



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

FIRST SECTION

CASE OF ALBEKOV AND OTHERS v. RUSSIA

(Application no. 68216/01)

JUDGMENT

STRASBOURG

9 October 2008

FINAL

06/04/2009

This judgment may be subject to editorial revision.

In the case of Albekov and Others v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 18 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 68216/01) 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 three Russian nationals, Mr Ramzan Abukhadzhiyevich Albekov, Mr Khusain Khamzatovich Minkailov and Ms Raiman Akhmedovna Uspanova (“the applicants”), on 10 December 2001.

2. The applicants were represented by EHRAC/Memorial, a human rights NGO with offices in London, Moscow and the Northern Caucasus. The Russian Government (“the Government”) were represented by Mr P. Laptev and Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged, in particular, that the State was responsible for the death of their relatives and that it had failed to conduct an effective investigation in this respect.

4. By a decision of 13 September 2007, the Court declared the application admissible.

5. The applicants and the Government each filed further written observations (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other’s observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1948, 1980 and 1944 respectively. The first applicant lives in the village of Kurchaloy and the second and third applicants live in the village of Akhkinchu-Barzoy, Kurchaloy district, in the Chechen Republic. The first applicant is a brother of Mr Vakhazhi Albekov, the second applicant is a brother of Mr Khasayn Minkailov and the third applicant is the mother of Mr Nokha Uspanov.

A. Background of the case

7. The facts of the case are partially disputed by the parties. The principal discrepancies may be summarised as follows.

8. Between March 2000 and February 2001 military unit no. 73881-2 was stationed near Akhkinchu-Barzoy, a village of about 1,000 residents.

9. According to the applicants, the military unit occupied land used by the residents for tillage and pasture, and soldiers mined the area around the unit and in the adjacent parts of the communal forest using anti-personnel mines and, specifically, mines with a trip wire.

10. According to the Government, the mines in the forest were planted by illegal armed gangs.

11. In statements submitted by the applicants, the head of the local administration and other residents alleged that there had been several incidents since March 2000 in which cattle and people had been injured by mines. The head of the administration stated that he had asked the military to remove the mines from the land used by the villagers but that the incidents had continued.

12. According to the Government, the population of Akhkinchu-Barzoy was regularly warned by the military that mines had been laid by armed gangs in the forest. They said that the minefield around the military unit was marked.

B. Disappearance of Mr Vakhazhi Albekov and the search for him

13. On 23 October 2000 at about 2 p.m. the first applicant's brother, Mr Vakhazhi Albekov, born in 1969, went to the meadow to collect the family's cattle from a field situated about 500 metres from the village. He was wearing a black jacket with a hood, a black sweater, blue sports trousers and black rubber boots. At about 3 p.m. another villager, Mr B., met Mr Vakhazhi Albekov in the meadow and the latter told him that he

was going north to collect the calves. As a rule it took very little time to collect the cattle and return, and at 4 p.m. his family became concerned.

14. At about the same time another resident of the village, Mr M., was in the southern part of the pasture and heard an explosion somewhere to the north. He was scared and decided to return home along the road. On the road he was fired at by soldiers returning to the military unit, but escaped unharmed.

15. After 4 p.m. Mr Vakhazhi Albekov's relatives and neighbours decided to search for him. They broke up into small groups and searched the pasture land and a short way into the forest, shouting his name. At about 10 p.m. they decided to report his disappearance to the military unit and ask for assistance. The first applicant's sister, along with the head of the village administration, Mr E., and two other neighbours, went to the location of the military unit. Only Mr E. was allowed to enter and a serviceman informed him that they had no news of Mr Albekov and that they had not detained anyone.

16. On the morning on 24 October 2000 Mr E. went to the district centre of Kurchaloy and reported Mr. Albekov's disappearance to the district authorities, namely the police station, the military commander and the head of the administration.

17. At the same time villagers continued to search for Mr Vakhazhi Albekov in the pasture land and forest. At about 2 p.m. the second applicant and Mr G. found Mr Albekov's body in a pit in the forest, about 30 metres from the road and about 300 metres from the military unit. The body was lying face down, and the upper part of the body had been disfigured by an explosion. The two men noticed the remains of tape on the body and recognised the clothes he had been wearing. Nearby they found his passport, which was intact. They also noted footprints on the ground, allegedly made by military boots, leading towards the military unit. They did not touch the body as they were afraid that it was mined.

18. At about 3 p.m. on the same day the first applicant's brother, Umar Albekov, and another villager went to the military unit with a request for sappers who could check if the body had been mined. The military refused and suggested that they should seek help in Kurchaloy. While waiting at the barrier of the military unit for an answer, Umar Albekov heard an explosion from the north-eastern part of the forest. Later they learnt that this was an explosion, which had injured Mr I. and Mr Khasayn Minkailov.

19. After the refusal by the military to help retrieve Mr Albekov's body, the residents decided to recover it themselves. They tied a long rope to one of his legs and pulled the body from a distance of 30-40 metres. Mr Vakhazhi Albekov was buried on 25 October 2000 in the village cemetery. His relatives did not seek medical or other professional examination of the body before burial.

C. Injury of Mr Khasayn Minkailov and Mr I.

20. The villagers searching for Mr Vakhazhi Albekov on 24 October 2000 divided up into several small groups. At about 3.30 p.m. one such group, consisting of Mr Khasayn Minkailov, born in 1982, the second applicant's brother, and Mr I., were blown up by a booby-trap mine in the forest. The sound of that explosion was heard by Umar Albekov, who was at the gate of the military unit.

21. Mr I., who was injured on the right side of his body and in both legs, managed to reach a roadblock near the village of Dzhugurta, which is about three kilometres from Akhkinchu-Barzoy. The soldiers stopped a passing car, and the driver, who happened to be a resident of Akhkinchu-Barzoy, took Mr I. home. Mr I. told the other villagers that they had been blown up by a mine and that Mr Khasayn Minkailov had been seriously injured in the same blast and had lost a leg. The head of the local administration again appealed to the military unit, asking them for sappers and for medical assistance. The military refused to send sappers, but a military doctor attended Mr I. at his home at about 4 p.m. and gave him first aid. He did not issue any medical documents in respect of Mr I.'s injuries.

D. Search for and death of Mr Khasayn Minkailov, injuries to Mr Nokha Uspanov and Mr Sh. M.

22. When the residents of the village were informed by Mr I. that Mr Khasayn Minkailov was seriously injured, they immediately went to look for him. They again broke up into small groups and entered the forest. Two of Mr Khasayn Minkailov's cousins, namely Mr Nokha Uspanov, born in 1973, the third applicant's son, and Mr Sh. M., volunteered to check the most dangerous sites, such as ravines, pits and abandoned dugouts. While checking a dugout in the north-eastern part of the forest, Mr Nokha Uspanov was blown up by a mine. Mr Sh. M. rushed to his aid and was also blown up. As a result each received serious injuries to their right legs, which were later amputated in hospital. Two of Mr Nokha Uspanov's fingers were also seriously injured and later had to be amputated. His left leg was fractured. Other residents brought the men to the village, where they were attended to by the first applicant.

23. On the morning of 25 October 2000 Mr Nokha Uspanov and Mr Sh. M. were taken by their relatives to a hospital in Kurchaloy, where they were operated on the same day. Mr Uspanov's right leg was amputated at shin level and two fingers on his right hand were also amputated; Mr Sh. M.'s right leg was amputated at ankle level. They remained in hospital until 21 November 2000.

24. On the morning of 25 October 2000 the head of the village administration, together with residents of Akhkinchu-Barzoy and

Dzhugurty, again went to the military unit and asked for sappers in order to find Mr Khasayn Minkailov and to prevent further casualties. This time the commander of the military unit ordered an armoured personnel carrier (APC) and about ten sappers to assist the villagers. The sappers had a map of the area, presumably indicating minefields. They used it to reach the body of Mr Khasayn Minkailov, who had died in the meantime. His left leg had been torn away by the blast and he had other injuries. The body was brought to his home in Akhkinchu-Barzoy with the help of the military. He was buried on 26 October 2000 in the village cemetery. His relatives did not contact any medical personnel or authorities before the burial.

E. Subsequent events and progress of the investigation

25. According to the applicants, on 25 October 2000 a group of officials arrived at Akhkinchu-Barzoy. They included individuals from the Kurchaloy district police, the military commander's office and the prosecutor's office. Accompanied by local residents, they filmed the site where Mr Vakhazhi Albekov's body had been found. They also visited Mr Albekov's home, where they took photographs and filmed the body. They also questioned a number of witnesses who had participated in the search and retrieval of the body. The officers drew up a report on Mr Vakhazhi Albekov's sweater and an axe he had been carrying to protect himself in case of attack by wild animals. None of the witnesses recalled signing any papers or statements.

26. The officers assured the first applicant that a criminal investigation would be conducted into the circumstances of the deaths. They gave him the name of the prosecutor responsible for the case in the district prosecutor's office. After his brother's funeral, the first applicant, who worked in Kurchaloy Hospital, tried to meet the prosecutor on eight occasions but was denied access to the building on each occasion on the ground that the prosecutor was absent.

27. The first applicant's sister, Petimat Albekova, also tried at some stage to inquire about the investigation into her brother's death. She submitted that a prosecutor had shouted at her and turned her out of his office. The first applicant's family made no further attempts to inquire about the investigation.

28. On 10 December 2000 an official from military unit no. 73888-2 issued a certificate to Mr Nokha Uspanov, confirming that he had received a blast injury while looking for cattle near the village of Akhkinchu-Barzoy.

29. On 11 December 2000 the head of the village administration issued a note which contained the following account of the events of 22-25 October 2000:

“At about 2 p.m. on 22 October 2000 a resident of Akhkinchu-Barzoy, Vakhazhi Albekov, born in 1969, went to look for his cattle and did not return. The whole

village went out to look for him. By 7 p.m. the search had produced no results and we applied to the headquarters of the federal forces, who denied any knowledge of him. The following day in the morning we applied to them again, because the pasture land and surrounding forest are mined. By 11 a.m. on 23 October we were told that Albekov had been found dead at the edge of the village, blown up by a TNT block. On 24 October we notified the district police authorities, who came and started a criminal investigation.

Khasayn Minkailov, born in 1982, who went to search for Albekov on 23 October, did not come back to the village. Another man who was with him, [I.], informed the villagers that [Minkailov] was seriously wounded; meanwhile [I.], also seriously wounded, reached the road near the village of Dzhugurty, from where he was brought back by another resident.

Another group of villagers went to look for Minkailov, knowing that he had been seriously injured and needed help. Nokha Uspanov and [Sh. M.] went by a separate path, hoping to be the first [ones] to reach him. They stated later that first Nokha Uspanov was blown up by a mine, and then [Sh. M.], trying to reach him. Another group took them home, where they were given first aid by the village doctor.

For the third time I asked the federal forces for help, but at the roadblock they told me that they could not send sappers and reconnaissance groups, as they were busy. On 25 October I asked them again, and finally they provided an APC and a group of sappers, who found Minkailov already dead and brought his body home.”

30. According to the second applicant, he was not questioned by any investigators about the circumstances of his brother’s death. However, in January 2001, during a “sweeping” operation in Akhkinchu-Barzoy, he and several other men from the village, including Mr Nokha Uspanov, were detained by Russian soldiers, beaten up and questioned about the circumstances of his brother’s death. The second applicant was also asked if he had complained anywhere about the incident, and replied in the negative. He was released a day later, and was too scared to apply to any other officials.

31. The third applicant submitted that her son, Mr Nokha Uspanov, had remained in hospital for a month after the injury sustained on 24 October 2000. His right leg was operated on twice, because his wound had become infected after the first amputation. After being discharged from hospital her son remained at home, suffering from severe pain and requiring constant care for several weeks. On 11 January 2001 Mr Nokha Uspanov, along with a few other men from the village, was detained by soldiers during a “sweeping” operation. The applicant had no news of her son for several weeks, despite having personally visited the military commander’s office, the local administration and other authorities. At the end of January 2001 her son’s body was discovered on the outskirts of the village of Bachi-Yurt. The third applicant submitted that her other son, Ruslan Uspanov, born in 1964, had been killed in the summer of 2001. She further submitted that after January 2001 she had not applied to any authorities in

relation to the events of October 2000, because she had been afraid and had not trusted any officials.

32. On 29 January 2002 the Kurchaloy district civil registry office issued death certificate no. 23 in respect of Mr Vakhazhi Albekov, stating that he had died in Akhkinchu-Barzoy on 22 October 2000.

33. According to the Government, until July 2004 no applications for institution of criminal proceedings were submitted by relatives of the deceased persons to the prosecutor's offices of the Chechen Republic. After the receipt on 12 July 2004 of unspecified materials concerning the explosions, the Kurchaloy District Prosecutor's Office conducted an inspection. On 22 July 2004, having regard to the results of the inspection, the district prosecutor's office refused to institute criminal proceedings on the ground that there was no indication that a crime had been committed.

34. On 24 July 2004 a lawyer from the NGO Memorial wrote to the Kurchaloy District Prosecutor's Office and asked for an update on the criminal investigation into the death of Mr Vakhazhi Albekov. No reply was received. In August 2004 the head of the village administration was visited by various officers from the district police station. He was questioned about the circumstances of the events of 23-25 October 2000, but was not asked to sign any papers.

35. The Government submitted the following information on the subsequent progress of the investigation.

36. On 5 March 2005 the decision of 22 July 2004, refusing to institute criminal proceedings, was quashed by the district prosecutor. However, on 9 March 2005, following the results of an additional inspection, another decision was given refusing the institution of criminal proceedings.

37. On 10 March 2005 the Prosecutor's Office of the Chechen Republic quashed the decision of 9 March 2005 refusing the institution of criminal proceedings. On the same date criminal investigation no. 54007 was instituted into the death of Mr Vakhazhi Albekov. On 11 March 2005 criminal investigation no. 54008 was instituted into the death of Mr Khasayn Minkailov and the injuries sustained by Mr Nokha Uspanov, Mr Sh. M. and Mr I. The Kurchaloy District Prosecutor's Office was responsible for the investigations.

38. On 12 March 2005 an inspection of the crime scene was carried out. In the course of the inspection an unspecified metal fragment was seized. It was later examined with unspecified explosives. In addition, at the prosecutor's request, the Shalinskiy District Court ordered the exhumation of the corpses of Mr Vakhazhi Albekov, Mr Khasayn Minkailov and Mr Nokha Uspanov. However, that order could not be enforced because the relatives of the deceased persons objected to the exhumation. A forensic examination was then conducted on the basis of the medical documents available. According to the results of the examination, the injuries sustained by Mr Nokha Uspanov and Mr Sh. M. were described as serious.

39. On the same date Ms Kh. A., the sister of Mr Vakhazhi Albekov, was granted the status of victim in the criminal proceedings and questioned. She confirmed that on 23 October 2000 her brother had gone to the meadow to collect the cattle from the field and had been killed by an explosion not far from the village. In the course of the search for him other villagers had been injured in similar circumstances. Ms Kh. A. submitted that neither she nor her relatives had lodged any complaints with the law-enforcement bodies in connection with the events and she did not consider her rights to have been breached.

40. Also on 12 March 2005 the father of Mr Nokha Uspanov and the brother of Mr I. were granted the status of victims in the criminal proceedings. Mr Uspanov's father stated that on 23 October 2000 his son had gone to search for Mr Vakhazhi Albekov and had been injured by an explosive device. He had not filed any complaints with the law-enforcement agencies in this respect. Mr R. I., Mr I.'s brother, stated that the military unit stationed near the village had provided transport and sappers who had found Mr Khasayn Minkailov and had brought his body to the village of Dzhigurty. The villagers then had taken his body to Akhkinchu-Barzoy and had buried him on the same day. Neither Mr R. I. nor his relatives had filed any complaints with the law-enforcement agencies in connection with the incidents.

41. Mr S. U., Mr Nokha Uspanov's cousin who was questioned on the same date, submitted that in October 2000 Mr Vakhazhi Albekov had disappeared after going to collect cattle. His body had been found in a dugout in the forest. His body had been lying face down and there had been a wound on his right side. There had been no injuries on other parts of the body. Later he had learned that Mr Khasayn Minkailov, Mr Nokha Uspanov and Mr M. Sh. had also been blown up by mines.

42. The third applicant, who was questioned on the same date, submitted that in October 2000 her son, Mr Nokha Uspanov, had gone to search for Mr Vakhazhi Albekov. He had returned home to have lunch and then had gone out again. Later her brother-in-law had come to tell her that Mr Nokha Uspanov and Mr Sh. M. had been injured. They had stayed in the Kurchaloy hospital for a month and then had continued treatment at home. Mr Nokha Uspanov had never told her what exactly had happened to him and Mr Sh. M.; however, she knew that they had been blown up by a mine while searching for Mr Vakhazhi Albekov. Neither she nor her husband had applied to police, or to the prosecuting or other authorities in this respect.

43. Ms P. A., another sister of Mr Vakhazhi Albekov, was questioned on the same date.

44. On 14 March 2005 Mr Khasayn Minkailov's cousin, Mr A. M., was granted the status of victim in the criminal proceedings and questioned. He submitted that in October 2000 he came from Gudermes to visit his parents in Akhkinchu-Barzoy. On his arrival he had learned that his cousin Khasayn

Minkailov had had been blown up by a mine earlier that day. In the evening of that day servicemen from the military unit located next to the village brought Khasayn Minkailov's body in an APC.

45. On 13 March 2005 Mr T., head of the village administration, was questioned. He submitted that in 1994-1996 some young men from the area, under the command of a certain Geriskhanov from the Gudermes district, had obtained weapons and set up watch at the village's entrance. He did not know what exactly they had been doing. According to rumours, Geriskhanov had been under the command of Shamil Basayev. Salman Raduyev had also passed through the village with his brigade of twenty-thirty men. They had stayed in Akhkinchu-Barzoy for a while. Sometimes convoys with military vehicles from the federal troops had passed through the villages. However, the federal troops had never stayed in the village. Between 1996 and 2000 a lot of cattle had died on account of the explosives, which could have been planted by members of illegal armed gangs headed by Geriskhanov or Salman Raduyev. Since 2000 a military unit, "the fifteenth regiment" as it was called by the servicemen, was located near the village. In the course of time the servicemen and the villagers established good relations. The military doctor provided medical assistance to the villagers, and the servicemen assisted them with transportation and other matters.

46. With regard to the explosions of October 2000, Mr T. submitted that he had been permanently resident in Gudermes at that time. However, he had heard about the events from the villagers. After being appointed head of the Kurchaloy District administration in 2003, he had met with the commanders of the military unit located within two kilometres of the village. The commanders had told him that they had information concerning the minefields set up by rebel fighters in that district and had asked him to tell the villages not to walk there. The sites in question had been marked with notices containing warnings about the mines. Furthermore, the commanders had warned him that there could be mines laid by rebel fighters near the village; however, they had not known their precise location, since the rebel fighters had planted them up chaotically. In January 2005 servicemen from the unit had been blown up on such mines themselves and had been badly injured.

47. On 15 March 2005 Mr L., the village's imam, was questioned. He submitted that in 2000 he had washed the dead bodies of Mr Vakhazhi Albekov and Mr Khasayn Minkailov. He had not participated in the search for Mr Vakhazhi Albekov. However, when his body had been found, his relatives had invited Mr L. for ablution, which he had performed on the next day at around 9 a.m. He had observed the following injuries on Mr Vakhazhi Albekov's body: the left side of the chest and the front abdominal walls had been missing, apparently as a result of an explosion, and internal organs had been visible through the opening. The edges of the

opening had been burnt and uneven and smelled of explosives. The hands had been seriously injured. A hand (he could not remember which) and the left leg had been almost torn apart, and had remained attached to the body only by the skin and remains of the muscles. There had been blood on Mr Vakhazhi Albekov's head, which had been washed off. He had not seen any bullet wounds. Mr Vakhazhi Albekov had been buried in the village cemetery.

48. Mr L. did know the exact place where Mr Khasayn Minkailov was blown up. From Mr I. he had learned that Khasayn had participated in the search for Mr Vakhazhi Albekov and had stepped on a mine. Mr I. had shown the place of the explosion to the servicemen who brought Mr Khasayn Minkailov's body to the village. He and Mr G. performed the ablution. Mr L. had observed the following injuries on his body: traumatic amputation up to the knee of a leg (he could not remember which one), and minor wounds on other parts of the body. It had been obvious that Mr Khasayn Minkailov's death had been the result of the traumatic amputation of the leg, pain, shock and blood loss. Mr Khasayn Minkailov had been buried in the village cemetery on the same day.

49. Mr L. had learned about the injuries sustained by Mr Nokha Uspanov and Mr Sh. M. from the villagers. He had not talked to them personally and therefore did not know any details of the explosions.

50. On 21 March 2005 Mr G., the village imam's assistant, was questioned. He submitted that since 1994 rebel fighters had repeatedly passed through the village. They had used different vehicles and weapons. Federal troops had never permanently stayed in the village or its vicinity. In the autumn of 1999 rebel fighters had passed through their village in motor vehicles. One morning in October 2000 somebody told him that the whole village had gone to search for Mr Vakhazhi Albekov. Then he heard that his body had been found, and he had gone to the spot together with other villagers. Within approximately one kilometre of the village they reached a dugout, surrounded by villagers. He had never seen this dugout before. It was a log-covered pit in the ground. The entrance to the dugout had no stairs. Having consulted the villagers, he concluded that the dugout had been left by rebel fighters, since it did not resemble the buildings usually left by the federal troops. He had looked into the dugout and had seen a corpse. Mr Vakhazhi Albekov's relatives who were present said that they recognised him by his clothes. Mr G. had not entered the dugout. He had said that the body could have been mined and asked for a long rope. Then someone attached the rope to a leg. Everybody had stepped back for 15-20 metres so as to avoid the consequences of a possible explosion, and had pulled the body out. Mr G. had put a blanket on the ground and had placed the body on the blanket. There had been no skin or muscles on the left side of the body. There had been no other injuries. Then Mr Vakhazhi Albekov's

relatives had taken his body home. During the ablution Mr G. had not seen any gunshot wounds on Mr Vakhazhi Albekov's body.

51. Mr G. further submitted that Mr I. and Mr Khasayn Minkailov had been blown up by a mine while searching for Mr Vakhazhi Albekov to the north-east of the village. Mr Khasayn Minkailov had died and Mr I. had only been frightened. Mr G. had been invited to Mr Khasayn Minkailov's ablution. His body had smelled of burnt meat. He had taken the clothes from the body and had laid them out on the table. In the process of ablution he had observed the following injuries: the left leg had been injured, the left foot had been smashed and had no toes, and its lower part was missing. In the inguinal region there was a hole of approximately ten centimetres in diameter. The buttocks were scratched. There had been no injuries on other parts of the body. Later Mr Khasayn Minkailov's father had objected to having his son's dead body examined and photographed. On the same day Mr Nokha Uspanov and Mr M. Sh. had also been blown up on a mine. Each of them had a leg torn off. They had both survived and walked with crutches. He had not talked to them and did not know any details of the explosion.

52. On an unspecified date several residents of the village of Akhkinchu-Barzoy and other witnesses were questioned. In particular, Mr D. submitted that in 1994-1996 an armed group, under the command of Geriskhanov, had conducted military actions in the whole mountain district and had stayed in Akhkinchu-Barzoy. Their headquarters had been in the school. The rebel fighters' dugout had been placed in the forest between the villages of Dzhugurty and Akhkinchu-Barzoy. Russian troops had never stayed there permanently; their convoys had merely passed through the village sometimes. Between 1996 and 2000 cattle had been regularly blown up on mines around the village, including the sites of the rebel fighters' dugouts. All the villagers had been aware that there were mines in the forest. He did not know who had laid them. However, judging from the fact that in 1994-1996 rebel fighters rather than Russian troops had stayed in the forest, it was more likely that the former had mined the land so as to prevent attacks from the federal forces. Mr D. described the circumstances of the explosions in which Mr Vakhazhi Albekov, Mr Khasayn Minkailov and Mr Nokha Uspanov had been killed and injured as he had learned them from other villagers. He considered it unlikely that Mr Vakhazhi Albekov had been intentionally killed and considered it most probable that he had been blown up accidentally on a mine.

53. Mr S. submitted that military actions between members of illegal armed groups and the federal forces had been conducted in the Kurchaloy District until the end of 1999. At the time approximately 800 members of illegal armed groups had been present in the district. In the forest, approximately 1,5 kilometres to the north of Akhkinchu-Barzoy, there were dugouts from the camp of the former field commander Salman Raduyev. He

and other villagers had known that, when leaving the district, the rebel fighters had mined their camps so as to annihilate any servicemen of the federal troops who might come to inspect the place. Near the military unit there were notices stating that the land had been mined. He did not have any precise information concerning the deaths of the villagers. It is not clear who Mr S. was.

54. Mr S. I. submitted that in 2000 there had been numerous instances of explosions in the forest. However, he did not have any information concerning the events in Akhkinchu-Barzoy. It is not clear who Mr S. I. was.

55. Mr Dzh. made a statement similar to that of Mr S. I. It is not clear who Mr Dzh. was.

56. Mr A. G. and Mr N. G. made statements similar to that of Mr G., the village imam's assistant. It is not clear who Mr A. G. and Mr N. G. were.

57. Mr Razh. and Mr O. did not have any information concerning the events in question. It is not clear who they were.

58. Mr M., who was questioned on an unspecified date, submitted that since 1963 he had been working as a medical assistant at the medical station in Akhkinchu-Barzoy. In 1994-1996 rebel fighters, in particular, one of Salman Raduyev's groups, had stayed in the village. The federal troops had not stayed in the village. Their convoys had sometimes passed by but had not stopped. He knew that between 1996 and 2000 a lot of cows had been blown up on mines around the village.

59. Mr M. had seen Mr I. after he had been blown up but he had not noticed any injuries. Mr I. had told him that he and Mr Khasayn Minkailov had been searching for Mr Vakhazhi Albekov and that Khasayn had been blown up on a mine. On the next day the villagers and servicemen from the 15th regiment had gone to search for Mr Khasayn Minkailov, and later the servicemen had brought his dead body to the village. Mr Nokha Uspanov and Mr Sh. M. had been among the villagers that had participated in the search and they had both been blown up on mines. Other villagers had brought them on stretchers to the house of the S-vs. family on the outskirts of the village. Somebody had called Mr M. and the first applicant, who was in the village that day, for medical assistance. The villagers had told Mr M. and the first applicant that they had gone with Mr Nokha Uspanov and Mr Sh. M. to search for Mr Khasayn Minkailov. In the forest Mr Sh. M. had noticed a dugout and had approached it in order to look inside. At the entrance of the dugout he had been blown up. Mr Nokha Uspanov had run over to help him and had been blown up too. In the S-vs.' house Mr M. and the first applicant had provided the two men with the first medical aid. They had been given stypic and anti-tetanus injections; the first applicant had cleansed the wounds and removed the injured parts of the muscles and skin. Mr Sh. M.' right leg had been torn off up to the middle of the ankle. Mr M. did not remember him having other injuries. Mr Nokha Uspanov had a

similar injury. Mr M. had not seen the bodies of either Mr Vakhazhi Albekov or Mr Khasayn Minkailov.

60. Mr R-v., who was questioned on an unspecified date, submitted that from August 2000 to February 2001 he had been seconded to military unit no. 73881. In October 2000 the military unit had been located on the outskirts of Akhkinchu-Barzoy. At the time the situation in the village had been tense; members of illegal armed groups had opened fire on several occasions. The military unit had not mined the area. In the forest near the military unit's location there had been a lot of mines, including trip-wire mines. There had been instances where servicemen or military vehicles had been blown up. The mines had most probably been laid by members of illegal armed groups. When explosive devices had been found by servicemen of the military unit, they had been destroyed on the spot by sappers. The administration of Akhkinchu-Barzoy had always been informed of the discovery of explosive devices.

61. Other unspecified servicemen from military unit no. 73881, questioned on unspecified dates, also submitted that the military unit had not laid any mines while located in the Kurchaloy District. When mines or other explosive devices were found, they had been destroyed by sappers. The command of military unit no. 73881 had always informed the residents and the administration of Akhkinchu-Barzoy of the discovery of mines.

62. According to the Government, it had not been possible to question either Mr Nokha Uspanov, because of his subsequent death, or Mr I., because he had moved to Germany permanently, although the Prosecutor's Office of the Chechen Republic had requested the German authorities to take certain investigative measures in respect of Mr I. Nor had it been possible to question Mr M. Sh., as he and his relatives had left the Chechen Republic. However, certain steps to establish his whereabouts had been taken.

63. The investigative authorities had requested the competent bodies to provide information concerning the laying of mines near the village of Akhkinchu-Barzoy. According to the military commander's office, there was no information to support the assumption that the mines had been laid by the federal forces. The involvement of representatives of the federal forces in the incident was therefore not established. Mr Vakhazhi Albekov had been blown up on land occupied by the military unit and which had previously been "abandoned by members of illegal armed formations". Mr Khasayn Minkailov, Mr Nokha Uspanov, Mr Sh. M. and Mr I. had been blown up while they had been searching for Mr Albekov in the forest where members of illegal armed gangs had laid mines.

64. The investigation was being conducted under the supervision of the Prosecutor General's Office and the persons granted the status of victim were being informed of all the decisions taken.

F. The Court's request to submit the investigation file

65. Despite specific requests made by the Court on several occasions, the Government did not submit copies of the investigation files concerning the deaths of Mr Vakhazhi Albekov and Mr Khasayn Minkailov and the injuries sustained by Mr Nokha Uspanov, except for 31 pages of documents containing decisions to open, suspend and resume the investigation and to grant victim status. The Government stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Russian Code of Criminal Procedure.

II. RELEVANT DOMESTIC LAW

66. Article 20 of the Constitution safeguards the right to life. Russia is not a party to the 1997 Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction.

67. 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 (the new CCP).

68. Article 125 of the new CCP provides for judicial review of decisions by investigators and prosecutors that might infringe the constitutional rights of participants in proceedings or prevent access to a court.

69. Article 161 of the new CCP stipulates that evidence 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, but 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 life of participants in criminal proceedings without their permission.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

A. Arguments of the parties

70. The Government contended that the applicants had failed to exhaust available domestic remedies because they had not brought any complaints concerning the actions of law-enforcements officials in connection with the investigations into the deaths and injuries of their relatives.

71. The applicants claimed that the Government had not provided the Court with any evidence of the effectiveness of the remedy referred to. They contended that they had no effective domestic remedies to exhaust.

B. The Court's assessment

72. In the present case, the Court took no decision about the exhaustion of domestic remedies at the admissibility stage, having found that this question was too closely linked to the merits. It will therefore examine this matter under the substantive provisions of the Convention (see paragraph 101 below).

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

73. . The applicants complained under Articles 2 of the Convention that Mr Vakhazhi Albekov, Mr Khasayn Minkailov and Mr Nokha Uspanov had been blown up by landmines, in breach of their right to life, and that the authorities had failed to conduct a proper investigation in this respect. Article 2 of the Convention provides:

“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 violation of the right to life of Mr Vakhazhi Albekov, Mr Khasayn Minkailov and Mr Nokha Uspanov

1. Arguments of the parties

74. The applicants noted, firstly, that the Government had submitted no evidence to support their statement that representatives of federal forces had not been involved in the laying of the mines. The contention that the mines had been planted by illegal armed gangs was unsubstantiated, since at the time there had been no rebel activity in the district. Furthermore, Mr Khasayn Minkailov's body had been found with the help of sappers from the military unit, who had consulted their map in order to move in safe parts of the area, which proved that the mines had been laid by the federal forces. As to the death of Mr Vakhazhi Albekov, the applicants alleged that he had been intentionally killed by servicemen, as evidenced by the tape found on his body, which must have been used for tying him up, and by the footprints made by tarpaulin boots in the mud which led from the body to the military unit.

75. The applicants further submitted that, even if the mines had been planted by rebel fighters, the State had not complied with its positive obligation under Article 2. The Government did not deny that they had been aware that the mines had been laid in the area. However, they had taken no steps to (i) locate and deactivate the mines; (ii) physically seal off the area to prevent anybody from entering the minefield; (iii) mark the area with warning signs; (iv) provide written and oral warnings to the residents concerning the area as a whole and the location of the mines; (v) provide for the permanent availability of sappers and medical experts. The applicants maintained that the Government's contention that the mined area had been marked was untrue. The villagers had never been warned of the existence of the mines, let alone of their location. No signs had been placed and no information had been circulated in order to minimise the risk of being blown up. Furthermore, not only had the authorities failed to take the above measures, they had also refused the villagers' requests for help following Mr Vakhazhi Albekov's disappearance with a view to preventing further injuries during the search.

76. The Government submitted that representatives of the federal forces had not violated the right to life of Mr Vakhazhi Albekov, Mr Khasayn Minkailov and Mr Nokha Uspanov. Mr Vakhazhi Albekov had been blown up on land occupied by the military unit and which had previously been "abandoned by members of illegal armed formations". Mr Khasayn Minkailov and Mr Nokha Uspanov had been blown up while they were searching for Mr Albekov in the forest, where explosive devices had also been planted by members of illegal armed gangs. In the Government's view, the fact that there had been instances where servicemen themselves had

been blown up on mines showed that they had not known where the mines had been laid, which was further supported by statements from the servicemen questioned.

77. Furthermore, the authorities of the Russian Federation had complied with their positive obligations under Article 2 of the Convention. The applicants' allegations that the authorities had taken no measures to prevent the explosions were unfounded. The residents of Akhkinchu-Barzoy had been regularly warned by the military unit's command about the mines planted in the forest by rebel fighters. The fact that the villagers had been aware of the mines was supported by statements of witnesses questioned during the investigation. Minefields around the military unit had been marked. Servicemen, sappers and transport had been provided for the search for Mr Vakhazhi Albekov and others. The dead body of Mr Khasayn Minkailov had been found and transported to his relatives by the servicemen themselves.

2. The Court's assessment

(a) General principles

78. The Court reiterates that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, judgment of 9 June 1998, *Reports* 1998-III, § 36). The State's obligation in this respect extends beyond its primary duty to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions. Article 2 of the Convention may also imply a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual (see *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports* 1998-VIII, § 115).

79. In this connection the Court reiterates that, in the light of the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Not every claimed risk to life therefore can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising (see *Osman*, cited above, § 116).

(b) Application to the present case

80. Turning to the facts of the present case, the Court firstly takes note of the applicants' allegations that Mr Vakhazhi Albekov had been intentionally killed by servicemen. The applicants supported this contention by referring to remains of tape allegedly found on Mr Vakhazhi Albekov's body and traces of tarpaulin boots which had led from the body to the military unit.

81. Assuming the accuracy of these submissions, the Court does not find them sufficient to corroborate the allegation. There is nothing to suggest that any remains of the tape that might have been found were connected to the death of Mr Vakhazhi Albekov. As for the traces of bootprints, it had not been shown conclusively that these belonged to a serviceman, or that they could not have been left on a different occasion.

82. Accordingly, the Court shall proceed from the assumption that Mr Vakhazhi Albekov was accidentally blown up on a mine laid in the forest near Akhkinchu-Barzoy, in a similar manner to Mr Khasayn Minkailov and Mr Nokha Uspanov.

83. The Court also takes note of the applicants' submissions that, after the incident with the landmines, Mr Nokha Uspanov was allegedly apprehended by servicemen in January 2001, and about two weeks later his body was found in a neighbouring village. However, the applicants made no complaints in connection with these events. At the same time, although the complaint at issue relates to the injuries sustained by Mr Nokha Uspanov, the Court considers that the events complained of concerned a serious risk to life and that therefore the complaint falls to be examined under Article 2 of the Convention.

84. The Court further notes that the parties disagreed as to who laid the mines in the vicinity of Akhkinchu-Barzoy. According to the applicants, they were laid by servicemen. In this regard they referred to the fact that the sappers who had assisted in the search for Mr Khasayn Minkailov had a map of the minefields in the area. The Government contended that the mines had been laid by illegal armed groups who were active in the area. They supported this contention by statements of servicemen to the effect that no mines had been laid by them and by statements from other witnesses who submitted that cattle had been blown up on mines on numerous occasions before the military unit had been located in the area.

85. The Court observes that the domestic investigation which is under way has to date produced no conclusive results on the matter. The evidence submitted by the parties is not sufficient to establish who laid the mines in the forest near Akhkinchu-Barzoy. However, the Court does not consider it necessary to decide on this issue since, in any event, the Government does not deny that the authorities were aware that mines had been laid in the area. Accordingly, regard being had to the principles cited above, the Court finds

that the domestic authorities were under a positive obligation to protect the residents from the risks involved.

86. The Court shall further determine whether, in the circumstances of the present case, the State has taken all necessary measures to protect the applicants' relatives and other villagers from being exposed to the danger constituted by the land mines.

87. The area of the minefield in the vicinity of the village appears to have been very large, since it took the villagers hours and even days to find the bodies of the victims, and it was clearly easily accessible to local residents. The Court notes that according to the statement by Mr R-v., who served in military unit no. 73881 from August 2000 to February 2001, when explosive devices were found by servicemen of the military unit, they had been destroyed on the spot by sappers. However, the Government has not provided the Court with information on any organised efforts to locate and deactivate mines in the whole area. In the Court's opinion, the deactivation of isolated mines occasionally found by sappers did not discharge the State from its obligation under Article 2 of the Convention to protect life.

88. The Court observes that in the absence of efforts to locate and deactivate mines the State might have discharged its positive obligation under Article 2 of the Convention by marking and sealing off the area so as to prevent anybody from entering it freely, and by comprehensively warning the residents of the location of the mines and the risks involved. The Government submitted, on the one hand, that the minefield around the military unit stationed near the village had been marked and, on the other hand, that servicemen had not known where exactly mines had been laid. The Court notes that these statements are contradictory. The Government further submitted that villagers had been aware of the mines laid in the forest, as was confirmed by some of the residents questioned.

89. The Court recalls that in *Paşa and Erkan Erol v. Turkey*, no. 51358/99, §§ 33-38, 12 December 2006, it found that the placement of warning signs and two rows of barbed wire around a minefield situated near a village in an area normally used for pasture was not sufficient for the purposes of compliance with the State's positive obligation under Article 2. In the present case the Government did not allege that any efforts had been made to seal off the area, which alone was incompatible with the State's obligation to protect life. Furthermore, in contrast to *Paşa and Erkan Erol v. Turkey*, cited above, the Government submitted no photographs or other evidence to support their contention that the minefield had been marked. Moreover, even assuming that residents received verbal warnings about mines laid somewhere in the forest and were in any case aware of their presence because of the deaths of cattle, without information on the precise locations of the mines such general knowledge could hardly significantly decrease the risks associated with the presence of mines in the forest, which was used by the villagers for pasture. In as much as the failure to provide

more accurate information was attributable to the fact that the servicemen themselves had not known the precise location of the mines, the Court has already stated in paragraph 87 above that no information was submitted to it on any efforts to locate and deactivate the mines.

90. Therefore, having regard to the State's failure to endeavour to locate and deactivate the mines, to mark and seal off the mined area so as to prevent anybody from freely entering it, and to provide the villagers with comprehensive warnings concerning the mines laid in the vicinity of their village, the Court finds that the State has failed to comply with its positive obligation under Article 2 of the Convention to protect the lives of Mr Vakhazhi Albekov, Mr Khasayn Minkailov and Mr Nokha Uspanov.

B. The alleged inadequacy of the investigation

1. Arguments of the parties

91. The applicants referred to *Öneryıldız v. Turkey* [GC], no. 48939/99, §§ 93-94, ECHR 2004-XII, where the Court held that in cases where "lives ha[d] been lost as a result of events occurring under the responsibility of the public authorities ... the competent authorities must act with exemplary diligence and promptness and must of their own motion initiate investigations capable of, firstly, ascertaining the circumstances in which the incident took place and any shortcomings in the operation of the regulatory system and, secondly, identifying the State officials or authorities involved in whatever capacity in the chain of events in issue." They noted that the local authorities had immediately become aware of the incidents. In particular, after Mr Vakhazhi Albekov had been blown up, a group of officials from the district police, the prosecutor's office and the military commander's office had arrived at the crime scene the next day. However, the investigation into the incidents had been instituted with a delay of almost five years, which drastically diminished the chances of obtaining any tangible results.

92. With regard to the investigative measures that had been taken, the applicants submitted the following. The statement by Mr T. was irrelevant, since he had not held the post of head of the village administration at the time of the events. However, Mr E., who had held this post at the relevant time, was never questioned. No servicemen from military unit no. 73881-2 were questioned. As to the alleged refusal by the relatives of the deceased persons to allow the exhumation of their bodies, the applicants submitted, firstly, that where an exhumation was ordered by a court the relatives' consent was not required. Furthermore, in his statement made in March 2005 the first applicant clearly stated that he had no objections to the exhumation of his brother's body. In any event, an exhumation conducted several years after death would hardly render any tangible results. Similarly,

the inspection of the crime scene conducted on 12 March 2005, that is, almost five years after the events had occurred, was pointless. Overall, the investigation was manifestly inadequate.

93. The Government submitted that the investigation into the incidents was pending. All the necessary investigative measures were being taken.

2. The Court's assessment

(a) General principles

94. 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", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, p. 49, § 161, and *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, p. 324, § 86). The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. This investigation should be independent, accessible to the victim's family and carried out with reasonable promptness and expedition. In cases where a positive obligation to safeguard the life of persons is at stake, the investigation should be effective in the sense that it is capable of, firstly, ascertaining the circumstances in which the incident took place and any shortcomings in the taking of preventive measures and, secondly, identifying the State officials or authorities responsible (see, *mutatis mutandis*, *Trubnikov v. Russia*, no. 49790/99, § 88, 5 July 2005).

(b) Application to the present case

95. The Court considers that in the present case the authorities were under a procedural obligation to investigate the circumstances of the explosions which had led to the deaths of Mr Vakhazhi Albekov and Mr Khasayn Minkailov and the injuries of Mr Nokha Uspanov. The incidents took place in the vicinity of a military unit and in an area where rebel fighters had previously had a base. The investigation was necessary to establish, firstly, who had laid the mines which had led to the deaths and injuries and, secondly, whether the authorities were in any way responsible for the incidents or a failure to prevent them. The investigation had to comply with the above requirements.

96. The Court notes that, according to the applicants, on 25 October 2000, the day after Mr Vakhazhi Albekov's disfigured body had been found, a group of officials including police, military and prosecuting officials, arrived at Akhkinchu-Barzoy. They filmed the corpse at Mr Albekov's home and also the site where the body had been found, and questioned several witnesses who had participated in the search for Mr Vakhazhi Albekov. These submissions have not been contested by the Government. Therefore, the Court concludes that the competent authorities were informed of the incidents on 25 October 2000. However, the first official inquiry did not take place until July 2004, that is, almost four years after the events in question, and the investigation was instituted in March 2005, after the Court had communicated the application to the respondent Government.

97. Consequently, a number of crucial investigative steps were delayed and eventually taken only after the communication of the complaint. In particular, the sites of the explosions were only examined on 12 March 2005. The exhumation was also ordered in March 2005, although no explanation was provided to the Court as to why Mr Nokha Uspanov and the bodies of Mr Vakhazhi Albekov and Mr Khasayn Minkailov could not have been examined directly after the incidents, especially taking into account that a group of officials had arrived at that time on the spot to film Mr Albekov's body and the site where he had been blown up.

98. The Court reiterates that it is crucial in cases of deaths in contentious situations for the investigation to be prompt. The passage of time will inevitably erode the amount and quality of the evidence available and the appearance of a lack of diligence will cast doubt on the good faith of the investigative efforts, as well as drag out the ordeal for the members of the family (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II). Such a substantial delay, unexplained in this case, not only demonstrates the authorities' failure to act of their own motion but also constitutes a breach of the obligation to exercise exemplary diligence and promptness.

99. As regards the accessibility of the investigation, it appears that the applicants were not granted victim status in the proceedings. The Court notes that other relatives of Mr Vakhazhi Albekov, Mr Khasayn Minkailov and Mr Nokha Uspanov were granted victim status. However, from the documents available to the Court it appears that they were only informed of the suspension and resumption of the investigation, and no other substantial information on the progress of the investigation was available to them. Accordingly, the investigating authorities failed to ensure that the investigation received the required level of scrutiny, or to safeguard the interests of the next of kin in the proceedings.

100. The Court notes that the authorities questioned a considerable number of witnesses in order to establish the circumstances of the

explosions and those responsible for laying the mines in the vicinity of Akhkinchu-Barzoy. However, having established that the investigation fell short of such essential requirements as promptness, exemplary diligence, initiative on the part of the authorities and public scrutiny, and taking into account the failure to take other investigative measures in a timely and appropriate manner, the Court concludes that the investigation failed to meet the minimum standards of effectiveness.

101. Having regard to the Government's preliminary objection, which was joined to the merits of the complaint, the Court observes that the applicants, having no access to the case file and not being properly informed of the progress of the investigation, could not have effectively challenged actions or omissions by the investigating authorities before a court. Furthermore, taking into account that the effectiveness of the investigation had already been undermined in its early stages by the authorities' failure to take necessary and urgent investigative measures, it is highly doubtful that the remedy relied on would have had any prospects of success. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and dismisses their preliminary objection as regards the applicants' failure to exhaust domestic remedies.

102. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the deaths of Mr Vakhazhi Albekov and Mr Khasayn Minkailov and the injuries of Mr Nokha Uspanov. Accordingly, there has been a violation of Article 2 on this account also.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

103. The applicants complained under Article 13 of the Convention that they had no effective remedies in respect of the alleged violations of Article 2 of the Convention. Article 13 of the Convention provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

104. The applicants maintained that they had no effective domestic remedies in relation to their complaints. With regard to the complaints concerning the activity of the investigating officials, they claimed that the Government had not provided the Court with any evidence of the effectiveness of the remedy referred to. As regards the alleged objections to the exhumation, they referred to their submissions concerning Article 2 above.

105. The Government contended that the applicants had had effective domestic remedies, as required by Article 13 of the Convention. However, they had not applied to the law-enforcement bodies. Furthermore, relatives of the deceased persons had objected to the exhumation, which considerably impeded the conduct of the investigation. Moreover, the applicants had not brought any complaints concerning the actions of officials of the law-enforcement bodies in connection with the investigations into their relatives' deaths and injuries. The Government also pointed out that it was still open to the applicants to file a claim of damages.

106. 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. 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, and *Süheyra Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005). 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 *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 183, 24 February 2005).

107. It follows that in circumstances where, as here, a criminal investigation into the deaths and injuries was ineffective and the effectiveness of any other remedy that may have existed, including civil remedies, was consequently undermined, the State has failed in its obligation under Article 13 of the Convention.

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

IV. OBSERVANCE OF ARTICLE 34 AND ARTICLE 38 § 1 (a) OF THE CONVENTION

109. The applicants argued that the Government's failure to submit the documents requested by the Court at the communication stage disclosed a failure to comply with their obligations under Article 34 and Article 38 § 1 (a) of the Convention. The relevant parts of those Articles provide:

Article 34

"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of

the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

Article 38

“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;

...”

110. The applicants invited the Court to conclude that the Government’s refusal to submit a copy of the entire investigation file in response to the Court’s requests was incompatible with their obligations under Article 38 of the Convention. In the applicants’ view, through their handling of the Court’s request for documents, the Government had additionally failed to comply with their obligations under Article 34 of the Convention.

111. The Government stated that the submission of the case file would be contrary to Article 161 of the Code of Criminal Procedure.

112. The Court reiterates that proceedings in certain types of applications do not in all cases lend themselves to a rigorous application of the principle whereby a person who alleges something must prove that allegation and 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.

113. 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. It is inherent in the proceedings relating to cases of this nature, where individual applicants accuse State agents of violating their rights under the Convention, that in certain instances it is only the respondent State that has access to information capable of corroborating or refuting these allegations. A failure on a Government’s part to submit such information which is in their possession 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. In a case where the application raises issues as to the effectiveness of the investigation, the documents of the criminal investigation are fundamental to the establishment of the facts and their absence may prejudice the Court’s proper examination of the complaint both at the admissibility and at the merits stage (see *Tanrikulu v. Turkey* [GC], no. 23763/94, § 71, ECHR 1999-IV).

114. The Court notes that despite its repeated requests for a copy of the investigation file opened into the deaths of Mr Vakhazhi Albekov and Mr Khasayn Minkailov and the injuries sustained by Mr Nokha Uspanov, the Government refused to produce such a copy, invoking Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has already found this reference insufficient to justify refusal (see, among other authorities, *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-... (extracts)).

115. Referring to the importance of a respondent Government's cooperation in Convention proceedings, the Court finds that the Government fell short of their obligations under Article 38 § 1 of the Convention because of their failure to submit copies of the documents requested.

116. In view of the above finding, the Court considers that no separate issues arise under Article 34.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

117. 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. Pecuniary damage

118. The first applicant claimed, on his own behalf and on behalf of his relatives, that they had sustained damage in respect of the lost wages of his brother in the amount of 7,432.76 pounds sterling (GBP) (approximately 9,372.20 euros (EUR)). He submitted that the Albekov family made their living by subsistence farming and that Mr Vakhazhi Albekov had been the only breadwinner in the family, whose dependants had included his mother, wife and children.

119. The second applicant claimed, on his own behalf and on behalf of his relatives, that they had sustained damage in respect of the lost wages of his brother in the amount of GBP 10,673.92 (approximately EUR 13,454.10). He submitted that his family made their living by subsistence farming and that before his death Mr Khasayn Minkailov had run the farm.

120. The third applicant claimed, on her own behalf and on behalf of her husband, that they had sustained damage in respect of the lost wages of her son in the amount of GBP 5,747.01 (approximately EUR 7,244.58). She submitted that Mr Nokha Uspanov had worked as a labourer on private

building sites in the neighbouring villages and had an income of about 1,000 Russian roubles (RUR) (approximately EUR 43) per month. After having sustained serious injuries as a result of the explosion he could not have returned to work. According to the third applicant, she and her husband had been dependent on their son's income, since the amount of their pension had been very small.

121. The applicants based their calculations on the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department in 2004 ("Ogden tables").

122. The Government submitted that, in the first place, it had not been established that the deaths of Mr Vakhazhi Albekov and Mr Khasayn Minkailov and the injuries sustained by Mr Nokha Uspanov had been caused by the actions of State representatives. Therefore, there had been no causal link between the damage sustained and the claim. They further contested the application of the Ogden tables to the applicant's claims, stating that compensation for pecuniary damage was governed by Article 1088 of the Civil Code of the Russian Federation.

123. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention and that this may, where appropriate, entail compensation in respect of loss of earnings. Furthermore, under Rule 60 of the Rules of Court, any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, "failing which the Chamber may reject the claim in whole or in part".

124. The Court notes, in the first place, that it cannot take into account the applicants' claims on behalf of their relatives, since the latter are not applicants in the present case.

125. As regards the first applicant's claim, the Court observes that at the relevant time he worked in Kurchaloy Hospital and was not dependent on his brother's income. Accordingly, the Court dismisses the claim.

126. As regards the second applicant's claim, the Court observes that he is Mr Khasayn Minkailov's elder brother, was of age at the relevant time and worked on the family farm himself. The second applicant submitted no evidence to support his claim that he was dependent on his younger brother's income. Therefore, the Court dismisses the claim.

127. As regards the third applicant's claim, the Court observes, firstly, that three months after having sustained the injuries Mr Nokha Uspanov disappeared and his body was subsequently found in circumstances which fall outside the scope of the present application. The Court further notes that the third applicant did not submit any documents to corroborate the amount of her son's earnings. Accordingly, having regard to Rule 60 of the Rules of Court, the Court dismisses the claim.

B. Non-pecuniary damage

128. The first applicant claimed on his own behalf and on behalf of his relatives EUR 100,000 in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of his brother, Mr Vakhazhi Albekov.

129. The second applicant claimed on his own behalf and on behalf of his relatives EUR 100,000 in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of his brother, Mr Khasayn Minkailov.

130. The third applicant claimed EUR 100,000 on behalf of her son in respect of non-pecuniary damage, consisting of constant severe pain and suffering caused by the injuries and on behalf of herself and her relatives who had endured psychological suffering as a result of Mr Nokha Uspanov's injuries.

131. The Government found the amounts claimed unsubstantiated and excessive.

132. The Court has found a violation of Articles 2 and 13 of the Convention on account of the deaths of Mr Vakhazhi Albekov and Mr Khasayn Minkailov and the injuries sustained by Mr Nokha Uspanov and the State's failure to conduct an effective investigation in this respect. The Court thus accepts that the first and second applicants suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It considers this likewise applicable to the third applicant, inasmuch as her claim was made on behalf of her son. The Court awards the first and second applicants EUR 35,000 each and the third applicant EUR 20,000, plus any tax that may be chargeable thereon.

C. The applicant's request for an investigation

133. The applicants also requested, referring to Article 41 of the Convention, that "an independent investigation, which would comply with the requirements of the Convention, be conducted into their relatives' deaths and injuries". They relied in this connection on the cases of *Assanidze v. Georgia* ([GC], no. 71503/01, §§ 202-203, ECHR 2004-II) and *Tahsin Acar v. Turkey* ((preliminary objection) [GC], no. 26307/95, § 84, ECHR 2003-VI).

134. The Court notes that in *Kukayev v. Russia*, no. 29361/02, §§ 131-134, 15 November 2007, in comparable circumstances, the Court decided that it was most appropriate to leave it to the respondent Government to choose the means to be used in the domestic legal order in order to discharge their legal obligation under Article 46 of the Convention. The Court does not see any exceptional circumstances which would lead it to reach a different conclusion in the present case.

D. Costs and expenses

135. The applicants were represented by lawyers from the NGO EHRAC/Memorial Human Rights Centre. The aggregate claim in respect of costs and expenses related to their legal representation amounted to GBP 2,548.02. They requested the award to be transferred directly into their representatives' account in the United Kingdom. The applicants submitted the following breakdown of costs:

- GBP 766.67 for 7 hours and 40 minutes of legal work by a United Kingdom-based lawyer at a rate of GBP 100 per hour;
- GBP 1,606.35 for translation costs, certified by invoices for the amount of GBP 667.60; and
- GBP 175 for administrative and postal costs.

136. The Government did not dispute the details of the calculations submitted by the applicants, but pointed out that they should be entitled to the reimbursement of their costs and expenses only in so far as it has been showed that they have been actually incurred and were reasonable as to quantum (see *Skorobogatova v. Russia*, no. 33914/02, § 61, 1 December 2005).

137. The Court has to establish first whether the costs and expenses indicated by the applicants were actually incurred and, second, whether they were necessary and reasonable (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

138. Having regard to the information available, the Court is satisfied that these rates are reasonable. However, it notes that while the applicants claimed GBP 1,606.35 for translation costs, they produced invoices only supporting the payment of GBP 667.60 for translation services. It further notes that this case was relatively complex and required a substantial amount of research and preparation.

139. Having regard to the details of the claims submitted by the applicants, the Court awards them the amount of EUR 1,619.27 together with any value-added tax that may be chargeable to the applicants, the net award to be paid into the representatives' bank account in the United Kingdom, as identified by the applicants.

E. Default interest

140. 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. *Joins to the merits* the Government's preliminary objection and *dismisses* it;
2. *Holds* that there has been a violation of Article 2 of the Convention on account of the State's failure to comply with its positive obligation to protect the lives of Mr Vakhazhi Albekov, Mr Khasayn Minkailov and Mr Nokha Uspanov;
3. *Holds* that there has been a violation of Article 2 of the Convention on account of the failure to conduct an effective investigation in respect of the deaths of Mr Vakhazhi Albekov and Mr Khasayn Minkailov and the injuries sustained by Mr Nokha Uspanov;
4. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
5. *Holds* that there has been a failure to comply with Article 38 § 1 (a) of the Convention in that the Government have refused to submit documents requested by the Court;
6. *Holds* that no separate issues arise under Article 34 of the Convention;
7. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 35,000 (thirty-five thousand euros), plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement, to each of the first and second applicants in respect of non-pecuniary damage;
 - (ii) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement, to the third applicant in respect of non-pecuniary damage;
 - (iii) EUR 1,619,27 (one thousand six hundred nineteen euros twenty seven cents), plus any tax that may be chargeable, in respect of costs and expenses, to be paid into the representatives' bank account in the United Kingdom;
 - (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 9 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President