



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

FIFTH SECTION

CASE OF KHATSIYEVA AND OTHERS v. RUSSIA

(Application no. 5108/02)

*This version was rectified on 6 January 2009
under Rule 81 of the Rules of the Court*

JUDGMENT

STRASBOURG

17 January 2008

FINAL

07/07/2008

This judgment may be subject to editorial revision.

In the case of Khatsiyeva and Others v. Russia,

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

Peer Lorenzen, *President*,
Snejana Botoucharova,
Karel Jungwiert,
Volodymyr Butkevych,
Margarita Tsatsa-Nikolovska,
Rait Maruste,
Anatoli Kovler, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 11 December 2007,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 5108/02) 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 seven Russian nationals, Ms Layla (also spelled Leyla) Magomedovna Khatsiyeva, Ms Khazman Yunusovna Akiyeva, Mr Nasip Khizirovich Khatsiyev, Mr Abdurashit Khizirovich (also spelled as Khazirovich) Khatsiyev, Ms Malikat Khasmagomedovna Akiyeva, Ms Zhanna Khas-Magomedovna Akiyeva¹ and Ms Zarema Vakhayevna Khayauri (“the applicants”), on 25 September 2001.

2. The applicants, who had been granted legal aid, were represented by lawyers from the Stichting Russian Justice Initiative (“SRJI”), an NGO based in the Netherlands with a representative office in Russia. The Russian Government (“the Government”) were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants complained, in particular, of the death of their relatives in an attack by State agents and of the absence of an adequate investigation into these events. They also alleged a breach of their right to respect for their family life, denial of access to a court and a lack of effective remedies in respect of the violations of their rights. The applicants relied on Articles 2, 6 § 1, 8 and 13 of the Convention.

¹ Rectified on 6 January 2009: the text was “...Mr Abu-Rashid Khizirovich Khatsiyev, Ms Malikat Khasmagomedovna Akiyeva, Ms Zhanna Khasmagomedovna Akiyeva...”

4. On 29 August 2004 the President of the First Section decided to grant priority to the application under Rule 41 of the Rules of Court.

5. By a decision of 23 October 2006 the Court declared the application admissible.

6. The applicants and the Government each filed further written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The first three applicants were born in 1934, 1943 and 1952 respectively, and the fifth, sixth and seventh applicants were born in 1962, 1974 and 1976 respectively. The date of birth of the fourth applicant is unknown. The applicants live in the village of Arshty in the Sunzhenskiy District of the Republic of Ingushetia. This district borders on the Chechen Republic.

8. The facts of the case as submitted by the parties are summarised in section A below (paragraphs 9-60). A description of the documents submitted by the Government is contained in section B below (paragraphs 61-104).

A. The facts

9. The first applicant is the mother of Khalid Khatsiyev, born in 1969, and of the third and fourth applicants. The second applicant is the mother of Kazbek Akiyev, born in 1970, and of the fifth and sixth applicants. The seventh applicant was married to Kazbek Akiyev.

10. Khalid Khatsiyev and Kazbek Akiyev were married and had two and four children respectively. At the material time both men lived in Moscow and went to Arshty in August 2000 to help their families with seasonal agricultural work.

1. Attack of 6 August 2000

11. The facts surrounding the death of the applicants' two relatives are disputed by the parties.

(a) The applicants' version

12. The applicants did not witness the events described below and the following account is based on eyewitness statements submitted by them.

13. In August 2000 the residents of Arshty were cutting grass. The work was done collectively by all villagers in small groups of five to six people.

14. On 6 August 2000 about a hundred people divided into small groups were working in the surrounding hills. One of the groups was formed by Khalid Khatsiyev, Kazbek Akiyev, their cousin Ilyas Akiyev, and three men who had come to Arshty as internally displaced persons from Chechnya – Baymurza Aldiyev, Aslambek Imagamayev, and Aslambek Dishniyev.

15. Aslambek Imagamayev stated that while working they had seen several helicopters bombing a forest area near the village of Bamut in Chechnya, about ten kilometres away from them.

16. Around 1.00 or 1.30 p.m. the group in which the applicants' relatives were working had decided to go home for lunch, when two military helicopters appeared from the direction of Bamut and started circling low above the field. Aslambek Imagamayev identified them as MI-24s. One of the helicopters fired a burst from an aircraft machine-gun at a spot situated 40-50 metres from the men. They were scared and, throwing down their scythes, ran to a white Niva car and drove down the hill in the direction of Arshty. Baymurza Aldiyev and Aslambek Imagamayev claimed that the helicopters had flown away but then reappeared and the men saw them right above the car, hovering at low altitude. They stopped the vehicle and ran for cover in different directions.

17. The helicopters launched non-guided missiles and strafed the Niva car with aircraft machine-guns with the result that its back tyres were flattened. They then chased the men. One of the helicopters fired a missile at the place where Khalid Khatsiyev and Kazbek Akiyev were hiding. They were both killed and Ilias Akiyev, who was nearby, was wounded by shrapnel in his leg.

18. Aslambek Imagamayev stated that he had run through the forest to tell the villagers what had happened. He stated that he had heard the helicopters shooting for some time. Baymurza Aldiyev testified that he had run towards the river and had hidden there in a bush. He estimated that the attack on the Niva car had continued for about an hour and a half. After the helicopters had left, he returned to the vehicle and found the bodies of Khalid Khatsiyev and Kazbek Akiyev about fifty metres away from the car.

19. The bodies were taken to the village in the damaged Niva.

20. The attack and the deaths were reported by human rights NGOs and the Russian mass-media in August 2000.

(b) The Government's version

21. According to the Government, since the beginning of the counter-terrorist operation within the territory of the Chechen Republic, the civil and military authorities had taken all necessary steps to secure the safety of civilians residing in the North Caucasus. The residents of the Republic of Ingushetia had been notified, through the television and press, of the risk of

being at the administrative border with Chechnya as well as of the actions they should perform when in the area of a counter-terrorist operation so as to indicate that they did not belong to illegal armed groups. In particular, once they had established “visual contact” with representatives of the federal forces, residents were supposed to stop moving, mark themselves with a piece of white cloth and wait for the arrival of a group of servicemen for an identity check.

22. On 6 August 2000 the authorities carried out a special operation aimed at searching for the base camp, eight kilometres to the south of the village of Arshty, of a group of around 250 illegal fighters, who were to be detained. The operation was planned and commanded by senior officers of the Western Group of the United Group Alignment (*Западная группировка войск Объединенной группировки войск*). The Government refused to indicate the names of those officers or provide details of the operation, stating that disclosure of the information might be harmful to the State’s national security interests. According to them, “in the materials of the preliminary investigation file there was no information” as to whether the residents of Arshty had been warned in advance about the operation in question, or whether the military personnel involved had been instructed to avoid civilian casualties.

23. During the operation, a federal transport MI-8 helicopter was hit by fire from members of illegal armed groups in the vicinity of the village of Arshty and crashed to the ground. Orders were given to evacuate the crew and servicemen on board the helicopter from the site of the crash. The Government alleged, with reference to the findings of the Chief Military Prosecutor’s Office, that servicemen who had arrived to evacuate those injured also came under fire from illegal fighters. The airspace above the area of the rescue operation was patrolled in shifts by a pair of military MI-24 helicopters.

24. At about 1 p.m., while patrolling over the area situated four kilometres to the west of Arshty and four kilometres from the site of the crash of the MI-8 helicopter, the pilots of the MI-24 helicopters saw a Niva car and a group of at least five men with light machine-guns. In the Government’s submission, the pilots observed the men through a target control system of tenfold magnification, from a distance of two kilometres and at an altitude of 100-150 metres.

25. According to the Government, the pilots reported this to the command centre and having received the respective order fired warning shots at a spot situated fifty metres away from the car and the people. The men immediately got into the car and started driving away, instead of staying where they were and waiting for the arrival of ground troops for an identity check. The pilots again reported to their superiors, received the respective order and fired warning shots for the second time, but the car continued moving. In order to prevent the Niva car with unidentified armed

men inside from driving further without authorisation in the close vicinity of the zone of the rescue operation, the pilots, pursuant to their superiors' order, fired at the car with the result that Khalid Khatsiyev and Kazbek Akiyev were killed and Ilias Akiyev was wounded.

26. The Government also submitted that "there was no information in the materials of the preliminary investigation file" as to whether the attacked men had used the firearms against the pilots, and that "according to its technical description, a light machine-gun [was] ineffective for hitting a target at a distance of over one kilometre".

2. Official investigation

27. According to the Government, after the rescue operation in respect of the crashed MI-8 helicopter had been completed, the servicemen had inspected the area near the crash site and found a Niva car as well as hand grenades, spent cartridges from light machine-guns and a bloodstained ammunition belt near the car.

28. In the evening of 6 August 2000 several officials from the prosecutor's office of the Sunzhenskiy District (*прокуратура Сунженского района* – "the Sunzhenskiy Prosecutor's Office") and the prosecutor's office of the Republic of Ingushetia (*прокуратура Республики Ингушетия* – "the Republican Prosecutor's Office") arrived at the scene of the incident. They also brought a forensic expert from the city of Nalchik, in the Republic of Kabardino-Balkaria. The officials questioned the witnesses to the attack, inspected the scene of the incident and collected pieces of shrapnel and damaged scythes. No firearms or ammunition were found at the scene of the incident. The officials also examined the bodies and noted the wounds caused by shrapnel and by large-calibre guns.

29. According to the applicants, at the same time the head of the village administration contacted the military authorities. Two armoured personnel carriers with servicemen arrived in the village, and together with some local officials they proceeded to the site, but soon afterwards the local officials returned because the military allegedly refused to proceed further.

30. The Government submitted that on 6 August 2000, on the basis of the information received from the Arshty administration, the Republican Prosecutor's Office had instituted criminal proceedings under Article 105 § 2 (a) and (f) of the Russian Criminal Code (murder of two or more persons committed by a generally dangerous method). The case file was assigned the number 20600055. After the initial investigative measures had been taken, the case was transferred to military prosecutors and given the number 34/32/0189-01.

31. According to the applicants, in the absence of any news of the investigation for several weeks after the incident, they applied to the Sunzhenskiy Prosecutor's Office and then to the Republican Prosecutor's Office. They were informed that a criminal investigation had been opened

on 6 August 2000 and that the case file had been given the number 20600055. In reply to their subsequent requests to the prosecutors at various levels the applicants received hardly any substantive information about the investigation into the attack. On several occasions they received copies of letters by which their requests had been forwarded to different prosecutors' offices.

32. On 29 August 2000 the Chief Military Prosecutor's Office (*Главная военная прокуратура*), in reply to a request made by a deputy of the State Duma from Ingushetia on the applicants' behalf, stated that the criminal investigation into the killing of two persons near the village of Arshty had been supervised by the military prosecutor's office of the North Caucasus Military Circuit (*военная прокуратура Северо-Кавказского военного округа*) and that he would be informed of any results of the investigation.

33. On 30 October 2000 the preliminary investigation into the attack of 6 August 2000 was stayed for failure to identify those responsible. It was then resumed on 13 November 2000 (see paragraphs 69-70 below). It does not appear that the applicants were informed of any of those decisions.

34. On 14 November 2000 the applicants were informed by the Republican Prosecutor's Office that on 9 August 2000 the file in case no. 20600055 had been transferred for investigation to garrison prosecutor's office no. 59 (*59 военная прокуратура гарнизона*) in Mozdok, North Ossetia.

35. On 14 November 2000 a person acting as the applicants' representative went to Mozdok to find out about the investigation. There he submitted an application stating the facts of the attack and asking for an update on the investigation. An officer of the prosecutor's office showed him a register of cases, according to which the case had been transferred to a military prosecutor in Vladikavkaz, North Ossetia, for further investigation.

36. On 15 November 2000 the representative went to Vladikavkaz and talked to the military prosecutor, who informed him that the case had been sent to the military prosecutor's office of military unit no. 20102 (*военная прокуратура – войсковая часть 20102*) based in Khankala, the main Russian military base in Chechnya. On the same day the representative filed a request for an update on the investigation, on the second applicant's behalf.

37. On 24 November 2000 the second applicant wrote to the military prosecutor of military unit no. 20102. She stated the facts of the case, referred to the number of the criminal investigation file communicated to her by the Sunzhenskiy Prosecutor's Office and asked for an update on the investigation. She also requested that she be granted the status of victim in the proceedings. According to the second applicant, she received no reply to that letter.

38. On 30 December 2000 the investigating authorities again suspended the investigation on account of failure to identify the alleged perpetrators. It appears that this decision was then quashed by superior prosecutors twice, on 11 March and 24 October 2001 (see paragraphs 72, 73 and 75 below). It does not appear that the applicants were notified of any of those decisions.

39. On 29 January 2001 the fourth applicant was informed by the military prosecutor of military unit no. 20102 that his complaint had been added to the criminal investigation file opened in relation to his brother's death. The date of the fourth applicant's complaint was not specified.

40. On 30 May 2001 the second applicant wrote to the military prosecutor of military unit no. 20102 and to the military prosecutor of the North Caucasus Military Circuit. She enquired about developments in the investigation and requested that she and the first applicant be declared victims, in accordance with the Russian Code of Criminal Procedure. She received no reply to those queries, apart from a letter of 21 June 2001 by which the military prosecutor of the North Caucasus Military Circuit informed her that her letter had been forwarded to garrison prosecutor's office no. 59 in Mozdok.

41. On 29 August 2001 the civil registration office for the Sunzhenskiy District issued death certificates numbered 376 and 405 for Khalid Khatsiyev and Kazbek Akiyev respectively. The date and place of death for both was recorded as 6 August 2000, village of Arshty, Sunzhenskiy District.

42. On 15 December 2001 the investigating authorities took a decision by which the criminal proceedings in connection with the events of 6 August 2000 were discontinued in part, as regards the superior officers' order to attack the Niva car, as there was no evidence of a crime in their actions, and another decision ordering that the criminal proceedings be closed as a whole in the absence of evidence of a crime (see paragraphs 76-77 below). The applicants were informed of these decisions in undated letters (see paragraph 78 below).

43. On 25 January 2002 the latter decision of 15 December 2001 was set aside by superior prosecutors and the proceedings resumed (see paragraph 79 below). They were again discontinued owing to the absence of evidence of a crime on 21 March 2002 and then re-opened on 16 August 2002 (see paragraphs 81-82 below).

44. On 24 March 2003 the military prosecutor's office of military unit 20102 informed the applicants that the investigation into the death of Khalid Khatsiyev and Kazbek Akiyev had been resumed.

45. By a letter of 17 April 2003 the SRJI, acting on the applicants' behalf, requested the military prosecutor of military unit no. 20102 to inform them of the latest development in the case and to grant the status of victim to the first two applicants.

46. In a letter of 24 April 2003 the military prosecutor's office of military unit no. 20102 informed the applicants that on the same date, with the consent of garrison prosecutor's office no. 59, the criminal proceedings instituted in connection with the death of Khalid Khatsiyev and Kazbek Akiyev had been discontinued owing to the absence of evidence of a crime in the attack of 6 August 2000.

47. According to the Government, that decision had been taken in view of the investigating authorities' finding that the pilots of the MI-24 helicopters had fired at the Niva car, with the result that the applicants' two relatives had been killed, pursuant to an order that had been given by the command centre and that had thus been binding on them. Accordingly, the pilots' action did not constitute a criminal offence. The actions of superior officers who had given the order to destroy the Niva vehicle did not constitute a criminal offence either, given that after the warning shots the car had continued moving in the close vicinity of the counter-terrorist operation in a situation of active armed resistance, with the members of illegal armed groups threatening the lives of federal servicemen and other persons. The Government did not mention the names of the pilots who had participated in the attack of 6 August 2000 or those of their superiors who had given the order in question.

3. The applicants' attempts to gain access to the case file

48. On 21 May 2003 the military prosecutor of military unit no. 20102 informed the SRJI that the file in the criminal case relating to the death of Khalid Khatsiyev and Kazbek Akiyev had been transferred to the prosecutor's office of the North Caucasus Military Circuit on 9 February 2001 in order to determine which body was competent to carry out the investigation. The prosecutor's letter referred to case no. 14/33/0429-00.

49. On 7 July 2003 the military prosecutor of military unit no. 20102 again replied to a request from the SRJI, stating that case no. 14/33/0429-00 instituted in relation to the death of Khalid Khatsiyev and Kazbek Akiyev had been forwarded to the prosecutor's office of the North Caucasus Military Circuit on 9 February 2001.

50. In a letter of 8 July 2003 the SRJI requested garrison prosecutor's office no. 59 to declare the first two applicants to be victims in criminal case no. 14/33/0429-00 and to grant them access to the case file.

51. On 10 July 2003 garrison prosecutor's office no. 59 notified the first two applicants in reply to their query that the file of the case concerning the killing of their sons had been sent to the prosecutor's office of the United Group Alignment (*военная прокуратура Объединенной группы войск*) in order to verify whether the decision to discontinue the proceedings had been lawful and well-founded.

52. In letters of 10 and 11 August 2003 garrison prosecutor's office no. 59 stated that the first and second applicants respectively could consult

the case file in the garrison prosecutor's office on any working day from 9 a.m. until 6 p.m. The letter referred to case file no. 34/32/0189-01D.

53. In a letter of 11 August 2003 garrison prosecutor's office no. 59 also informed the SRJI, in reply to their query, that the criminal proceedings in case no. 34/32/0189-01D had been discontinued on 24 April 2003 in the absence of evidence of a crime in the attack of 6 August 2000, and that therefore there were no grounds in domestic law for declaring the first two applicants to be victims of a crime. The letter added that the first two applicants could have access to the case file on any working day between 9 a.m. and 6 p.m.

54. On 9 March 2004 the SRJI applied on the applicants' behalf to garrison prosecutor's office no. 59. They stated that on 29 August 2003 the applicants' legal counsel had attempted to gain access to the documents in case no. 34/32/0189-01D but this had been refused on the ground that the case file had been transmitted to the military prosecutor's office of the Republic of Ingushetia (*военная прокуратура Республики Ингушетия*). In this connection the SRJI requested garrison prosecutor's office no. 59 to notify them of the reasons for the transfer of the case to the military prosecutor's office of the Republic of Ingushetia and of any new developments in the investigation, together with the date on which, and the place where, the first two applicants and their lawyers could study the case file.

55. On the same date the SRJI sent a similar letter to the military prosecutor's office of the Republic of Ingushetia.

56. On 18 March 2004 the Chief Military Prosecutor's Office forwarded the request of the SRJI to the military prosecutor's office of the United Group Alignment for examination.

57. In a letter of 23 March 2004 garrison prosecutor's office no. 59 informed the SRJI that the file in criminal case no. 34/32/0189-01D had been referred to the military prosecutor's office of the United Group Alignment for examination and then, after 1 September 2003, to a newly organised military prosecutor's office of military unit no. 04062 (*военная прокуратура – войсковая часть 04062*) in the Republic of Ingushetia. The letter thus invited the applicants and their representatives to apply to the last mentioned prosecutor's office.

58. On 2 June 2004 garrison prosecutor's office no. 59 stated that they had replied to all the queries from the SRJI in a letter of 23 March 2004.

59. On 2 July 2004 the military prosecutor's office of the United Group Alignment informed the first two applicants and the SRJI that the criminal proceedings in case no. 34/32/0189-01D had been discontinued on 24 April 2003 and that no subsequent investigative measures had been taken. The military prosecutor's office of the United Group Alignment had studied the case materials and found the aforementioned decision of 24 April 2003 to have been substantiated. The case file had then been forwarded to the

military prosecutor's office of military unit no. 04062 and the applicants could consult the file there.

60. According to the applicants, all their efforts to gain access to the case file have so far proved unsuccessful. On the latest occasion they attempted to consult the case file in December 2006, but in vain.

B. Documents submitted by the Government

1. The Court's requests for the investigation file

61. In October 2004, at the communication stage, the Government were invited to produce a copy of the investigation file in the criminal case instituted in connection with the attack of 6 August 2000 and the killing of Khalid Khatsiyev and Kazbek Akiyev. Relying on the information obtained from the Prosecutor General's Office, the Government refused to submit any documents from the criminal investigation file, stating that, even though the investigation had been discontinued, the disclosure of the documents would be in violation of Article 161 of the Russian Code of Criminal Procedure since the file contained information of a military nature and personal data concerning the witnesses.

62. On 23 October 2006 the application was declared admissible. At that stage the Court again invited the Government to submit the investigation file. In February 2007 the Government agreed to reveal the case-file materials, apart from documents "the disclosure of which [might] be harmful to the interests of the security of the Russian Federation and of the participants in the criminal proceedings" and those "which were irrelevant to the investigation". According to the Government, the submission of the case file at an earlier stage had been inappropriate in view of the need to secure the safety of the participants in the criminal proceedings and to ensure that the information from the preliminary investigation was not disclosed, in accordance with Article 161 of the Russian Code of Criminal Procedure as well as on account of the applicants' failure to exhaust available domestic remedies.

63. Eventually, the Government produced a number of documents running to a total of 223 pages. They can be summarised as follows.

(a) Documents relating to the conduct of the investigation and informing the applicants of its progress

64. By a decision of 6 August 2000 the prosecutor of the Sunzhenskiy District ordered that criminal proceedings under Article 105 § 2 (a) and (f) of the Russian Criminal Code (murder of two or more persons committed by a generally dangerous method) be instituted in connection with an attack by two military helicopters earlier that day which had resulted in the death of Khalid Khatsiyev and Kazbek Akiyev.

65. By a decision of 6 August 2000 the investigator in charge took up the case. In another decision taken on the same date the investigator in charge granted the status of victim of a crime to Ilyas Akiyev, who had sustained injuries as a result of the attack (see paragraphs 17 and 25 above).

66. In a decision of 8 August 2000 the investigator in charge ordered that the case file be transferred to a military prosecutor's office, which had jurisdiction to investigate criminal offences committed by military personnel.

67. By a decision of 18 September 2000 an investigator of the military prosecutor's office of military unit no. 20102 took up the case, which was given the number 14/33/0429-2000.

68. A decision of 2 October 2000 taken by the investigator in charge and approved by the military prosecutor of military unit no. 20102 ordered that the term of the preliminary investigation should be extended until 6 November 2000. The decision stated, in particular, that it had been established that on 6 August 2000 at about 9 a.m. the applicants' two relatives, together with Ilyas Akiyev, Baymurza Aldiyev, Aslambek Imagamayev and Aslambek Dishniyev, had arrived in a Niva car at an area three kilometres to the west of Arshty for grass-cutting. The decision then continued:

"At about 11 a.m. two military MI-24 helicopters appeared over the territory of the Chechen Republic to the south of the village of Arshty and started strafing the territory of the Chechen Republic. At about 1.30 p.m. [the applicants' two relatives and the four other persons mentioned above] got into the [Niva] car and attempted to drive off in the direction of the village of Arshty. At the same time the helicopters ... moved in their direction and opened fire on the car from aircraft machine-guns. [The applicants' two relatives and the four others mentioned above] left the car and went into hiding in grass nearby. The helicopters went on strafing the vehicle and [the six persons'] hiding-place from missile launchers and aircraft machine-guns. As a result of the attack Khalid Khatsiyev and Kazbek Akiyev died."

The report then listed the investigative actions that had been carried out. It stated, in particular, that the scene of the incident had been inspected and craters and metallic pieces of shrapnel with markings had been found, that the corpses of Khalid Khatsiyev and Kazbek Akiyev had been examined and then sent to the Forensic Examinations Office of the Republic of Ingushetia for a forensic examination, and that Ilyas Akiyev, Baymurza Aldiyev, Aslambek Imagamayev, Aslambek Dishniyev and F., who had been present at the scene of the incident on the date of the attack, had been questioned as witnesses. The decision also prescribed that further investigative measures be taken. It ordered that the identity of the pilots of the two MI-24 helicopters be established and that they be questioned, that the identity of the persons who had ordered the pilots to open fire be established and that those persons be charged with a criminal offence, and that other investigative measures necessary to complete the investigation be carried out.

69. By a decision of 30 October 2000 the investigator in charge of the military prosecutor's office of military unit no. 20102 suspended the proceedings in case no. 14/33/0429-2000. The decision restated the facts of the incident and listed the investigative actions that had been conducted, in the same manner as this had been stated in the decision of 2 October 2000. It went on to say the following:

"A witness questioned in the course of the investigation, Lieutenant Colonel K., the head of the headquarters of the aircraft division of a [deleted] military unit, confirmed the fact of the attack on the Niva vehicle by helicopters of a [deleted] separate helicopter squadron in the vicinity of the village of Arshty. It follows from Lieutenant Colonel K.'s statement that at present the [deleted] separate helicopter squadron had been transferred from the territory of the Chechen Republic to the place of its permanent station in the city of [deleted].

Taking into account that the alleged perpetrator has not been identified, despite all the measures taken, that all the investigative measures which could have been carried out within the territory of the Chechen Republic have been taken and that the personnel of the [deleted] separate helicopter squadron have left for the place of their permanent station in the town of [deleted] ... the investigation should be carried out [at that place] in the town of [deleted].

The decision thus ordered that the criminal proceedings be suspended, as it was impossible to establish the identity of those responsible, and that the case file be transmitted to the military prosecutor's office of the Kursk garrison.

70. In a decision of 13 November 2000 the military prosecutor's office of the North Caucasus Military Circuit quashed the decision of 30 October 2000, stating that the investigation had been incomplete and ordering that the case be sent to the military prosecutor's office of military unit no. 20102 for additional investigation.

71. By a decision of 30 November 2000 an investigator of the military prosecutor's office of military unit no. 20102 took up the case.

72. A decision of 30 December 2000 ordered that the criminal proceedings in case no. 14/33/0429-2000 be stayed. It was, in essence, similar to the decision of 30 October 2000, but stated in addition the following:

"A witness questioned in the course of the investigation, [deleted] L., stated that on 6 August 2000 illegal fighters had attacked a [federal air] group in the vicinity of the village of Arshty. A MI-8 helicopter [was hit as a result of the attack] and fell to the west from Arshty...A search group, together with MI-24 helicopters for fire support, was sent to the site of the crash. Thereafter the pilots of the helicopters reported that they had destroyed a Niva vehicle from which illegal fighters had been firing at the helicopters. [Witness L.] was not asked for permission to open fire on the Niva vehicle. As a result of inspection [by federal servicemen] of an area in the vicinity of Arshty, a damaged Niva vehicle, hand grenades, spent cartridges from machine-guns cases and a bloodstained ammunition belt were found".

The decision then concluded that the identity of those responsible could not be established and ordered that the proceedings be suspended.

73. In a decision of 11 March 2001 the military prosecutor's office of the North Caucasus Military Circuit set aside the decision of 30 December 2000, stating as follows:

"An examination of the materials of the criminal case has established that the investigation was becoming procrastinated, that no practical measures aimed at establishing the identity of those responsible were being taken, that special requests were being met, with the result that it is now difficult to assess the actions or omissions of public officials and pilots of the helicopters' crew, who have not been questioned to date. Until the present time no forensic examination of the dead bodies has been carried out, and therefore the cause of death has not been established and the question of the damage sustained by [those who were declared victims in the proceedings] has not been resolved."

The military prosecutor's office thus ordered that the decision of 30 December 2000 be quashed, that the proceedings in case no. 14/03/0396-00 instituted in connection with the murder of Khalid Khatsiyev and Kazbek Akiyev be resumed and that the case file be forwarded to garrison prosecutor's office no. 59 for additional investigation.

74. By a decision of 24 August 2001 an investigator of the garrison prosecutor's office no. 59 took up the case, referring to file number 14/32/0189-01D.

75. A decision of the military prosecutor's office of the North Caucasus Military Circuit dated 24 October 2001 again quashed the decision of 30 December 2001 and ordered the re-opening of the investigation in case no. 14/21/0396-00 concerning the murder of the applicants' relatives. It set out the same reasons as the decision of 11 March 2001.

76. In a decision of 15 December 2001 the investigator in charge of garrison prosecutor's office no. 59 ordered that the criminal proceedings in case no. 14/32/0189-01D concerning the murder of Khalid Khatsiyev and Kazbek Akiyev be closed in part. The decision stated as follows:

"On 6 August 2000 at about 9 a.m. a MI-8 helicopter of a [deleted] separate helicopter squadron fell down in the vicinity of the village of Arshty of the Sunzhenskiy District of the Republic of Ingushetia. A helicopter which arrived at the site of the crash for the evacuation of the injured servicemen was also attacked by fire. On the same day at 12 noon, pursuant to an order of Colonel D., the commander of military unit no. 06652, two MI-24 helicopters under the command of Major [the real name is replaced with the nickname "Ivanov"] and Major [the real name is replaced with the nickname "Petrov"] were sent to cover the rescue operation. At about 1 p.m., while patrolling over the area to the west of Arshty, they saw a white [Niva] vehicle and five [rather than six] persons armed with automatic firearms standing nearby, and immediately reported this to the command centre of the United Group Alignment in the village of Khankala of the Chechen Republic. The helicopter[s] [were] at an altitude of 100-150 metres and at a distance of two kilometres from the car. [The pilots] observed the car through a target control system of tenfold magnification. The command centre reported that the identity of those persons would be established. About 15 minutes later the command centre gave an order to destroy the vehicle. Then

[the pilots] fired a warning shot from a gun at a spot situated fifty metres away from the car with the purpose of warning everybody to stay where they were until the arrival of ground troops. After the warning shot, the people got into the car and started driving in the direction of the village of Arshty. [The pilots] reported to the command centre and received a repeated order to destroy the vehicle. Following the order, [the pilots] again fired a warning burst from an aircraft machine-gun. The car continued to advance. Thereafter, the third burst for effect was fired from the helicopter under the command of Major [“Ivanov”] after which the car stopped. This was reported to the command centre and to the ground troops... As a result of the attack Khalid Khatsiyev and Kazbek Akiyev died.

Accordingly, there is nominal evidence of a criminal offence punishable under Article 286 (3) of the Russian Criminal Code [aggravated abuse of power] in the actions of an official who ordered the destruction of the [Niva] vehicle. However, [this] order was justified in the aforementioned circumstances, and therefore the criminal proceedings in the part concerning the criminal offence under Article 286 (3) of the Russian Criminal Code should be terminated [owing to the absence of evidence of a criminal in that official’s actions ...]”

77. Another decision taken by the same investigator on 15 December 2001 ordered that the criminal proceedings instituted concerning the murder of the applicants’ two relatives be discontinued in full. The decision described the circumstances of the attack of 6 August 2000 as they were stated in the aforementioned decision of 15 December 2001 and referred to a report on the inspection of the scene of the incident of 6 August 2000, the reports on the forensic examination of the dead bodies of Khalid Khatsiyev and Kazbek Akiyev dated 3 September 2001 and witness statements of Ilyas Akiyev, Baymurza Aldiyev, Aslambek Imagamayev and Aslambek Dishniyev, those of the pilots of the MI-24 helicopters, those of Colonel D., the commander of military unit no. 06652, and those of Lieutenant Colonel A., the head of the headquarters of military unit [the number of the unit is deleted] as well as to the other decision of 15 December 2001. It then concluded:

“Accordingly, on the basis of the evidence obtained during the investigation, it has been established that on 6 August 2000 at about 1 p.m. in the vicinity of the village of Arshty ... the members of the crew of the MI-24 helicopters destroyed the [Niva] vehicle pursuant to an order which was justified in the circumstances and was binding on them, and therefore their actions did not constitute a criminal offence and they are not liable to criminal responsibility for the damage inflicted by their actions. The criminal case instituted on 6 August 2000 under 105 § 2 (a) and (f) of the Russian Criminal Code shall be terminated ... in the absence of evidence of a crime.”

78. In undated letters the investigating authorities informed the applicants, Ilyas Akiyev, Baymurza Aldiyev, Aslambek Imagamayev and Aslambek Dishniyev that the criminal proceedings instituted in connection with the attack of 6 August 2000 and the murder of Khalid Khatsiyev and Kazbek Akiyev had been suspended on 15 December 2001 owing to the absence of evidence of a crime. The applicants were informed that the

decision could be appealed against to the prosecutor of garrison no. 59 or before a court.

79. By a decision of 25 January 2002 the military prosecutor's office of the North Caucasus Military Circuit set aside the second decision of 15 December 2001 (see paragraph 77 above), stating that the preliminary investigation had been incomplete, that the special instructions had not been complied with, and that all the measures envisaged in the law had not been taken, with the result that it was difficult to assess the actions or omissions of the public officials and the members of the crew of the MI-24 helicopters. The decision thus ordered that the investigation be resumed.

80. On 21 February 2002 an investigator of garrison prosecutor's office no. 59 took up the case.

81. In letters of 22 March 2002 the investigator in charge informed the second applicant's family, as well as Ilyas Akiyev, Baymurza Aldiyev, Aslambek Imagamayev and Aslambek Dishniyev, that on 21 March 2002 the proceedings in connection with the death of the applicants' two relatives had been discontinued in the absence of evidence of a crime, and that this decision could be appealed against to the prosecutor of garrison no. 59 or in court. It is unclear whether the first applicant's family was informed of the decision of 21 March 2002, as there is no letter to that effect among the documents submitted by the Government. A copy of the decision of 21 March 2002 was not submitted to the Court either.

82. By a decision of 16 August 2002 the military prosecutor's office of the North Caucasus Military Circuit quashed the decision of 21 March 2002, stating that the investigation had been incomplete, that a superior prosecutor's instructions had not been complied with and that all the measures envisaged in the law had not been taken to establish the circumstances of the case.

83. By a decision of 24 March 2003 an investigator of the military prosecutor's office of military unit no. 20102 took up the case.

84. On the same date the investigator in charge informed the second applicant's family and the aforementioned four men who had been attacked together with Khalid Khatsiyev and Kazbek Akiyev of the decision of 24 March 2003. It is unclear whether the first applicant's family was informed of the said decision, as there is no letter to that effect among the documents submitted by the Government.

85. A decision of 24 April 2003 taken by the investigator in charge of the military prosecutor's office of military unit no. 20102 ordered that the criminal proceedings in case no. 34/32/0189-01 be terminated. The decision described the circumstances of the attack of 6 August 2000 as they had been stated in the decision of 15 December 2001 on complete termination of the criminal proceedings (see paragraph 77) and referred to the same documents as those relied on in that decision. It also referred to the witness statement of Mr F., the head of the administration of Arshty at the relevant period, that of

Mr M., the head of the flight safety service, and the report of a military expert of 20 March 2002 (see paragraph 102 below). The decision then stated that all the investigative actions aimed at establishing fully and objectively the circumstances of the case had been carried out and that it had been established that at the relevant period a counter-terrorist operation had been underway within the territory of the North Caucasus region, which comprised several republics, including the Chechen Republic and the Republic of Ingushetia. The residents of the region had been notified that once approached by military vehicles or federal servicemen they were to mark themselves with a piece of white cloth so as to indicate that they were civilians and wait for the arrival of servicemen for an identity check. The decision went on to say that on 6 August 2000 the applicants' two relatives and the four other men, who had been discovered in the vicinity of Arshty by two MI-24 helicopters under the command of Major "Ivanov" and Major "Petrov", had failed to comply with the aforementioned requirements and, after a warning shot, had attempted to escape in the Niva car with the result that the MI-24 helicopters had opened fire for effect, entailing the death of Khalid Khatsiyev and Kazbek Akiyev. The decision then concluded that the pilots had acted pursuant to an order which had been justified in the circumstances and had been binding on them, and therefore their actions did not constitute a criminal offence and they were not responsible for the damage caused. It thus ordered that the criminal proceedings against officers "Ivanov" and "Petrov" be discontinued in the absence of evidence of a crime in their actions.

(b) Transcripts of witness interviews

86. There are a number of transcripts of witness interviews among the documents submitted by the Government. In particular, Ilyas Akiyev, Baymurza Aldiyev, Aslambek Imagamayev and Aslambek Dishniyev described the attack of 6 August 2000 as stated in the applicant's version of events (see paragraphs 12-20) and insisted that they had had no firearms and that it had been obvious that they had been civilians cutting grass and had posed no danger. Aslambek Dishniyev and Aslambek Imagamayev also stated that they had never received any information concerning the rules of conduct of civilians in the zone of a counter-terrorist operation, that it had never been explained how a civilian should mark himself, as no special operations had been carried out in Ingushetia. Baymurza Aldiyev submitted that the head of the administration of Arshty and officers of the Department of the Interior of the Sunzhenskiy District had explained to the local residents that they should avoid the military personnel, not approach and not provoke them. He had heard from his relatives that when federal servicemen opened fire it was necessary to mark oneself as a civilian with a piece of white cloth and wait for the arrival of servicemen for an identity check, but

during the attack of 6 August 2000 he had not performed those actions, as they had all been scared and attempted to escape, fearing for their lives.

87. Mr F., the head of the administration of Arshty at the material time, stated that Khalid Khatsiyev and Khalid Akiyev had never been involved in illegal activities, and no criminal proceedings had ever been brought against them. He also submitted that on 6 August 2000 he had visited the scene of the incident with the Niva car, together with local law-enforcement officers. According to Mr F., during the inspection of the scene of the incident pieces of shrapnel and craters from shells and bullets had been found. Mr F. claimed that there had been no firearms or grenades at the scene of the incident, that it had not been attended by servicemen or any persons before the arrival of the law-enforcement officers and that there had been no traces of anyone's prior presence at the scene. Mr F. also stated as follows:

“Since the summer of 2000 a counter-terrorist operation has been underway within the territory of the Chechen Republic. From that time onwards the federal forces have repeatedly conducted special operations in the village of Arshty, during which representatives of official bodies or commanding officers have never explained the rules of conduct in a situation when representatives of the federal forces approach. I, myself, have on several occasions told the residents of the village that if military vehicles, aircraft or armed soldiers appear they should move away to a safe distance.

During the year 2000 it was never explained to me that on the approach of aircraft or helicopters it was necessary for people to mark themselves as civilians – with a white cloth or in any other way – to make the servicemen understand that they are civilians. Accordingly, I never gave such explanations to the residents of the village.

The officials of the Department of the Interior of the Sunzhenskiy District did not give [any such explanations] either, since there were no military actions on the territory of the Republic of Ingushetia...”

88. According to a statement of a superior officer of the air force obtained on 30 November 2000, in case of necessity the pilot in command of a helicopter might be authorised by the command centre to take, of his own motion, a decision to open fire.

89. Officer L., whose military rank and position are unknown as his personal details have been deleted from the transcript, stated during the questioning of 29 December 2000 that:

“...the pilots reported that they had destroyed a Niva vehicle with illegal fighters, who had been firing at the helicopters. The pilots did not request me to give them authorisation to open fire. I suppose that the pilot in command, of his own motion, took a decision to destroy the Niva car, having assessed the battle conditions. After the rescue operation had been completed, the area in the vicinity of the crash was inspected. As a result, a destroyed Niva vehicle was found and several hand-grenades, spent cartridges from light machine-guns and a bloodstained ammunition belt were found nearby.”

90. Lieutenant Colonel A., whose position is unknown as his personal details have been deleted from the transcript, stated during questioning on 6

May 2001 that it was he who, on 6 August 2000, had assigned a mission to a group consisting of the MI-8 helicopter, which had then been hit by the rebel fighters, and two MI-24 helicopters, which had been entrusted with the task of “covering” the MI-8 helicopter. He stated that this group had not been involved in an attack on the Niva car and that he had no information regarding the attack.

91. According to a statement of 23 April 2001 by Mr I., an investigator from the Sunzhenskiy Prosecutor’s Office, he had been summoned to the scene of the incident with the Niva car on 6 August 2000. When he arrived, the destroyed vehicle and the dead bodies had already been removed from the site. Mr I. had inspected the site and found fragments of shrapnel, pieces of broken car headlights and bloodstains. According to him, he had found no grenades, spent cartridges from light machine-guns or an ammunition belt.

92. Mr B., who at the material time had been a driver for the Ministry of the Interior of the Republic of Ingushetia and had attended the scene of the incident as an attesting witness on 6 August 2000, stated during questioning on 23 April 2001 that he had seen a severely damaged Niva car, two dead bodies lying 12-15 metres away and a lot of craters and pieces of shrapnel. Mr B. submitted that he had seen an F-1 hand grenade lying between the vehicle and one of the corpses. According to him, he had not seen any firearms, spent cartridges from light machine-guns or ammunition belts at the scene of the incident; near the corpses Mr B. had only seen scythes.

93. The pilots of the two Mi-24 helicopters who had attacked the Niva car on 6 August 2000 were questioned on 22 and 23 January 2001 respectively. The real names, surnames and personal details of the pilots have been deleted from the transcripts of their interviews. The pilots in command of the helicopters are indicated with the nicknames “Ivanov” and “Petrov” and an operating pilot who was working in tandem with “Ivanov” is indicated as “Sidorov”.

94. Witness “Ivanov” submitted that he had participated in a rescue operation of 6 August 2000 as pilot in command of the lead helicopter of a pair of MI-24 helicopters. The mission was assigned to them by the commander of military unit no. 06652, who received orders from the command centre of the main federal military base in the village of Khankala, the Chechen Republic. According to “Ivanov”, at about 1 p.m. he noticed a white Niva car and five [rather than six] men standing nearby, all of whom had automatic firearms. He observed the people without using any optical devices from the distance of two kilometres and altitude of 100-150 metres, but insisted that he clearly saw the people had firearms, and that his operating pilot, “Sidorov”, had seen them through a target control system of tenfold magnification. He reported this to the command centre in Khankala and was told that the identity of those five persons would be established. The pilots continued observing, the Niva vehicle remained still and the five

men were moving around it. About 15 minutes later “Ivanov” received an order from the command centre in Khankala to destroy the car. According to him, he did not know the name of the official who had given the order. “Ivanov” then sought and obtained confirmation of that order. He fired a warning shot at a spot situated fifty metres away from the car, so as to make the people stand still and wait for the arrival of federal servicemen for an identity check. After the shot, the people got into the car and drove off in the direction of Arshty. “Ivanov” reported this to the command centre in Khankala and received an order to destroy the vehicle. He then fired a warning burst from an aircraft machine-gun, but the car carried on moving. “Ivanov” fired another burst and hit the Niva vehicle, which stopped but nobody got out of it. “Ivanov” then reported the incident to his superiors and left for the place of his station, as he was running out of fuel. “Ivanov” insisted that he did not know the names or military ranks of officials who had given him orders and had had no doubt that the five men belonged to illegal armed groups, as they had been armed. He submitted that “the people in the [Niva] car were supposed to stop after a warning shot; this was known to all the civilian population in the area of the military actions”.

95. Witness “Petrov” stated that he had participated in a rescue operation on 6 August 2000 as wingman of the pair of MI-24 helicopters. He confirmed that he had seen from a distance of two kilometres a white Niva car and five [rather than six] armed men, who after “Ivanov’s” warning shot had got into the car and started driving away, although “everybody knew that a car must stop at a shot or even a helicopter’s flight”. “Petrov” submitted that he had not been authorised to communicate with the command centre but had heard “Ivanov’s” communications and confirmed that “Ivanov” had reported about the car and the people to the command centre and twice received an order to destroy the vehicle. After the second order from the command centre “Ivanov” had given “Petrov” a command to fire at the vehicle, and the latter had strafed the vehicle with a machine-gun of 12.7 mm calibre, whilst “Ivanov” had fired at it with an automatic cannon of 30 mm calibre. The car had stopped but nobody had got out. He then left for the place of his location, as he was running out of fuel. “Petrov” stated that he did not know the names or military ranks of the officials who had communicated with “Ivanov” on 6 August 2000.

96. Witness “Sidorov” stated that on 6 August 2000 he had been an operating pilot on the MI-24 helicopter under the command of “Ivanov”, and that he had observed a Niva car and five [rather than six] men with automatic firearms standing nearby through a target control system of tenfold magnification, as he had reported to “Ivanov”. He then submitted the following:

“I clearly heard Major [“Ivanov”] report about the car to [deleted] and to [deleted]. About 10 minutes later an order followed from [deleted] (Khankala) to fire a warning shot. “Ivanov” fired a warning shot from an automatic cannon in front of the car. The

people got into the vehicle and drove off in the direction of the village of Arshty and did not stop. All local inhabitants know that it is necessary to stop. ["Ivanov"] reported to [deleted] that the car had not stopped. An order to fire another warning shot followed. ["Ivanov"] made another circle and fired in front of the car with the automatic cannon, but the car did not stop. ["Ivanov"] reported to [deleted] about the situation with the car. An order followed to open fire for effect. ["Ivanov"] opened fire for effect, and the car stopped and I saw two persons get out and run into the forest. ["Ivanov"] reported to [the command centre] that the car had stopped and thereafter he transmitted to [deleted] the information on the car's location to enable an identity check of the people in the car."

97. During questioning on 23 January 2001 Colonel D. submitted that at the material time he had been the commander of the [deleted] separate helicopter squadron and that on 6 August 2000 he had heard communications between the MI-24 helicopters and the command centre. He confirmed that the pilots had reported about the Niva vehicle and armed men nearby, that they had been ordered to fire a warning shot, that the pilots had reported that the men had got into the car and attempted to escape and that the pilots had been ordered to destroy the vehicle.

98. Officer M., a military expert, stated during an interview of 20 April 2003 that the actions of the pilots of the MI-24 helicopters, who had attacked the group of people on 6 August 2000, had fully complied with relevant military regulations and the provisions of international law and had been justified in the circumstances. The expert admitted that the pilots could have mistaken agricultural equipment, in particular scythes, for firearms, but noted that the pilots had been absolutely positive that the men whom they had noticed had been armed and that those men had not marked themselves as civilians and had attempted to escape.

(c) Documents relating to investigative actions

99. A report on the inspection of the scene of the incident of 6 August 2000 attested the presence of a large number of craters and metallic fragments of irregular shape as well as pieces of broken glass from backlights and a splash shield of a car and a large brown stain resembling blood. A piece of a broken scythe was also found at the scene of the incident.

100. Reports on the examination of the corpses of Khalid Khatsiyev and Kazbek Akiyev on 6 August 2000 attested the presence of a number of bleeding wounds of irregular shape, going from top downwards.

101. Reports on the medical forensic examination of the corpses of Khalid Khatsiyev and Kazbek Akiyev on 3 September 2001, based on the aforementioned two reports of 6 August 2000, confirmed that the corpses had borne bullet wounds, that the death of the two men had been caused by those wounds and that the location of the wounds indicated that they could have been inflicted in the circumstances described in the materials of the criminal case file.

102. An expert commission made up of two military experts, Mr M. (see paragraph 98 above) and Mr K., stated as follows in a report of 20 March 2002:

“According to the rules in force in the territory of the Chechen Republic and neighbouring regions, a driver of any transport vehicle is obliged, at the sight of a military helicopter, to stop the vehicle, get out and mark himself. Therefore the crew had the right to destroy the vehicle, which was moving away from the area of an attack without marking itself with a prearranged signal (a white flag, a green signal flare).”

The report thus concluded that the pilots had been justified in their actions.

103. The materials submitted by the Government reveal that the investigating authorities also sent a number of queries and requests to various State bodies in the context of the investigation. In particular, on 1 December 2000 the military prosecutor’s office of military unit no. 20102 sent a request to the military prosecutor of the Kursk garrison to establish whether the pilots who had attacked the Niva car had coordinated their actions with their superiors, to establish the identity of those superiors, and to establish who had taken the decision to attack the Niva car. It is unclear whether this request has ever been complied with, as there are no corresponding documents among the materials submitted by the Government.

2. *Domestic courts’ decisions*

104. The Government also adduced copies of domestic court decisions taken in unrelated sets of civil proceedings. These included a first-instance judgment and appeal decision awarding compensation for property damage inflicted by servicemen in Ingushetia; a first-instance judgment and appeal decision awarding damages to the first applicant in *Khashiyev and Akayeva v. Russia* (nos. 57942/00 and 57945/00, judgment of 24 February 2005) in connection with the death of his relatives in Chechnya; and a first-instance judgment and appeal decision refusing compensation for property damage inflicted by servicemen in Ingushetia.

II. RELEVANT DOMESTIC LAW

105. Until 1 July 2002 criminal-law matters were governed by the 1960 Code of Criminal Procedure of the RSFSR. On 1 July 2002 the old Code was replaced by the Code of Criminal Procedure of the Russian Federation (CCP).

106. Article 125 of the CCP provides that the decision of an investigator or prosecutor to dispense with or terminate criminal proceedings, and other decisions and acts or omissions which are liable to infringe the constitutional rights and freedoms of the parties to criminal proceedings or

to impede citizens' access to justice, may be appealed against to a district court, which is empowered to examine the lawfulness and grounds of the impugned decisions.

107. Article 161 of the CCP enshrines the rule that information from the preliminary investigation may not be disclosed. Part 3 of the same Article provides that information from the investigation file may be divulged with the permission of a prosecutor or investigator and only in so far as it does not infringe the rights and lawful interests of the participants in the criminal proceedings and does not prejudice the investigation. It is prohibited to divulge information about the private lives of participants in criminal proceedings without their permission.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

1. Submissions by the parties

108. The Government contended that the applicants had failed to exhaust the domestic remedies available to them. In particular, the applicants had never lodged any court complaints under Article 125 of the Russian Code of Criminal Procedure against the actions or omissions of the investigating authorities during the criminal proceedings in connection with the deaths of Khalid Khatsiyev and Kazbek Akiyev, nor had they appealed against the decision of 23 April 2003 by which those proceedings had been discontinued. The Government disputed the applicants' argument that they had been unable to make use of that remedy, as they had not been recognised as victims of a crime, and stated that the said provision entitled any individual and not only participants in criminal proceedings to apply to a court with relevant complaints. The Government further argued that the applicants could also have filed a claim for compensation for the deaths of their relatives in civil proceedings, but had never availed themselves of that remedy.

109. The applicants contested that objection. They stated that an administrative practice consisting in the authorities' continuing failure to conduct adequate investigations into offences committed by representatives of the federal forces in Chechnya or Ingushetia rendered any potentially effective remedies inadequate and illusory in their case. In this connection they relied on applications submitted to the Court by other individuals claiming to be victims of similar violations, documents of human rights NGOs and media reports. The applicants further contended that they had

been excluded from the criminal proceedings as none of them had ever been recognised as a victim of a crime, and therefore they had no right under national law to challenge decisions of the investigating authorities. Nevertheless, they had actively attempted to participate in the investigation and repeatedly applied to law-enforcement bodies, including various prosecutors, requesting them to inform them of the investigative measures that had been taken and of any developments in the case as well as to grant the status of victim to the first two applicants, the mothers of the persons killed. The applicants thus argued that they had had recourse to the remedies usually available in domestic law, but that those remedies had proved futile in their case.

2. *The Court's assessment*

110. The Court notes that, in its decision of 23 October 2006, it considered that the question of exhaustion of domestic remedies was closely linked to the substance of the present application and that it should be joined to the merits. It will now proceed to assess the parties' arguments in the light of the Convention provisions and its relevant practice.

111. The Court reiterates that the rule of exhaustion of domestic remedies under Article 35 § 1 of the Convention obliges applicants to use first the remedies which are available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain both in theory and in practice, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used. However, there is no obligation to have recourse to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275-76, §§ 51-52; *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1210, § 65-67; and, most recently, *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, no. 41964/98, § 64, 27 June 2006).

112. In the present case, in so far as the Government argued that the applicants had failed to seek compensation for their relatives' deaths through a civil procedure, the Court points out that, as it has already found in a number of similar cases, this procedure by itself cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention. A civil court is unable to pursue any independent investigation and is not capable, without the benefit of the conclusions of a criminal investigation, of making any meaningful findings as to the identity of the

perpetrators of fatal assaults, still less of attributing responsibility. Furthermore, a Contracting State's obligation under Articles 2 and 13 of the Convention to conduct an investigation capable of leading to the identification and punishment of those responsible in cases of fatal assaults might be rendered illusory if, in respect of complaints under those Articles, an applicant would be required to pursue an action leading only to an award of damages (see *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, p. 2431, § 74, and *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005). In the light of the above, the Court finds that the applicants were not obliged to pursue a civil remedy and that this limb of the Government's preliminary objection should therefore be dismissed.

113. To the extent the Government argued that the applicants had not lodged any court complaints against the actions and omissions of the investigating authorities, and had not challenged before a court the decision of 24 April 2003 to discontinue the criminal proceedings concerning the attack of 6 August 2000, the Court emphasises that the application of the rule of exhaustion of domestic remedies must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting States have agreed to set up. Accordingly, it has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned but also of the general context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see *Akdivar and Others*, cited above, p. 1211, § 69; *Aksoy*, cited above, p. 2276, §§ 53-54; and *Tanrikulu v. Turkey* [GC], no. 23763/94, § 82, ECHR 1999-IV).

114. The Court considers that this limb of the Government's preliminary objection raises issues which are closely linked to the question of the effectiveness of the investigation, and it would therefore be appropriate to address the matter in the examination of the substance of the applicants' complaints under Article 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

115. The applicants complained of the killing of their relatives and of the domestic authorities' failure to carry out an effective investigation in

this connection. They relied on Article 2 of the Convention, which provides 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. Alleged failure to protect the right to life

1. Submissions by the parties

(a) The applicants

116. The applicants disputed the Government’s version of the events of 6 August 2000 as unreliable. They strongly denied the Government’s assertion that Khalid Khatsiyev, Kazbek Akiyev and the other four men had been armed when the pilots of the MI-24 helicopters had seen them. The applicants referred to various mass-media reports and claimed that it had been obvious that those six persons had been civilians and that they had been cutting grass in the open field and posed no danger either to the civilian population or to servicemen.

117. The applicants further argued, with reference to eyewitness statements, that the pilots of the MI-24 helicopters had never fired any warning shots before attacking the Niva car and killing their relatives. They also expressed doubts that the pilots had had an opportunity to coordinate their actions with their superiors’ orders, given that the attack had been very quick. They argued that the pilots had not demonstrated the degree of caution in the use of lethal force to be expected from law-enforcement personnel in a democratic society.

118. The applicants stated that the authorities had not notified them of any special operation in the vicinity of Arshty on the day of the incident, and therefore their relatives had worked in the fields instead of staying at home.

119. They further submitted, with reference to statements of high-ranking officials in Ingushetia, that the federal MI-8 helicopter had been

attacked from the territory of the Chechen Republic rather than from Ingushetia. The applicants also contended that the authorities had never given any explanations as to what actions civilians were to perform within the area of a counter-terrorist operation and that, in any event, the territory of the Sunzhenskiy District of the Republic of Ingushetia had never been part of such an area, as it was situated at quite a distance from the administrative border between Ingushetia and Chechnya. They also pointed out that the state of emergency had never been declared in the Republic of Ingushetia.

120. The applicants thus contended that the use of force by the State which had led to the deprivation of their relatives' lives had been clearly disproportionate and could not be regarded as justified under Article 2 § 2 of the Convention. They also claimed that the special operation carried out on 6 August 2000 had not been properly planned and controlled by the authorities so as to minimise, to the greatest extent possible, recourse to lethal force (see *McCann v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, § 194).

(b) The Government

121. The Government conceded that the applicants' relatives had been deprived of their lives by State agents. They argued, however, that the applicants' relatives had been killed in the course of a counter-terrorist operation carried out by the federal forces in order to effect lawful detention of illegal paramilitaries and to prevent further criminal activity by the latter and thus to secure public safety in the region.

122. The Government insisted that since the beginning of the general counter-terrorist operation within the territory of the Chechen Republic, the civil and military authorities had taken all necessary steps to secure the safety of civilians residing in the North Caucasus and, in particular, to inform the residents of the Republic of Ingushetia of the risk of being at the administrative border with Chechnya as well as of the actions they should perform when in the area of a counter-terrorist operation so as to indicate that they did not belong to illegal armed groups.

123. The Government further submitted that the federal servicemen, both commanding officers and their subordinates, had planned and conducted the operation of 6 August 2000, acting in full compliance with national legislation and regulations for securing the safety of the civilian population as well as those relating to the use of lethal force. The Government admitted that "in the materials of the preliminary investigation there was no information indicating that the military personnel had been instructed in advance to avoid civilian casualties" in the operation of 6 August 2000, but argued that, in accordance with relevant regulations, "every serviceman should know and strictly comply with the rules governing contacts with the civilian population in the area of military

action”. They refused to provide any details on the planning and execution of the operation in question, invoking Russia’s national security interests.

124. The Government conceded, referring to the absence of relevant information in the criminal investigation file, that the residents of Arshty had not been warned in advance about the operation of 6 August 2000, but contended that it had been unnecessary to give such a warning. In this latter respect they pointed out, firstly, that the aim of the operation in question had been to search for and detain illegal fighters and had therefore not presupposed the use of lethal force; secondly, that the operation had been carried out at a considerable distance (8 kilometres) from the village of Arshty; and thirdly, that operations of that kind “presupposed elements of surprise and secrecy” as “acquaintances and relatives could have warned the illegal fighters of the actions planned by the federal forces”. The Government argued that, in any event, Khalid Khatsiyev and Kazbek Akiyev had been aware of the military operation of 6 August 2000, as on that date they had seen military helicopters flying for a prolonged period of time. The Government thus insisted that the fact that the authorities had not warned the residents of Arshty about the operation of 6 August 2000 did not indicate that the authorities had not taken the necessary measures to protect civilians.

125. The Government further argued that despite the authorities’ general warning against staying within the area of the counter-terrorist operation in Chechnya, including the vicinity of the administrative border between the Republic of Ingushetia and the Chechen Republic, a group of six men including the applicants’ relatives had been found within that area and in close proximity (4 kilometres) to the site where a federal helicopter had crashed and where the rescue group had subsequently been attacked by the illegal fighters. Moreover, those men had breached the necessary requirements, in particular failing to mark themselves with white cloth, and had tried to escape in their car with the result that the pilots of the federal MI-24 helicopters had taken them for members of illegal armed groups. The Government thus contended that the applicants’ relatives had been deprived of their lives on account of their own negligence and that this was notably the result of “the local residents’ failure to comply with the necessary rules concerning personal safety in an area where State agents were conducting a counter-terrorist operation”.

126. On the other hand, the Government also insisted that the pilots had clearly seen that the men were carrying light machine-guns, this fact having been relevant for the decision to attack the group, as the men could have belonged to illegal armed groups. The Government stated, however, that “there was no information in the criminal investigation file” to suggest that the men had used firearms against the pilots and that, in any event, light machine-guns “were ineffective for hitting a target at a distance of over one kilometre”, whilst the pilots had observed the group from a distance of two

kilometres and an altitude of 100-150 metres. They submitted that after the rescue operation had been completed, the servicemen had examined the nearby area and found the Niva car and several hand-grenades, spent cartridges from light machine-guns and a bloodstained ammunition belt, whilst, according to the report on the inspection of the scene of the incident carried out on the same date between 8.10 p.m. and 9.30 p.m., no firearms or ammunition had been found. In this latter respect the Government claimed that, prior to the arrival of law-enforcement officers, the scene of the incident could have been accessible both to the military personnel and to the individuals who took the bodies to the village.

127. Finally, it was not before the pilots had coordinated their actions with the superiors' orders and fired several warning shots that they had fired at the Niva car, leading to the death of the applicants' relatives.

128. The Government thus contended that in view of the fact that the six men who had come under the aerial attack could have belonged to illegal armed groups, the killing of the applicants' relatives had been justified, as the use of lethal force in the present case had been no more than absolutely necessary for the purposes of Article 2 § 2 (a) and (b) of the Convention.

2. The Court's assessment

129. 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, to 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*, cited above, §§ 146-50; *Andronicou and Constantinou v. Cyprus*, judgment of 9 October 1997, *Reports of Judgments and Decisions* 1997-VI, pp. 2097-98, § 171; and *Oğur v. Turkey* [GC], no. 21594/93, § 78, ECHR 1999-III).

130. In the present case, it is common ground between the parties that Khalid Khatsiyev and Kazbek Akiyev were killed by State agents as a result

of the intentional use of lethal force against them. The State's responsibility is therefore engaged.

131. The Court must next ascertain whether the force used against the applicants' relatives by the federal 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.

132. The Court observes that it is in dispute between the parties whether the six men who came under attack, including the applicants' two relatives, had been armed with firearms at the moment of the attack. The applicants insisted that it had been obvious that the six men had been unarmed civilians cutting grass, whilst the Government advanced controversial arguments on the issue. On the one hand, the Government seemed ready to admit that the applicants' relatives had been unarmed local residents, but insisted that they had been attacked because of their own negligence, since they had failed to mark themselves as civilians. On the other hand, the Government also stated that the six men, who had been detected by the military pilots in the field close to the site where a federal helicopter had been hit, had been armed with light machine-guns and therefore could have belonged to a group of illegal fighters.

133. In the absence of any evidence other than the pilots' statements and a statement of military officer L., the Court retains certain doubts as to whether the group of six men, including Khalid Khatsiyev and Kazbek Akiyev, were armed when they were attacked, given in particular that no firearms had ever been found on the scene of the incident (see paragraphs 87, 91, 92 and 99). No evidence has been produced that the victims fired at the helicopter or otherwise endangered the lives of the pilots. In any event, it does not consider it necessary to establish the facts in this respect for the following reasons.

134. The Court is aware of the difficult situation at the material time in the neighbouring region, the Chechen Republic, which called for exceptional measures on the part of the State to suppress the illegal armed insurgency (see *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, § 178, 24 February 2005). With this in mind, and assuming that the federal pilots honestly believed that the applicants' two relatives and the other four men had machine-guns, when they spotted them, the Court nevertheless does not consider that this fact, by itself, can justify the use of lethal force against them and that a number of circumstances surrounding the incident should be taken into account.

135. The Court notes first of all that a substantial body of evidence in its possession consistently suggests that the pilots did not take the decision to destroy the vehicle with the people of their own motion, but acted pursuant to their superiors' order which was binding on them (see paragraphs 25, 47, 77 and 85 above). The Court must therefore ascertain whether when taking that decision the commanding officers exercised the necessary degree of

caution and appropriate care to be expected from law-enforcement personnel in a democratic society (see *McCann and Others*, cited above, § 212) for the purposes of Article 2 of the Convention, and in particular, whether the instructions they gave to the pilots, rendering inevitable the use of lethal force, adequately took into consideration the right to life of the applicants' two relatives.

136. The materials in the Court's possession reveal that the pilots reported to the command centre that they could see a group of at least five men with light machine-guns standing near a Niva vehicle. The command centre replied that the identity of those men would be established and then 15 minutes later ordered that the car and people be destroyed, this order having been confirmed upon the pilots' request. It does not appear from the submitted documents, and was not alleged by the Government, that the pilots provided the command centre with any details regarding the men other than those mentioned above. Moreover, it does not appear, and was not alleged by the Government, that the officers from the command centre sought any further details to enable them adequately to assess the situation and take an appropriate decision. In particular, the pilots were not asked to provide any information as to visibility in the area, the distance between the site of the crash of the federal helicopter and the allegedly armed group, whether the area was populated, whether the pilots had or could have come under an armed attack, whether the men found by the pilots had tried to escape and whether the situation required any urgent measures to be taken by the pilots, or any other details. It is furthermore highly doubtful that the authorities in command established the identity of the applicants' two relatives and the other men before giving the order to destroy them, given the very tight period that elapsed between the pilots' first report and the order. Indeed, there is nothing in the submitted materials to suggest that they did or even attempted to do so.

137. The Court considers that all these circumstances suggest a lack of appropriate care by the authorities in assessing the situation reported by the pilots and giving them an order to attack the six men, including Khalid Khatsiyev and Kazbek Akiyev, who were killed as a result.

138. Having regard to the above, the Court is not persuaded that the killing of Khalid Khatsiyev and Kazbek Akiyev, even assuming that they were armed, constituted a use of force which was no more than absolutely necessary in pursuit of the aims provided for in Article 2 § 2 (a) and (b) of the Convention.

139. Moreover, assuming that the group of six men, including the applicants' relatives, were unarmed when attacked by the State agents, as alleged by the applicants, the Court notes at the outset the Government's argument that the applicants' relatives were deprived of their lives because of their own negligence, and notably as a result of their failure to comply with instructions concerning personal safety in an area where State agents

were conducting a counter-terrorist operation. Leaving open the question whether a State could be justified under Article 2 § 2 of the Convention in using lethal force against civilians for mere failure to comply with official safety instructions in an area of an armed conflict, the Court cannot in any event perceive any justification for the use of lethal force in the circumstances of the present case, given that the authorities had never warned the residents of Arshty about the operation of 6 August 2000 (see paragraph 124 above) and that it is highly doubtful that the residents of the Republic of Ingushetia, and in particular the inhabitants of Arshty, were ever apprised of the conduct required when confronted with federal servicemen (see paragraphs 86-87 above).

140. There has accordingly been a violation of Article 2 of the Convention in this connection.

B. Alleged ineffectiveness of the investigation

1. Submissions by the parties

141. The applicants claimed that the authorities had failed in their obligation to carry out an effective investigation into the circumstances of their relatives' deaths. They argued that the investigation had fallen short of the requirements of domestic law and the Convention standards. In particular, it had been pending for almost three years and during that period it had been suspended on at least five occasions. The applicants argued that a number of investigative measures had not been taken, or had been taken after considerable delay. Throughout the investigation the first two applicants had requested that the status of victim of a crime be granted to them, but had received no replies to their requests. The authorities had never kept the applicants abreast of developments in the investigations or informed them as to what investigative measures had been taken and repeatedly denied them access to the criminal investigation file. Moreover, a copy of the decision of 24 April 2003 by which the criminal proceedings in connection with the death of the applicants' relatives had been discontinued had never been served on them.

142. In their post-admissibility observations, the applicants also argued that the investigation had been conducted by military prosecutors who could not be regarded as impartial and independent in a situation, such as in the present case, where they investigated the alleged involvement of military personnel in an offence.

143. The Government claimed, relying on the opinion of the Prosecutor General's Office, that the investigation carried out in the present case had met the Convention requirement of effectiveness. It had been opened on the date of the incident and had been conducted in full compliance with the relevant provisions of the domestic law. The investigating authorities had

taken all the necessary steps, and notably had inspected the scene of the incident, carried out forensic examinations, seized and examined relevant documents, and had questioned witnesses among local residents and military personnel. The decision to discontinue the criminal proceedings had been based on evidence obtained during the investigation and had been brought to the applicants' knowledge.

2. *The Court's assessment*

144. The Court 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 the identification and punishment of those responsible (see *Oğur*, cited above, § 88). In particular, there must be an implicit requirement of promptness and reasonable expedition (see *Yaşa*, cited above, § 102-04, and *Mahmut Kaya v. Turkey*, no. 22535/93, ECHR 2000-III, §§ 106-07). 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 maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts. 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 for 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).

145. In the instant case, the Court observes that some degree of investigation was carried out into the killing of the applicants' relatives. It must assess whether that investigation met the requirements of Article 2 of the Convention.

146. The Court notes that the investigation was commenced on the date of the attack and that some initial investigative actions, such as the inspection of the scene of the incident, preliminary medical examination of the corpses and questioning of eyewitnesses to the attack, were taken immediately (see paragraphs 28, 64, 86, 99 and 100 above). However, after the case file had been transferred to a military prosecutor's office two days later (see paragraph 66), the investigation appears to have become protracted and plagued with inexplicable shortcomings and delays in taking

the most trivial steps. In particular, it does not appear that any ballistic tests were ever performed, even though they may have been relevant in the circumstances, given the pilots' statements that the men whom they had had attacked had been armed and the statements of military officials that spent cartridges from machine-guns had been found during the servicemen's inspection of the area. Moreover, no autopsy or any further medical forensic examination of the corpses was ever carried out, apart from the initial medical examination on 6 August 2000, the report on the forensic examination of 3 September 2001 being based entirely on the results of that initial examination.

147. Furthermore, despite the abundant evidence of the federal military personnel's involvement in the attack of 6 August 2000 and the killing of the applicants' two relatives, it does not appear that at the early stage of the investigation any meaningful efforts were made to establish the identity of the State agents who had given the order to attack the group of people including the applicants' relatives, or of those who had carried out the order. The Court notes in this connection that the investigation had been suspended at least on two occasions, on 30 October and 30 December 2000 (see paragraphs 69 and 72 above), for failure to identify those responsible. The Court notes in this connection that it is highly unlikely that the identity of those involved in the operation of 6 August 2000 was unknown to the authorities or that it was impossible to establish it immediately thereafter. Moreover, whilst the identity of the federal pilots who participated in the attack was finally established more than a year later, the identity of their superiors who had given the order to attack does not appear to have been established at all. In particular, the decision of 15 December 2001 ordered that the criminal proceedings be discontinued in the part relating to the actions of an official who had given the order to attack the Niva vehicle and its occupants, without indicating whether the identity of that official had been established (see paragraph 76 above). Furthermore, the decision in question ordered that the proceedings be discontinued on the sole ground that the order to use lethal force had been justified in the circumstances of the case, without making any assessment of that order or providing any explanations in this connection. No further attempts to analyse the order were ever made, the proceedings under that head having remained closed after 15 December 2001.

148. The Court further observes that, despite their numerous requests in this connection, none of the applicants was ever granted the status of victim of a crime, which would have afforded them minimum guarantees in the criminal proceedings. It is also clear from the materials in the Court's possession that the applicants were informed of the developments in the investigation only fragmentarily and occasionally, and that they were not given a realistic opportunity to have access to the case file despite their numerous attempts. The Court considers that the applicants were, in fact,

excluded from the criminal proceedings and were unable to have their legitimate interests upheld.

149. Finally, the investigation remained pending from August 2000 to April 2003, during which period it was adjourned and reopened at least five times. In particular, on the first two occasions it was suspended on the ground that it was impossible to identify the alleged perpetrators, whilst on the latter three occasions it was suspended owing to the absence of evidence of a crime. Its ineffectiveness and the investigators' failure to take practical measures aimed at resolving the crime and to comply with prosecutors' orders were acknowledged by senior prosecutors (see paragraphs 73, 75, 79 and 82). The Court notes also numerous transfers of the investigation file from one investigating authority to another without giving any reasonable explanations.

150. Against this background, and in so far as the Government's argument concerning the applicants' alleged failure to appeal to a court against the actions or omission of the investigators, under Article 125 of the Russian Code of Criminal Procedure, is concerned, the Court notes firstly that the Government did not indicate which particular actions or omissions of the investigators the applicants should have challenged before a court. It further observes that the legal instrument referred to by the Government became operative on 1 July 2002 and that the applicants were clearly unable to have recourse to this remedy prior to that date. As regards the period thereafter, the Court considers that in a situation where the effectiveness of the investigation was undermined from a very early stage by the authorities' failure to take the necessary investigative measures, where the investigation was repeatedly suspended and reopened, where the applicants were never declared victims and were unable to consult the case file at any stage, and where they were only informed of the conduct of the investigation occasionally, it is highly doubtful that the remedy invoked by the Government would have had any prospect of success. Moreover, the Government have not demonstrated that this remedy would have been capable of providing redress in the applicants' situation – in other words, that it would have rectified the shortcomings in the investigation and would have led to the identification and punishment of those responsible for the deaths of their relatives. The Court thus considers that in the circumstances of the case it has not been established with sufficient certainty that the remedy advanced by the Government would have been effective within the meaning of the Convention. It finds that the applicants were not obliged to pursue that remedy, and that this limb of the Government's preliminary objection should therefore be dismissed.

151. As regards the Government's argument concerning the applicants' alleged failure to appeal to a court against the decision of 24 April 2003 to discontinue the criminal proceedings, the Court reiterates that, in principle, this remedy may offer a substantial safeguard against the arbitrary exercise

of power by the investigating authority, given a court's power to annul a decision to dispense with or discontinue criminal proceedings and indicate the defects to be addressed (see, *mutatis mutandis*, *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003). Therefore, in the ordinary course of events such an appeal might be regarded as a possible remedy where the prosecution has decided not to investigate the claims. The Court, however, has strong doubts as to whether this remedy would have been effective in the circumstances of the present case. As mentioned above, prior to the decision of 24 April 2003, the investigating authorities ordered that the proceedings be terminated at least twice, on 15 December 2001 and 21 March 2002, referring to the same grounds, and namely the absence of evidence of a crime. Those decisions were subsequently set aside by supervising prosecutors and the case was repeatedly referred back for further investigation. In such circumstances, the Court is not convinced that an appeal to a court, which could only have had the same effect, would have offered the applicants any redress. It considers, therefore, that such an appeal in the particular circumstances of the present case would be devoid of any purpose. The Court finds that the applicants were not obliged to pursue that remedy and that this limb of the Government's preliminary objection should therefore be dismissed.

152. In the light of the foregoing, the Court further concludes that the authorities failed to carry out a thorough and effective investigation into the circumstances surrounding the deaths of Khalid Khatsiyev and Kazbek Akiyev, and that in such circumstances there is no need to address separately the applicant's argument concerning the alleged lack of impartiality of the investigating authorities, given in particular that this argument has only been raised since the case was declared admissible, and the Government have not had the opportunity to submit their observations on this issue.

153. The Court accordingly holds that there has been a violation of Article 2 of the Convention under its procedural head.

III. ALLEGED VIOLATION OF ARTICLES 6 AND 8 OF THE CONVENTION

154. The applicants complained that they had had no access to a court, contrary to Article 6 § 1 of the Convention, as under domestic law they were barred from bringing a civil claim to obtain compensation for the deaths of their relatives in the absence of any tangible results from the criminal investigation, and that the killings of their close relatives had constituted an unlawful and brutal interference with their family life, in breach of Article 8 of the Convention. The respective Convention provisions in so far as relevant read as follows:

Article 6

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

Article 8

“1. Everyone has the right to respect for his ... family life...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

155. In their submissions before the Court’s decision on admissibility the applicants insisted that they had been denied access to a court for the purpose of filing a civil claim for compensation, in breach of Article 6 § 1 of the Convention. They also maintained their complaint about interference with their rights under Article 8 of the Convention as a result of the killing of their relatives and argued that in view of the Government’s refusal to produce the file of the criminal case it was impossible to ascertain whether that interference had been justified under Article 8 § 2 of the Convention. After the present application had been declared admissible, the applicants informed the Court that they did not insist on a separate examination of their complaints under Article 6 § 1 and Article 8 of the Convention.

156. The Government argued that throughout the investigation and after its termination it had been open to the applicants to bring civil proceedings for compensation for the deaths of their relatives and that they had therefore had access to a court, as required by Article 6 § 1 of the Convention. In their submission, there was no direct link between the killing of the applicants’ relatives and a breach of the applicants’ right to respect for their family life and that, in any event, the alleged interference with that right had been justified under Article 8 § 2 of the Convention.

157. Having regard to the applicants’ submission made after the Court’s decision as to the admissibility of the application, the Court does not consider it necessary to examine the aforementioned complaints.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

158. The applicants claimed that they had no effective domestic remedies in respect of the violations of their rights secured by Article 2 of the Convention, contrary to Article 13 of the Convention, which reads as follows:

“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.”

159. The applicants insisted that in their case the domestic remedies usually available had proved to be ineffective, given that the investigation had been plagued with defects, that they had never been granted the status of victim, that their attempts to gain access to the case file had proved unsuccessful and that they had thus been excluded from the criminal proceedings and barred from bringing civil proceedings, and that all their applications to public bodies had remained unanswered or had only produced standard replies.

160. 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 those remedies. In particular, the authorities had opened a criminal investigation on the date on which the applicants’ relatives had been killed and during that investigation the applicants had had an opportunity to appeal, both to senior prosecutors and to a court, against the actions or omissions of the investigating authorities, or against the decision of 24 April 2003 to discontinue the criminal proceedings. In addition, throughout the investigation and after its termination it had been open to the applicants to file a claim for compensation in civil proceedings. In this latter respect the Government relied on the *Khashiyev* case in which the applicant had sought and obtained compensation for the death of his relatives (see *Khashiyev and Akayeva*, cited above, §§ 39-42).

161. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant’s complaint under the Convention. Nevertheless, the remedy required by Article 13 must be “effective” in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by acts or omissions of the authorities of the respondent State (see *Aksoy*, cited above, § 95).

162. Given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life, including effective access for the complainant to the investigation

procedure leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-162, ECHR 2002-IV; *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, § 117; *Süheyta Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005 and *Baysayeva v. Russia*, no. 74237/01, § 155, 5 April 2007). The Court further reiterates that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see *Orhan v. Turkey*, no. 25656/94, § 384, 18 June 2002).

163. In view of the Court's findings above with regard to Article 2, the applicants' complaint was clearly "arguable" for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52). The applicants should accordingly have been able to avail themselves of effective and practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation for the purposes of Article 13.

164. It follows that in circumstances where, as in the present case, the criminal investigation into the deaths was ineffective (see paragraph 152-153 above) and the effectiveness of any other remedy that may have existed, including the civil remedies, was consequently undermined, the State has failed in its obligation under Article 13 of the Convention.

165. Consequently, there has been a violation of Article 13 of the Convention in respect of the aforementioned violations of Article 2 of the Convention.

V. COMPLIANCE WITH ARTICLE 38 § 1 OF THE CONVENTION

166. In their observations on the admissibility and merits of the case, the applicants argued that the State had breached its obligations under Article 38 § 1 of the Convention, as it had not submitted the entire file of the criminal case against the applicants. This Article, in its relevant part, reads as follows:

"1. If the Court declares the application admissible, it shall

(a) pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities."

167. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications (see *Tanrikulu*, cited above, § 70). This obligation requires the Contracting States to furnish all necessary facilities to the Court, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of applications. Failure on a Government's part to

submit such information which is in their hands, without a satisfactory explanation, may not only give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a) of the Convention (see *Timurtaş v. Turkey*, no. 23531/94, § 66, ECHR 2000-VI).

168. In the present case, the Court observes that, despite their reluctance to produce a copy of the investigation file at earlier stages, the Government agreed to reveal the requested materials after the present application was declared admissible. The adduced materials ran to 223 pages and included a number of important procedural documents, such as reports on the inspection of the scene of the incident and on the results of the examination of corpses, transcripts of witness interviews, and others. While it is true that some documents were not submitted by the Government on the ground that their disclosure might be harmful to the interests of the security of the Russian Federation and to those of the participants in the criminal proceedings, or that they "were irrelevant to the investigation", the Court notes that the Government submitted a significant part of the case file and that this has considerably facilitated the examination of the present case by the Court. Overall, the Court does not consider that the Government's conduct has been such as to obstruct the conduct of an effective investigation in the present case and thus contrary to Article 38 § 1 (a).

169. Accordingly there has been no failure on the part of the respondent Government to comply with Article 38 § 1 (a) of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

170. 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

171. The applicants stated that they had lost their close relatives and suffered severe anguish and distress in this connection and as a result of the authorities' failure to investigate their complaints about the violations of their rights. They claimed a total amount of 100,000 euros (EUR) in respect of non-pecuniary damage, which comprised the following claims:

- (a) EUR 20,000 to each of the first, second and seventh applicants, and
- (b) EUR 10,000 to each of the third, fourth, fifth and sixth applicants.

172. The Government considered the applicants' claims to be excessive and submitted that should the Court find a violation of the applicants' rights, a token amount would suffice.

173. The Court observes that it has found a violation of Articles 2 and 13 of the Convention on account of the deaths of the applicants' close relatives and the absence of effective remedies to secure domestic redress for the aforementioned violations. The applicants must have suffered anguish and distress as a result of all these circumstances, which cannot be compensated for by a mere finding of a violation. Having regard to these considerations, and to the amounts sought by the applicants, the Court considers these claims to be reasonable and grants them in full. Accordingly, it awards EUR 20,000 to each of the first, second and seventh applicants, and EUR 10,000 to each of the third, fourth, fifth and sixth applicants, plus any tax, including value-added tax, that may be chargeable.

B. Costs and expenses

174. The applicants were represented by lawyers from the SRJI. They submitted a schedule of costs and expenses that included research and interviews in Ingushetia and Moscow, at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic authorities, at a rate of EUR 50 per hour for the SRJI lawyers and EUR 150 per hour for the SRJI senior staff. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 12,318.16, comprising:

- EUR 1,500 for the preparation of letters to the domestic authorities and research;
- EUR 4,500 for the preparation of the full application and documents;
- EUR 75 for the preparation of additional correspondence with the Court;
- EUR 5,250 for the preparation of the applicants' reply to the Government's memorandum;
- EUR 379.10 for the translation expenses;
- EUR 250 in connection with the preparation of the applicants' declarations of means and supporting documents;
- EUR 801.79 for administrative costs (7% of legal fees);
- EUR 62.27 for international courier post to the Court.

175. The Government did not dispute the details of the calculations submitted by the applicants, but contested the applicants' claims in their entirety as excessive, with reference to the established rates of legal fees in Russia. They relied on the Court's case-law to the effect that costs and expenses should be awarded only in so far as they were actually incurred, were necessary and were reasonable as to their amount. The Government

also insisted that the applicant's claims were not supported by relevant documents.

176. The Court reiterates that costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred, and were also reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

177. The Court observes that in August 2001 the applicants issued the SRJI with authority to represent their interests in the proceedings before the European Court of Human Rights. The SRJI acted as the applicants' representative throughout the procedure. The applicants also submitted documents in support of their claims for translation and postal expenses. Having regard to these documents and the rates for the work of the SRJI lawyers and senior staff, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representatives.

178. The Court further notes that this case has been rather complex and has required a certain amount of research work. On the other hand, once the preparation of the initial submissions had been completed, the work did not involve a large amount of documents, and the Court therefore doubts whether at later stages it required the amount of research and preparation claimed by the applicants' representatives.

179. In these circumstances, having regard to the details of the claims submitted by the applicants, the Court awards them a reduced amount of EUR 10,000, less the EUR 850 already received by way of legal aid from the Council of Europe, together with any tax, including value-added tax, that may be chargeable. The amount awarded shall be payable to the representative organisation directly.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 2 of the Convention as regards the deaths of Khalid Khatsiyev and Kazbek Akiyev;

3. *Holds* that there has been a violation of Article 2 of the Convention on account of the authorities' failure to carry out an adequate and effective investigation into the circumstances surrounding the deaths of Khalid Khatsiyev and Kazbek Akiyev;
4. *Holds* that it is not necessary to examine the applicants' complaints in respect of the alleged violations of Articles 6 and 8 of the Convention;
5. *Holds* that there has been a violation of Article 13 of the Convention in respect of the violations of Article 2 of the Convention;
6. *Holds* that there has been no failure to comply with Article 38 § 1 (a) of the Convention;
7. *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, all of which, save for those payable to the bank in the Netherlands, are to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 20,000 (twenty thousand euros) to each of the first, second and seventh applicants, and EUR 10,000 (ten thousand euros) to each of the third, fourth, fifth and sixth applicants in respect of non-pecuniary damage;
 - (ii) EUR 9,150 (nine thousand one hundred and fifty euros) in respect of costs and expenses, to be paid in euros to the bank account in the Netherlands indicated by the applicants' representative;
 - (iii) any tax, including value-added tax, that may be chargeable on the above amounts;
 - (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 17 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President