutes and then stopped. By that time the first and second applicants had seen an IBV arrive from the direction of Malye Varandy and join the group of servicemen on the highway. The IBV stopped and the servicemen started shouting at each other, using obscene language. One of them allegedly shouted to the others “What have you done?!” The

servicemen then started their vehicles and swiftly left in the direction of Malye Varandy, towing one of the IBVs behind them.

19. Meanwhile, M.K. and the third applicant were joined by a local police officer whom the third applicant identified as “Ibragim”. Together they approached the vehicle and saw two persons inside, showing no signs of life. M.K. and the third applicant identified the passenger in the backseat as Movsar Khamzatov. He had numerous bullet wounds to his head and back. The driver of the car was dead. When the third applicant touched Movsar Khamzatov, he moved. The third applicant and the police officer immediately took Movsar Khamzatov to the police officer’s car and took him to the local hospital but he died on the way there. It appears that on the same day the third applicant brought the body of Movsar Khamzatov back to the village.

20. According to the first applicant, on 25 October 2001 the engineering unit inspecting the highway replaced the IBV with plate number “NR 327” with an IBV numbered “NR 301”. On 26 October 2001 the Ural truck with the white stripe was allegedly also replaced with another vehicle.

21. According to death certificate no. 954, issued by the civil registration office of the Groznenskiy District on 20 November 2001, Movsar Khamzatov’s death was caused by “a brain coma, a 4th degree shock and numerous bullet wounds to the head, chest and abdomen”. The date of death was recorded as 23 October 2001 and the place of death was noted as the village of Starye Atagi.

2. Information submitted by the Government

22. With reference to the findings of the domestic investigation, the Government submitted the following information concerning the events of 23 October 2001.

23. On 23 October 2001 servicemen of one of the military bases of the United Group Alignment (“the UGA”), under the command of an officer, were repairing a defective armoured vehicle in Starye Atagi. At some point, during curfew hours when the circulation of civilian vehicles was prohibited, a VAZ-2109 car with registration plate “K 069 MC 99” started moving in the direction of the military convoy. After a while the vehicle left the main road, turned off its headlights and started moving in the opposite direction. Upon an order from the head of the military group to stop and inspect the vehicle, several servicemen followed the car on foot, signalling to the driver with their hands to stop, and then fired two warning shots in the air. In response, the passengers of the vehicle opened fire on the servicemen, wounding officer Z. In response to the armed resistance, the servicemen shot to kill, causing the death of Movsar Khamzatov and another person in the vehicle, whose identity had not been established.

B. The investigation into the death of Movsar Khamzatov

1. The applicants' account

24. On 24 October 2001 the first applicant contacted representatives of the local administration, who notified various law-enforcement officials about the events of 23 October 2001.

25. On 24 October 2001 a group of investigators arrived in Starye Atagi. They examined the body of Movsar Khamzatov and his personal belongings and noted the findings in their reports. They also questioned the first, second and third applicants, their neighbours and some other witnesses. Lastly, they inspected the crime scene and the VAZ car, in which they did not discover anything illegal.

26. On 24 October 2001 the prosecutor's office of the Groznenskiy District ("the district prosecutor's office") instituted a criminal investigation into the killing of Movsar Khamzatov under Article 105 § 2 of the Criminal Code (aggravated murder). The case file was assigned the number 19173.

27. On 30 November 2001 the district prosecutor's office transferred case no. 19173 to the military prosecutor's office of military unit no. 20102 ("the military prosecutor's office") for investigation. The case file was assigned the number 14/33/787-01.

28. On 21 January 2002 the first applicant wrote to the military prosecutor's office, enquiring about the progress of the investigation in case no. 19173 concerning the killing of his son, Movsar Khamzatov.

29. By a letter of 27 March 2002 the military prosecutor's office replied to the first applicant that they had never received case file no. 19173.

30. On 14 March 2003 the deputy prosecutor of the prosecutor's office of the Chechen Republic ("the republican prosecutor's office") forwarded the first applicant's query about the investigation into the death of his son to the military prosecutor's office and instructed the latter authority to provide the applicant with the relevant information. The letter stated that on 30 November 2001 criminal case no. 19173 "opened in connection with the shooting by the servicemen of Battalion Tactical Team 205 ("BTT-205") of the Separate Motorised Rifle Brigade (SMRB) (hereinafter also "the 205th brigade") at the VAZ-2109 vehicle in the village of Starye Atagi of the Groznenskiy District, causing the death of Khamzatov M." had been transferred for investigation to the military prosecutor's office and had been received by officer Zh.

31. On 25 March 2003 the first applicant wrote to the prosecutor of the Chechen Republic, enquiring about the progress of the investigation into the death of his son.

32. On 27 March 2003 the prosecutor of the Chechen Republic forwarded the first applicant's query about the progress of the investigation

to the military prosecutor's office and instructed the latter authority to inform him of any developments.

33. On 29 May 2003 the republican prosecutor's office transmitted the first applicant's complaint about a lack of information about the investigation into the killing of Movsar Khamzatov to the military prosecutor's office. On 17 July 2003 the South Federal Circuit Department of the Prosecutor General's Office forwarded a further query by the first applicant about the investigation to the republican prosecutor's office.

34. In a letter of 6 August 2003, in reply to another identical query by the first applicant, the republican prosecutor's office reiterated the information concerning the transfer of case file no. 19173 to the military prosecutor's office and advised the first applicant to address his queries to that authority.

35. On 6 September 2003 the first applicant wrote to the military prosecutor's office, requesting to be provided with information concerning the investigation of the death of his son. On 17 September 2003 the first applicant filed another complaint with the military prosecutor's office along the same lines.

36. On 30 October 2003 the military prosecutor's office replied to the first applicant that the investigation in case no. 14/33/0787-01 had been discontinued on 21 December 2001 for lack of *corpus delicti*. There is no indication that the letter contained any enclosures, such as a copy of the decision of 21 December 2001, and it is unclear when the first applicant received the letter.

37. By a letter dated 10 December 2003 the deputy prosecutor of the Groznenskiy District notified the Ombudsman of the Chechen Republic ("the Ombudsman") that on 24 October 2001 the district prosecutor's office had opened criminal case no. 19173 into "the shooting by servicemen, who had driven APC-205 of the SMRB, at a VAZ-2109 car with registration number "K 069 MS 99". As a result of the shooting, two people, including Movsar Khamzatov, had been killed and one person had been wounded. On 30 November 2001 the district prosecutor's office had forwarded case file no. 19173 to the military prosecutor's office, which was competent to pursue the investigation. A copy of the letter was sent to the first applicant.

38. On 19 February and 7 May 2004 the first applicant complained to the military prosecutor's office and the Prosecutor General of the Russian Federation about the lack of progress in the investigation into the killing of Movsar Khamzatov. It appears that the Prosecutor General's Office forwarded the first applicant's complaints to the Military Prosecutor's Office of the United Group Alignment ("the UGA prosecutor's office").

39. By a letter dated 12 August 2004 the UGA prosecutor's office informed the first applicant that it had examined his complaint of 7 May 2004 and had set aside the decision of 21 December 2001 discontinuing the investigation in case no 14/33/0787-01. The case file had been forwarded to

the military prosecutor's office for an additional inquiry and the latter authority had been instructed to inform the first applicant about the progress of the investigation and any decisions taken.

40. On 13 September 2004 the first applicant complained to the Chief Military Prosecutor's Office that the military prosecutor's office had failed to inform him about any developments in the investigation into the killing of Movsar Khamzatov despite the instructions of the UGA prosecutor's office. His complaint was forwarded to the UGA prosecutor's office on 4 October 2004.

41. By a letter dated 30 November 2004 the UGA prosecutor's office informed the first applicant that, following its examination of case no 14/33/787-01, it had quashed a decision to terminate the proceedings for lack of *corpus delicti* issued by the military prosecutor's office on 1 October 2004, and had remitted the case file back to it for an additional investigation. The letter stated that the first applicant would be informed of any developments.

42. On 11 April 2005, in reply to a query by the first applicant, the UGA prosecutor's office notified him that it had set aside a decision to discontinue the proceedings in case no. 14/33/0787-01 issued by the military prosecutor's office on 30 March 2005 and that the investigation had been resumed. The letter stated that the applicant would be apprised in due time of the progress of the investigation and any decisions taken.

43. On 22 August 2005 the UGA prosecutor's office replied to another query by the first applicant that, following his complaint, on an unspecified date it had reversed a decision to close the investigation into the killing of Movsar Khamzatov, issued by the military prosecutor's office on 30 April 2005, and had instructed that body to conduct an additional investigation. The military prosecutor's office was instructed to notify the first applicant about the progress of the investigation and any decisions taken.

44. On 20 November 2006 the first applicant complained to the Prosecutor General and the Chief Military Prosecutor that after the referral of the investigation to the military prosecutor's office he had been literally "cut off" from information on the progress and the results of the investigation into the killing of Movsar Khamzatov. He also submitted that, several years after the initiation of the investigation, and notwithstanding his repeated requests and the pecuniary and non-pecuniary damage caused to him by the murder of his son, he had not been granted victim status. On 19 December 2006 the Chief Military Prosecutor's Office forwarded the first applicant's complaint to the UGA prosecutor's office.

45. By a letter of 30 January 2007 the UGA prosecutor's office informed the first applicant that on 24 January 2007 it had set aside a decision by the military prosecutor's office of 30 December 2005 to close the investigation in case no. 34/33/0787-01 and had ordered the latter authority to have the proceedings resumed.

46. On 19 February 2007 the Chief Military Prosecutor's Office informed the first applicant that it had received his complaint about the inaction of the investigating authorities forwarded to it by the Ombudsman and that it had forwarded it to the UGA prosecutor's office.

47. By a letter of 24 March 2007 the UGA prosecutor's office notified the Ombudsman of the resumption on 24 January 2007 of the investigation into the killing of the first applicant's son. The letter further stated that the investigation had been activated and that, following an internal inquiry, it had been recommended that an official of the military prosecutor's office be reprimanded for taking an unfounded decision to discontinue the investigation in case no. 34/33/0787-01. Lastly, it was stated that the military prosecutor's office would apprise the first and third applicants, who had meanwhile been granted victim status in those proceedings, of any developments in the investigation. A copy of the letter was sent to the first applicant.

2. Information submitted by the Government

48. The Government stated that they had forwarded to the Court a copy of the entire file in criminal case no. 34/33/0787-01. The Court notes that the documents furnished by the Government were partly illegible; the majority of the documents supplied had double numbering. Some of the documents were submitted only in part. In so far as the documents provided by the Government are legible, the information contained in them may be summarised as follows.

(a) Opening of the investigation by the district prosecutor's office and the initial investigative steps

49. On 24 October 2001 the district prosecutor's office opened a criminal investigation into the killing of Movsar Khamzatov under Article 105 § 2 of the Criminal Code (aggravated murder). The decision stated that at about 8.40 p.m. on 23 October 2001 servicemen of the 205th brigade had fired with their automatic weapons at a VAZ-2109 vehicle, licence plate "K069MC99". As a result of the skirmish, two people had been killed and one person had been wounded. The case file was given the number 19173.

(i) Interviewing of civilian witnesses

50. On 24 October 2001 the investigators granted the third applicant victim status in the proceedings in case no. 19173 and interviewed him. According to a partial copy of his interview record, the third applicant stated that at about 7.30 p.m. on 23 October 2001 he had seen a convoy of armoured military vehicles stop at about 100 metres' distance from his parents' house. After a while he had heard the sounds of shooting coming from the direction where the servicemen had been stationed and had run in

that direction. At the crossing of the streets he had met a local police officer, “Ibragim”, and together they had noticed a civilian vehicle nearby. There were two dead people inside the vehicle. The third applicant identified one of them as his brother, Movsar Khamzatov. By that time the convoy of armoured vehicles had already left.

51. The second applicant, interviewed on the same date, submitted that in October 2001 Movsar Khamzatov had come to Starye Atagi to visit his parents. At about 7 p.m. on 23 October 2001 a group of servicemen driving in a convoy of armoured military vehicles had stopped in the vicinity of her house to repair one of their vehicles. After a while they had been joined by another armoured vehicle and shortly thereafter she had seen a civilian vehicle moving in the direction of the locks in the nearby canal. Suddenly, servicemen had started shooting at the vehicle and shortly thereafter they had left, towing one of the defective vehicles with them. The applicant’s relatives went to the scene of the incident and found Movsar Khamzatov there, wounded to his head and back. The second applicant stressed that she had not heard any shots coming from the civilian vehicle in which her son had been found. She also submitted that the military vehicles belonged to the 205th rifle brigade, stationed in the vicinity of Starye Atagi.

52. A.I. and A.M., residents of Starye Atagi, interviewed on 24 October 2001 as witnesses, stated that at about 7 p.m. on 23 October 2001 they had heard a convoy of armoured vehicles move in the vicinity of their houses and stop near Pochtovaya Street. Some time later, at about 8 p.m. they had heard shooting, which lasted for about five to seven minutes. A.M. also stated that he had gone out into Pochtovaya Street and had seen a VAZ-2109 vehicle surrounded by four to five armed individuals in military uniforms. They had stayed near the VAZ car for about five to ten minutes and had then run in the direction of the Ural truck and the two multipurpose armoured traction engines (“MATEs”) parked nearby. The convoy of military vehicles had then swiftly taken off in the direction of the village of Malye Varandy.

53. On 24 October 2001 the investigators interviewed M.K. as a witness. He submitted that on the evening of 23 October 2001 he had seen a convoy of military vehicles, including a Ural truck with a white stripe and the words “mine clearing” on its body and two MATEs, parked in the vicinity of his house. The convoy had belonged to the 205th brigade. The servicemen had been repairing one of the MATEs. Some time later M.K. had heard the sound of submachine gun shooting, which continued for about five to ten minutes. Shortly thereafter the convoy had swiftly left in the direction of the village of Malye Varandy. When M.K. had gone outside to the scene of the incident he had learnt that Movsar Khamzatov had been killed in a VAZ-2109 vehicle.

(ii) Statements by servicemen A.K. and O.S.

54. On 30 October 2001 the investigators interviewed serviceman A.K. as a witness. According to a partly illegible fragment of a copy of his interview record, A.K. stated that he was serving as an intelligence officer in military unit no. 74930, stationed in the vicinity of the village of Starye Atagi. At about 7.30 p.m. on 23 October 2001 officer Z., head of A.K.'s platoon, had received an order to evacuate a defective MATE from Starye Atagi. At about 8.05 p.m. a group of servicemen including officer Z., staff sergeant S., sergeants K. and Kh., private T. and firing pointer Ya., had left for the village in an IBV. Upon their arrival, A.K.'s group had found the broken MATE parked on the highway close to a bus stop where there was another group of servicemen from the SMRB, whom A.K. did not know. A Ural truck with an anti-aircraft weapon had also been parked there, with a further group of servicemen responsible for that vehicle. At a certain point the electricity in the entire village had been cut off and at the same time A.K. had noticed a civilian vehicle with its headlights on moving on the highway in the direction of their group. At a distance of about one hundred to two hundred metres, the vehicle had turned onto the unpaved road. With a view to stopping and inspecting the vehicle, the servicemen and A.K. had run towards it, but had been unable to approach it because of the canal between the highway and the road. At ten to fifteen metres' distance from the car, A.K. had fired two warning shots. After the shots had been fired, the car had accelerated and shots had been fired from its side. A.K. had decided to shoot to kill in the direction of the car. He had been equipped with a AK-74 submachine gun, using 5.45 mm calibre bullets.

55. On 30 October 2001 investigators interviewed serviceman O.S. as a witness. According to a partly illegible fragment of a copy of his interview record, O.S. submitted that on 23 October 2001 his unit had been ordered to evacuate a defective vehicle from the village of Starye Atagi. At about 8 p.m. his group, consisting of seven servicemen, arrived in the village. Some fifteen to twenty minutes after their arrival the electricity had been cut off in the entire village. O.S. had informed his commander Z. of that fact. At that moment, O.S. had noticed a vehicle with its headlights turned on moving from the northern part of the village, of which fact he had also informed Z. The latter had ordered him to stop and inspect the vehicle. O.S. had transmitted the order to K., Kh. and A.K. and they had moved in the direction of the vehicle. O.S. had run to the car and tried to stop it by waving his hand. However, the vehicle had accelerated its pace. A.K. had then fired two shots in the air with his submachine gun but the car had accelerated again. At that time O.S. had seen two flashes coming from the backseat of the car, after which the servicemen had shot to kill. The vehicle continued moving and another group of servicemen from the infantry had run closer and started firing at the vehicle. O.S. did not remember who exactly had fired and what arms they had used. Subsequently, the vehicle

turned into another street, continued to move, and the servicemen stopped firing at it. Without approaching the vehicle, the servicemen had swiftly returned to their military vehicles and left.

(iii) Further investigative steps

56. At 12.40 p.m. on 24 October 2001 investigator D. of the district prosecutor's office inspected the crime scene in the presence of two attesting witnesses. According to the partly illegible copy of the crime scene inspection report, a VAZ-2109 vehicle was found on the southern outskirts of the village of Starye Atagi. The vehicle had numerous oval holes ranging from 8 mm to 2 × 3 cm on the rear left wing; a missing window in the rear left door; four oval holes and a missing window on the front left door; holes in the front left wheel measuring between 3 and 15 cm; one oval hole in the left front wing; broken left headlight; five holes in the right front door; a missing window of the right front door; three "perforation holes" and numerous cracks on the windscreen; perforation holes in the trunk, the front and back seats, the front desk and the backdoor, and a perforation hole in the roof. At fifty metres to the west of the vehicle the investigators found "numerous" cartridges from automatic weapons of 5.45 calibre bullets; at thirty metres to the north-west of the vehicle "further cartridges" were discovered. In total, sixty-six cartridges of 5.45 calibre bullets were seized from the crime scene.

57. On 24 October 2001 investigator D. examined Movsar Khamzatov's body. According to the corpse examination report ("*протокол осмотра трупы*") of 24 October 2001, Movsar Khamzatov had a roundish 8 mm hole in the cervical region of the head; a 20×20 mm hole in the parietal region of the head; a roundish 8 mm hole in the left subcostal region; and a penetrating 8 mm roundish wound in the left axillary crease. According to the report, all the injuries were presumably gunshot wounds.

58. On 24 October 2001 the first applicant asked the investigators not to carry out a post mortem examination of his son, owing to the need to bury him without delay in accordance with his religious beliefs.

59. On 28 October 2001 investigator D. ordered a ballistic examination of the bullets seized from the crime scene.

60. According to the ballistic report of 28 November 2001, the cartridges seized from the crime scene were of 5.45 mm calibre and could have been shot from automatic submachine guns AK-74 and RPK-74.

(b) Investigation by the military prosecutor's office

(i) Transfer of the case to the military prosecutor's office

61. By a decision of 30 November 2001 the district prosecutor's office transferred criminal case no. 19173 to the military prosecutor's office, finding that the latter authority was competent to pursue the investigation.

The decision stated, among other things, that, after having examined the criminal case-file materials, the district prosecutor's office had established that at about 8.40 p.m. on 23 October 2001 servicemen of the BTT-205 of the SMRB had fired at the VAZ-2109 vehicle with licence plate number "K069MC". As a result, two people, including Movsar Khamzatov, had been killed and one person had been wounded.

62. It transpires that after the transfer to the military prosecutor's office the case file was given the number 14/33/0787-01.

(ii) Information concerning the decisions to close and reopen the investigation

63. On 21 December 2001 the military prosecutor's office discontinued the criminal investigation in case no. 14/33/0787-01. The decision, in so far as relevant, reads:

"At about 8 p.m. on 23 October 2001 servicemen of military unit no. 74930 under the command of senior lieutenant Z. were evacuating a defective MATE vehicle from Starye Atagi. At that moment a VAZ-2109 vehicle came towards the servicemen from the direction of the outskirts of the village. At about one hundred to two hundred metres distance from the military convoy the car turned off the highway onto the unpaved road and continued moving along the edge of the village. Following the order to stop and inspect the vehicle, junior sergeant A.K. ran up to it, waving to the driver, requesting him to stop and firing two warning shots in the air. However, the car accelerated and one shot was fired in the direction of the servicemen, wounding Z. With a view to stopping the car and suppressing its passengers' unlawful acts, A.K. shot to kill and several seconds later the vehicle stopped. As a result of the firing at the car, two people died, one of whom was Khamzatov M.S., born in 1972.

According to a witness statement by A.K., at about 8 p.m. on 23 October 2001 he arrived in Novye Atagi with a group of servicemen under the command of Z. with a view to evacuating a defective MATE. At that moment the electricity was cut off in the village and a civilian vehicle with its headlights off approached the servicemen from the direction of the outskirts of the village. At a hundred to two hundred metres distance from the military convoy the VAZ-2109 vehicle turned off the highway onto the unpaved road. With a view to stopping the suspicious vehicle, A.K. ran up to it, waving to it to stop, and fired two warning shots in the air. However, the car accelerated and a shot was fired from it in the direction of the servicemen, wounding Z. In order to stop the vehicle and to suppress the unlawful acts of its passengers, A.K. shot to kill with his AK-74 submachine gun and the car stopped several seconds later. On the following day A.K. learnt that the bodies of two civilians had been found in the car at which he had fired on the previous day.

Witness O.S., deputy commander of the unit, gave a similar account of the events.

According to a record from the battle operations log book of the BTT of military unit 74930, made on 24 October 2001, on 23 October 2001 the repair unit evacuated a defective vehicle from Starye Atagi ... At 8.30 p.m. the electricity was cut off in the village, and some five minutes later a civilian vehicle arrived. The driver failed to react to the orders to stop. One warning shot was fired in the air. Fire was opened on the car. The car turned in the direction of the village. As a result of the exchange of fire, platoon commander Z. sustained a penetrating injury to the right forearm.

The use of arms by the indicated serviceman [A.K., as it was in the context of] an arrest of persons having committed a crime, is recognised as lawful.

Accordingly, junior sergeant A.K. lawfully used arms with a view to suppressing the unlawful acts of unidentified civilians, who had wounded Z. to his arm. Hence, the case should be closed for lack of *corpus delicti* in the acts of A.K. ...”

64. On 12 August 2004 the UGA prosecutor’s office set aside the decision of 21 December 2001 as premature and unfounded. The UGA prosecutor’s office’s decision stated, among other things, that there were numerous contradictions in the statements of the servicemen which remained unexplained. The investigation had failed to establish which of the servicemen had caused Movsar Khamzatov’s death and had also failed to conduct a forensic medical examination of Z., in the absence of which the allegation that the passengers of the VAZ-2109 vehicle had fired at the servicemen could not be considered to have been ascertained. The military prosecutor’s office was instructed to have the investigation resumed and to conduct an additional inquiry.

65. By a letter of 5 September 2004 the military prosecutor’s office informed the district prosecutor’s office that when they received case file no 19173 from the latter authority, it had lacked the exhibits and, in particular, the spent cartridges seized from the crime scene. The district prosecutor’s office was asked to notify their counterpart of the whereabouts of those pieces of evidence and also to identify and interview the officials who had carried out the initial investigative steps and had, in particular, examined the crime scene. There is no indication that that request was complied with.

66. On 1 October 2004 the military prosecutor’s office discontinued the investigation in case no. 34/33/0787-01, reproducing verbatim the text of the decision of 21 December 2001. In addition, the decision stated that, in accordance with the “order of the conduct of the civilian population in the area of the counterterrorist operation, existing at the material time”, the population had been repeatedly informed that, if they approached military vehicles or federal troops, they were required to demonstrate that they were civilians and await the arrival of the servicemen, so that the latter could check their identities.

67. On 30 November 2004 the UGA prosecutor’s office set aside the decision of 1 October 2004 as unfounded and premature, noting that the military prosecutors had failed to rectify the shortcomings indicated in the decision of 12 August 2004, and ordered that the investigation be resumed.

68. Subsequently, the military prosecutor’s office decided to close the investigation in case no. 34/33/0787-01 on 10 February 2005, 30 April 2005, 27 October 2005, 30 December 2005, 24 February 2007, 24 March 2007, 29 April 2007, and 15 July 2007. The decisions to close the investigation reproduced verbatim the text of the decision of 1 October 2004.

69. From the documents submitted by the Government it follows that higher-ranking military prosecutors set aside the decisions to close the investigation in case no. 34/33/0787-01 on the following dates: 24 March 2005, 31 August 2005, 15 November 2005, 24 January 2007, 25 February 2007, 29 March 2007, 15 June 2007 and 11 August 2007.

70. In quashing the impugned decisions the higher-ranking prosecutors stressed that the military prosecutor's office had repeatedly failed to rectify the shortcomings in the investigation which the former authorities had identified. In particular, the military investigators failed to establish whether any arms had been found in the VAZ-2109 vehicle in order to verify the allegation that the vehicle passengers had fired at the servicemen; no evidence was obtained to confirm the fact of officer Z.'s wounding; Z. himself was not interviewed; only two of the servicemen who had been present at the crime scene were interviewed and there were numerous contradictions in their statements as to which of them had stopped the VAZ-2109 vehicle, who had fired at it and what had happened to the vehicle after the skirmish. Moreover, there were numerous contradictions between the statements of the serviceman and the civilians who had witnessed the events of 23 October 2001. The military investigators failed to verify whether senior lieutenant Z. had acted in excess of his authority because his specific task on 23 October 2001 had consisted of evacuating the defective MATE vehicle and not inspecting civilian vehicles. The investigators did not establish who had discovered the bodies in the VAZ-2109 vehicle, whether the vehicle passengers had had arms and if so, what had become of them after their eventual seizure.

(iii) Investigative steps taken by the military prosecutor's office

71. On 17 January 2005 the military prosecutor's office instructed the commanders of military units nos. 74930 and 64646 to identify the servicemen who had been under the command of Z. on 23 October 2001 and to provide it with their contact details with a view to their eventual interviewing; to interview officer Z. about the circumstances of his wounding during the incident and to provide all attesting medical documents. By a letter of the same date the military prosecutor's office reiterated its request to the district prosecutor's office concerning the whereabouts of the exhibits and the interviewing of the investigators who had taken the initial investigative steps. There is no indication that those requests were replied to.

72. On 4 April and 14 December 2005, 26 January and 22 and 29 March 2007 the military prosecutor's office reiterated its requests made on 17 January 2005. By their letter of 29 March 2007 the military prosecutor's office also instructed the district prosecutor's office to conduct an additional interview of the third applicant about the events of 23 October 2001. It

appears from the documents submitted by the Government that the majority of the instructions given in those letters were not complied with.

73. On 27 March 2007 the investigators interviewed officer Z. as a witness. According to a copy of his interview record, he stated that in the evening of 23 October 2001 he had been in command of a group of six servicemen, who had been ordered to evacuate a defective MATE vehicle from Starye Atagi. At about 9 p.m. Z. had noticed a VAZ-2109 vehicle driving from the direction of Grozny. Upon noticing the military convoy, the vehicle had turned off its headlights and had turned from the highway onto the unpaved road leading to Starye Atagi, following which Z. had sent four servicemen, whose names he did not remember, to stop and inspect the vehicle and its passengers. When the driver had noticed the servicemen, he had accelerated and at that moment Z. had heard single shots. He had not seen who had fired them but had considered that they had been warning shots fired in the air. The servicemen whom Z. had sent to inspect the car had been the first to fire. After that Z. had run towards the vehicle and had seen a number of shots coming from it, one of the bullets wounding him in the right shoulder. Z. had fallen to the ground and had seen the car drive off in the direction of Starye Atagi and the servicemen fire at it. None of the servicemen except Z. had been wounded in the skirmish. Z. stated that the skirmish had been provoked by the people inside the vehicle because they had been moving around during curfew hours, had not complied with the order to stop and had offered armed resistance.

74. In a letter of 29 March 2007, addressed to the military prosecutor of the Budennovskiy Garrison and the head of military unit no. 74930, the military prosecutors stated that the preliminary investigation in case no. 34/33/0787-01 had established that thirty-two servicemen of unit no. 74390 had been present at the crime scene during the shooting on 23 October 2001. Giving the names and ranks of the servicemen, the military prosecutors instructed their counterparts to establish the current whereabouts of the servicemen and to obtain the following information from them:

- What were the circumstances of their arrival in Starye Atagi on 23 October 2001?
- Who was in command of the military convoy?
- What arms did the servicemen carry (including the serial numbers of the pistols and the submachine guns)?
- What did they know about the VAZ-2109 vehicle which had come under fire?
- Who was the first to open fire (the passengers of the VAZ vehicle or the servicemen)?
- If the passengers of the VAZ vehicle shot at the servicemen, from what part of the car did they do so and with what weapons?
- Which of the servicemen was the first to fire at the VAZ vehicle?

- Which of the servicemen approached the vehicle after the firing?
- What information was available on the passengers of the car?
- Were arms or spent cartridges found inside the VAZ vehicle?
- How was senior lieutenant Z. wounded and where was he hospitalised?
- To whom did Z. report, or talk about, the incident of 23 October 2001?

75. In a letter of 29 March 2007 the military prosecutors requested the district prosecutor's office to interview attesting witness A.Kh., who had participated in the crime scene inspection, and to obtain from him specific information concerning the identities of the persons present during the crime scene inspection; the exact location of the VAZ-2109 vehicle and the damage sustained by it; the eventual presence of arms or spent cartridges inside the vehicle, and the whereabouts of the vehicle after the inspection.

76. On 25 June 2007 the Ombudsman wrote to the military prosecutor's office, forwarding them the first applicant's complaint about the investigating authorities' persistent refusal to grant him victim status in the proceedings concerning the death of his son. The Ombudsman stressed that that was in breach of the first applicant's rights and also drew the authority's attention to the fact that in their replies the military prosecutor's office had given different criminal case numbers, which was misleading for the first applicant. He invited the military prosecutor's office to remedy those failures and to notify the first applicant of any decisions taken.

77. On 25 June 2007 the military prosecutor's office granted the first applicant victim status. By the same decision it set aside the decision of 24 October 2001 by which the third applicant had been granted victim status in the proceedings concerning the death of Movsar Khamzatov. The first applicant, interviewed on the same date as a victim, submitted that at about 7.30 p.m. on 23 October 2001 he had been at home and that a convoy of military vehicles, including two IBVs, one APC and a Ural truck, had been parked in the vicinity of his house on the Grozny-Shatoy highway. The servicemen were repairing one of the vehicles. Suddenly the electricity in the entire village had been cut off and at about the same time he had seen a civilian vehicle, with its headlights turned on, moving along the highway. The servicemen had opened fire on the vehicle. The car had turned into Pochtovaya Street and some ten minutes later the firing had stopped. At about that time a further IBV had joined the military convoy. The servicemen had started shouting at each other, one of them saying "What have you done?". Immediately thereafter they had started their engines and had left in the direction of the village of Malye Varandy, towing one of the defective vehicles behind. The first applicant, who had been ill at the time, had not gone to look at the vehicle. Subsequently, he had learnt that his son, Movsar Khamzatov, had been in the vehicle and that he had died of gunshot wounds on the way to the hospital. On 24 October 2001 investigating

authorities had arrived at the crime scene and inspected the car but had not found any illegal items in it.

78. By a letter of 27 June 2007 the military prosecutors instructed their counterparts in various regions in Russia to re-interview servicemen A.K. and O.S. and to interview serviceman A.Kh. about the events of 23 October 2001

79. It appears that on 13 July 2007 an expert of the State centre of forensic medical expert examinations in Rostov on Don carried out a medical examination of the documents concerning Z's wounding. However, the copy of the expert's report in its part concerning the expert's findings is illegible.

80. By a letter of 16 July 2007 the commander of military unit no. 74930 replied to the military prosecutor's office that it was impossible to interview the thirty-two servicemen indicated by the latter authority, because they had retired or had left the Chechen Republic. It was furthermore impossible to provide information on the arms used by the unit servicemen on 23 October 2001 because the relevant arms logbooks had been destroyed.

81. On an unspecified date in July 2007 the military prosecutor's office received a copy of officer Z.'s medical file. According to a record dated 6 November 2001, Z. had been wounded during a skirmish which had taken place at 11.30 p.m. on 23 October 2001 in the village of Starye Atagi, following which, from 25 October to 6 November 2001, Z. had received inpatient treatment in connection with a penetrating gunshot wound to the right deltoid muscle.

82. On 28 August 2007 serviceman A.K. was re-interviewed as a witness. From the partly illegible copy of his interview record it follows that he confirmed his earlier account of the events and stated that he did not remember the names of the servicemen who had been with him in Starye Atagi on 23 October 2001. He specified that after he had fired two shots in the air with his AK-74 rifle, a number of shots had been fired in his direction from the VAZ-2109 vehicle. Thereafter A.K. and three other servicemen shot to kill at the vehicle. A.K. may have used two magazines when firing at the car. He had not approached it and had not seen whether there had been arms or spent cartridges inside it. A.K. did not know how senior lieutenant Z. had been wounded because during the skirmish Z. had stayed behind him. Subsequently, A.K. had been told by unit intelligence officers that the people in the vehicle had been a deputy of the terrorist Khattab and his guards.

83. According to a partly illegible copy of the interview record of serviceman A.Kh., dated 28 August 2007, he had no memories of the events of 23 October 2001, except for the fact that he had been armed with a modernised Kalashnikov rifle ("AKMS") and that his group had been under the command of senior lieutenant Z.

84. On 3 September 2007 the military prosecutor of the Budennovskiy Garrison informed the military prosecutor's office that they had no information on the whereabouts of serviceman O.S.

85. On 26 June 2007 the military prosecutors instructed the Zernogradsky Department of the Interior of the Rostov Region to interview serviceman A.M.K. about the events of 23 October 2001.

86. On 27 June and 18 August 2007 the military prosecutors reiterated their request to the district prosecutor's office concerning the missing exhibits and, in particular, the spent cartridges seized from the crime scene, and instructed the latter authority to interview investigator D., who had been initially in charge of the investigation into Movsar Khamzatov's death. The district prosecutor's office was also instructed to interview the attesting witnesses who had participated in the crime scene inspection.

87. By a letter of 21 August 2007 the military prosecutor's office instructed their counterpart in Ulyanovsk to re-interview serviceman A.Kh. about the events of 23 October 2001.

88. On 23 August 2007 the military prosecutor's office instructed their counterpart in the Stavropol Region to interview twenty-seven servicemen, who had been present at the crime scene on 23 October 2001, giving their names and ranks. The military prosecutors also instructed their counterpart to inform them of the whereabouts of the servicemen, should they have been re-assigned or discharged from service.

89. On 24 August 2007 the military prosecutor's office instructed their counterparts in several regions of Russia to interview servicemen A.T., O.S. and A.R. and to re-interview serviceman A.K. about the events of 23 October 2001.

(c) Investigation by the investigating department of military unit no. 68797

90. On 6 September 2007 case no. 34/33/0787-01 was transferred to the investigating department of military unit no. 68797 ("the military investigating department") for further investigation.

(i) Information concerning the decisions to close and reopen the investigation

91. On 15 September 2007 the military investigating department decided to discontinue the investigation into the events of 23 October 2001, reproducing verbatim the text of the decision of 1 October 2004.

92. On 17 September 2007 head of the military investigating department set aside the decision of 15 September 2007 on the ground that the investigators had, yet again, failed to comply with the instructions given previously by the higher-ranking prosecutors.

93. Subsequently, the military investigating department decided to close the investigation into the death of Movsar Khamzatov on 17 October and 18 November 2007, 5 April 2008 and 12 May 2008. Its decisions to close

the investigation reproduced verbatim the text of the decision of 1 October 2004.

94. From the documents submitted by the Government it follows that higher-ranking prosecutors reversed the above-mentioned decisions to close the investigation on the following dates: 18 October 2007, 5 March 2008, 9 April 2008 and 12 April 2009. In their decisions higher-ranking prosecutors stressed that investigators of the military investigating department had failed to take all relevant investigative steps indicated earlier and that their decisions were premature and unfounded.

(ii) Investigative steps taken by the military investigating department

95. By a letter of 20 August 2007 the military investigating department requested the district prosecutor's office to inform it of the whereabouts of the exhibits, including the spent cartridges seized from the crime scene, and also instructed the latter authority to interview the attesting witnesses who had participated in the crime scene inspection.

96. On 21 September 2007 the military investigating department instructed their counterparts in a number of Russian regions to interview servicemen A.M.K., A.V.T. and A.A.Kh. about the events of 23 October 2001.

97. According to a copy of the record of the interview of serviceman A.A.Kh., dated 12 November 2007, he stated that at the material time he had been serving as a conscript in military unit no. 74930. On 23 October 2001 A.A.Kh.'s platoon under the command of officer Z. had evacuated a defective MATE in the village of Starye Atagi. The servicemen had been armed with submachine guns of 7.62 mm calibre. A.A.Kh. further stated that he did not remember who had first noticed the VAZ-2109 vehicle approaching the convoy, who had given the order to stop the vehicle and who had carried it out. He likewise did not remember how Z. had been wounded, whether any of the servicemen had inspected the vehicle after it had stopped and whether anyone had reported the skirmish to the higher-ranking military authorities.

98. On 1 and 2 October 2007 the military investigating department instructed their counterparts in several regions of Russia to interview servicemen O.A.S., A.O.S. and A.V.R. and to re-interview serviceman A.K. about the events of 23 October 2001. It is unclear whether those requests were complied with.

99. On 2 October 2007 the first applicant wrote to the military investigating department, seeking access to case file no. 34/33/0787-01 in the presence of his lawyer. He stated that on 25 June 2007 he had received a visit from investigator G., who had showed him some of the case file materials. However, given his lack of legal knowledge and the fragmentary information provided by G., the first applicant had been unable to discern

whether the investigators had taken all the necessary steps to elucidate the circumstances of the death of his son.

100. On 6 November 2007 the military investigating department granted the first applicant's request.

101. On 18 November 2007 the first applicant was given access to the materials of the criminal case file in the presence of his lawyer.

102. On 23 March 2008 the military investigating department requested the head of the Archives of the Ministry of Defence of the Russian Federation to provide information on the whereabouts of thirty-three servicemen who had been present at the crime scene on 23 October 2001.

103. By further letters of 23 and 28 March 2008 the military investigating department reiterated its request to the district prosecutor's office concerning the missing exhibits, the interviewing of investigator D. of the district prosecutor's office, who had taken the initial investigative steps, as well as the interviewing of the attesting witnesses who had been present during the crime scene inspection. The military investigating department also requested the district prosecutor's office to interview police officer "Ibragim" and to re-interview the third applicant and to take steps to identify the second passenger of the VAZ-2109 vehicle, who had been killed with Movsar Khamzatov.

104. On 30 April 2008 the military investigating department reiterated its requests to a number of authorities concerning the interviewing of the servicemen present at the crime scene, giving their names and ranks.

105. On 5 May 2008 the investigators re-interviewed the third applicant as a witness. According to a copy of his interview record, he confirmed his previous account of the events of 23 October 2001 and stated that he had not seen any arms inside the VAZ-2109 vehicle.

106. On 6 May 2008 the military investigating department informed the head of the intelligence service of the UGA that criminal case file no. 34/33/0787-01 contained information that, before the arrival of the VAZ-2109 vehicle in Starye Atagi on the evening of 23 October 2001, the servicemen of the 205th brigade had received radio intelligence that several members of illegal armed groups, moving in a VAZ-2109 vehicle, would approach them. The UGA intelligence service was requested to furnish to the military investigating department all information concerning the radio intelligence in question.

107. On 27 May 2009 the military investigating department suspended the proceedings in case no. 34/33/0787-01, owing to the need to interview serviceman A.K.

108. In the Government's submission, the investigation in case no. 34/33/0787-01 is pending.

(d) Documents concerning the curfew

109. The Government enclosed with their observations an excerpt from the order of the head of the Joined Headquarters of the “Western Zone”, dated 10 May 2000 and entitled “On the creation of a permanent commission on the verification of the lawfulness of the use of motor transport in the area of the counterterrorist operation” (*выписка из приказа руководителя Объединенного Штаба зоны «Западная» «О создании постоянно действующей комиссии по проверке законности использования автотранспорта в зоне проведения контртеррористической операции»*). According to the order, the commission consisted of a number of security and military officials, including deputy heads of the joined headquarters responsible for the armament and the police and the representative of the Federal Security Service in the “Western Zone”. The commission was entitled, among other things, to verify ownership documents in respect of all types of vehicles and to inspect those vehicles; to check the drivers’ and passengers’ identity documents and, in their absence, to arrest those persons and to deliver them to the police, as well as to transfer suspicious vehicles to tow pounds specifically designed for those purposes. The document also stated that a curfew from 8 p.m. to 6 a.m. was to be introduced and that the movement of civilians and civilian vehicles during that time was to be prohibited. The document neither specified the period of time for which the curfew was introduced nor delimited the area where it was to be applied. The order stated that it was to be notified to the servicemen to the extent that they were concerned by it. It made no mention as to whether the general public was to be notified of it and if so, how this would be done.

C. Court proceedings against the investigating authorities

110. On 23 January 2008 the applicants complained to the Military Court of the Groznenskiy Garrison (“the military court”) about the decision of 18 November 2007 to discontinue the investigation into the death of Movsar Khamzatov, referring to numerous omissions and flaws in the investigation and seeking to have it resumed.

111. On 7 March 2008 the military court examined the complaint. It found that there were important contradictions between the statements by serviceman A.K. and witnesses M.K. and A.M. Whilst A.K. submitted that he had fired a warning shot, other witnesses claimed that from the beginning of the incident there had been continuing bursts of gunfire coming from the side of the servicemen. Moreover, the investigators had disregarded the fact that during the examination of the vehicle on 24 October 2001 no weapons or ammunition had been found in it. More importantly, all the spent cartridges had been discovered on the side of the canal where the servicemen had been stationed. The investigators had also failed to examine

the fact that the vehicle had been moving with its headlights turned on and that the driver could have been unable to see the servicemen who had allegedly been signalling at it to stop from the other side. It followed from the medical documents concerning the wounding of Z. that he had been wounded at 11.30 p.m. on 23 October 2001, whilst the incident involving the applicants' relative had taken place at 8 p.m. on that day. The investigators had failed to interview all the servicemen who had witnessed the shooting and to identify the persons who had discovered the bodies in the VAZ-2109 vehicle. Moreover, they had not taken procedural decisions in respect of all the servicemen who admitted to having fired at the vehicle. The court noted at the same time that on 5 March 2008 the deputy head of the military investigating department had set aside the impugned decision, that the investigation had been resumed and that, accordingly, the applicants' complaint was devoid of purpose.

112. On 25 March 2009 the applicant complained to the military court about a further decision to close the investigation, issued by the military investigating department on 12 May 2008. They specifically stressed that they had received the letter informing them of the decision to close the investigation but the decision itself had not been enclosed with it and they had never received it.

113. On 27 April 2009 the military court terminated the examination of the applicants' complaint, referring to the fact that the military prosecutors had informed it that on 27 April 2009 the decision of 12 May 2008 had been set aside and the proceedings had been resumed.

II. RELEVANT DOMESTIC LAW

114. For a summary of the relevant domestic law provisions see *Khashiyev and Akayeva v. Russia* (nos. 57942/00 and 57945/00, §§ 79-98, 24 February 2005).

115. In their observations the Government referred to a number of presidential and governmental decrees which are summarised below.

116. Presidential Decree no. 1255c of 23 September 1999 provided for the creation of a United Group Alignment of military forces ("the UGA") with a view to conducting a counterterrorist operation in the Northern Caucasus, which was to include, among others, military forces of the Ministry of Defence and the Ministry of the Interior and their respective departments. The decree established the structure of the UGA and also provided that decisions of the head of the UGA were binding for the military forces under his command. The executive authorities of the subjects of the Russian Federation in Northern Caucasus were to take measures aimed at ensuring public order and to assist the UGA in carrying out its tasks.

117. By presidential Decree no. 2166 of 9 December 1994 the Government was instructed “to use all means available to the State with a view to ensuring national security, lawfulness, protection of the rights and freedoms of citizens, public order, the fight against crime and dismantlement of illegal armed groups”.

118. Under Governmental Decree no. 1360 of 9 December 1994, the Ministry of the Interior and the Ministry of Defence were instructed to dismantle illegal armed groups in the Chechen Republic. The former authority and the Federal Counterintelligence Service were instructed to take measures aimed at the seizure of illegal arms and identification and arrest of persons suspected of serious crimes, including “inspection of documents, vehicles and persons entering and leaving the [Chechen] Republic”, “inspection of documents in places where people gather”, “search of citizens, residential and non-residential premises and vehicles if there is information that citizens possess arms” and “other measures”.

119. Presidential Decree no. 1833 of 2 November 1993 introduced the main regulations concerning the military doctrine of the Russian Federation. The decree became inoperative on 21 April 2000.

120. Presidential Decree no. 2137 of 30 November 1994, *inter alia*, declared a state of emergency in the Chechen Republic and regulated the cooperation between various executive authorities with a view to dismantling illegal armed groups. The decree became inoperative on 11 December 1994.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

121. The applicants complained under Article 2 of the Convention that their relative Movsar Khamzatov had been killed by the members of federal troops and that the investigation into his killing had not been effective. Article 2 reads as follows:

“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. Submissions by the parties

1. The Government

122. The Government argued that in October 2001 the domestic authorities had conducted a counterterrorist operation in the Chechen Republic with a view to suppressing activities of illegal armed groups in the area. They submitted that the conduct of the counterterrorist operation had been regulated by several presidential and governmental decrees (see paragraphs 116-20 above), without providing copies of them. In the Government’s submission, members of illegal armed groups who had committed crimes were to be arrested and prosecuted or liquidated if they offered armed resistance. Since the beginning of the counterterrorist operation the domestic authorities had informed the local population that, if they found themselves in an area where counterterrorist activities were being carried out, the civilians were, upon establishing visual contact with the members of the federal forces and receiving warning signals from them, to stop moving, to show that they had no fire- or other arms in their hands, to leave their vehicles and to wait until the arrival of a “check-out group” of the federal troops.

123. The Government further submitted that the VAZ-2109 vehicle with Movsar Khamzatov had been moving around during curfew hours, with its headlights turned off. The servicemen had first signalled to the vehicle, ordering it to stop and had then fired warning shots. However, the driver and the passengers of the vehicle had not reacted. Instead, the vehicle had accelerated its pace and its passengers had started firing at the servicemen with their automatic guns, following which the commander of the group had taken a lawful decision, ordering his servicemen to shoot to kill. The fact that the passengers of the VAZ-2109 vehicle had shot at the servicemen was confirmed by the wounding of officer Z., who had had to undergo inpatient treatment. The servicemen had had to act in a difficult operative situation and under a real threat of attack from members of illegal armed groups and had complied with all the relevant legal requirements. Accordingly, the Government concluded that the use of lethal force against Movsar Khamzatov was absolutely necessary and was justified by Article 2 § 2 (a) and (b) of the Convention.

124. In the Government’s submission, the domestic authorities had promptly opened a criminal investigation into the killing of Movsar Khamzatov and had taken crucial investigative steps, such as corpse and

crime scene inspections and a ballistic examination. The investigators had interviewed numerous witnesses, including local residents and servicemen. The authorities could not carry out a post mortem examination of the applicants' relative because the first applicant had himself refused to allow it, stating that he had needed to bury his son without delay in accordance with religious traditions. The first and third applicants had been granted victim status and the first applicant had had access to the investigation case file. The Government specifically stressed that the obligation under Article 2 to investigate was not an obligation of result but of means. Lastly, they submitted that the domestic authorities had identified serviceman A.K., who had shot to kill and had caused Movsar Khamzatov's death, and emphasised that the investigation was still ongoing.

2. The applicants

125. The applicants submitted that the domestic authorities had never informed them of any orders or decisions introducing a curfew and stressed that the Government had failed to produce any documents which would confirm that a curfew had been introduced in the Chechen Republic or indicated either its start or end dates or the conduct to be adopted by the local population in that connection. They furthermore argued that the documents submitted by the Government suggested that Z. had not been entitled to stop and inspect civilian vehicles and that he had acted in excess of his powers, which fact had been indicated by higher-ranking prosecutors. Moreover, there was no indication that the servicemen under his command had been entitled to stop and inspect the vehicle. It followed from the statement by A.K. that the incident had taken place when it had been dark and accordingly the passengers of the VAZ-2109 car could hardly have seen any signals to stop allegedly made by the servicemen. Moreover, the statement by A.K. that he had fired two warning shots was contradicted by the statements of K.M. and the third applicant, who submitted that the servicemen had directly shot at the vehicle and that they had not heard any single shots but continuing bursts of automatic gun fire coming from the side of the servicemen. During the first minutes after the skirmish a police officer had inspected the vehicle but no weapons or ammunition had been discovered in it. Moreover, it had been inspected again on 24 October 2001 and no spent cartridges or guns had been found close to it. Hence, the allegation that the vehicle passengers had fired at the servicemen did not stand up. More importantly, all the spent cartridges seized from the crime scene were found on the side of the road where the servicemen had been stationed. In sum, the applicant claimed that the death of their relative had been in breach of Article 2 of the Convention.

126. The applicants further argued that the investigation of Movsar Khamzatov's death had been pending for years and that the domestic authorities had made no genuine attempts to elucidate the facts and to bring

those responsible to justice. A number of investigative steps had been carried out with considerable delay; the authorities were constantly closing and reopening the investigation. In the applicants' submission, the authorities' failure to investigate similar crimes in the Chechen Republic was commonplace.

B. The Court's assessment

1. Admissibility

127. The Court notes at the outset, and this was not contested by the parties, that the applicants' relative was killed on 23 October 2001 and that the investigation into his death was opened on 24 October 2001. The applicants lodged their application with the Court on 18 June 2007, that is, five years and seven months after those events.

128. In this connection the Court reiterates that it is not open to it to set aside the application of the six-month rule solely because a government has not made a preliminary objection to that effect (see, for example, *Mužević v. Croatia*, no. 39299/02, § 77, 16 November 2006, with further references). It has therefore to examine whether the applicants in the present case have complied with this admissibility criterion.

129. The Court observes 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 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 this admissibility criterion 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).

130. The Court has particularly emphasised that in cases concerning deaths, where there is generally a precise point in time at which death is known to have occurred and some basic facts are in the public domain, applicant relatives are expected to take steps to keep track of the investigation's progress, or lack thereof, and to lodge their application with due expedition, once they are, or should have become, aware of the lack of any effective remedies (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, §§ 158 and 162, 18 September 2009).

131. Turning to the circumstances of the present case, the Court notes firstly that it does not find it unreasonable that the first applicant acted on

behalf of the other applicants in contacting the authorities in the proceedings concerning the investigation into the death of Movsar Khamzatov.

132. It further observes that after the opening of the investigation into Movsar Khamzatov's death the applicants continuously enquired with the authorities about its progress. However, it transpires that after the transfer of the criminal case file to the military prosecutor's office for investigation, the latter authority first denied the fact of the transfer, thereby providing the applicants with misleading information, and then omitted to inform them of the developments and the decisions taken. In particular, it transpires that it informed the applicants of the decision of 21 December 2001 to close the investigation two years after it had been issued and only after the applicants' repeated requests for information, filed with prosecuting authorities of various levels (see paragraph 36 above). Shortly after having been informed of the existence of that decision, the applicants successfully challenged it before the UGA prosecutor's office, which ordered that the investigation be resumed (see paragraph 39 above). Subsequently, as it emerges from the case file materials, the military prosecutor's office persistently failed to inform the applicants of its ensuing decisions to close the investigation. However, in reply to the applicants' queries, the UGA prosecutor's office consistently notified them that the military prosecutor's office's decisions to close the investigation had been set aside and that the investigation had been resumed and was ongoing (see paragraphs 41-45 above).

133. Having regard to what has been said above, the Court is satisfied that throughout the period under consideration the applicants acted with requisite diligence in consistently enquiring with the authorities about the state of the proceedings concerning their relative's death and it is unable to find that, in the circumstances of the present case, there were periods of inactivity on their part which were long enough to cast doubt on whether they displayed due diligence and informed themselves of the progress made in the investigation (compare *Tsechoyev v. Russia*, no. 39358/05, § 123, 15 March 2011; see, by contrast, *Narin*, cited above, §§ 44-51, *Aydin and Others v. Turkey* (dec.), no. 46231/99, 26 May 2005, and *Finozhenok v. Russia* (dec.), no. 3025/06, 31 May 2011, where the applicants remained inactive vis-à-vis the domestic investigation for eight years, six and a half years and four years, respectively). Having regard to the circumstances of the case, the Court is also satisfied that the applicants duly lodged their application once they realised that they did not have effective remedies in respect of their grievances.

134. The Court therefore concludes that, in the circumstances of the present case, the applicants have complied with the six-month rule in respect of their complaints under Articles 2 of the Convention.

135. It further notes that these applicants' complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and

that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

136. The Court finds it appropriate to begin its analysis of the applicants' complaints by examining their submissions in so far as they raise an issue under the procedural limb of Article 2 of the Convention and then to turn to the examination of the substantive issue under this provision.

(a) The alleged inadequacy of the investigation

137. The Court firstly notes that the Government acknowledged the fact that Movsar Khamzatov had been killed as a result of the use of force by the federal servicemen. Accordingly, it finds that the applicants have an arguable claim under the substantive limb of Article 2 of the Convention and that the authorities were under an obligation to investigate their relative's death.

138. The Court further reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", 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, in particular by agents of the State. The investigation must be effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances (see *Kaya v. Turkey*, 19 February 1998, § 87, *Reports* 1998-I) and to the identification and punishment of those responsible (see *Oğur v. Turkey* [GC], no. 21594/93, § 88, ECHR 1999 III).

139. In particular, the authorities must take the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death (see, concerning autopsies, for example, *Salman v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000 VII; concerning witnesses, for example, *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 109, ECHR 1999-IV, and concerning forensic evidence, for example, *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible may risk falling foul of this standard.

140. Also, there must be an implicit requirement of promptness and reasonable expedition (see *Mahmut Kaya v. Turkey*, no. 22535/93, §§ 106-07, ECHR 2000-III). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular

situation. However, a prompt response by the authorities in investigating the use of lethal force may generally be regarded as essential in maintaining public confidence in the maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.

141. For the same reasons, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *Shanaghan v. the United Kingdom*, no. 37715/97, §§ 91-92, 4 May 2001).

142. In the present case the Court would observe at the outset that many of the documents from criminal case file no. 14/33/0787-01, furnished by the Government, bore double numbering (see paragraph 48 above) and that copies of some of the key witnesses' interview records were submitted only in part (see, for example, paragraphs 54 and 55 above). Moreover, whilst in their correspondence with various State authorities the investigators referred, for example, to the fact that the case file contained radio intelligence information, the related documents were not furnished to the Court. Against this background and in the absence of any explanation by the Government, it cannot but conclude that, contrary to their assertion, the Government failed to produce an entire copy of the criminal case file opened into Movsar Khamzatov's death. Accordingly, it considers that it can draw inferences from their conduct (see *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, § 172, 24 February 2005). Noting, furthermore, that many of the documents provided by the Government were illegible, the Court will have to assess the merits of the complaint on the basis of this fragmentary information and the documents submitted by the applicants.

143. To that end, it observes that the investigation into the events of 23 October 2001 was opened on the day following Movsar Khamzatov's death, which can be considered a prompt reaction on the part of the authorities. On the same date investigators of the district prosecutor's office inspected the crime scene, examined the body of Movsar Khamzatov and interviewed some of his relatives and their three neighbours. A ballistic examination of the bullets seized from the crime scene was carried out a month after the events. Whilst the investigating authorities may be considered to have promptly taken those steps, the Court cannot but note that a number of essential investigative measures were carried out with a considerable delay.

144. In this connection it firstly notes that it was only six days after the opening of the investigation that servicemen A.K. and O.S. were interviewed, despite the fact that the decision to open the criminal case, issued on 24 October 2001, indicated that the investigators were aware that

the servicemen involved in the shooting belonged to the 205th brigade (see paragraph 49 above). The Court is further struck by the fact that senior lieutenant Z. and servicemen A.Kh. and A.A.Kh. were interviewed more than five years after the events, with the result that A.Kh. and A.A.Kh. stated that they were unable to recollect most of the circumstances of the fatal shooting (see paragraphs 73, 83 and 97 above). Similarly, the investigating authorities waited for five years to obtain medical documents concerning Z.'s alleged wounding and the Government failed to provide an explanation for any of those delays.

145. The Court is also struck by the fact that, whilst it appears that there was information in respect of radio intelligence to the effect that members of illegal armed groups could be moving in a VAZ-2109 vehicle in the direction of the servicemen, it was only in March 2008 that the former authority had made an attempt to verify it (see paragraph 106 above). Assuming that such radio intelligence indeed existed, it was critical for the assessment of the circumstances of the use of force by the servicemen and in particular, whether they had received any orders to stop or arrest the passengers of the vehicle, what instructions had been given to them, if any, and whether those instructions or orders had been issued by an authority properly empowered to do so. However, there is no indication that that matter was genuinely pursued by the investigators.

146. More importantly, it transpires that a number of crucial investigative steps were not taken at all. In the first place, the Court notes that the investigating authorities did not consider it necessary to carry out an expert examination of the VAZ-2109 vehicle, which could have permitted to establish not only the trajectories of the shots fired at the car, but also whether there had been traces of gunshot residue inside it or any other evidence indicating whether its passengers had been armed or had used their arms. Moreover, given the servicemen's statement that they had used 5.45 mm calibre bullets, an expert examination of the VAZ-2109 vehicle could have shed light on the presence of holes measuring between 3 and 15 cm on the car, noted in the crime scene inspection report (see paragraph 56 above). In the Court's opinion, such an examination would have been particularly opportune, given the cursory nature of the inspection of the vehicle by the investigators and their summary and unspecific findings, as reflected in the crime scene inspection report (*ibid.*). In respect of the latter investigative step the Court also notes that it does not transpire that the investigators attempted to look for tyre tracks with a view to identifying the vehicle's exact path.

147. It furthermore follows from the documents available to the Court that the investigators possessed information to the effect that, besides senior lieutenant Z.'s group consisting of seven men, twenty-seven to thirty-two further servicemen had been present at the crime scene on 23 October 2001 and that their names and ranks were known to the investigation

(see paragraphs 54, 55, 74 and 88 above). However, not only did the investigators fail to interview all members of Z.'s group, but it transpires that they did not question any of those other servicemen and it is particularly striking that the first attempts to interview them were made with a delay ranging from more than five to six years after the events (*ibid.*), which the Court considers unacceptable. The same holds true for the investigators' failure to take steps to identify and interview any further residents of the village who could have witnessed the events of 23 October 2001.

148. In so far as the Government submitted that the applicants had not allowed a post-mortem examination of Movsar Khamzatov to be carried out, the Court notes that the Government did not dispute the cause of his death and, in any event, it does not appear that the investigating authorities ever attempted to obtain an exhumation of his remains or that the applicants had ever opposed it (compare *Mezhidov v. Russia*, no. 67326/01, § 70, 25 September 2008).

149. Having furthermore regard to the decisions issued by the investigators in case no. 14/33/0787-01, the Court cannot but observe that the only pieces of evidence they relied on in finding no fault with the actions of the servicemen were the statements by servicemen A.K. and O.S., implicated in the armed clash (see paragraphs 63, 66 and 68 above), which raises serious doubts as to the independence of the investigation in practical terms (see, for example, *Ergi v. Turkey*, 28 July 1998, §§ 83-84, *Reports of Judgments and Decisions* 1998-IV).

150. In this connection the Court emphasises that, in relying on the statements by the two servicemen, the investigators took for granted their submission that the incident had taken place during curfew hours, without verifying whether a curfew had indeed been introduced in the area at the material time. They also disregarded submissions by civilian witnesses to the effect that there had been no warning shots but continuing bursts of fire coming from the side of the servicemen; the fact that the time of infliction of the injury on Z., as recorded in the medical documents, did not correspond to the timing of the incident, as described by witnesses; that no weapons had been found in the VAZ-2109 vehicle and that all the spent cartridges had been discovered on the side of the canal where the servicemen had been stationed. It is furthermore significant for the Court that the investigators failed to verify whether the servicemen present at the crime scene and entrusted with the specific task of evacuating a defective military vehicle had had any authority to stop and inspect civilian vehicles and if so, what had been the legal basis for their acts. In setting aside the decisions to close the investigation, higher ranking prosecutors specifically pointed to those shortcomings and requested that they be rectified; the same flaws in the investigation had been identified by the military court (see

paragraphs 70 and 111 above). However, it transpires that those instructions were not complied with.

151. The Court considers that the flaws and omissions mentioned above critically undermined the capacity of the investigation, which has been ongoing for more than ten years, to establish the circumstances in which Movsar Khamzatov had been killed and whether the lethal force used against him had been absolutely necessary.

152. It is further noted that, although in June 2007 and March 2008 the first applicant was ultimately afforded the opportunity to have access to the investigation file, it transpires that in the time span between October 2001 and June 2007 the applicants had been deprived of any meaningful information about the investigation (see paragraphs 28-47 above). It does not appear that the fact that the third applicant was granted victim status after the opening of the investigation had any bearing on that situation. It is also observed that the investigating authorities decided to grant the first applicant victim status only on 25 June 2007, that is, more than five years and eight months after the opening of the investigation into the death of his son, and the Government offered no explanation as to why, by the same decision, the investigators chose to annul the third applicant's victim status. In sum, the Court considers that 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.

153. In the light of the foregoing, and drawing inferences from the Government's refusal to submit the entire criminal investigation file, the Court concludes that the authorities failed to carry out a thorough and effective investigation into the circumstances surrounding the death of Movsar Khamzatov.

154. Having regard to what has been stated above, it does not consider it necessary to examine the applicants' submission concerning the existence of an administrative practice of non-investigation of similar crimes in the Chechen Republic.

155. The Court therefore finds that there has been a violation of Article 2 of the Convention under its procedural limb.

(b) Alleged failure to protect the right to life of Movsar Khamzatov

156. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances where deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which, in peacetime, no derogation is permitted under Article 15. The situations where deprivation of life may be justified are exhaustive and must be narrowly interpreted. The use of force which may result in the deprivation of life must be no more than "absolutely necessary" for the achievement of one of the purposes set out in Article 2 § 2 (a), (b) and (c). This term indicates that a stricter and more compelling test of necessity

must be employed than that normally applicable when determining whether State action is “necessary in a democratic society” under paragraphs 2 of Articles 8 to 11 of the Convention. Consequently, the force used must be strictly proportionate to the achievement of the permitted aims. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, particularly where deliberate lethal force is used, taking into consideration not only the actions of State agents who actually administer the force but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-50, Series A no. 324).

157. In addition to setting out the circumstances when deprivation of life may be justified, Article 2 implies a primary duty on the part of the State to secure the right to life by putting in place an appropriate legal and administrative framework defining the limited circumstances in which law-enforcement officials may use force and firearms, in the light of the relevant international standards (see *Makaratzis v. Greece* [GC], no. 50385/99, §§ 57-59, ECHR 2004 XI, and *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 96, ECHR 2005 VII). Furthermore, the national law regulating policing operations must secure a system of adequate and effective safeguards against arbitrariness and abuse of force and even against avoidable accident (see *Makaratzis*, cited above, § 58). In particular, law-enforcement agents must be trained to assess whether or not there is an absolute necessity to use firearms, not only on the basis of the letter of the relevant regulations, but also with due regard to the pre-eminence of respect for human life as a fundamental value (see *Nachova and Others*, cited above, § 97).

158. In the present case it has been acknowledged by the Government that Movsar Khamzatov was killed as a result of the shooting by the federal servicemen on 23 October 2001. It is therefore for the State to account for his death. Notably, it is incumbent on the State to demonstrate that the force used by the servicemen could be said to have been absolutely necessary and therefore strictly proportionate to the achievement of one of the aims set out in paragraph 2 of Article 2 (see *Mansuroğlu v. Turkey*, no. 43443/98, §§ 77-78, 26 February 2008, and *Esmukhambetov and Others v. Russia*, no. 23445/03, § 140, 29 March 2011).

159. In this connection the Court notes first of all that its ability to assess the circumstances surrounding the death of the applicants’ relative, including the legal or regulatory framework in place, is hampered by the Government’s failure to submit the entire copy of the investigation case file and also the quality of the submitted documents.

160. The Government argued that the use of lethal force in the present case had been justified under Article 2 § 2 (a) and (b) of the Convention. In so far as they may be understood to claim that it pursued the aim of

effecting the lawful arrest of the persons inside the VAZ-2109 vehicle and in particular, Movsar Khamzatov, the Court cannot but note that the servicemen left the crime scene immediately after the shooting, without taking any steps to report the incident to the authorities, which fact, in its view, raises serious doubts as to their intention to carry out a lawful arrest of the applicants' relative and the applicability of Article 2 § 2 (b).

161. It is further observed that no arms or evidence of their use by the passengers of the VAZ vehicle were discovered by the domestic investigation, which seems to contradict the Government's thesis that they offered armed resistance to the servicemen. In any event, even assuming that there existed any risk of unlawful violence or that the use of lethal force in the present case can be said to have pursued any of the aforementioned aims, the Court does not consider that the Government properly accounted for the use of that force resulting in Movsar Khamzatov's death.

162. In particular, the Court observes at the outset that, whilst claiming that the federal servicemen involved in the incident of 23 October 2001 had acted in full compliance with the national legislation, the respondent Government failed to provide a copy of any such legal acts or regulations, or even to indicate more specifically the legal instruments to which they referred.

163. In so far as they may be understood to refer to the presidential and governmental decrees mentioned in paragraphs 116-120 above, the Court notes that they failed to furnish copies of the relevant documents, which it finds unacceptable. In any event, having examined those documents of its own motion, it observes that decrees nos. 1833 and 2137 were not in force at the time of the events under examination (see paragraphs 119 and 120 above). As regards the remaining legal acts, the Government failed to explain how they were relevant to the fact of the fatal use of firearms by the servicemen against the applicants' relative in the particular circumstances of the present case and, having regard to the content of those documents, the Court is also unable to accept as pertinent their reference to those decrees.

164. Accordingly, the Court finds that the Government failed to demonstrate that an appropriate legal framework concerning the use of lethal force and, in particular, firearms, by the military servicemen was in place and if so, whether it contained clear safeguards to prevent arbitrary deprivation of life and to satisfy the requirement of protection "by law" of the right to life secured by Article 2 of the Convention.

165. The Government submitted that the vehicle the applicants' relative had been in had moved around during curfew hours and that the servicemen had had to resort to lethal force because the vehicle passengers had refused to react to their signals to stop and had offered armed resistance, wounding serviceman Z. However, the Court considers that none of the Government's submissions can be recognised as being supported by either the findings of

the domestic investigation or the selection of the documents from the criminal file they made available to it.

166. In particular, the investigation never ascertained that the applicants' relative had indeed been killed during curfew hours; none of the investigators' decisions, in fact, mentioned the curfew (see paragraphs 63 and 66 above). The Court is also not convinced by the Government's reference to the order of 10 May 2000 because it finds no indication to suggest that it was valid at the time of the events under examination or that the area in which Movsar Khamzatov had been killed was covered by it (see paragraph 109 above).

167. It further takes note of the domestic courts' findings to the effect that, given that the vehicle the applicants' relative was in was moving with its lights turned on, its passengers could not have seen the signals to stop allegedly made by the servicemen and that, whilst A.K. submitted that he had fired warning shots, his statement was contradicted by statements of other witnesses, who claimed that there had been continuing bursts of gunfire from the beginning of the incident (see paragraph 111 above).

168. Furthermore, bearing in mind that the investigating authorities did not discover any arms in the VAZ-2109 vehicle and obtained no evidence that they had been used by its passengers, the Court is unable to accept as convincing the Government's thesis of armed resistance on the part of the vehicle passengers. In the same vein, having regard to important contradictions in available documents concerning the timing of Z.'s alleged wounding (see, among others, paragraphs 73 and 81 above) and also the statement by O.S. that a large number of servicemen were firing at the vehicle, including those who stayed behind the group of servicemen trying to stop it (see paragraph 55 above), the Court considers that the Government failed to demonstrate convincingly that Z. had been wounded by the passengers of the vehicle and not, for example, under the crossfire coming from the servicemen who had stayed behind.

169. It is further noted that, despite the instructions of the higher-ranking prosecutors, the investigating authorities failed to verify whether the servicemen had had any authority to stop and inspect the VAZ-2109 car, given that their specific task had been to evacuate a defective military vehicle. Furthermore, in the light of the contradictory information concerning the radio intelligence, the Court is unable to assess whether, if such intelligence existed, any specific instructions had been given to the servicemen and if so, of what they consisted.

170. The Court takes note of the Government's argument that the servicemen had to act in a difficult situation because of the conflict in the Chechen Republic and observes that it has recognised that the conflict called for exceptional measures to suppress the illegal armed insurgency (see *Isayeva v. Russia*, no. 57950/00, § 180, 24 February 2005). However, this does not mean that the law-enforcement officials have *carte blanche* to

use firearms whenever they are confronted with such problems. On the contrary, they are required to have the ability to assess all parameters and to organise their actions carefully with a view to minimising a risk of deprivation of life or bodily harm (see, for example, *Kakoulli v. Turkey*, no. 38595/97, § 114, 22 November 2005, and *Isayeva*, cited above, § 181).

171. It is also significant for the Court that, as it transpires from O.S.'s statement, at a certain point during the skirmish a large number of servicemen started indiscriminately firing at the vehicle carrying the applicants' relative (see paragraph 55 above), which indicates that the situation swiftly degenerated and became chaotic. Moreover, the size of some of the holes discovered on the VAZ vehicle and in particular those measuring between 3 and 15 cm, as well as the fact that some of the witnesses pointed to the presence of an anti-aircraft gun at the crime scene (see paragraphs 56 and 12 above) would rather suggest that, besides submachine guns, the servicemen used heavier weapons when firing at the vehicle, which fact raises further doubts as to the strict proportionality of the lethal force used. In any event, the Court cannot but note that a total of sixty-six bullet cartridges were seized from the crime scene, all of them discovered on the side of the canal where the servicemen had been stationed (see paragraph 111 above).

172. In sum, having regard to what has been said above and also drawing inferences from the Government's failure to submit an entire copy of the investigation case file into the applicants' relative's death, the Court considers that the Government failed to demonstrate that the use of lethal force against Movsar Khamzatov had been absolutely necessary and therefore strictly proportionate to the achievement of the purposes set out in Article 2 § 2 (a) or (b) of the Convention.

173. There has accordingly been a violation of Article 2 of the Convention under its substantive limb.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

174. The applicants complained under Article 13 that they did not have effective remedies in respect of their complaints under Article 2. Article 13 reads:

"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. Submissions by the parties

175. The Government contended that the applicants had had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using them.

176. The applicants maintained their complaint.

B. The Court's assessment

1. Admissibility

177. 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

178. The Court reiterates that in circumstances where, as here, a criminal investigation into the killing of an applicant's relative has been ineffective and the effectiveness of any other remedy that might have existed has consequently been undermined, a State will be found to have failed in its obligation under Article 13 of the Convention (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 183, 24 February 2005).

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

180. 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

181. The applicants did not submit any claims for pecuniary damage. They claimed non-pecuniary damage for the suffering they had endured as a result of the loss of their relative and the authorities' failure to investigate his death, leaving the determination of its amount to the Court.

182. The Government argued that they did not consider that the applicants' rights had been violated in the present case and submitted that,

should the Court find a breach of any Convention provisions, the finding of a violation would constitute sufficient just satisfaction.

183. The Court notes that it has found a violation of Articles 2 and 13 of the Convention on account of the death of the applicants' relative, the authorities' failure to investigate it properly and the lack of effective remedies in respect of those complaints. It considers that the applicants must have suffered anguish and distress as a result of all these circumstances, which cannot be compensated for solely by a finding of a violation. Having regard to those considerations, it awards the first and second applicants jointly 20,000 euros (EUR), the fifth and sixth applicants jointly EUR 30,000 and the third and fourth applicants EUR 5,000 each in respect of non-pecuniary damage, plus any tax that may be chargeable to them.

B. Costs and expenses

184. The applicants were represented by Mr D. Itsleyev. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 9,303. They submitted the following breakdown of costs:

- (a) EUR 8,798 for 58.65 hours of research and drafting of legal documents submitted to the Court at a rate of EUR 150 per hour;
- (b) EUR 360 for translation costs, as certified by invoices; and
- (c) EUR 145 for administrative and postal costs.

185. The Government pointed out that the applicants should be entitled to the reimbursement of their costs and expenses only in so far as it had been shown that they had actually been incurred and were reasonable as to quantum (see *Skorobogatova v. Russia*, no. 33914/02, § 61, 1 December 2005)

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

187. Having regard to the details of the information and legal representation contracts submitted by the applicants, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representative.

188. As to whether the costs and expenses incurred for legal representation were necessary, the Court notes that this case was rather complex and required a certain amount of research and preparation. It notes at the same time, that due to the application of the former Article 29 § 3 in the present case, the applicants' representatives submitted their observations on the admissibility and merits in one set of documents.

189. Having regard to what has been stated above and the details of the claims submitted by the applicants, the Court awards them the amount of

EUR 6,500, together with any value-added tax that may be chargeable to them.

D. Default interest

190. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 2 of the Convention on account of the authorities failure to conduct an effective investigation of the death of Movsar Khamzatov;
3. *Holds* that there has been a violation of Article 2 of the Convention as regards Movsar Khamzatov's death;
4. *Holds* that there has been a violation of Article 13, taken in conjunction with Article 2 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicants, 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 rate applicable at the date of settlement:
 - (i) EUR 20,000 (twenty thousand euros) to the first and second applicants jointly, EUR 30,000 (thirty thousand euros) to the fifth and sixth applicants jointly and EUR 5,000 (five thousand euros) to the third and fourth applicants each, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 6,500 (six thousand and five hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
 - (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;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 28 February 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President