



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

THIRD SECTION

CASE OF AKHMEDNABIYEV AND KAMALOV v. RUSSIA

(Applications nos. 34358/16 and 58535/16)

JUDGMENT

Art 2 (procedural) • Ineffective investigation into the murder of the applicants' relatives

Art 2 (substantive) • Life • State's failure to comply with positive obligation to take preventative operational measures to safeguard the life of the first applicant's father • Existence of a "real and immediate" risk to his life • First applicant's father's status as a journalist created additional obligation to take all measures necessary to guarantee his protection in line with relevant international standards and recommendations • Absence of real and immediate risk to life of second applicant's nephew

Prepared by the Registry. Does not bind the Court.

STRASBOURG

30 January 2024

FINAL

30/04/2024

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

In the case of Akhmednabiyev and Kamalov v. Russia,

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

Pere Pastor Vilanova, *President*,

Jolien Schukking,

Yonko Grozev,

Georgios A. Serghides,

Darian Pavli,

Peeter Roosma,

Ioannis Ktistakis, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the applications (nos. 34358/16 and 58535/16) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Russian nationals, Mr Mutaelum Akhmednabiyevich Akhmednabiyev and Mr Ali Akhmedovich Kamalov (“the applicants”), on the dates indicated in the appended table;

the decision to give notice of the applications to the Russian Government (“the Government”);

the observations submitted by the applicants;

the decision of the President of the Section to appoint one of the sitting judges of the Court to act as *ad hoc* judge, applying by analogy Rule 29 § 2 of the Rules of Court (for a similar situation and an explanation of the background see *Kutayev v. Russia*, no. 17912/15, §§ 5-8, 24 January 2023);

Having deliberated in private on 9 January 2024,

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

INTRODUCTION

1. The applications concern the murders of the applicants’ relatives and the effectiveness of the ensuing investigations.

THE FACTS

2. The applicant in application no. 34358/16 (“the first applicant”) is the son of Mr Akhmednabi Akhmednabiyev (“Mr Akhmednabiyev”), who was murdered on 9 July 2013. The applicant in application no. 58535/16 (“the second applicant”) is the uncle of Mr Khadzhimurad Kamalov (“Mr Kamalov”), who was murdered on 15 December 2011. The applicants were represented by Mr T. Misakyan, a lawyer practising in Moscow.

3. The Government were represented by Mr M. Vinogradov, Representative of the Russian Federation to the European Court of Human Rights.

I. THE THREATS OF 3 SEPTEMBER 2009 AND THE ENSUING INVESTIGATION

4. On 3 September 2009 unknown persons distributed printed leaflets in various places in Makhachkala in the Republic of Dagestan, in which they accused several journalists, human rights defenders and lawyers of colluding with Dagestan's armed Islamists and threatened the persons mentioned in the leaflet with death to avenge the murders of police officers (the "execution list"). Mr Kamalov's and Mr Akhmednabiyev's names were mentioned among those targeted by the threats.

5. At the material time Mr Akhmednabiyev was a deputy editor of the daily newspaper *Novoye Delo* in Dagestan and a correspondent of the *Kavkazskiy Uzel* news website. Mr Kamalov was founder and editor of the Dagestan newspaper *Chernovik*.

6. On 23 October 2009 a criminal case was opened in relation to offences of public calls to engage in extremist activities (Article 280 § 1 of the Criminal Code ("the CC")) and inciting hatred and enmity through the mass media (Article 282 § 1) on account of the leaflets distributed on 3 September 2009. The file was given the number 96892. The decision to open the case shows that the investigating authorities had information about the places where the leaflets had been distributed and the model, colour and registration number of the car from which they had been dropped.

7. On 5 February 2010 Mr Akhmednabiyev was granted victim status in criminal case no. 96892. When questioned by the investigator in charge of the case, Mr Akhmednabiyev stated that he was afraid for his life because of certain threats which he perceived to be real. He said that he did not know who had made the threats but suspected that they might have come from the law-enforcement authorities, probably from serving or former officials of the Ministry of the Interior of the Republic of Dagestan.

8. There is no information in the case file as to whether Mr Kamalov was granted victim status or questioned in the framework of the investigation of criminal case no. 96892. Nor has the Court been provided with any information about the steps taken by the investigating authorities in criminal case no. 96892. According to the first applicant, the criminal investigation in that case was eventually discontinued.

II. ATTACK ON MR AKHMEDNABIYEV, HIS SUBSEQUENT MURDER AND THE ENSUING INVESTIGATIONS

A. Attack on Mr Akhmednabiyev of 12 January 2013 and the ensuing investigation

1. Attack of 12 January 2013 and opening of the criminal case

9. On 12 January 2013 Mr Akhmednabiyev was shot at four times near his house in the village of Semender. He was not wounded but his car was damaged. A bullet was found in the boot of his car.

10. On 13 January 2013 an investigator from the Kirovskiy District Department of the Interior of Makhachkala instituted an investigation into the events of 12 January 2013 under Article 167 (damage to property) and Article 222 (illegal use of firearms) of the CC). The case file was given the number 35819. When he was questioned the same day with the status of victim, Mr Akhmednabiyev stated that he perceived the attack as an attempted murder in so far as he had already been targeted by death threats in leaflets distributed previously in Makhachkala and had also received a death threat via SMS in 2011. He linked those threats to his professional activity as a journalist. In particular, he stated that he was in conflict with Mr I.M., the head of one the municipalities of Dagestan, because of various critical articles that he had published about him.

2. Mr Akhmednabiyev's complaints about the legal classification of the attack and the choice of the investigating body

11. On 29 January 2013 Mr Akhmednabiyev lodged a complaint with the prosecutor about the investigator's decision of 13 January 2013. He stated that the criminal case concerning the attack of 12 January 2013 should have been initiated on the basis of Article 30 § 3 and Article 105 (attempted murder for reasons connected with the victim's professional activity) and Article 144 (obstructing the lawful professional activities of journalists) of the CC.

12. On 1 February 2013 Mr Akhmednabiyev lodged another complaint with the prosecutor, asserting that the criminal file should be transferred to the Investigative Committee, which had jurisdiction to investigate offences under Article 105 of the CC.

13. On 8 February 2013 the deputy prosecutor of the Kirovskiy District in Makhachkala dismissed the above-mentioned complaints.

14. On 11 February 2013 Mr Akhmednabiyev lodged a complaint under Article 125 of the Code of Criminal Procedure ("the CCrP") against the decision of 8 February 2013.

15. On 15 February 2013 the Kirovskiy District Court of Makhachkala upheld the complaint "on the grounds raised by the complainant", declared

the disputed decision unlawful and ordered the prosecutor to correct the shortcomings it had identified.

16. On 2 April 2013 the Supreme Court of Dagestan upheld the decision of 15 February 2013 on appeal. It stated, *inter alia*, that, for the purposes of opening a criminal file, the acts committed by unknown perpetrators during the attack of 12 January 2013 should have been classified as breaches of Articles 105 and 144 of the CC.

3. *Resumption of the investigation in criminal case no. 35819, its transfer and further complaints about the investigators' decisions*

17. Notwithstanding the domestic courts' findings, the investigation of case no. 35819 initially remained with the Kirovskiy District Department of the Interior of Makhachkala. Certain investigative steps were taken (compiling of a plan of investigative measures; questioning of members of Mr Akhmednabiyev's family and neighbours; and analysis of the bullet found in Mr Akhmednabiyev's car). The investigator tried to question Mr I.M. (see paragraph 10 above) but he refused to testify on the ground that "he was not obliged to answer questions as [the accusations] tarnished his reputation as the head of the municipality and a good citizen".

18. By a decision of 3 June 2013, the investigator finally transferred case file no. 35819 to the prosecutor, stating that the Investigative Committee of Dagestan had the procedural jurisdiction to investigate offences under Articles 105, 144 and 222 of the CC.

19. On 10 June 2013 the prosecutor's office transferred case file no. 35819 to the Oktyabrskiy District Investigative Department in Makhachkala. It was received on 13 June 2013.

20. By a decision of 25 June 2013, an investigator of the Oktyabrskiy District Investigative Department refused to investigate the events of 12 January 2013 under Articles 105 and 144 of the CC. On the basis of Mr Akhmednabiyev's testimony about the events and, in particular, about the sequence of shots, the investigator considered that "the prosecutor's arguments about the presence of the elements of the offences under Article 30 § 3, Article 105 § 3 (g) and Article 144 of the CC" were "erroneous". The refusal was based on Article 24 § 1 (1) of the CCrP (see paragraph 72 below).

21. On 4 July 2013 Mr Akhmednabiyev appealed against the decision of 25 June 2013 to the Kirovskiy District Court of Makhachkala under Article 125 of the CCrP. He stated in particular that the investigator had distorted his testimony about the circumstances of the attack. The proceedings were discontinued on 9 July 2013 because of Mr Akhmednabiyev's death (see paragraph 26 below).

22. On 8 July 2013 the deputy prosecutor of the Kirovskiy District in Makhachkala quashed the decision of 25 June 2013 as unlawful, finding that it contradicted the courts' decisions of 15 February 2013 and 2 April 2013

(see paragraphs 15-16 above) and that, moreover, it was procedurally irregular as the CCrP did not allow for a refusal to investigate a criminal case where the file had already been opened.

23. On 15 July 2013 the Deputy Prosecutor of Dagestan issued a document entitled “Request to rectify the breaches of the federal legislation committed in the course of the preliminary investigation” (*Требование об устранении нарушений федерального законодательства, допущенных в ходе предварительного расследования*) and addressed to the head of the Kirovskiy District Investigative Department. Referring to the courts’ decisions of 15 February 2013 and 2 April 2013 (see paragraphs 15-16 above), the Deputy Prosecutor asked for “the immediate opening of a criminal investigation” into the events of 12 January 2013 under Articles 105 and 144 of the Criminal Code and for all necessary investigative steps to be taken.

24. On 24 July 2013 the Kirovskiy District Investigative Department instituted an investigation into the events of 12 January 2013 under Article 105 of the Criminal Code. It was merged with case file no. 35819.

25. By a decision of 24 August 2013, the deputy head of the Kirovskiy District Investigative Department suspended the preliminary investigation in case no. 35819 because of the impossibility of identifying the perpetrators of the attack of 12 January 2013.

B. Mr Akhmednabiyev’s murder and the ensuing investigation

26. Meanwhile, on 9 July 2013 at around 7 a.m. Mr Akhmednabiyev was shot dead in his car in the village of Semeder. According to the statements of several eyewitnesses, Mr Akhmednabiyev was killed by a masked man who fired several shots at him and left the crime scene in a car.

27. On the same date a criminal investigation was instituted into the murder under Articles 105, 167 (intentional destruction of or damage to another person’s property) and 222 of the CC. The case file was given the number 358499 and assigned to a group of investigators of the Kirovskiy District Investigative Department.

28. On 15 July 2013 the first applicant was granted victim status in case no. 358499.

29. By a decision of 2 December 2013, the head of the Kirovskiy District Investigative Department extended the preliminary investigation in case no. 358499 by one month. He identified several steps that needed to be taken, such as the questioning of additional witnesses and an analysis of cell phone connections around the crime scene. It appears that the Kirovskiy District Department of the Interior was instructed to take some of these steps.

30. On 9 January 2014 the Kirovskiy District Investigative Department issued a reminder, and on 24 January of the same year a warning, to the Kirovskiy District Department of the Interior that the tasks entrusted to it had

still not been carried out. On 12 February 2014 several officers of that department received disciplinary sanctions for failing to take action.

31. By a decision of 25 February 2014, the head of the Kirovskiy District Investigative Department merged case file no. 35819 with criminal case no. 358499. He stated, *inter alia*, that the preliminary investigation in both cases showed that the attack of 12 January 2013 and the murder of 9 July 2013 had been perpetrated by the same persons given that they had been carried out in the same place and that the perpetrators had used a car of the same model and colour, as well as a firearm with similar characteristics.

32. The investigating authorities carried out several investigative measures, such as an analysis of the cell phone connections near the crime scene, which enabled them to establish that Mr N.Ch., Mr I.M.'s chauffeur, could have been present in the vicinity of the crime scene at the moment of Mr Akhmednabiyev's murder. On 24 March 2014 Mr N.Ch. was questioned as a witness and on 10 April 2014 he underwent a polygraph test.

33. On 9 April 2014 the investigation was suspended pursuant to Article 208 § 1 (1) of the CCrP (see paragraph 74 below). It was then resumed on 10 June 2014, after the decision to suspend it was quashed by a prosecutor.

34. On 11 July 2014 Mr I.M. was questioned as a witness.

35. On 30 July 2014 the investigation was again suspended pursuant to Article 208 § 1 (1) of the CCrP.

36. On 16 September 2014 a prosecutor quashed the decision of 30 July 2014 to suspend the investigation and identified the following investigative steps to be taken: questioning of Mr G.K. and Mr S.U. (Mr Akhmednabiyev's colleague and friend respectively); inspection of items seized at the crime scene and their registration as physical evidence; and obtaining expert reports about the CCTV recordings which had been submitted for expert examination in January and April 2014.

37. On 18 October 2014 case file no. 358499 was transferred to the Investigative Committee of Dagestan because of the difficulty of pursuing the investigation and the absence of tangible results. It was assigned to a unit that dealt with the investigation of particularly serious crimes.

38. On 12 December 2014 the investigation authorities obtained an expert ballistics report on the bullets found in Mr Akhmednabiyev's car after the attack of 11 January 2013 and those found in Mr Akhmednabiyev's body and car on 9 July 2013.

39. On 14 December 2014 the investigation was suspended pursuant to Article 208 § 1 (1) of the CCrP.

40. On 10 March 2015 the investigation resumed.

41. On 27 March 2015 Mr Sh.T. was questioned as a witness. He stated, *inter alia*, that in 2012 Mr I.M. had asked him to kill Mr Akhmednabiyev or find a person who would agree to do so but he had refused. After Mr Akhmednabiyev's murder, Mr Sh.T. had told Mr A.G., a friend of the

deceased, about Mr I.M.'s request. In 2015 the relationship between Mr I.M. and Mr Sh.T. had deteriorated. According to Mr Sh.T., on the morning of 27 March 2015, he had been shot at several times and had been wounded.

42. On 1 April 2015 Mr A.G. was questioned as a witness. He confirmed that in 2013 Mr Sh.T. had told him that Mr I.M. had asked him to kill Mr Akhmednabiyev.

43. On 1 April 2015 Mr. K.N. was questioned as a witness. He stated that the conflict between Mr Akhmednabiyev and Mr I.M. had arisen from the fact that they belonged to two clans that had been in dispute for many years over the use of land in Mr Akhmednabiyev's native village. Mr I.M., as the head of the municipal administration, had sold municipally owned land in order to raise his status with members of his clan. Mr Akhmednabiyev had published articles criticising Mr I.M.'s decisions.

44. On 17 July 2015 the investigation was suspended again, and on 28 September 2016 it was again resumed. The following steps were identified as necessary: the examination of Mr Sh.T. by a forensic expert in relation to the injuries he had sustained during the assault of 27 March 2015 and the analysis of any relevant medical documents in that regard; face-to-face confrontations between Mr Sh.T. and Mr A.G., as well as between Mr Sh.T. and Mr I.M.; additional questioning of Mr I.M.; and the setting-up of "technical operational-search measures" with regard to Mr Sh.T. and Mr I.M.

45. In October 2015 the first applicant's lawyer complained of the ineffectiveness of the investigation and the lack of communication as to its results.

46. On 27 November 2015 the investigation was again suspended.

47. The first applicant's lawyer appealed against the decision of 27 November 2015 under Article 125 of the CCrP. He complained that the investigation was ineffective and had not been pursued with diligence.

48. On 10 March 2016 the Sovetskiy District Court of Makhachkala rejected the complaint. It held that "the investigator examined and took into account all the circumstances that could influence his decision whether to suspend the investigation". On 27 April 2016 the Supreme Court of Dagestan upheld that decision on appeal.

49. On 15 June 2017 the first applicant asked the Investigative Committee of Dagestan to provide information about the conduct of the investigation in criminal case no. 358449. There was no response.

50. On 4 April 2018 the first applicant's representative wrote to the head of the Investigative Committee of Russia complaining of the ineffective investigation in criminal case no. 358449 and asking for it be transferred to that Committee.

51. On 8 June 2018 the Investigative Committee of Dagestan informed the first applicant's lawyer that the investigation in criminal case no. 358449 had resumed and that he would be informed about its results. According to the applicant, no such information was received.

52. No further information on those proceedings has been submitted to the Court.

III. MR KAMALOV'S MURDER AND THE ENSUING INVESTIGATION

53. On 15 December 2011 at around 11.45 p.m. Mr Kamalov was shot dead in Makhachkala near the entrance of the building in which he worked.

54. On 16 December 2011 a criminal investigation was instituted into the murder under Articles 105 and 222 of the Criminal Code. The case file was given the number 158780 and assigned to an investigator of the Kirovskiy District Investigative Department of the Investigative Committee in Makhachkala.

55. Mr Kamalov's brother was given victim status in criminal case no. 158780. According to the second applicant, who was Mr Kamalov's uncle and thus not a close relative within the meaning of Article 44 § 8 of the CCRP (see paragraph 72 above), he was not eligible for recognition as a victim.

56. Nevertheless, during the investigation, the second applicant made several requests to the investigating authorities about the investigation into his nephew's murder and he also obtained, from unknown sources, several documents from the investigation file.

57. On 22 May 2012 criminal file no. 158780 was transmitted to the Main Investigative Department in the North Caucasus Federal District. According to the second applicant, several investigative steps were taken after the file was transferred.

58. On 6 June 2012 the second applicant was questioned as a witness.

59. In December 2012 the second applicant obtained two notes from case file no. 158780 which analysed the state of the investigation. According to the note, on unspecified dates several investigative steps had been taken (for example, questioning of witnesses, phone tapping, and obtaining CCTV recordings from near the crime scene), leading to the hypothesis that the murder had been carried out by members of a criminal gang, in particular Mr Mu.Sh., and commissioned by Mr Sh.I., a member of the Dagestan Parliament.

60. In March 2013 the second applicant obtained a report from criminal file no. 158780 which was addressed to the head of the Investigative Committee of Russia. The report stated, *inter alia*, that on 29 January 2013 Mr Mu.Sh. had been arrested in the framework of criminal case no. 901615, which had been opened for the investigation into the murder of another local journalist in Dagestan in 2009. When questioned as a suspect, Mr Mu.Sh. also confessed to Mr Kamalov's murder and stated that he and two other members of the gang, Mr M.A. and Mr M.Kh., had killed him. Mr Mu.Sh. confirmed his statement during a reconstruction of the events. The report indicated that criminal case no. 158780 had been merged with file no. 901615. Mr M.A.

and Mr M.Kh. were placed on a wanted persons list and arrest warrants for them were issued. According to the second applicant, he also obtained a video recording of Mr Mu.Sh. being questioned as a suspect, in which he stated that the assassination had been commissioned by Mr Sh.I.

61. By a letter of 15 November 2013, the Investigative Committee in the North Caucasus Federal Circuit informed the second applicant that the investigating authorities were taking measures to find Mr M.A. and Mr M.Kh.

62. On 20 November 2013 the investigator in charge of criminal case no. 901615 decided to discontinue the investigation in respect of Mr Mu.Sh. as regards Mr Kamalov's murder. The investigator took into account the fact that on 17 February 2013 Mr Mu.Sh. had retracted his previous statements and asserted his innocence. Given the contradictory character of Mr Mu.Sh.'s statements, the lack of direct evidence and the impossibility of establishing the whereabouts of Mr M.A. and Mr M.Kh., the investigator considered that Mr Mu.Sh.'s implication in Mr Kamalov's murder could not be proved. It appears that the material from the criminal file relating to Mr Kamalov's murder was severed from case file no. 901615 and given the number 368247.

63. On 6 June 2014 Mr M.Kh. was arrested and placed in pre-trial detention on charges of murder and illegal possession of firearms.

64. On 9 December 2014 the Investigative Committee in the North Caucasus Federal Circuit informed the second applicant that, being a witness, he was not allowed to have access to the material from criminal case no. 368247 which related to Mr. Kamalov's murder.

65. In June 2016 the second applicant requested information from the Investigative Committee in the North Caucasus Federal Circuit about the state of the investigation in criminal case no. 368247. By a reply of 13 July 2016, he was denied access to the information.

66. In July 2017 the second applicant made another request for information about the investigation and claimed to have information about the murder. By a reply of 24 July 2017, he was informed that the investigation was pending and that he might be questioned as witness if need be.

67. It appears from several newspaper articles submitted by the second applicant that in 2018 criminal case no. 368247 was transmitted to the Investigative Committee of Russia and that the investigation was completed in September 2020. Four individuals were charged with Mr Kamalov's murder: Mr Sh.I., who commissioned the murder, and Mr Mu.Sh, Mr M.A. and Mr M.Kh., who carried it out. The charges were brought under Articles 277 (organising an attempt on the life of a public person), 209 (establishing and participating in an armed gang), 205.1 (complicity in terrorist activity) and 222 (illegal possession of firearms) of the CC.

68. In October 2020, the four accused were committed to stand trial before the South Circuit Military Court.

69. On 1 July 2022, the South Circuit Military Court delivered a judgment by which all the accused were convicted. According to a press release of

1 July 2022, Mr Sh.I., Mr Mu.Sh, Mr M.A. and Mr M.Kh. received prison sentences ranging from sixteen to twenty-four years.

70. On 26 May 2023 the Appellate Military Court upheld the judgment on appeal.

71. By a letter of 26 July 2023, the South Circuit Military Court refused to deliver a copy of the judgment or of the appeal decision to the second applicant because he was not a party to the proceedings.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW

72. Under Article 24 § 1 of the CCrP, a criminal case may be closed on the following grounds, *inter alia*: (1) “the absence of an offence”; or (2) “the act did not contain the elements of the offence”.

73. Under Article 42 § 8 of the CCrP as in force between 10 December 2011 and 28 December 2013, in criminal cases involving offences resulting in the death of a person, the victim’s rights under Article 42 pass to one of the victim’s close relatives. On 28 December 2013 this provision was amended to provide that in such cases, the victim’s rights would pass to one of his or her close relatives and/or close associates, or, where those persons were absent or unable to participate in proceedings, to one of the victim’s (other) relatives. Article 5 of the CCrP defines close relatives as the spouse and the parents, children, adoptive parents, adopted children, siblings, grandparents and grandchildren; relatives as all other persons, other than close relatives, who are related by blood; and close associates as persons other than close relatives and relatives who have links to the victim or witness, as well as persons whose life, health or well-being is of concern to the victim or witness because of their personal relationship.

74. A preliminary investigation may be suspended pursuant to Article 208 § 1 (1) of the CCrP for failure to identify the person to be charged.

75. Federal Law no. 119-FZ of 20 August 2004 on State protection of victims, witnesses and other parties to criminal proceedings, as in force at the material time, provided as follows:

Section 2: Persons subject to State protection

“1. The following participants in criminal proceedings may be given State protection under this Federal Law:

- (1) a victim;
- (2) a witness;

...

2. State protection measures may also be applied prior to the initiation of criminal proceedings to a complainant, an eyewitness or a victim of the crime or other persons contributing to the prevention or detection of the crime.

...”

Section 6: Security measures

“1. One or more of the following security measures may be implemented together with respect to the protected person:

- (1) personal protection, protection of the person’s home and property;
- (2) issuing of special means of personal protection, communication and alert;
- (3) ensuring the confidentiality of information about the protected person;
- (4) relocation to another place of residence;
- (5) replacement of identity documents;
- (6) change of appearance;
- (7) change of the place of work (or service) or study;
- (8) temporary relocation to a safe place;
- (9) additional security measures in respect of a protected person who is in detention or is serving a sentence, including transfer from one place of detention to another.

2. On the grounds referred to in section 16 of this Federal Law, other security measures provided for by the legislation of the Russian Federation may also be implemented in respect of the protected person.

3. The security measures provided for in points (4)-(7) of subsection 1 of this section shall be applied only in criminal cases involving serious and particularly serious crimes.

...”

Section 16. Grounds for implementing security measures

“1. Security measures may be implemented on the grounds of the existence of a real threat to kill the protected person, to commit violence against him or her, or to engage in destruction of or damage to his or her property in connection with participation in criminal proceedings, where such grounds are established by the authority deciding on the implementation of State protection.

2. Security measures shall be applied on the basis of a written application by the protected person or with his or her consent in writing ...”

II. INTERNATIONAL LAW

A. Council of Europe

76. The relevant parts of the Appendix to Recommendation CM/Rec(2016)4 of the Committee of Ministers of the Council of Europe to member States on the protection of journalism and safety of journalists and other media actors, adopted on 13 April 2016, read as follows:

“I. Guidelines

...

8. Legislation criminalising violence against journalists should be backed up by law enforcement machinery and redress mechanisms for victims (and their families) that are effective in practice. Clear and adequate provision should be made for effective injunctive and precautionary forms of interim protection for those who face threats of violence.

...

17. It is imperative that everyone involved in killings of, attacks on and ill-treatment of journalists and other media actors be brought to justice. Investigations into such crimes and the prosecution of those responsible for them must therefore meet a number of general requirements. When those responsible for such crimes are not brought to justice, a culture of impunity can arise, which calls for particular courses of action.

...

II. Principles

...

23. The procedural dimension involves a positive obligation on the State to carry out effective, independent and prompt investigations into alleged unlawful killings or ill-treatment, either by State or non-State actors, with a view to prosecuting the perpetrators of such crimes and bringing them to justice. Article 13 of the Convention also requires States to ensure that an effective remedy is available whenever any of the substantive rights in the Convention are violated.

24. The absence of such effective measures gives rise to the existence of a culture of impunity, which leads to the tolerance of abuses and crimes against journalists and other media actors. When there is little or no prospect of prosecution, perpetrators of such abuses and crimes do not fear punishment. This inflicts additional suffering on victims and can lead to the repetition of abuses and crimes.

...

28. Ensuring the safety and security of journalists and other media actors is a precondition for ensuring their ability to participate effectively in public debate. The persistence of intimidation, threats and violence against journalists and other media actors, coupled with the failure to bring to justice the perpetrators of such offences, engender fear and have a chilling effect on freedom of expression and on public debate. States are under a positive obligation to protect journalists and other media actors against intimidation, threats and violence irrespective of their source, whether governmental, judicial, religious, economic or criminal.

...

39. Attacks on and intimidation of journalists and other media actors inevitably have a grave chilling effect on freedom of expression and this effect is all the more piercing when the prevalence of attacks and intimidation is compounded by a culture of legal impunity for their perpetrators. Such a culture of legal impunity is an indicator of endemic abuse of human rights.”

B. United Nations (UN)

77. The issue of the safety of journalists has constantly been on the UN agenda. The UN General Assembly and the Human Rights Council have adopted numerous resolutions in which they have urged the member States to provide for various measures to protect journalists. For instance, in its Resolution on the safety of journalists adopted on 25 September 2014 (A/HRC/RES/27/5), the Human Rights Council strongly condemned

“the prevailing impunity for attacks and violence against journalists, and expresses grave concern that the vast majority of these crimes go unpunished, which in turn contributes to the recurrence of these crimes ...”

and urged States

“to promote a safe and enabling environment for journalists to perform their work independently and without undue interference, to prevent attacks and violence against journalists and media workers, to ensure accountability through the conduct of impartial, speedy, thorough, independent and effective investigations into all alleged violence against journalists and media workers falling within their jurisdiction, to bring perpetrators including, *inter alia*, those who command, conspire to commit, aid and abet or cover up such crimes, to justice, and to ensure that victims and their families have access to appropriate remedies.”

The Council called upon States

“to develop and implement strategies for combating impunity for attacks and violence against journalists, including by using, where appropriate, good practices such as ... *inter alia*:

- (a) The creation of special investigative units or independent commissions;
- (b) The appointment of a specialized prosecutor;
- (c) The adoption of specific protocols and methods of investigation and prosecution;
- (d) The training of prosecutors and the judiciary regarding the safety of journalists;
- (e) The establishment of information-gathering mechanisms, such as databases, to permit the gathering of verified information about threats and attacks against journalists;
- (f) The establishment of an early warning and rapid response mechanism to give journalists, when threatened, immediate access to the authorities and protective measures; ...”

78. In its Resolution on the safety of journalists and the issue of impunity (2014) of 18 December 2014 (A/RES/69/185) the United Nations General Assembly noted that

“impunity for attacks against journalists remains one of the greatest challenges to the safety of journalists and that ensuring accountability for crimes committed against journalists is a key element in preventing future attacks ...”.

It expressed

“deep concern also at the growing threat to the safety of journalists posed by non-State actors, including terrorist groups and criminal organizations ...”,

and called upon States

“to create and maintain, in law and in practice, a safe and enabling environment for journalists to perform their work independently and without undue interference, including by means of: (a) legislative measures; (b) awareness-raising in the judiciary and among law enforcement officers and military personnel, as well as among journalists and in civil society, regarding international human rights and humanitarian law obligations and commitments relating to the safety of journalists; (c) the monitoring and reporting of attacks against journalists; (d) publicly and systematically condemning violence and attacks; and (e) dedicating the resources necessary to investigate and prosecute such attacks and to develop and implement strategies for combating impunity for attacks and violence against journalists, including by using, where appropriate, good practices such as those identified in Human Rights Council resolution 27/5 of 25 September 2014 ...”

THE LAW

I. JOINDER OF THE APPLICATIONS

79. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. JURISDICTION

80. The Court observes that the facts giving rise to the alleged violations of the Convention occurred prior to 16 September 2022, the date on which the Russian Federation ceased to be a party to the Convention. The Court therefore decides that it has jurisdiction to examine the present application (see *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, §§ 68-73, 17 January 2023, and *Pivkina and Others v. Russia* (dec.), nos. 2134/23 and 6 others, §§ 56-57, 6 June 2023).

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

81. Relying on Article 2 of the Convention, the applicants complained that the authorities had failed to protect their respective relatives' lives and that the investigation into the circumstances of their deaths had been ineffective. They relied on Article 2 of the Convention, which 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. Admissibility

82. The Court notes at the outset that the applicants have the requisite standing of indirect victims under Article 34 of the Convention in respect of their relatives’ deaths as they are personally affected by the alleged violation of Article 2 of the Convention (see, for examples of various acceptable degrees of kinship, *Fabris and Parziale v. Italy*, no. 41603/13, §§ 37-41, 19 March 2020, for an uncle, and *Khojoyan and Vardazaryan v. Azerbaijan*, no. 62161/14, §§ 30-32, 4 November 2021, for the children of the deceased person).

83. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions of the parties

84. The Government did not submit any observations.

85. As regards the positive obligation under Article 2 of the Convention, the applicants submitted that the domestic authorities had failed to protect their relatives’ lives by failing to properly investigate the threats to Mr Akhmednabiyev and Mr Kamalov respectively as set out in the “execution list” circulated in Makhachkala in 2009 (see paragraph 4 above). The first applicant further submitted that, despite the obviously life-threatening character of the attack of 13 January 2013 on his father, the domestic authorities had failed to take any measures to protect him. Moreover, they had obstinately refused to investigate the attack of 13 January 2013 as attempted murder.

86. As to the conduct of the investigations into their respective relatives’ murders, the applicants maintained that the investigations had been ineffective and tainted with numerous shortcomings and delays.

2. The Court’s assessment

(a) Preliminary remarks

87. The respondent Government chose not to participate in the proceedings and not to submit any documents or arguments in their defence. Accordingly, the Court will need to examine the application on the basis of the applicants’ submissions, which will be presumed to be accurate where

supported by evidence as long as other evidence available in the case file does not lead to a different conclusion (see *Svetova and Others v. Russia*, no. 54714/17, § 38, 24 January 2023). The Court may draw such inferences as it deems appropriate from a party's failure or refusal to participate effectively in the proceedings (Rule 44C of the Rules of Court and *Glukhin v. Russia*, no. 11519/20, § 42, 4 July 2023).

(b) Procedural obligations under Article 2

88. For a summary of the general principles reflecting the Court's approach to the examination of allegations of a violation of the procedural aspect of Article 2 of the Convention, see *Mustafa Tunç and Fecire Tunç v. Turkey* ([GC], no. 24014/05, §§ 169-82, 14 April 2015), and *Mazepa and Others v. Russia* (no. 15086/07, §§ 69-70 and 74, 17 July 2018).

(i) Investigation into Mr Akhmednabiyev's murder

89. The Court observes at the outset that the official investigation into Mr Akhmednabiyev's murder was opened on 9 July 2013 and, according to the material in the Court's possession, was still pending before the investigating authorities on 23 June 2022, that is, on the date of the submission of the first applicant's observations. The investigation has therefore already lasted more than nine years. The Court reiterates that the excessive length of proceedings is a strong indication that the proceedings are defective to the point of constituting a violation of the respondent State's positive obligations under the Convention, unless the State has provided highly convincing and plausible reasons to justify the length of the proceedings (see *Mazepa and Others*, cited above, § 80). The Court observes that no such reasons have been provided by the respondent Government in the present case.

90. The Court notes that between 9 April 2014 and 27 November 2015 the investigation was suspended five times, some suspensions being decided even before the authorities had obtained the results of the measures requested in the investigation (see paragraph 36 above). Several such measures were not taken promptly because of a lack of cooperation between the investigating authorities and the local police department, which failed to take the investigative steps identified by the investigator (see paragraph 30 above). The Court notes in particular that the expert ballistics report was obtained only on 12 December 2014 (see paragraph 38 above), that is, approximately six months after Mr Akhmednabiyev's murder.

91. As to the thoroughness of the investigation, the Court finds it striking that after several indications that Mr I.M. could be implicated in the commissioning of Mr Akhmednabiyev's murder (see paragraphs 41-43 above), the investigating authorities nevertheless suspended the investigation without taking any steps to verify that information (see paragraph 44 above).

92. The Court lastly notes that the first applicant was not regularly informed of the progress of the investigation, despite his attempts to obtain such information (see paragraphs 49-51 above).

93. The Court therefore concludes that the investigation into Mr Akhmednabiyev's murder was not effective.

(ii) Investigation into Mr Kamalov's murder

94. The investigation into Mr Kamalov's murder was opened on 16 December 2011 and appears to have been completed in September 2020, when four individuals were charged and were subsequently committed to stand trial in the South Circuit Military Court (see paragraph 67-68 above). The investigation thus lasted almost nine years. As mentioned in paragraph 89 above, such length is in itself indicative that the proceedings did not comply with the "reasonable expedition" requirement (see *Cerf v. Turkey*, no. 12938/07, § 79, 3 May 2016). The Court reiterates that the Government did not provide any justification for the considerable length of the investigation.

95. The Court further notes that the second applicant had no access to the investigation file because at the time Article 42 § 8 of the CCrP limited the procedural status of victim in a murder investigation to close relatives of the deceased person only. Although that provision was amended in 2013 to broaden the list of persons who could be recognised as victims, it appears that members of the new categories of relatives were granted victim status only if close relatives did not exist or were unable to participate in the criminal proceedings (see paragraph 73 above). Mr Kamalov's brother had already been granted victim status in the investigation so the second applicant, being Mr Kamalov's uncle and thus not a "close relative", continued to be denied any access to the investigation file. This was confirmed by letters of 9 December 2014 and 13 July 2016 (see paragraphs 64-65 above).

96. The Court has difficulty in assessing the thoroughness of the investigation since, on the one hand, the Government have not submitted either observations or copies of the investigation file and, on the other hand, the second applicant had no official access to that material either. It follows from the limited material in the Court's possession that the investigating authorities had already obtained information about Mr Sh. I.'s implication in Mr Kamalov's murder by January 2013, when Mr Mu.Sh. confessed to it (see paragraph 60 above). However, the investigation was discontinued several months later because it was impossible to establish the whereabouts of the other suspects, even though five days before the discontinuation the search had still been ongoing (see paragraphs 61-62 above).

97. The Court notes that there is also no information about the measures taken by the investigating authorities between June 2014, when Mr M.Kh. was arrested (see paragraph 63 above), and September 2020, when the investigation was completed (see paragraph 67 above). The Government have

not provided any convincing and plausible reasons to justify this delay, which amounted to more than six years. The Court therefore considers that the length of the investigation was such that it did not meet the requirements of promptness and reasonable expedition inherent in the procedural obligation under Article 2 of the Convention.

98. In the light of the material in its possession, and in particular taking into account the lack of any opportunity for the second applicant to participate in the investigation, which was unjustifiably protracted, and despite the ultimate conviction of four persons for Mr Kamalov's murder (see paragraph 69 above), the Court concludes that the investigation into Mr Kamalov's murder was not in compliance with the Article 2 requirements.

(iii) Conclusion as to the procedural obligations

99. There has accordingly been a violation of Article 2 of the Convention in its procedural limb in respect of the first and second applicants.

(c) Positive obligations under Article 2

100. The Court refers to the general principles established in its case-law and set out in *Osman v. the United Kingdom* (28 October 1998, §§ 115-16, *Reports of Judgments and Decisions* 1998-VIII), and *Kurt v. Austria* ([GC], no. 62903/15, §§ 157-60, 15 June 2021). It reiterates the following in particular (see *Kurt*, cited above, §§ 158-59):

“[F]or this positive obligation to arise, it must be established that the authorities knew or ought to have known at the relevant time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk ... [I]n this context, the assessment of the nature and level of risk constitutes an integral part of the duty to take preventive operational measures where the presence of a risk so requires. Thus, an examination of the State's compliance with this duty under Article 2 must comprise an analysis of both the adequacy of the assessment of risk conducted by the domestic authorities and, where a relevant risk triggering the duty to act was or ought to have been identified, the adequacy of the preventive measures taken.”

(i) As regards Mr Akhmednabiyev

101. The Court notes that on 3 September 2009 Mr Akhmednabiyev, among other independent journalists, human rights defenders and lawyers, was publicly targeted by death threats in printed leaflets distributed in Makhachkala. When questioned as a victim in the framework of the investigation into those threats, he stated that he was afraid for his life (see paragraphs 4-5 above). The domestic authorities were therefore informed about the threats to Mr Akhmednabiyev's life (see, in the same vein, *Dink v. Turkey*, nos. 2668/07 and 4 others, §§ 66-70, 14 September 2010,

Gongadze v. Ukraine, no. 34056/02, § 167, ECHR 2005-XI, and contrast with *Tagiyeva v. Azerbaijan*, no. 72611/14, § 65, 7 July 2022).

102. The question arises as to whether the domestic authorities conducted an assessment of those threats with a view to establishing whether they constituted a “real and immediate” risk to Mr Akhmednabiyev’s life. In the absence of information about the steps taken in the framework of criminal case no. 96892, which was opened on 23 October 2009 (see paragraph 6 above), the Court is unable to establish that any such assessment took place.

103. In any event, the Court considers that after the attack on Mr Akhmednabiyev on 12 January 2013, there could be no doubt as to the existence of a “real and immediate” risk to his life even if there was nothing to show that the attack was carried out by the same persons who had been behind the threats of 3 September 2009. Despite the obviously life-threatening character of the attack, the investigating authorities did not proceed with a risk assessment and, moreover, obstinately refused to investigate the attack as life-threatening, notwithstanding the court decisions and the prosecutor’s express instructions to that effect (see paragraphs 11-23 above). It is worth noting that during his questioning as a victim after the failed attack of 12 January 2013, Mr Akhmednabiyev pointed to Mr I.M. as a possible source of the threat (see paragraph 10 above). However, the investigating authorities failed to effectively question Mr I.M. in this regard (see paragraph 17 above). These drawbacks undermined any deterrent effect that the official investigation might have had on the possible perpetrators.

104. In view of the above, the Court considers that from 12 January 2013 at the latest the domestic authorities were under an obligation to take preventive operational measures to protect Mr Akhmednabiyev’s life. The Court notes that the Federal Law no. 119-FZ of 20 August 2004 provides for various measures that can be implemented to protect a victim in a criminal case. Those measures can be taken not only at the request of the person concerned but also on the initiative of the relevant authorities with the written consent of that person (see paragraph 75 above).

105. Although Mr Akhmednabiyev was recognised as a victim in criminal case no. 96892, the investigating authorities did not consider the possibility of putting measures in place to protect him and, consequently, no such measures were taken.

106. Such a situation creates an impression of tolerance by the law-enforcement authorities of serious unlawful acts and therefore undermines public confidence in the principle of lawfulness and the State’s maintenance of the rule of law. In this connection, the Court considers that Mr Akhmednabiyev’s status as a journalist created an additional obligation on the domestic authorities to take all measures necessary to guarantee his protection, in line with the standards and recommendations on the safety of journalists developed by the Council of Europe and the United Nations (see paragraphs 76-77 above, and *Mazepa and Others*, cited above, § 73).

107. While the Court cannot conclude with certainty that matters would have turned out differently or that the killing would not have occurred if the authorities had acted otherwise, it reiterates that a failure to take reasonable measures which could have had a real prospect of altering the outcome or mitigating the harm is sufficient to engage the responsibility of the State (see *Dink*, cited above, §§ 71-75, and *Opuz v. Turkey*, no. 33401/02, § 136, ECHR 2009). The Court notes that, as indicated in the decision of 25 February 2014, there were reasons to believe that the attack of 12 January 2013 and the murder of 9 July 2013 were carried out by the same persons (see paragraph 31 above). Thus, should protective measures and an effective and prompt investigation have been taken after 12 January 2013, there would have been a real prospect that the risk to Mr Akhmednabiyev's life could have been averted.

108. In the light of the above considerations, the Court concludes that the State has failed to comply with its positive obligation to take appropriate steps to safeguard the life of the first applicant's father.

(ii) As regards Mr Kamalov

109. The Court notes that Mr Kamalov was also targeted with death threats in the leaflets distributed on 3 September 2009 (see paragraph 4 above). There is no information as to whether the investigating authorities tried to question him in the framework of criminal case no. 96892. There is no evidence that the domestic authorities made any assessment of the threats with a view to establishing whether they constituted a "real and immediate" risk to Mr Kamalov's life.

110. While some risk to Mr Kamalov's life could have been said to exist in 2009, the Court does not have sufficient information to conclude that it was "real and immediate" shortly after the leaflets were distributed. There is nothing in the case file indicating that that risk persisted throughout the two years and three months that passed between the distribution of the leaflets on 3 September 2009 and Mr Kamalov's murder on 15 December 2011. There is no evidence either that before Mr Kamalov's murder any new risk arose which was clearly "real and immediate", as in Mr Akhmednabiyev's case (see paragraph 103 above).

111. The Court therefore considers that, in the circumstances of the case, there has been no violation of the State's positive obligation under Article 2 of the Convention in respect of the second applicant's nephew.

(iii) Conclusion as to positive obligations

112. There has accordingly been a violation of Article 2 of the Convention in its substantive limb in respect of Mr Akhmednabiyev and no such violation in respect of Mr Kamalov.

IV. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

113. The first and second applicants complained that, having regard to their relatives' journalistic activities, the authorities' failure to safeguard their lives and to ensure an effective investigation into their murders amounted to a violation of the right to freedom of expression under Article 10 of the Convention.

114. Having regard to the conclusions reached above under Article 2 of the Convention, the Court considers that there is no need to give a separate ruling on the admissibility and merits of this complaint in the present case.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

115. 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

116. The applicants claimed 60,000 euros (EUR) each in respect of non-pecuniary damage.

117. The Government did not comment on this point.

118. The Court awards EUR 26,000 to the first applicant and EUR 20,000 to the second applicant in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

119. The applicants did not submit claims under this heading.

C. Default interest

120. 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. *Decides* to join the applications;
2. *Holds* that it has jurisdiction to deal with the applicants' complaints, as they relate to facts that took place before 16 September 2022;

3. *Declares* the complaints under Article 2 of the Convention admissible;
4. *Holds* that there has been a violation of Article 2 of the Convention in its procedural limb in respect of both applicants and in its substantive limb in respect of the first applicant's father;
5. *Holds* that there has been no violation of Article 2 of the Convention in its substantive limb in respect of the second applicant's nephew;
6. *Holds* that there is no need to examine separately the admissibility and merits of the complaint under Article 10 of the Convention;
7. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 26,000 (twenty-six thousand euros) to the first applicant and EUR 20,000 (twenty thousand euros) to the second applicant, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
8. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 30 January 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Pere Pastor Vilanova
President

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of birth Place of residence Nationality	Represented by
1.	34358/16	Akhmednabiyev v. Russia	06/06/2016	Mutaelum Akhmednabiyevich AKHMEDNABIYEV 1992 Semender Russian	Tumas Arsenovich MISAKYAN
2.	58535/16	Kamalov v. Russia	03/10/2016	Ali Akhmedovich KAMALOV 1948 Makhachkala Russian	Tumas Arsenovich MISAKYAN