



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

FIRST SECTION

CASE OF SALATKHANOVY v. RUSSIA

(Application no. 17945/03)

JUDGMENT

STRASBOURG

16 October 2008

FINAL

16/01/2009

This judgment may be subject to editorial revision.

In the case of Salatkhanyov 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 25 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 17945/03) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Russian nationals, Ms Reyzilya Nasrudinovna Salatkhanova and Mr Movlid Yusup-Khadzhiyevich Salatkhanov (“the applicants”), on 24 November 2000.

2. The applicants were represented by Ms L. Khamzayeva, a lawyer practising in Moscow. 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 their son had been killed by a serviceman in breach of Article 2 of the Convention and that no adequate investigation had been conducted in this respect.

4. By a decision of 20 September 2007, the Court declared the application admissible.

5. The Government, but not the applicants, filed further written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1951 and 1938 respectively and live in the village of Dyshne-Vedeno, the Chechen Republic.

A. Killing of Ayub Salatkhano

7. The applicants are husband and wife. The first applicant is a housewife and the second applicant is retired. They have nine children. In April 2000 their son Ayub Salatkhano, born in 1984, was a student of the 9th grade at school.

8. On 17 April 2000 at about 1 p.m. Ayub Salatkhano, with three of his friends, were walking along Lenina Street towards the village market. At the same time a convoy of Russian military vehicles was going down the street. The convoy included armoured personnel carriers (APCs), with soldiers sitting on the hulls. One of the servicemen raised his automatic rifle, took aim and shot at the applicants' son. According to the applicants, it must have been a rifle fitted with a silencer because the other three boys did not hear the shot and did not understand where it had been aimed, until Ayub Salatkhano, who took several more steps, fell on the ground in front of a house at 153 Lenina Street, where the head of the village administration lived.

9. Ayub Salatkhano was bleeding from the mouth and the chest area. He was immediately put into a car to be taken to the district hospital, but died in the car on the way. He had been wounded in the heart.

10. At the relevant time there were a lot of passers-by in the street, who called the local police, the military commander's office and the prosecutors office. Together they forced the convoy to stop and to go to the military commander's office. There the servicemen of the Dyshne-Vedeno temporary district police station (VOVD) identified a warrant officer, Ch., who had allegedly shot at the boy. In the meantime he had climbed from the APC into the hull of a ZIL-130 military truck. According to the applicants, the servicemen of the VOVN searched the truck, and in a box containing canned meat found an AK 7.62 automatic rifle, with an ammunition magazine and a silencer. The rifle belonged to warrant officer Ch.

B. Investigation into the killing

11. On 17 April 2000 the Vedeno District Prosecutor's Office opened criminal investigation no. 14/36006 under Article 105 paragraph 1 of the

Criminal Code into the murder of Ayub Salatkhanov. The applicants were informed accordingly by a letter of 27 April 2000, which also stated that “the person who committed the crime has been identified and detained” and that the case file would be transferred for further investigation to the military prosecutor of military unit no. 20102 based in Khankala (the main Russian military base in Chechnya).

12. On the same date an inspection of the crime scene and of the military vehicles was carried out and E., an eye-witness, was questioned. E. submitted that on 17 April 2000 he, together with Ayub Salatkhanov, S., A., Kh. and B. had been walking down Lenina Street and that a military convoy had been moving towards them. He had seen a serviceman in an APC who lifted a weapon fitted with a silencer, aimed it at Ayub Salatkhanov from a distance of ten meters and took two or three shots with it.

13. On 19 April 2000 S. was questioned. He made a statement similar to that of E.

14. On 19 and 20 April 2000 serviceman S-v. was questioned. He submitted that a magazine case with 25 cartridges of 7.62 mm calibre and a silencer had been found in Ch.’s backpack.

15. On 20 April 2000 the second applicant was granted victim status in the criminal proceedings.

16. On the same date the automatic rifle was seized from Ch. It was inspected together with other pieces of evidence.

17. On 21 April 2000 Ch. reported to the Vedeno District Prosecutor’s Office and admitted his guilt. He was questioned as a suspect on the same date. He was placed under the supervision of the commander of military unit no. 75143 as a measure of restraint.

18. Later Ch. retracted the statement he had made on 21 April 2000 and apparently submitted that the bullets had ricocheted.

19. On 3 May 2000 a forensic expert examination of the cartridges was completed.

20. On 3 June 2000, due to the lack of evidence required to bring charges, the investigating authorities suspended the investigation and lifted the measure of restraint in respect of Ch.

21. On 16 June 2000 the Prosecutor’s Office of the Chechen Republic replied to the applicants’ request for information that the criminal investigation into their son’s murder had been transferred to the military prosecutor’s office, which was responsible for investigating crimes committed by servicemen. It was also stated that all further questions should be referred to the military prosecutor’s office in Khankala. On transfer, the case was given the number 34/33/0179-00.

22. On 20 June 2000, upon completion of his secondment in Chechnya, Ch. arrived in the town of Pechora in the Pskov region according to the order of the commander of military unit no. 75143.

23. On 28 June 2000 the applicants were informed by a letter from the military prosecutor of military unit no. 20102 that on 2 June 2000 the criminal investigation in respect of warrant officers Ch. and S-v. of military unit no. 75143 had been discontinued under Article 5 paragraph 2 of the Code of Criminal Procedure [absence of *corpus delicti*]. The case file was forwarded for further investigation to the Prosecutor's Office of the Chechen Republic.

24. On 29 June 2000 the supervising military prosecutor quashed the decision to suspend the investigation.

25. On 3 July 2000 the Vedenov district civil registration office issued a death certificate for Ayub Salatkhonov, aged 16, who had died on 17 April 2000 from a gunshot wound to the heart.

26. On 21 July and 26 October 2000 serviceman G. was questioned. He submitted that upon his arrival at the crime scene his comrade had told him that he had seen a serviceman climbing from the APC to the ZIL truck in front of it. When G. had approached the truck, he had seen a serviceman hiding in the corner.

27. On 22 July 2000 the second applicant and A. were questioned. A. made a statement similar to that of E.

28. On 23 July 2000 another inspection of the crime scene was carried out and E. was again questioned. T. was questioned on the same date and submitted that a spent yellow cartridge case had been found at the crime scene. It had been handed over to police officers. On the same date an investigative experiment was conducted.

29. On 24 July 2000 Yu. was questioned. He submitted that after the convoy had stopped he had seen a serviceman hiding inside a car. The serviceman had a red face, blue eyes and was of medium height.

30. T-v., apparently of the Vedenov District military commander's office, who was questioned on the same date, stated that on 17 April 2000 at around 2 p.m. a patrol had come running to headquarters and reported that a military convoy had been stopped in Lenina Street because a serviceman had shot a schoolboy. When T-v. arrived at the crime scene, he had been told that a serviceman had climbed from an APC to a ZIL vehicle where other servicemen had tried to hide him.

31. Serviceman I., questioned on the same date, submitted that on 17 April 2000 his fellow servicemen had told him that a serviceman from a convoy moving through Dyshne-Vedenov had killed a boy. When he had arrived at the crime scene, eye-witnesses indicated an APC from which, according to them, shots had been fired. A serviceman had been acting agitatedly around the APC. He had appeared to be nervous and had been holding an AKSM 7.62 automatic rifle with no silencer. He had then gone to sit in the ZIL-131 truck. In the course of the search of the ZIL truck officers of the Vedenov District military commander's office had found a magazine of cartridges and a silencer.

32. Ts., questioned on 24 July and 26 October 2000, submitted that he had been present at the examination of Ayub Salatkhonov's body and had seen bullet wounds. A spent 7.62 cartridge case had been found by T. and immediately handed over to the police officer who had conducted the inspection.

33. On 26 July 2000 an investigative experiment concerning the audibility of shots fired from an AKSM automatic rifle with a silencer was conducted.

34. On 31 July, 16 and 19 October 2000 expert Sh. was questioned.

35. On 3 August 2000 a forensic examination of Ayub Salatkhonov's clothes was completed.

36. On 5 August 2000 servicemen P., K. and P-o were questioned. They submitted that after two AKSM automatic rifles with two PBS-1 silencers, including the one seized from Ch., had been returned to the military unit, they had been used according to their purpose. They had not been repaired and no parts of them had been replaced either.

37. On 8 August 2000 Sh-n, a serviceman that had formed a part of the military convoy, submitted that when the convoy had been moving he had seen a boy lying on the ground in the yard of a house. When the convoy had stopped, he had seen a serviceman sitting on the right side of the ZIL-131 truck removing a silencer from his automatic rifle. When the serviceman had left the car, there had been no silencer on his automatic rifle.

38. On 16 August 2000 a forensic expert examination was completed.

39. On 9 September 2000 a ballistic expert examination was completed.

40. On 27 September 2000 serviceman O. was questioned. He submitted that in the convoy it was only special forces servicemen who had had PBS-1 silencers.

41. On 11 October 2000 a forensic examination of Ayub Salatkhonov's body was completed.

42. On 15 November 2000 Ch. was charged with the offence and a decision to place him in custody was taken. However, since he was no longer in the Chechen Republic, he was placed on the wanted list. The investigation was suspended on the same date on account of Ch.'s whereabouts being unknown.

43. On 25 November 2000 a forensic expert's examination was completed.

44. On 11 March 2001 the military prosecutor of military unit no. 20102 informed the applicants that the investigation had identified the suspect – Ch., warrant officer of military unit no. 75143. However, the military unit had been relocated out of Chechnya without the military prosecutor's knowledge. Warrant officer Ch. had absconded and on 15 November 2000 had been placed on the wanted list.

45. By a letter dated 27 July 2001 (received by the applicant in December 2001) the military prosecutor of military unit no. 20102 informed

the applicants that the serviceman responsible for the murder of their son had been identified. He had been discharged from military service and had absconded. He had been searched for by the officers of the Ostrovskiy district police of the Pskov Region, where his residence was located. The letter further stated that on 15 November 2000 the investigation had been suspended during the search. On 25 July 2001 the investigation was resumed, and a request for a search to be carried out was forwarded to the authorities in Ukraine, where the suspect's parents resided.

46. On 8 August 2001 the Chief Military Prosecutor's Office informed the applicants that the investigation into their son's murder had been reopened. The person suspected of the crime had absconded and had been placed on the federal wanted list.

47. On 8 October 2001 the Prosecutor's Office of the North Caucasus Military Circuit informed the applicants that on 2 April 2001 the decision of 15 August 2000 to suspend the proceedings had been quashed and the case file had been forwarded for further investigation to the military prosecutor of military unit no. 20102. The investigation was pending, and the applicants would be informed of the results.

48. After a number of stops and starts, the investigation was again resumed on 17 January 2005. Ch.'s whereabouts were established and it was also found that he had changed his name to M. He was subsequently arrested, and on 18 April 2005 the case was committed for trial to the Grozny Garrison Military Court.

C. Trial proceedings

49. On 7 July 2006 the Grozny Garrison Military Court dismissed Ch.'s (M.'s) contradictory submissions that, firstly, it had not been him who had shot at Ayub Salatkhanov and, secondly, that he had accidentally pulled the trigger when the vehicle he had been in had gone over a bump in the road. The court found that Ch. (M.) had aimed at Ayub Salatkhanov's chest, found him guilty of murder and sentenced him to ten years' imprisonment. Ch. (M.) appealed.

50. On 23 November 2006 the North Caucasus District Military Court upheld the judgment on appeal.

D. Proceedings for compensation for non-pecuniary damage

51. In 2003 the second applicant brought a claim against the Ministry of Finance for compensation for non-pecuniary damage caused by the murder of his son by a serviceman.

52. On 22 July 2003 the Basmani District Court of Moscow dismissed the claim. The court held, in particular:

“As follows from the evidence in the case, the fact that [the applicant] was caused physical and moral suffering arose as a result of the fulfilment of duties by a serviceman of military unit no. 75143 [Ch.] ...

It is precisely [this military unit] which may be liable if [its serviceman] caused non-pecuniary damage when fulfilling [his] duties.”

53. On 12 February 2004 the Moscow City Court upheld the judgment on appeal.

54. Subsequently, within the framework of the criminal proceedings against Ch. (M.), the second applicant brought a civil claim for compensation for non-pecuniary damage in the amount of 10,100,000 Russian roubles (RUR) before the criminal case against Ch. was sent for trial.

55. In the hearing of 29 June 2006 counsel for the second applicant withdrew the civil claim. He explained that the second applicant intended to file a claim for damages against the military unit where Ch. (M.) had served within the framework of civil proceedings. The court accepted the withdrawal of the claim and specifically stated that it was open to the second applicant to file it within the framework of civil proceedings.

56. According to the Government, the second applicant did not file any civil claims before the Grozny Garrison Military Court.

E. Request for information

57. Despite specific requests made by the Court on two occasions, the Government did not submit a copy of the entire investigation file concerning the murder of Ayub Salatkhanov. However, after the application had been declared admissible they submitted an update on the progress of the investigation, copies of judicial decisions and minutes of the hearings, which contained a detailed description of the investigative actions and witnesses' statements. The Government stated that the documents submitted contained detailed information concerning the conduct of the investigation and the trial and, should the Court require any additional documents, it should specifically request them.

II. RELEVANT DOMESTIC LAW

58. 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).

59. 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.

60. 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.

61. Article 151 of the Civil Code of the Russian Federation, Part II, in force since 1 March 1996, provides for a right to claim non-pecuniary damage. Article 1100 of the Civil Code provides grounds for compensation of non-pecuniary damage.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

62. The Government contended that the applicants had failed to exhaust available domestic remedies. In particular, they had not brought civil claims for damages and had not appealed against procedural decisions adopted in the course of the criminal proceedings.

63. The applicants averred that the Government had failed to demonstrate the relevance and effectiveness of the domestic remedies invoked.

64. In the present case, the Court dismissed the part of the Government's objection related to domestic civil remedies at the admissibility stage. At the same time it took no decision about the exhaustion of domestic remedies in criminal law invoked by the Government, having found that this question was too closely linked to the merits. It will now proceed to examine the arguments of the parties in the light of the provisions of the Convention and its relevant practice (for a relevant summary, see *Estamirov and Others v. Russia*, no. 60272/00, § 73-74, 12 October 2006).

65. The Court observes that the applicants complained to the law enforcement authorities immediately after the killing of Ayub Salatkhanov and that an investigation was pending from 17 April 2000 to 18 April 2005. The applicants and the Government dispute the effectiveness of this investigation.

66. The Court considers that the Government's preliminary objection raises issues concerning the effectiveness of the criminal investigation

which are closely linked to the merits of the applicants' complaints. Thus, it considers that these matters fall to be examined below under the substantive provisions of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

67. The applicants complained under Articles 2 and 3 of the Convention about their son's murder and the lack of an effective investigation. The Court considers that the complaint falls to be examined under Article 2 of the Convention, which 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. Arguments of the parties

68. In their submissions made prior to the Court's decision as to admissibility of the present application, the applicants argued that the State was responsible for the murder of their son since at the time of the events Ch. had been fulfilling his duties as a serviceman. They further submitted that the mere institution of the investigation and the granting of victim status to the second applicant were not sufficient to render the investigation effective. The applicants made no further submissions after the application had been declared admissible.

69. The Government submitted that, in having instituted a criminal investigation into Ayub Salatkhanov's murder, the Russian authorities had admitted that there had been a violation of his right to life. However, the violation had been the result of the actions of a particular individual and not of State agencies. The investigation conducted had met the requirements of Article 2 of the Convention. Its long duration had been due to the fact that the suspect had absconded and it had taken some time to establish his whereabouts. Serviceman Ch. could not have been arrested directly after the incident, because it had been necessary to establish the circumstances of the incident first. In particular, another serviceman was under suspicion and

certain versions of the events advanced by the accused, such as the claim that the bullet had ricocheted, required time-consuming investigative experiments. In the Government's view, the long duration of the investigation alone could not lead to the conclusion that it was ineffective, especially taking into account that it had led to the culprit being convicted and sentenced by domestic courts.

B. The Court's assessment

1. General principles

70. 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). In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, particularly where deliberate lethal force is used, taking into consideration not only the actions of State agents who actually administer the force but also all the surrounding circumstances including such matters as the planning and control of the actions under examination (see *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, §§ 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).

71. The Court further reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", 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*, cited above, 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, carried out with reasonable promptness and expedition, effective in the sense that it is capable of leading to a determination of whether the force

used in such cases was or was not justified in the circumstances or otherwise unlawful, and afford a sufficient element of public scrutiny of the investigation or its results (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-109, 4 May 2001, and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

2. Application to the present case

72. The Court observes, firstly, that at the time of the events Ch. (M.) was engaged in a military service. It notes, at the same time, that Ch. (M.) did not shoot at Ayub Salatkhanov within a framework of any military operation and that no order had been given to him in this respect. Furthermore, domestic courts found Ch. (M.) guilty of murder, sentenced him to ten years' imprisonment and acknowledged the second applicant's right to claim damages. The question arises whether, in accordance with Article 34 of the Convention, the applicants can still be regarded as "victims" of a violation of Article 2.

73. The Court reiterates that, according to its case law, the applicant may lose the status of "victim" in instances where "the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention" (see *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

74. As regards the acknowledgement of the violation, the Court observes that the domestic investigation was instituted immediately on the date of the shooting. In the days which followed the authorities took significant investigative measures, having examined the crime scene and the military vehicles that formed part of the convoy, questioned numerous witnesses and conducted investigative experiments. The Court does not find the fact that Ch. (M.) was not charged immediately after the events to be evidence of the inefficiency of the investigation, since from the materials in the case it follows that the investigating authorities made diligent efforts to establish the circumstances of the events and to reconcile conflicting versions of events. Likewise, the Court considers that the long duration of the investigation did not detract from the acknowledgement of the violation, since in the present case it was caused by Ch.'s (M.'s) absconding from the investigating authorities and the need to establish his whereabouts, which was further complicated by his change of name. The Court has no evidence to imply that the authorities either acted in bad faith or failed to take all appropriate steps to locate him. It further notes that in the present case the applicants did not allege that they had not been duly informed of the progress of the investigation. Finally, the domestic investigation resulted in a trial which led to the serviceman who had killed the applicants' son being convicted of murder and sentenced to ten years' imprisonment. The Court thus finds that the domestic investigation was effective for the purposes of Article 2 of the Convention and that the conviction constituted express

acknowledgement by the authorities of a violation of Ayub Salatkhonov's right to life.

75. As regards the redress afforded, the Court notes, firstly, that the proceedings brought by the second applicant in 2003 against the Ministry of Finance should not be taken into account because they had been instituted before Ch.'s (M.'s) conviction and against an improper defendant. Yet subsequently the second applicant filed a civil claim for damages against Ch. (M.) within the framework of criminal proceedings against him. However, later he withdrew the claim and, although the domestic courts acknowledged his right to file it within the framework of civil proceedings, has not re-filed it.

76. The Court reiterates that in *Saukaitis v. Lithuania* (dec.), no. 41774/98, 14 November 2000, it held that the applicant's entitlement to claim damages for a violation of Article 6 of the Convention constituted sufficient redress to deprive him of victim status under the above provision. Likewise, in *Caraheer v. the United Kingdom* (dec.), no. 24520/94, 11 January 2000, the Court held that "the possibility of obtaining compensation for the death of a person will generally, and in normal circumstances, constitute an adequate and sufficient remedy for a substantive complaint of an unjustified use of lethal force by a State agent in violation of Article 2 of the Convention".

77. The Court observes that, in the present case, the second applicant's withdrawal of his claim for damages within the framework of criminal proceedings could be regarded as a waiver of his right to obtain redress. However, in any event, the applicants retained their entitlement to claim redress within the framework of civil proceedings, which was specifically acknowledged by the domestic courts, and there are no grounds to consider that there are circumstances which would absolve Ch. (M.) from any civil liability which exists.

78. Having regard to the foregoing, the Court concludes that in these circumstances the applicants can no longer claim to be victims, within the meaning of Article 34 of the Convention, of a violation of Article 2 of the Convention.

79. In view of this finding, the Court does not consider it necessary to decide on the limb of the Government's preliminary objection that was joined to the merits of the case.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

80. The applicants complained under Articles 6 and 13 of the Convention about the lack of an effective investigation into their son's murder. The Court considers that, inasmuch as the complaint is related to the applicant's entitlement to compensation, it falls to be examined under 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.”

81. In their submissions made prior to the Court’s decision as to the admissibility of the present application the applicants maintained the complaint. They made no further submissions.

82. The Government insisted that the investigation in the present case had been efficient and that the applicants were entitled to compensation. However, the second applicant withdrew his civil claim for damages of his own motion.

83. 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, where there is an “arguable claim” of a violation of a substantive Convention provision (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52). 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 *Süheyla 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).

84. The Court observes that when the applicants instituted the present proceedings they had an “arguable claim” of a violation of Ayub Salatkhanov’s right to life under Article 2 of the Convention. However, as set out in paragraphs 72-78 the Court decided that the applicants could no longer claim to be victims of the above provision having found that, firstly, the domestic authorities conducted an effective investigation into the killing of the applicants’ son which led to punishment of the serviceman responsible and, secondly, that the applicants were entitled to claim damages.

85. Having regard to its above finding that the applicants lost their victim status in respect of their complaints under Article 2 and the reasons for this decision, the Court considers that, in the circumstances, no separate issue arises in respect of Article 13 read in conjunction with Article 2 of the Convention.

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

86. The Government's failure to submit a copy of the entire investigation file requested by the Court at the communication stage gives rise to issues under Article 38 § 1 (a) of the Convention, which provides:

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;

..."

87. In their observations made before the decision on admissibility the Government stated that the submission of the entire case file would be contrary to Article 161 of the Code of Criminal Procedure. After the decision on admissibility the Government provided an update on the progress of the investigation, copies of judicial decisions and minutes of the hearings, which contained detailed descriptions of the investigative steps that had been taken and witnesses' statements. They stated that those documents contained detailed information concerning the conduct of the investigation and the trial and, should the Court require any additional documents, it should specifically request them. The Court did not make any further requests.

88. 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.

89. 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 of 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 *Tanrıkul v. Turkey* [GC], no. 23763/94, § 71, ECHR 1999-IV).

90. The Court notes that the Government refused to submit a copy of the entire investigation file opened as a result of the murder of the applicants' son in response to the communication of the complaints. They referred to Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has already found this explanation insufficient to justify the withholding of key information requested by the Court (see, among other authorities, *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-... (extracts)).

91. The Court reiterates that Article 38 § 1 (a) of the Convention is applicable to cases which have been declared admissible. The Court cannot find that the delay in submitting the information requested prior to the admissibility decision gave rise to issues under this provision or otherwise prevented the proper examination of the present case. It further notes that after the application had been declared admissible the Government submitted documents which contained detailed information on the progress and results of the investigation. Furthermore, the Government were prepared to examine further requests of the Court for any particular documents; however, the Court made no such requests.

92. The Court notes that the Government submitted documents containing key elements that considerably facilitated the examination of the present case by the Court. In these circumstances, 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).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Joins to the merits* the Government's preliminary objection and *holds* that it is not necessary to decide on it;
2. *Holds* that the applicants may no longer claim to be "victims" of the alleged violation of Article 2 of the Convention;
3. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violation of Article 2 of the Convention;

4. *Holds* that there has been no failure to comply with Article 38 § 1 (a) of the Convention;

Done in English, and notified in writing on 16 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President