



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

FIRST SECTION

**CASE OF AKHMADOV AND OTHERS v. RUSSIA**

*(Application no. 21586/02)*

JUDGMENT

This version was rectified on 3 June 2009 and 8 June 2010  
under Rule 81 of the Rules of Court

STRASBOURG

14 November 2008

**FINAL**

*06/07/2009*

*This judgment may be subject to editorial revision.*



**In the case of Akhmadov 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,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 21 October 2008,

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

**PROCEDURE**

1. The case originated in an application (no. 21586/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by eight Russian nationals listed in the attachment (“the applicants”) on 9 April 2002.

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

3. The applicants complained, in particular, of the killing of their relatives by State agents and of the absence of an adequate investigation into the events. They also complained that their relatives’ right to liberty and security had been breached, that they had endured mental suffering on account of these events, that they had been discriminated against and that there was a lack of effective remedies in respect of those violations. The applicants referred to Articles 2, 3, 5, 13 and 14 of the Convention.

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

5. By a decision of 3 May 2007 the Court declared the application partly admissible.

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

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

7. The first applicant is the father of the fifth and sixth applicants and a grandfather of Amkhad Vakha-Khadzhiyevich Gekhayev, born in 1986. The second and third applicants are the parents of Zalina Amadovna Mezhidova, born in 1978. The fourth and fifth applicants are Amkhad Gekhayev's parents. The sixth applicant is Zalina Mezhidova's husband and Amkhad Gekhayev's uncle. The seventh and eighth applicants are Zalina Mezhidova's children.

8. The applicants live in the Gudermes District of the Chechen Republic.

#### A. The facts

##### *1. The events of 27 October 2001*

###### **(a) The applicants' version**

9. It does not appear that any of the applicants witnessed the events of 27 October 2001. The following account is based on eye-witness statements submitted by the applicants.

10. On 27 October 2001 a number of farmers from several villages of the Gudermes District, including two of the applicants' relatives – Amkhad Gekhayev and Zalina Mezhidova – were harvesting in a field near the village of Komsomolskoye. The farmers had obtained prior authorisation for their work from the local authorities.

11. At 3 p.m. the farmers loaded the crop into a VAZ-2121 "Niva" vehicle belonging to the first applicant, in order to transport it to Komsomolskoye. Amkhad Gekhayev was driving and Zalina Mezhidova accompanied him, as she intended to return to the village to take care of her ailing grandmother and her two minor children – the seventh and eighth applicants, who were then three years and three months old and four months and twenty days old respectively.

12. At 3.10 p.m. an MI-8 and two MI-24 helicopters without clear hull numbers appeared in the sky over the field. One of the helicopters had the letters *VVS RF* ("the Air Forces of the Russian Federation") on its side.

13. The MI-24 helicopters headed towards the field and started shooting over the heads of the people who remained there. Women and children were among their number.

14. The MI-8 helicopter attacked the "Niva" vehicle. After several warning shots the car stopped. The helicopter then landed nearby and

several armed men in uniform approached the “Niva”, strafing it with machine guns. They took the applicants’ relatives out of the car and put them in the helicopter. According to the witnesses, Amkhad Gekhayev and Zalina Mezhidova appeared wounded or dead. The military blew the car up and the three helicopters then left.

15. Immediately after the incident the residents of Komsomolskoye made a video recording of the car. The “Niva” vehicle had been blown up, its windows were missing and there were numerous bullet holes in its frame. There were blood traces on the car doors. Zalina Mezhidova’s shoes and Amkhad Gekhayev’s cap lay nearby. Police officers arrived shortly after the incident, inspected and took photographs of the incident scene, collected slugs and cartridges from bullets of various calibres and a casing for a signal flare, examined the bullet holes on the car frame and noted the findings in their report.

16. The applicants referred to statements by a resident of Komsomolskoye, who had claimed that late in the evening of 27 October 2001 he had seen two armoured personnel carriers arrive at the scene of the incident and leave shortly afterwards.

**(b) The Government’s version**

17. According to the Government, since the beginning of the counter-terrorist operation in the Chechen Republic, the civil and military authorities had taken all necessary steps to secure the safety of civilians residing in the North Caucasus. The residents of the Chechen Republic had been notified of the actions they should perform when in the area of any special counter-terrorist operation so as to indicate that they did not belong to illegal armed formations. In particular, once they had established “visual contact” with representatives of the federal forces, residents were to stop moving, exit from their means of transport, show that they had no firearms or other weapons in their hands and wait for the arrival of a group of servicemen for an identity check.

18. On 27 October 2001, following orders, a group of three federal military helicopters were patrolling the air space trying to detect movements of off-road vehicles, a type of vehicle often used by members of illegal armed formations, with a view to carrying out identity checks.

19. At about 3.30 p.m., while patrolling over the area in the vicinity of the village of Komsomolskoye, the pilots of the helicopters saw an off-road VAZ-2121 “Niva” vehicle moving at high speed. The pilots fired warning shots using a light machine-gun at a spot situated 20-30 metres away from the car in order to make it stop. In the Government’s submission, the “Niva” accelerated. The pilots again fired warning shots using the same weapons and aiming the same distance from the car. The “Niva” then stopped and the helicopters landed. Servicemen from the helicopters saw a man rush out of the car and hide in thick bushes along the road. According to the

Government, the people who remained in the car did not get out and show that they were unarmed. The servicemen started approaching the “Niva” but when they arrived within 10 metres of the car, it suddenly drove off. The officer in command of the servicemen assessed the situation as life-threatening and ordered that lethal fire be opened on the car, with the result that Amkhad Gekhayev and Zalina Mezhidova were shot dead.

20. The servicemen further inspected the “Niva” and found an F-1 grenade and a RPG-26 hand-held grenade launcher. The servicemen then took those weapons and the bodies of the deceased to the helicopter and delivered them to the competent authorities.

### *2. Discovery of the bodies of Amkhad Gekhayev and Zalina Mezhidova*

21. Immediately after the incident the applicants started searching for Amkhad Gekhayev and Zalina Mezhidova.

22. On 28 October 2001 the first applicant applied in writing to various Gudermes District officials seeking their assistance in establishing the whereabouts of his grandson and daughter-in-law.

23. According to the applicants, on 29 October 2001 the corpses of Amkhad Gekhayev and Zalina Mezhidova, wrapped in plastic sheeting, were brought by a helicopter to the Gudermes District military commander’s office. The bodies were severely mutilated – the upper half of the body was missing from Zalina Mezhidova’s corpse and Amkhad Gekhayev’s corpse had no lower limbs.

24. On 30 October 2001 the remains were taken to Makhachkala, in the Republic of Dagestan, for an independent forensic examination. In the applicants’ submission, they were denied access to a report on the results of this examination.

25. According to the applicants, on the same date the bodies were returned to them and they buried the remains.

26. On 7 December 2001 a civil registration office of the Gudermes District issued death certificates for Zalina Amkhadovna Mezhidova, born in 1978, and Amkhad Vakha-Khazhiyevich Gekhayev, born in 1986. The dates of death were recorded as 1 and 27 November 2001 respectively and the place of death was indicated as the village of Komsomolskoye, Gudermes District.

### *3. Criminal investigation*

27. Since 27 October 2001 the applicants have repeatedly applied in person and in writing to various public bodies, including prosecutors at different levels, the Administration of the Chechen Republic (*Администрация Чеченской Республики*), the Special Envoy of the Russian President for Rights and Freedoms in Chechnya (*Специальный представитель Президента Российской Федерации по соблюдению*

*прав и свобод человека в Чеченской Республике*) and the President of the Supreme Court of Chechnya (*Председатель Верховного Суда Чеченской Республики*). In their letters to the authorities the applicants referred to the events of 27 October 2001 and asked for assistance and details of any investigation. These enquiries remained largely unanswered, or only formal responses were given, stating that the applicants' requests had been forwarded to various prosecutors' offices. The applicants also applied to a number of intergovernmental organisations and mass media.

28. On 27 October 2001 the Gudermes prosecutor's office (*прокуратура Гудермесского района*) commenced an investigation in connection with the shooting at the "Niva" vehicle and the detention of Amkhad Gekhayev and Zalina Mezhidova. The case file was assigned the number 21176. In the applicants' submission, neither they nor any other relatives were formally notified of the initiation of the investigation or granted victim status.

29. On 3 November 2001 the Gudermes prosecutor's office referred the case to the military prosecutor's office of military unit no. 20102 (*военная прокуратура – войсковая часть 20102*) for investigation. The latter received the case on 17 November 2001 and assigned it the number 14/33/0741-01. According to the Government, as a result of the re-organisation of the system of military prosecutor's offices, the case file number was subsequently replaced with the number 34/33/0741/01.

30. On 30 November 2001 the military prosecutor's office of military unit no. 20102 discontinued the investigation, in the absence of the constituent elements of a crime in the actions of the servicemen involved in the incident of 27 October 2001. According to the applicants, they were not apprised of this decision until much later.

31. In a letter of 28 December 2001 the military prosecutor's office of military unit no. 20102 notified the applicants, in response to their query, that:

"The preliminary investigation established that the use of firearms by the servicemen on 27 October 2001 in the vicinity of the village of Komsomolskoye had been lawful and justified. There are no grounds to bring criminal proceedings against them.

Besides, during the examination of the "Niva" vehicle [the servicemen] discovered weapons and ammunition which had been kept there and carried unlawfully."

The letter further stated that the criminal proceedings instituted in connection with the death of the applicants' relatives had been discontinued, and informed the applicants that they could challenge that decision in court and also file a civil claim for compensation for pecuniary damage. According to the applicants, they were not furnished with a copy of the decision to discontinue criminal proceedings referred to in the letter of 28 December 2001, and therefore were unable to challenge it.

32. On 28 January 2002 the prosecutor's office of the Chechen Republic (*прокуратура Чеченской Республики*, "the republican prosecutor's office") informed the fourth applicant, father of Amkhad Gekhayev, that his complaint concerning the lack of an effective investigation into the murder of Amkhad Gekhayev and Zalina Mezhidova had been transmitted to the military prosecutor's office of military unit no. 20102 for examination.

33. On the same date the Chief Military Prosecutor's Office (*Главная военная прокуратура*) informed the fourth applicant that his application of 5 December 2001 concerning the investigation into the abduction and murder of Amkhad Gekhayev and Zalina Mezhidova had been transferred to the Military Prosecutor's Office of the Northern Caucasus Military Circuit ("the Northern Caucasus Military Prosecutor's Office", *Военная прокуратура Северо-Кавказского военного округа*) and to the Government of the Chechen Republic.

34. In a letter of 28 January 2002 the Administration of the Chechen Republic notified the fourth applicant that his application concerning the abduction and murder of Amkhad Gekhayev and Zalina Mezhidova had been forwarded to the Commander of the United Group Alignment (*Командующий ОГВ (с)*) for investigation.

35. By a letter of 15 February 2002 the Northern Caucasus Military Prosecutor's Office informed the fourth applicant that his application of 5 December 2001 had been transmitted to the military prosecutor's office of military unit no. 20102 for examination.

36. In its letter of 14 March 2002 the Northern Caucasus Military Prosecutor's Office reported that:

"Criminal case no. 14/33/0741-01 was closed on 30 November 2001 by the military prosecutor's office of military unit no. 20102 ... in the absence of the constituent elements of a crime in the actions of [servicemen] of an air-borne search and attack group (*воздушно-поисковая штурмовая группа*) of military unit no. 20706 who had been carrying out their combat mission of searching for and apprehending leaders of armed gangs on the territory of Chechnya. The ground for the decision to discontinue the criminal proceedings was the failure by Gekhayev A.V., who had been driving the vehicle VAZ-2121,... to comply with the group's order to stop in order to permit the inspection of the car, with the result that the group opened fire on the vehicle. Gekhayev A.V. and Akhmadova (Manayeva) Z.A., who were sitting in the car, died as a result of their wounds. During the inspection of the vehicle boot [the servicemen] found an F-1 grenade and a RPG-26 hand-held grenade launcher."

The letter also stated that the Northern Caucasus Military Prosecutor's Office was studying the case file and would inform the applicants of its findings.

37. On 20 March 2002 the sixth applicant – Amkhad Gekhayev's uncle and Zalina Mezhidova's husband – sent a complaint to the Prosecutor General's Office of Russia (*Генеральная прокуратура Российской Федерации*). He referred to the events of 27 October 2001 and requested that the criminal proceedings in connection with the abduction and murder



of his relatives be resumed. He also complained that his applications to the military prosecutor of Chechnya had remained unanswered.

38. In reply, on 23 April 2002 the Chief Military Prosecutor's Office referred the sixth applicant's complaint to the Northern Caucasus Military Prosecutor's Office for examination.

39. On an unspecified date in June 2002 the sixth applicant requested the Northern Caucasus Military Prosecutor's Office to inform him of developments in the case, stating that for a month and a half he had received no information regarding the results of the investigation.

40. In its letter of 21 June 2002 the Northern Caucasus Military Prosecutor's Office notified the sixth applicant that the decision of 30 November 2001 had been quashed on 21 June 2002 on the ground that the investigation had been incomplete. The letter further stated that the case had been transmitted to the military prosecutor's office of military unit no. 20102 for fresh investigation, and that the Northern Caucasus Military Prosecutor's Office would closely supervise the course of the investigation.

41. On 27 July 2002 the sixth applicant again applied to the Northern Caucasus Military Prosecutor's Office, seeking information about the results of the investigation. On 29 August 2002 the Northern Caucasus Military Prosecutor's Office transmitted their application to the military prosecutor's office of military unit no. 20102.

42. In early September 2002 the sixth applicant applied both to the Northern Caucasus Military Prosecutor's Office and to the military prosecutor's office of military unit no. 20102 for information regarding the results of the investigation. It does not appear that those applications were ever answered.

43. On 16 September 2002 the sixth applicant sent another query to the military prosecutor's office of military unit no. 20102. He complained that none of the relatives of Amkhad Gekhayev and Zalina Mezhidova had ever been questioned by the investigating bodies.

44. On 18 November 2002 the SRJI, acting on the applicants' behalf, applied to the republican prosecutor's office and the Gudermes prosecutor's office, seeking to ascertain what measures had been taken to establish the circumstances of the crime and the identities of the culprits. The SRJI also requested the authorities to let the applicants have the forensic examination report of 30 October 2001.

45. The republican prosecutor's office referred the above application to the Military Prosecutor's Office of the United Group Alignment in the Northern Caucasus (*военная прокуратур объединенной группировки войск на Северном Кавказе*).

46. The latter informed the SRJI on 6 January 2003 that during the preliminary investigation in criminal case no. 34/33/0741/01, opened in relation to the abduction and murder of Amkhad Gekhayev and Zalina Mezhidova, the identities of the servicemen involved had been established

and that the criminal proceedings had been discontinued on 30 November 2001 on account of the lack of the constituent elements of a crime. The Military Prosecutor's Office of the United Group Alignment in the Northern Caucasus was at that stage unable to review the lawfulness of the decision of 30 November 2001, since the case file had been transferred on 28 March 2002 to a prosecutor of the Northern Caucasus Military Prosecutor's Office who had been studying it since that date.

47. On 27 January 2003 the military prosecutor's office of military unit no. 20102 informed the SRJI that the investigation had identified all the servicemen involved in shooting and abducting Amkhad Gekhayev and Zalina Mezhidova. In order to establish the events of 27 October 2001 in detail, all the persons involved in the incident, including the helicopter pilots, had been questioned and three ballistic expert studies had been carried out. A number of forensic examinations had also been conducted, but reports on their findings had not yet been obtained from an expert body in Makhachkala. The letter provided assurances that the forensic examination reports would be obtained on demand from the expert body in Makhachkala and that the victims would have access to them. The investigation was pending.

48. On 26 March 2003 the SRJI requested the military prosecutor's office of military unit no. 20102 to inform the applicants of the latest developments in the case and of the exact number of criminal proceedings instituted in relation to the abduction and murder of Amkhad Gekhayev and Zalina Mezhidova. The SRJI also enquired about the possibility for the applicants to obtain access to the forensic examination reports and requested that the applicants be notified of the names of the relatives who had been granted victim status in the case and provided with a copy of the relevant decision.

49. On 17 May 2003 the military prosecutor's office of military unit no. 20102 stated that they were unable to reply to the SRJI's queries as case file no. 34/33/0741-01 had been transferred to the Military Prosecutor's Office of the United Group Alignment for examination.

50. Following the receipt of that letter, on 27 July 2003 the SRJI submitted a query similar to that sent on 26 March 2003 to the Military Prosecutor's Office of the United Group Alignment. The latter forwarded it to the military prosecutor's office of military unit no. 20102 on 17 September 2003.

51. On 20 July 2003 the sixth applicant addressed a letter to the Gudermes prosecutor's office. He complained that he had on numerous occasions requested the investigating authorities to update him on the results of the investigation into the deaths of his wife and nephew but had never been provided with any information. He also complained that neither he nor the fourth and fifth applicants – Amkhad Gekhayev's parents – had so far been declared victims of a crime.

52. In a letter of 11 August 2003 the South Federal Circuit Department of the Prosecutor General's Office (*Управление Генеральной прокуратуры РФ в Южном федеральном округе*) replied to the sixth applicant, informing him that his complaint had been forwarded to the republican prosecutor's office "for examination on the merits". The latter forwarded the sixth applicant's complaint to the Gudermes prosecutor's office on 25 August 2003.

53. On 21 October 2003 the military prosecutor's office of military unit no. 20102 replied to the SRJI's letter of 27 July 2003, forwarded by the Military Prosecutor's Office of the United Group Alignment, stating that they were unable to provide any information concerning the investigation, as the case file had been sent to the Northern Caucasus military prosecutor's office for study.

54. On 20 December 2003 the SRJI complained to the Chief Military Prosecutor's Office that their queries addressed to various military prosecutors remained unanswered.

55. In a letter of 15 April 2004 the Military Prosecutor's Office of the United Group Alignment informed the SRJI that the investigation in criminal case no. 34/33/0741-01 had been discontinued on 15 January 2004 in the absence of the constituent elements of a crime in the servicemen's actions, and that the said prosecutor's office was at present studying the case file to establish whether the decision of 15 January 2004 had been lawful. The letter further stated that the applicants would be apprised of the results of that study and that they could have access to the case file at the military prosecutor's office of military unit no. 20102 in Khankala.

56. On 5 May 2004 the Military Prosecutor's Office of the United Group Alignment further notified the SRJI that the criminal case had been transmitted to the military prosecutor's office of military unit no. 20102 for additional investigation. The applicants were invited to address their further queries to the military prosecutor's office of military unit no. 20102.

57. On 21 July 2005 the military prosecutor's office of military unit no. 20102 informed the sixth applicant that on the same date the criminal proceedings in case no. 34/33/0741-01D against Captain S., a serviceman of military unit no. 74854, for criminal offences under Articles 126 (kidnapping), 108 (2) (causing death by negligence) and 244 (abuse of dead bodies and desecration of their graves) of the Russian Criminal Code, had once again been terminated in the absence of the constituent elements of a crime, and the proceedings against him for a criminal offence under Article 286 (2) (aggravated abuse of power) had once again been terminated due to an amnesty act.

58. On 24 January 2006 the first applicant complained in writing about the incident of 27 October 2001 and the defects in the investigation to the President of the Chechen Republic. It does not appear that any reply followed.

59. On 28 and 31 January 2006 the first, fifth and sixth applicants wrote letters to the Prosecutor General's Office complaining about the deaths of their relatives and the inadequate investigation. It does not appear that they received any replies to their letters.

60. Referring to the information provided by the Prosecutor General's Office, the Government submitted that the investigation into the abduction of the applicants' relatives had been commenced on 27 October 2001, and had then been discontinued on several occasions as there had been no constituent elements of a crime in the servicemen's actions, and subsequently resumed by higher-ranking prosecutors in view of the incomplete nature of the investigation. According to them, the applicants were duly informed of all the decisions taken during the investigation. The Government adduced a report on the investigative measures taken in case no. 34/33/0741-01. The undated report signed by an acting head of one of the departments of the Main Military Prosecutor's Office lists investigative measures taken during the investigation, without providing any details concerning those actions.

61. It can be ascertained from this document that the criminal proceedings in criminal case no. 34/33/0741-01 were instituted under Article 126 (kidnapping) of the Russian Criminal Code on 27 October 2001. They were then discontinued on 30 November 2001 owing to the absence of the constituent elements of a crime in the incident of 27 October 2001. That decision was quashed on 21 June 2002 and the case file was forwarded to the military prosecutor's office of military unit no. 20102 for further investigation. The report further states that the investigator in charge of the military prosecutor's office of military unit no. 20102 took up the case on 8 December 2003. It is unclear from the report whether any action was taken in the period between 21 June 2002 and 8 December 2003. The investigation was then discontinued on 8 January 2004 in the absence of the constituent elements of a crime in the incident of 27 October 2001. On 21 May 2004 that decision was set aside and the case was sent for additional investigation. On 10 July 2004 the proceedings were again discontinued, as it was impossible to establish the whereabouts of Captain S., the officer in command of the servicemen involved in the incident of 27 October 2001. Thereafter the investigation was reopened on 23 October 2004 and 7 May 2005 and discontinued in application of an amnesty act on 7 April and 21 July 2005 respectively.

62. The report also states that the scene of the incident was inspected on 27 October and 29 October 2001, and that the "Niva" vehicle was inspected on 9 November 2001. It can also be ascertained from the report that in the first few days following the incident of 27 October 2001 fragments of bullets and cases were collected at the scene of the incident and in the "Niva" and examined by experts. Also during the first days following the incident investigators seized and examined documents relating to the

combat mission of 27 October 2001, as well as firearms and ammunition used by the servicemen involved in the events in question. Over the same few days a number of expert studies were ordered and carried out and a number of witnesses were questioned. The report reveals the names of some of those witnesses, whilst the other witnesses, apparently the servicemen involved in the events of 27 October 2001, are identified only by the first letter of their surnames. According to the report, one A. A. Mezhidov – apparently the third applicant – was questioned and granted the status of victim of a crime on 3 November 2001.

63. The report also states that “a male and female corpse were examined” on 29 October 2001 and that a forensic expert examination of the remains of the applicants’ relatives was ordered on 30 October 2001; however, it is unclear when this examination was performed. The report further states that the results of the forensic examination of the bodies of the deceased “were received on 29 June 2004”. It can also be ascertained from the report that at some point criminal proceedings were brought against Captain S., the officer in command of the servicemen who strafed the “Niva” vehicle on 27 October 2001, but were discontinued on 21 July 2005, under an amnesty act.

64. In their memorial of 6 August 2007, submitted after the decision on admissibility, the Government did not provide any updated information regarding developments in the investigation after 21 July 2005 despite the Court’s specific request for such information. In reply to another question of the Court they indicated that on 29 October 2001 investigators had examined the dead bodies of Amkhad Gekhayev and Zalina Mezhidova in the presence of forensic medical experts. They further submitted that a forensic medical examination of the remains had been ordered and commenced on 30 October 2001 and terminated on 19 February 2002. According to the Government, expert report no. 221 of 19 February 2002 reflecting the results of the examination of Amkhad Gekhayev’s remains had stated that six gunshot and shrapnel wounds had been found on his chest and that those wounds had been caused by bullets and iron fragments of a car body. The report had further attested a traumatic amputation of Amkhad Gekhayev’s lower limbs as a result of the explosion of some explosive device. It had stated that Amkhad Gekhayev’s death had been caused by abundant blood loss as a result of a bullet wound to his chest inflicting injuries of the heart and left lung. In the Government’s submission, expert report no. 222 of 19 February 2002 showing the results of the examination of Zalina Mezhidova’s remains had stated that three bullet wounds had been found on the right buttock, thigh and pubic region. The Government did not provide any further details regarding the results of the examination of Zalina Mezhidova’s body and, in particular, did not indicate the cause of her death. They also remained silent as regards the applicants’ assertion that the upper half of Zalina Mezhidova’s body had

been missing. According to them, both reports stated that the gunshot wounds had been inflicted while the victims were alive. The Government did not submit a copy of any of the reports to which they referred.

#### *4. Proceedings against the investigating authorities*

65. On 13 October 2003 the first applicant lodged a complaint with the Military Court of the North Caucasus Military Circuit (*военный суд Северо-Кавказского военного округа*), alleging inactivity on the part of investigators from the military prosecutor's office of military unit no. 20102, the military prosecutor's office of the United Group Alignment and the Northern Caucasus military prosecutor's office. He described in detail the events of 27 October 2001, the circumstances of the discovery of the bodies of Amkhad Gekhayev and Zalina Mezhidova and the applicants' fruitless efforts to have their relatives' killings investigated. He further complained that the investigation had been plagued with serious defects which rendered it ineffective. The first applicant complained, in particular, that the investigation had been pending for almost a year and a half without any progress, that none of the numerous eye-witnesses to the events of 27 October 2001 had ever been questioned by the investigators, that the reports on the forensic examination of the remains of Amkhad Gekhayev and Zalina Mezhidova had not been included in the case file and that none of the relatives of the deceased could gain access to those reports, that none of the relatives of the deceased had been declared victims, that none of them had received copies of the decisions to open the criminal proceedings or to discontinue the investigation, or been informed what measures were being taken to investigate the events of 27 October 2001, and that their numerous requests and applications had remained unanswered or only formal replies had been given. The first applicant requested the court to order the competent authorities to carry out a full and objective investigation capable of leading to the identification of those responsible for his relatives' deaths.

66. The Military Court of the North Caucasus Military Circuit forwarded this complaint to the Grozny Garrison Military Court (*Грозненский гарнизонный военный суд*) on 13 November 2003.

67. In a letter of 1 December 2003 the Grozny Garrison Military Court notified the first applicant that a court hearing in connection with his complaint had been scheduled for 9 December 2003. The letter was sent to the SRJI's address in Moscow rather than to the first applicant's address in the Gudermes District of Chechnya. According to the SRJI, they received the above letter on 8 January 2004, and therefore neither the first applicant nor his representatives from the SRJI were able to attend the hearing.

68. On 9 December 2003, in the absence of the first applicant or his representatives and in the presence of the defendants' representatives, the Grozny Garrison Military Court examined the first applicant's complaint of

13 October 2003 and dismissed it as unfounded. The court held, in particular:

“It has been established that the objective reason for the prolonged processing of the case was that the case file had been transmitted to various levels of the competent authorities by confidential mail.

The question of the necessity of questioning any witnesses falls within the competence of the investigator in charge or the supervising prosecutor.

The case material also reveals that the report on the forensic examination of the bodies of Z. Mezhidova and A. Gekhayeva was not included in the case file, with the result that it was impossible for the [applicants] to gain access to it.

...

...On 22 July 2002 the decision to discontinue the criminal proceedings in connection with the abduction of Z. [Mezhidova] and A. Gekhayev by [the] servicemen was quashed and it was not until 8 December [2003] that the senior investigator of the military prosecutor’s office of military unit no. 20102 took up the case. As a result, the [applicants] have not been informed of the course of the investigation and so far [they] have not been granted the status of victims of a crime.

Accordingly, it has been established that there is no evidence of any breach of the law in the [defendants’] actions.”

69. On 20 January 2004 the SRJI wrote to the Grozny Garrison Military Court stating that they had not received the court’s letter of 1 December 2003 until 8 January 2004. They requested the court to send them a copy of its decision of 9 December 2003, if a decision had been taken on that date, and henceforth to inform them of court hearings in advance. They also pointed out that the first applicant’s address in Chechnya had been indicated on the front page of his complaint.

70. By two letters of 17 June 2004 the Grozny Garrison Military Court forwarded a copy of its decision of 9 December 2003, without further explanations, to the first applicant and the SRJI. According to the applicants, this letter never reached the first applicant, whilst the SRJI received it on 4 September 2004.

71. On 13 September 2004 the SRJI dispatched an application to have the time-limit for appealing against the decision of 9 December 2003 restored. The application was sent by registered mail and received by the Grozny Garrison Military Court on 21 October 2004. No reply followed.

72. On 11 February 2005 the SRJI forwarded a copy of their application of 13 September 2004 to the Grozny Garrison Military Court and asked the latter to provide them with reasons for its failure to reply to the motion received by the court on 21 October 2004. According to the applicants, they were informed in reply that the court had not received their letter of 13 September 2004. The outcome of these proceedings is unclear.

## **B. The Court's requests for the investigation file**

73. In April 2005, when the application was communicated to them, the Government were invited to produce a copy of the investigation file in the criminal case opened in connection with the incident of 27 October 2001. Relying on information obtained from the Prosecutor General's Office, the Government replied that the investigation was in progress and that the disclosure of the documents would be in violation of Article 161 of the Russian Code of Criminal Procedure since the file contained information of a military nature and personal data concerning the witnesses. At the same time, the Government suggested that a Court delegation could have access to the file at the place where the preliminary investigation was being conducted, with the exception of "the documents [disclosing military information and personal data concerning the witnesses], and without the right to make copies of the case file and to transmit it to others".

74. In August 2005 the Court reiterated its request and suggested that Rule 33 § 3 of the Rules of Court be applied. In reply, the Government again refused to produce the investigation file for the aforementioned reasons. The Government did, however, submit a report containing a list of investigative measures taken in the context of the investigation in case no. 34/33/0741-01 (see paragraphs 60-63 above).

75. On 3 May 2007 the application was declared partly admissible. At that stage the Court once again invited the Government to submit the investigation file and to provide information concerning the progress in the investigation after 21 July 2005, the latest date on which it had been stayed. Having regard to the Government's statement to the effect that on 27 October 2001 the federal servicemen had been pursuing a combat mission in order to suppress the criminal activity of members of illegal armed formations in Chechnya, and to their argument that the use of force by the federal servicemen was no more than absolutely necessary during the incident on 27 October 2001, the Court also put a number of factual questions to the Government. It enquired, in particular, how and by whom the mission had been planned and commanded, whether, and, if so, in what manner, the military personnel involved had been instructed to avoid civilian casualties, and whether any firearms or unlawful violence had been used by the applicants' relatives before the federal servicemen fired lethal shots.

76. In reply, the Government once again refused to furnish the Court with the investigation file, referring to Article 161 of the Russian Code of Criminal Procedure and the lack of assurances from the Court that, once in receipt of the investigation file, the applicants or their representatives would not disclose the material contained in it to the public. The Government remained silent as regards the Court's question concerning progress in the investigation after 21 July 2005, and the question whether firearms or any



unlawful violence had been used by the applicants' relatives against the federal servicemen on 27 October 2001. As regards the Court's question on the planning and commanding of the combat mission of 27 October 2001 and whether any instructions had been given to the military personnel to avoid civilian casualties during that mission, the Government replied that during the combat mission the federal servicemen, both commanding officers and their subordinates, had acted in compliance with national legislation and regulations for securing the safety of the civilian population and those relating to the use of lethal force, and that "every serviceman ... knows and must strictly comply with the rules governing contacts with the civilian population in areas of military action". They refused to provide any further details or any relevant documents, stating that such information constituted a military secret.

### **C. Court decisions submitted by the Government**

77. The Government adduced copies of domestic court decisions reached in unrelated sets of civil and criminal proceedings. These included four first-instance judgments by which federal servicemen, privates or non-commissioned officers, had been convicted of criminal offences committed in the Republic of Ingushetia or the Chechen Republic, as well as a first-instance judgment and appeal decision awarding compensation for omissions on the part of the investigating authorities during the investigation into an individual's abduction in the Republic of Karachayevo-Cherkessia, the person in question having subsequently been released.

## **II. RELEVANT DOMESTIC LAW**

78. For a summary of the relevant domestic law see *Khatsiyeva and Others v. Russia*, no. 5108/02, §§ 105-107, 17 January 2008.

## **THE LAW**

### **I. THE GOVERNMENT'S PRELIMINARY OBJECTION**

#### **A. Submissions by the parties**

79. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that

the investigation into the death of the applicants' relatives had not yet been completed. They further argued that, in accordance with Article 125 of the Russian Code of Criminal Procedure, it had been open to the applicants to challenge in court any actions or omissions of the investigating or other law-enforcement authorities or to seek compensation for the deaths of their relatives; in the Government's opinion, however, the applicants had not availed themselves of any such remedy.

80. The applicants contested the Government's statement as incorrect. They pointed out that in fact they had lodged a court complaint about the authorities' failure to carry out an effective investigation into the events of 27 October 2001, which had yielded no results. The applicants contended in this connection that they were not required to pursue that remedy, since it was ineffective and, in particular, incapable of leading to the identification and punishment of those responsible, as required by the Court's settled case-law in relation to complaints under Article 2 of the Convention.

### **B. The Court's assessment**

81. The Court notes that in its decision of 3 May 2007 it considered that the question of exhaustion of domestic remedies was closely linked to the substance of the present application and that it should be joined to the merits. It will now proceed to assess the parties' arguments in the light of the Convention provisions and its relevant practice.

82. The Court reiterates that the rule of exhaustion of domestic remedies under Article 35 § 1 of the Convention obliges applicants to use first the remedies which are available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain both in theory and in practice, failing which they will lack the requisite accessibility and effectiveness. There is no obligation to have recourse to remedies which are inadequate or ineffective. It is incumbent on the respondent Government claiming non-exhaustion to indicate to the Court with sufficient clarity the remedies to which the applicants have not had recourse and to satisfy the Court that the remedies were effective and available in theory and in practice at the relevant time, that is to say that they were accessible, were capable of providing redress in respect of the applicants' complaints and offered reasonable prospects of success (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275-76, §§ 51-52; *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1210-11, § 65-68; and, most recently, *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, no. 41964/98, § 64-65, 27 June 2006).

83. In the present case, in so far as the Government argued that the applicants had failed to seek compensation for their relatives' deaths in civil proceedings, the Court points out that, as it has already found in a number

of similar cases, a civil action by itself cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention. A civil court is unable to pursue any independent investigation and is not capable, without the benefit of the conclusions of a criminal investigation, of making any meaningful findings as to the identity of the perpetrators of fatal assaults, still less of attributing responsibility. Furthermore, a Contracting State's obligation under Articles 2 and 13 of the Convention to conduct an investigation capable of leading to the identification and punishment of those responsible in cases of fatal assaults might be rendered illusory if, in respect of complaints under those Articles, an applicant were to be required to pursue an action leading only to an award of damages (see *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, p. 2431, § 74, and *Khatsiyeva and Others*, cited above, § 112). In the light of the above, the Court finds that the applicants were not obliged to pursue a civil remedy and that this limb of the Government's preliminary objection should therefore be dismissed.

84. As to the Government's argument that the investigation was still pending and that the applicants had not complained to a court about the actions or omissions of the investigating or other law-enforcement authorities during the investigation, in accordance with Article 125 of the Russian Code of Criminal Procedure, the Court firstly observes that the Government did not indicate which particular actions or omissions of the investigators the applicants should have challenged before a court. It further notes that the legal instrument referred to by the Government became operative on 1 July 2002 and that the applicants were clearly unable to have recourse to the remedy invoked by the Government prior to that date. As regards the period thereafter, the Court considers that this limb of the Government's preliminary objection raises issues which are closely linked to the question of the effectiveness of the investigation, and it would therefore be appropriate to address the matter in the examination of the substance of the applicants' complaints under Article 2 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

85. The applicants complained of a breach of the right to life in respect of their relatives – Amkhad Gekhayev and Zalina Mezhidova. They also complained that no proper investigation into their relatives' deaths had been conducted. The applicants relied on Article 2 of the Convention, which reads as follows:

“1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

### **A. Alleged failure to protect the right to life**

#### *1. Submissions by the parties*

86. The applicants insisted that their deceased relatives had been civilians, had not used firearms or any unlawful violence and posed no danger either to the civilian population or to servicemen. The applicants strongly denied that any weapons could have been hidden in the boot of the “Niva” car, and argued that, even assuming they were, their relatives could not have threatened the servicemen, as the weapons allegedly found in the boot would have been covered with a large amount of vegetables collected in the field. The applicants further denied that the authorities had ever given any explanations as to how civilians were expected to behave within the area of the counter-terrorist operation. They contended therefore that the use of force by the State which had led to the loss of their relatives’ lives had been clearly disproportionate in the circumstances of the case and could not be regarded as justified under Article 2 § 2 of the Convention. The applicants stressed in this respect that the Government had not submitted any convincing arguments or documentary evidence to the contrary.

87. The Government conceded that the applicants’ relatives had been deprived of their lives by State agents. They argued, however, that the applicants’ relatives had been killed in the course of the counter-terrorist operation carried out by the federal forces in the Chechen Republic in order to effect the lawful detention of illegal paramilitaries and to prevent further criminal activity by the latter.

88. The Government insisted that since the beginning of the counter-terrorist operation within the territory of the Chechen Republic, the civil and military authorities had taken all necessary steps to secure the safety of civilians residing in the North Caucasus and, in particular, to inform the residents of the Chechen Republic of the actions they should perform when in the area of a counter-terrorist operation to indicate that they did not belong to illegal armed groups. According to them, during the operation, and in particular when performing the combat mission of 27 October 2001, the federal servicemen, both commanding officers and their subordinates,

had acted in full compliance with national legislation and regulations for securing the safety of the civilian population, as well as those relating to the use of lethal force.

89. The Government refused to provide any details in reply to the Court's question on planning and execution of the combat mission of 27 October 2001, stating that such information was classified as a military secret. They did not indicate whether the military personnel had been instructed to avoid civilian casualties during the mission of 27 October 2001, stating merely that "every serviceman ... knows and must strictly comply with the rules governing contacts with the civilian population in the area of military action".

90. The Government further argued that the applicants' relatives had failed to comply with the instructions in force, with the result that the federal servicemen had taken them for members of illegal armed formations. In particular, they had failed to stop and get out of the car after the first warning shots. Moreover, after the vehicle had stopped an unidentified man had rushed off and hidden in the bushes. The Government also insisted that it was not until the "Niva" had suddenly driven off that the servicemen had fired at the vehicle, leading to the death of the applicants' relatives. In this respect the Government submitted that the officer in command of the federal servicemen had assessed the situation as life-threatening, given that it had been widespread practice of illegal fighters to stop their vehicles following warning shots by federal servicemen and then suddenly to drive off and open fire when servicemen had approached. Finally, they also indicated that on examining the car immediately after the incident the servicemen had found a grenade and a fully equipped grenade launcher in its boot. The Government remained silent regarding the Court's question as to whether firearms or any unlawful violence had been used by the applicants' relatives against the federal servicemen on 27 October 2001.

91. The Government thus contended that the use of lethal force in the present case had been no more than absolutely necessary for the purposes of paragraph 2 (a) and (b) Article 2 of the Convention, and that the deaths of Amkhad Gekhayev and Zalina Mezhidova had been the result of "the local residents' failure to comply with the necessary rules concerning personal safety in an area where State agents were conducting a counter-terrorist operation, and to obey the servicemen's legitimate orders".

## *2. The Court's assessment*

92. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances where deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, to which in peacetime no derogation is permitted under Article 15. The situations where deprivation of life may be justified are exhaustive and must be narrowly interpreted. The use of force which may result in the

deprivation of life must be no more than “absolutely necessary” for the achievement of one of the purposes set out in Article 2 § 2 (a), (b) and (c). This term indicates that a stricter and more compelling test of necessity must be employed than that normally applicable when determining whether State action is “necessary in a democratic society” under paragraphs 2 of Articles 8 to 11 of the Convention. Consequently, the force used must be strictly proportionate to the achievement of the permitted aims. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, particularly where deliberate lethal force is used, taking into consideration not only the actions of State agents who actually administer the force but also all the surrounding circumstances including such matters as the planning and control of the actions under examination (see *McCann and Others 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* 1997-VI, pp. 2097-98, § 171; and *Oğur v. Turkey* [GC], no. 21594/93, § 78, ECHR 1999-III).

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

94. In the present case, it has been acknowledged by the Government that Amkhad Gekhayev and Zalina Mezhidova were killed by State agents as a result of the intentional use of lethal force against them. The State’s responsibility is therefore engaged, and it is for the State to account for the deaths of the applicants’ relatives. It is notably for the State to demonstrate that the force used against Amkhad Gekhayev and Zalina Mezhidova by the federal servicemen could be said to have been absolutely necessary and therefore strictly proportionate to the achievement of one of the aims set out in paragraph 2 of Article 2.

95. The Court notes that it is faced with conflicting accounts of the incident of 27 October 2001. Whilst it is undisputed that the car in which

the applicants' relatives were driving home stopped after warning shots were fired by pilots of federal military helicopters, following which the helicopters landed, the parties disagreed as to what happened next. In particular, the Government claimed that a man had rushed out of the car and hidden in nearby bushes, which the applicants strongly denied. Furthermore, whilst the applicants alleged that the federal servicemen had approached the vehicle strafing it with machine-guns, the Government insisted that the servicemen had started approaching the car intending to check the identities of the people in it, and that the vehicle had suddenly driven off, provoking the use of lethal fire by the servicemen. The Government also claimed that a grenade and a grenade-launcher had been found in the boot of the car, which the applicants denied.

96. The Court does not consider it necessary to resolve the controversies in the parties' submissions on the facts, as even assuming that the Government's version as presented by them is accurate, the Court is not convinced that the Government properly accounted for the use of lethal force against the applicants' relatives.

97. In this connection, the Court notes firstly that it is aware of the difficult situation in the Chechen Republic at the material time, which called for exceptional measures on the part of the State to suppress the illegal armed insurgency (see *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, § 178, 24 February 2005, or *Khatsiyeva and Others*, cited above, § 134). It also does not overlook the fact that an armed conflict, such as that in Chechnya, may entail developments to which State agents are called upon to react without prior preparation. Bearing in mind 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 obligation to protect the right to life must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities (see, *mutatis mutandis*, *Makaratzis*, cited above, § 69, and *Mahmut Kaya v. Turkey*, no. 22535/93, § 86, ECHR 2000-III).

98. Turning to the present case, the Court notes, however, that the Government failed to demonstrate that the circumstances of the incident of 27 October 2001 rendered the use of lethal force against the applicants' relatives inevitable. Even assuming that a man had, indeed, rushed out of the car and hidden in the nearby bushes, that the federal servicemen had started approaching the "Niva" intending to check the identities of those in the car, that the car had suddenly driven off, and that a grenade and a grenade launcher had been subsequently found in the boot of the vehicle, as alleged by the Government, the following crucial elements remain unclear.

99. First of all, the Court notes as a matter of grave concern that, whilst claiming that the federal servicemen involved in the incident of 27 October 2001 had acted in full compliance with national legislation and regulations

for securing the safety of the civilian population, as well as those relating to the use of lethal force, the respondent Government failed to provide with any such legal act or regulations, or even indicate more specifically legal instruments to which they referred. This prevented the Court from assessing, whether an appropriate legal framework on the use of force and firearms by military personnel was in place and, if so, whether it contained clear safeguards to prevent arbitrary deprivation of life and to satisfy the requirement of protection “by law” of the right to life secured by Article 2 of the Convention.

100. The Court further finds it unacceptable that, despite its specific request, the Government blankly refused, with reference to a military secret, to provide any information on planning and execution of the combat mission of 27 October 2001 which had resulted in the deaths of the applicants’ relatives, or even to reply to the Court’s question as to whether the military personnel had been instructed to avoid civilian casualties during that mission. The Court cannot accept as satisfactory the Government’s allegation that “every serviceman ... knows and must strictly comply with the rules governing contacts with the civilian population in the area of military action” in the absence of more detailed explanations to that end.

101. As regards the action of the servicemen involved in the incident of 27 October 2001, the Court observes that the Government provided no explanations as to whether at the moment when the pilots had detected the “Niva” car, they had, or could have reported this to the command centre, and whether any instructions had, or could have been given to them. It also does not appear, and was not alleged by the Government, that any orders or warnings had been given to those sitting in the “Niva” after it had stopped. Secondly, as regards the Government’s assertion that after the car had stopped a man had rushed out and hidden in the bushes along the road, the Court observes that they did not indicate whether that man had, or could have posed any danger to servicemen, whether he had been armed, or whether any attempts had been made to pursue that man, if the federal servicemen had taken him for an illegal fighter. Thirdly, as regards the Government’s allegation that the car had suddenly driven off when the servicemen had been at a distance of 10 metres from it, which had provoked the use of lethal fire by them, the Government did not provide any details concerning the weather that day and the visibility in the area, nor did they indicate from which side of the car the servicemen had approached it, or whether they had, or could have clearly seen through its windows to be able to assess the danger emanating from the applicants’ relatives. Lastly, the Government gave no explanations, despite the Court’s specific question in this respect, whether the federal servicemen had, or could have been regarded as being at risk from the applicants’ relatives owing either to the latter’s conduct or to the weapons allegedly later found in the boot of the car. Among other things, it was not shown that the applicants’ relatives



could have had recourse to the weapons in the boot. In such circumstances, the Court cannot conclude that the use of lethal forces against the applicants' relatives was based on an honest belief which was perceived, for good reasons, to be valid at the time (see, by contrast, *McCann and others*, cited above, § 200).

102. The Court finds that in the absence of information on the crucial elements mentioned in paragraphs 99-101 the Government may not be regarded as having accounted for the use of lethal force in the circumstances of the present case. It is therefore not persuaded that the killing of Amkhad Gekhayev and Zalina Mezhidova constituted a use of force which was no more than absolutely necessary in pursuit of the aims provided for in paragraph 2 of Article 2 of the Convention.

103. There has accordingly been a violation of Article 2 of the Convention in this respect.

## **B. Alleged inadequacy of the investigation**

### *1. Submissions by the parties*

104. The applicants also insisted that the investigation into the death of their relatives had clearly been inadequate and had fallen short of the Convention standards. It had been pending since 27 October 2001, having been repeatedly suspended and resumed, and had produced no tangible results.

105. The Government claimed, relying on the opinion of the Prosecutor General's Office, that the investigation carried out in the present case had met the Convention requirement of effectiveness, given that it had been opened on the date on which the applicants' relatives had been killed and that all the decisions to suspend the investigation had been subsequently set aside by superior prosecutors and the proceedings had been resumed. The length of the investigation, in the Government's view, could be explained by the complicated situation in Chechnya and the particular circumstances of the events of 27 October 2001.

### *2. The Court's assessment*

106. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force, in particular by agents of the State. The investigation must be effective in the sense that it is capable of leading to a determination

of whether the force used in such cases was or was not justified in the circumstances (see *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, p. 324, § 87) and to the identification and punishment of those responsible (see *Oğur*, cited above, § 88).

107. In particular, the authorities must take the reasonable steps available to them to secure the evidence concerning the incident, including *inter alia* eye witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death (see concerning autopsies, for example, *Salman v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000-VII; concerning witnesses, for example, *Tanrıkulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 109; and concerning forensic evidence, for example, *Gül v. Turkey*, no. 22676/93, [Section 4], § 89). Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible may risk falling foul of this standard.

108. Also, there must be an implicit requirement of promptness and reasonable expedition (see *Yaşa*, cited above, §§ 102-04, and *Mahmut Kaya*, cited above, §§ 106-07). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating the use of lethal force may generally be regarded as essential in maintaining public confidence in the maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.

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

110. In the instant case, the Court observes that some degree of investigation was carried out into the killing of the applicants' relatives. It must assess whether that investigation met the requirements of Article 2 of the Convention. The Court notes in this connection that its knowledge of the criminal proceedings at issue is very limited in view of the respondent Government's refusal to submit the investigation file, or even to reply to the Court's factual questions (see paragraphs 73-76 above). Drawing inferences from the respondent Government's conduct when evidence was being obtained (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp.64-65, § 161), the Court will assess the merits of this complaint on the basis of the available information in the light of these inferences.

111. The Court notes that from the report on the investigative actions submitted by the Government (see paragraphs 60-63 above) it appears that the civilian authorities made fair attempts promptly to investigate the events of 27 October 2001 and to secure evidence concerning the incident. In particular, the investigation was commenced on the same date and a number of important investigative actions, such as the inspection of the scene of the incident and the car, the seizure of fragments of bullets and cases at the scene of the incident, the seizure of documents relating to the combat mission of 27 October 2001, the seizure of weapons and ammunition from the servicemen involved in the incident, a number of expert studies as well as a preliminary examination of the bodies of those deceased and the questioning of eyewitnesses to the attack, were taken without delay (see paragraph 62 above).

112. However, it does not appear that the military investigating authorities, once in receipt of the case file on 17 November 2001, continued the investigation with the same diligence. In particular, according to the Government, a forensic medical examination of the remains of Amkhad Gekhayev and Zalina Mezhidova had been ordered and commenced on 30 October 2001 and terminated only on 19 February 2002. The Court notes first of all an apparent discrepancy between this assertion by the Government and the applicants' submission to the effect that their relatives' bodies had been taken for a forensic examination to Makhachkala and then returned to them on the same date, namely on 30 October 2001 (see paragraphs 24-25 above). The Court considers it highly unlikely that the two bodies were, indeed, being examined by medical experts for a period of over three months and finds it reasonable to assume that the examination, as such, was carried out on the former date, and that it was on the latter date that the reports on its results were drawn up. The Court further notes that, as can be ascertained from the report adduced by the Government, the results of the examination were only received by the investigating authorities on 29 June 2004 (see paragraphs 63-64 above). The Government provided no explanations regarding the length of the examination, or regarding a delay of more than two years between the date on which it had been completed and the date on which its results had been received by the investigators. Moreover, in spite of the Court's specific request, the Government did not submit copies of any documents regarding the outcome of the examination. Instead, they provided very succinct and fragmentary information on the findings of the reports on the forensic examination drawn up in respect of each of the bodies (see paragraph 64 above). The Court notes that the information provided does not clarify whether the cause of death of Zalina Mezhidova had at all been established, or whether any findings had been made as regards the alleged mutilation of Zalina Mezhidova's body, given the applicants' allegation that its upper half had been missing.

113. Furthermore, according to the report submitted by the Government, the investigation remained pending until July 2005, during which period it was discontinued and re-opened at least on five occasions. In particular, on the first two occasions it was discontinued owing to the absence of the constituent elements of a crime in the incident of 27 October 2001; it was stayed again when it proved impossible to establish the whereabouts of Captain S., the officer in command of the servicemen who had strafed the “Niva” vehicle, shooting dead the applicants’ relatives; and on the other two occasions the proceedings against Captain S. were discontinued due to an application of the amnesty act. In the absence of copies of any relevant procedural decisions or any explanation by the Government, it remains unclear what the grounds for those decisions, and more specifically for the application of the amnesty act, were, whether all the circumstances surrounding the deaths of the applicants’ relatives were duly established, and whether the actions of the servicemen involved in the incident of 27 October 2001 were adequately assessed, given that those actions included not only killing the applicants’ two relatives but also taking their bodies away from the scene of the incident and mutilating them by exploding them, this latter fact being confirmed at least in respect of Amkhad Gekhayev’s body by the Government’s submission on the result of the forensic medical examination (see paragraph 64 above). In such circumstances, the Court is unable to conclude that the military investigating authorities took all reasonable steps to carry out an effective investigation into the events of 27 October 2001.

114. The Court further notes that, according to the report submitted by the Government, the decision of 30 November 2001 to discontinue the criminal proceedings was quashed by a supervising prosecutor on 21 June 2002, whereas the investigator in charge did not take up the case until 8 December 2003 (see paragraph 61 above). No explanation was provided by the Government in respect of this delay. The Court also notes the absence of any reasonable explanation on the part of the Government regarding the numerous transfers of the investigation file from one authority to another which protracted the investigation (see paragraphs 46, 49, 53 and 68 above).

115. The Court further observes that in the absence of the Government’s relevant submission, it is unclear whether any of the applicants was ever granted the status of victim of a crime, which would have afforded them minimum guarantees in the criminal proceedings. Assuming that the A. A. Mezhidov who according to the report submitted by the Government was declared a victim of a crime on 3 November 2001 was the third applicant, Zalina Mezhidova’s father (see paragraph 62 above), it does not appear in any event that any of Amkhad Gekhayev’s relatives were admitted as victims to the criminal proceedings. It is furthermore clear from the materials in the Court’s possession that the applicants were informed of the

developments in the investigation only fragmentarily and occasionally, and that they were not given a realistic opportunity to have access to the case file despite their numerous attempts. The Court considers that the applicants were, in fact, excluded from the criminal proceedings and were unable to have their legitimate interests upheld.

116. Against this background, and having regard to the Government's argument concerning the applicants' alleged failure to appeal to a court, under Article 125 of the Russian Code of Criminal Procedure, against the actions or omissions of the investigators, the Court firstly notes that the applicants did attempt to have recourse to this remedy, but were unsuccessful (see paragraphs 65-72 above). In the absence of any information as to the outcome of the proceedings against the officials brought by the applicants, the Court considers that, in any event, in a situation where the investigation was repeatedly suspended and reopened, where the applicants were unable to consult the case file at any stage and were in fact excluded from the criminal proceedings, and where they were only informed of the conduct of the investigation occasionally, it is highly doubtful that the remedy invoked by the Government would have had any prospect of success. Moreover, the Government have not demonstrated that this remedy would have been capable of providing redress in the applicants' situation – in other words, that it would have rectified the shortcomings in the investigation and would have led to the identification and punishment of those responsible for the deaths of their relatives. The Court thus considers that in the circumstances of the case it has not been established with sufficient certainty that the remedy advanced by the Government would have been effective within the meaning of the Convention. It finds that the applicants were not obliged to pursue that remedy, and that this limb of the Government's preliminary objection should therefore be dismissed.

117. In the light of the foregoing, and drawing inferences from the Government's refusal to submit the criminal investigation file, the Court further concludes that the authorities failed to carry out a thorough and effective investigation into the circumstances surrounding the deaths of Amkhad Gekhayev and Zalina Mezhidova.

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

### III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

119. The applicants complained that they had serious grounds to believe that Amkhad Gekhayev and Zalina Mezhidova had been subjected to torture and inhuman treatment before having been murdered and that no effective investigation had been conducted in that respect. They also submitted that they had suffered severe mental distress and anguish in connection with the killing of their relatives and on account of the State's failure to conduct a

thorough investigation into the events concerned. The applicants referred to Article 3 of the Convention, which states as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

#### **A. Alleged ill-treatment of the applicants’ relatives**

120. In their submissions prior to the Court’s decision on admissibility, the applicants argued that their relatives had been subjected to ill-treatment contrary to Article 3 of the Convention, and that no effective investigation had been carried out in that respect. After the present application had been declared partly admissible, the applicants informed the Court that they did not wish to maintain their complaint regarding the alleged ill-treatment of their relatives.

121. According to the Government, the circumstances of the death of the applicants’ relatives, as established by the investigation, clearly indicated that they had not been subjected to treatment prohibited by Article 3 of the Convention.

122. Having regard to the applicants’ submissions made after the Court’s decision as to the admissibility of the application, the Court does not consider it necessary to examine this complaint (see *Khatsiyeva and Others*, cited above, § 157).

#### **B. Alleged mental suffering of the applicants**

123. The applicants also insisted that their mental suffering in connection with the events of 27 October 2001 and the lack of response by the authorities to their numerous queries and requests fell within the ambit of Article 3 of the Convention, and that this provision had been violated.

124. In the Government’s submission, “the perception of events is a very personal matter depending on emotional and other specific features of an individual’s personality and relates in fact to the field of psychology”, and therefore “it is impossible to assess the degree of the applicants’ mental suffering from the views of the investigating officers”, the latter being responsible only for investigating criminal offences. They also pointed out that, under national legislation, a victim of a crime was entitled to compensation for non-pecuniary damage; however, given that the investigation in the case concerning the death of the applicants’ relatives was still pending, it was premature to decide whether any damage had been caused to the applicants.

125. The Court reiterates that whilst a family member of a “disappeared person” may in certain circumstances claim to be a victim of treatment contrary to Article 3 (see *Kurt v. Turkey*, judgment of 25 May 1998, *Reports*

1998-III, §§ 130-34), the same principle would not usually apply to situations where a person dies at the hands of the authorities (see, for example, *Tanlı v. Turkey*, no. 26129/95, § 159, ECHR 2001-III (extracts)). In the latter cases the Court would limit its findings to Article 2. Similarly, in the present case, while having no doubt of the profound suffering caused to the applicants by the deaths of their relatives, the Court finds no basis for finding a violation of Article 3 in this context, the Court's case-law on the issue referring to the specific phenomenon of disappearances.

126. Accordingly, there has been no violation of Article 3 of the Convention on that account.

#### IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

127. The applicants complained that the provisions of Article 5 as a whole had been violated in respect of Amkhad Gekhayev and Zalina Mezhidova. Article 5 of the Convention reads as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

128. The applicants disputed the Government's submission that Amkhad Gekhayev and Zalina Mezhidova had been killed at the moment when the federal servicemen had strafed their car. They argued that their relatives

could have been wounded rather than dead when taken out of the car and put into the military helicopter, and that therefore they had been detained in violation of Article 5 of the Convention. In support of their argument that their relatives had still been alive after the incident of 27 October 2001 the applicants relied on the fact that the criminal proceedings into the incident had been instituted under Article 126 of the Russian Criminal Code, which concerned kidnapping, and that the death certificates issued by the Civil Registration Office of the Gudermes District in respect of Zalina Mezhidova and Amkhad Gekhayev indicated the dates of death as 1 and 27 November 2001 respectively.

129. According to the Government, the circumstances of the death of the applicants' relatives, as established by the investigation, clearly indicated that they had not been detained in breach of the provisions of Article 5 of the Convention.

130. Having regard to the circumstances of the present case, the Court does not find the applicants' arguments convincing. In particular, as regards their reference to the fact that the criminal proceedings were brought in connection with kidnapping rather than murder, it appears from the information provided by the parties that the authorities instituted criminal proceedings immediately after the incident on the basis of the information available to them at that moment. It seems highly unlikely that already at that stage they had established the circumstances of the incident in sufficient detail to be able to claim with any certainty that the applicants' relatives had been alive when taken by the servicemen from the scene of the incident, and therefore the fact that it was the alleged kidnapping that was the ground for the institution of criminal proceedings cannot serve as objective proof of the applicants' allegation. As regards their argument that the death certificates issued by a civil registration office indicated that Zalina Mezhidova and Amkhad Gekhayev had died on 1 and 27 November 2001 respectively, the Court notes that this argument contradicts the applicants' own statement to the effect that their relatives' dead bodies had been delivered to them on 29 October 2001 and were buried on 30 October 2001.

131. The Court further notes that it was not furnished with any document which would reliably attest the exact date of the death of Amkhad Gekhayev and Zalina Mezhidova. However, it can be ascertained from the parties' submissions that their relatives died no later than two days after the attack. In the Court's opinion, in a situation where the car in which the applicants' relatives were sitting was strafed by several servicemen with machine-guns, inflicting multiple gunshot wounds which were later attested by forensic medical experts (see paragraph 64 above), it is more than likely that Amkhad Gekhayev and Zalina Mezhidova died immediately, or in the aftermath of the incident. In such circumstances, no separate issue under Article 5 arises.



132. The Court finds therefore that there has been no violation of Article 5 of the Convention in the circumstances of the present case.

## V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

133. The applicants alleged the absence of any effective remedies in respect of their complaints under Articles 2, 3 and 5, contrary to Article 13 of the Convention, which provides 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.”

134. The applicants argued that an administrative practice consisting in the authorities’ continuing failure to conduct adequate investigations into offences committed by representatives of the federal forces in Chechnya rendered any potentially effective remedies inadequate and illusory in their case. In this connection they relied on applications submitted to the Court by other individuals claiming to be victims of similar violations, documents from human rights NGOs and media reports. The applicants also referred to the general disruption in the functioning of the judicial system in Chechnya during the period of hostilities. With regard to the copies of the court decisions produced by the Government in support of their assertion as to the existence of effective remedies in Russia (see paragraph 77 above), the applicants contended that the decisions given in civil cases were irrelevant, as, according to the Court’s well-established practice, alleged violations of Article 2 and 3 of the Convention could not be remedied merely by an award of damages to the relatives of the victims in civil proceedings. In so far as the Government relied on judgments given in criminal cases, the applicants submitted that they were irrelevant, since in the applicants’ case the investigation had not led to the identification and punishment of those responsible.

135. In the Government’s submission, the applicants had had effective remedies at their disposal as required by Article 13 of the Convention, and the authorities had not prevented them from using those remedies. In particular, the authorities had opened a criminal investigation on the date on which the applicants’ relatives had been killed, and in the context of that investigation the applicants had had an opportunity to appeal against the actions or omissions of the investigating authorities before military prosecutors at various levels or before the Prosecutor General’s Office, and also before the different instances of the military courts and the Supreme Court of Russia. The Government insisted that the applicants had been “regularly informed of the developments in the investigation and the decisions taken” in the context of the criminal proceedings. They also stated that the applicants would be able to gain access to the case file as soon as

the investigation was completed and the case was referred to a court for trial. The Government corroborated their submissions regarding the existence of effective domestic remedies in Russia with copies of domestic court decisions taken in unrelated sets of civil or criminal proceedings.

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

137. 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 *Khatsiyeva and Others*, cited above, § 162, and the authorities cited therein). The Court further reiterates that the requirements of Article 13 are broader than a Contracting State’s obligation under Article 2 to conduct an effective investigation (see *Orhan v. Turkey*, no. 25656/94, § 384, 18 June 2002).

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

139. It follows that in circumstances where, as in the present case, the criminal investigation into the deaths was ineffective (see paragraph 117 above) 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 (see, among other authorities, *Khatsiyeva and Others*, cited above, §164).

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

141. As regards the applicants' reference to Article 13 in connection with Articles 3 and 5 of the Convention, the Court recalls its above findings that there has been no violation of the applicants' rights secured by Articles 3 and 5 of the Convention. In the absence of an "arguable claim" of a violation of substantive Convention provisions, the Court finds that there has been no violation of Article 13 in this respect either.

## VI. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

142. The applicants complained under Article 14 in conjunction with Articles 2 and 3 of the Convention that the aforementioned violation of their rights occurred because of their Chechen ethnic origin and residence in Chechnya. The respective Article reads as follows:

"The enjoyment of the right and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

143. The applicants maintained their complaint, whereas the Government contended that the applicants had never been discriminated against in the enjoyment of their Convention rights on any ground.

144. The Court observes that no evidence has been submitted that the applicants were treated differently from persons in an analogous situation without objective and reasonable justification, or that they have ever raised this complaint before the domestic authorities. It thus finds that this complaint has not been substantiated (see, for example, *Musikhanova and Others v. Russia* (dec.), no. 27243/03, 10 July 2007).

145. Accordingly, there has been no violation of Article 14 of the Convention.

## VII. COMPLIANCE WITH ARTICLE 38 § 1 (a) OF THE CONVENTION

146. The applicants complained that the Government's refusal to submit a copy of the file of the investigation into their relatives' murder as requested by the Court at the communication stage and after the decision on admissibility was in breach of the State's obligations under Article 38 § 1 (a) of the Convention. The relevant parts of this Article provide:

"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;

..."

147. The Government argued that they had complied with their obligations under Article 38 § 1 (a), as they had provided detailed information on the investigative measures taken in the case. The Government reiterated that the submission of the entire case file would be contrary to Article 161 of the Russian Code of Criminal Procedure. They also submitted that they had taken into account the possibility to request confidentiality under Rule 33 of the Rules of Court, but noted that the Court provided no guarantees that once in receipt of the investigation file, the applicants or their representatives would not disclose these materials to the public. According to the Government, in the absence of any sanctions in respect of the applicants for a disclosure of confidential information and materials, there were no guarantees of compliance by the applicants with the Convention and the Rules of Court.

148. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications (see *Tanrıkulu*, cited above, § 70). This obligation requires the Contracting States to furnish all necessary facilities to the Court, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of applications. Failure on a Government's part to submit such information which is in their hands, without a satisfactory explanation, may not only give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a) of the Convention (see *Timurtaş v. Turkey*, no. 3531/94, § 66, ECHR 2000-VI). In a case where the application raises issues of the effectiveness of an investigation, the documents of the criminal investigation are fundamental to the establishment of facts and their absence may prejudice the Court's proper examination of the complaint both at the admissibility stage and at the merits stage (see *Tanrıkulu*, cited above, § 70).

149. The Court observes that it has on several occasions requested the Government to submit a copy of the file on the investigation opened in connection with the deaths of the applicants' relatives. The evidence contained in that file was regarded by the Court as crucial to the establishment of the facts in the present case. In reply, the Government only produced a copy of a report which listed investigative actions allegedly taken in the case without providing any details regarding those actions (see paragraph 60 above). Relying on Article 161 of the Russian Code of Criminal Procedure, the Government refused to submit any documents from the criminal investigation file.

150. The Court further notes that the Government did not request the application of Rule 33 § 2 of the Rules of Court, which permits a restriction

on the principle of the public character of the documents deposited with the Court for legitimate purposes, such as the protection of national security and the private life of the parties, and the interests of justice. The Court further notes that the provisions of Article 161 of the Code of Criminal Procedure, to which the Government referred, do not preclude the disclosure of documents from the file of an ongoing investigation, but rather set out the procedure for and limits to such disclosure. The Court also notes that in a number of comparable cases that have been reviewed by the Court, the Government submitted documents from the investigation files without reference to Article 161 (see, for example, *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 46, 24 February 2005, or *Magomadov and Magomadov v. Russia*, no. 68004/01, §§ 36 and 82, 12 July 2007), or agreed to produce documents from the investigation files even though they initially invoked Article 161 (see *Khatsiyeva and Others*, cited above, §§ 62-63). For these reasons, the Court considers the Government's explanations concerning the disclosure of the case file insufficient to justify withholding the key information requested by the Court.

151. Having regard to the importance of cooperation by the respondent Government in Convention proceedings and the difficulties associated with the establishment of the facts in cases such as the present one, the Court finds that the Russian Government fell short of their obligations under Article 38 § 1 (a) of the Convention on account of their failure to submit copies of the documents requested in respect of the killing of the applicants' relatives.

## VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

152. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

### A. Damage

#### 1. *Pecuniary damage*

153. The first applicant claimed 7,100 United States dollars (USD) for his family's car, VAZ 2121 “Niva”, which was destroyed during the incident of 27 October 2001. The seventh and eighth applicants, Zalina Mezhidova's minor children, sought compensation in the amount of 184,636.04 Russian roubles (“RUB”, approximately 5,000 euros, “EUR”)

and RUB 162,231.39 (approximately EUR 4,500) in respect of the loss of the financial support their mother would have provided them with until they came of age. In the applicants' submission, they and their deceased relatives rented a plot of land for farming purposes and sold the harvest at the market. The applicants submitted that they were unable to provide any document concerning Zalina Mezhidova's exact earnings at the material time, but stated that in any event those had been no less than the allowance of an unemployed person having the same qualifications. 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 ("the Ogden tables"), with reference to the absence of any equivalent methods of calculation in Russia.

154. The Government disputed the applicants' claims under this head as unsubstantiated, speculative and based on suppositions.

155. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention (see, among other authorities, *Çakıcı v. Turkey* [GC], no. 23657/94, § 127, ECHR 1999-IV). It notes that there is no such link between the violations found and the pecuniary damage sought by the first applicant. It therefore rejects this claim. As regards the claim submitted by the seventh and eighth applicants, the Court finds that there is indeed a direct causal link between the violation of Article 2 in respect of their mother and the loss by the seventh and eighth applicants of the financial support which she could have provided for them. The Court further finds that the loss of earnings applies to dependants and considers it reasonable to assume that Zalina Mezhidova would have had some earnings and that the seventh and eighth applicants would have benefited from these. Having regard to the applicants' submissions, the Court does not consider the amounts sought by the seventh and eighth applicants excessive. It therefore awards EUR 5,000 to the seventh applicant and EUR 4,500 to the eighth applicant under this head, plus any tax that may be chargeable on these amounts.

## *2. Non-pecuniary damage*

156. As regards non-pecuniary damage, the applicants claimed that they had suffered severe emotional distress, anxiety and trauma as a result of the killing of their two close relatives and on account of the indifference demonstrated by the Russian authorities during the investigation into these events. The applicants sought the overall amount of EUR 145,000, which comprised the following claims:

- (i) the first applicant claimed EUR 5,000 in respect of non-pecuniary damage caused by the loss of his grandson and daughter-in-law;
- (ii) the second and third applicants each claimed EUR 10,000 in respect of non-pecuniary damage sustained as a result of the loss of their daughter;

(iii) the fourth and fifth applicant each claimed EUR 25,000 in respect of non-pecuniary damage caused by the loss of their only son;

(iv) the sixth applicant claimed EUR 20,000 in respect of non-pecuniary damage caused by the loss of his wife;

(v) the seventh and eighth applicants each claimed EUR 25,000 in respect of non-pecuniary damage sustained as a result of the loss of their mother.

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

158. The Court observes that it has found a violation of Articles 2 and 13 of the Convention on account of the killing of the applicants' relatives, ineffective investigation into the matter and the absence of effective remedies to secure domestic redress for those violations. The Court has also found a violation of Article 38 § 1 (a) of the Convention on account of the Government's failure to submit the materials requested by the Court. The applicants must have suffered anguish and distress as a result of all these circumstances, which cannot be compensated by a mere finding of a violation. Having regard to these considerations, the Court awards, on an equitable basis, EUR 5,000 to the first applicant, EUR 20,000 to the second and third applicants jointly, EUR 40,000 to the fourth and fifth applicants jointly, and EUR 45,000 to the sixth, seventh and eighth applicants jointly, plus any tax that may be chargeable on these amounts.

## **B. Costs and expenses**

159. The applicants were represented by lawyers from the SRJI. They submitted a schedule of costs and expenses that included research and interviews in Ingushetia and Moscow, at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic authorities, at a rate of EUR 50 per hour for the SRJI lawyers and EUR 150 per hour for the SRJI senior staff. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 10,201.98, comprising EUR 7,950 for 63 hours spent by the SRJI staff on preparing and representing the applicants' case, EUR 968 for translation expenses, EUR 616.56 for international courier post to the Court and EUR 667.42 for administrative costs (7% of legal fees).

160. The Government did not dispute the details of the calculations submitted by the applicants, but contested the applicants' claims in their entirety as excessive, stating that the SRJI was a non-profit NGO and should have provided assistance to the applicants free of charge. They also stated that part of the applicants' claims in respect of costs and expenses was not confirmed with any documents.

161. The Court observes that in March 2002 the applicants gave the SRJI authority to represent their interests in the proceedings before the European Court of Human Rights. The SRJI acted as the applicants' representative throughout the proceedings. The applicants also submitted documents in support of their claims for translation and postal expenses. Having regard to these documents and the rates for the work of the SRJI lawyers and senior staff, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representatives.

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

163. In these circumstances, having regard to the details of the claims submitted by the applicants, the Court awards them the reduced amount of EUR 8,000, less the EUR 850 already received by way of legal aid from the Council of Europe, together with any tax that may be chargeable to the applicants. The amount awarded shall be payable to the representative organisation directly.

### **C. Default interest**

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

## **FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 2 of the Convention as regards the deaths of Amkhad Gekhayev and Zalina Mezhidova;
3. *Holds* that there has been a violation of Article 2 of the Convention on account of the authorities' failure to carry out an adequate and effective investigation into the circumstances surrounding the deaths of Amkhad Gekhayev and Zalina Mezhidova;
4. *Holds* that it is not necessary to examine the applicants' complaint under Article 3 of the Convention concerning the alleged ill-treatment of Amkhad Gekhayev and Zalina Mezhidova;



5. *Holds* that there has been no violation of Article 3 of the Convention as regards the alleged mental suffering of the applicants;
6. *Holds* that there has been no violation of Article 5 of the Convention;
7. *Holds* that there has been a violation of Article 13, taken in conjunction with Article 2 of the Convention;
8. *Holds* that there has been no violation of Article 13, taken in conjunction with Articles 3 and 5 of the Convention;
9. *Holds* that there has been no violation of Article 14 of the Convention;
10. *Holds* that there has been a failure to comply with Article 38 § 1 (a) of the Convention in that the Government refused to submit the documents requested by the Court;
11. *Holds*
  - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, all of which, save for those payable into the bank in the Netherlands, are to be converted into Russian roubles at the rate applicable at the date of settlement:
    - (i) EUR 5,000 (five thousand euros) to the seventh applicant and EUR 4,500 (four thousand five hundred euros) to the eighth applicant in respect of pecuniary damage;
    - (ii) EUR 5,000 (five thousand euros) to the first applicant, EUR 20,000 (twenty thousand euros) to the second and third applicants jointly, EUR 40,000 (forty thousand euros) to the fourth and fifth applicants jointly, and EUR 45,000 (forty-five thousand euros) to the sixth, seventh and eighth applicants jointly in respect of non-pecuniary damage;
    - (iii) EUR 7,150 (seven thousand one hundred and fifty euros) in respect of costs and expenses, to be paid in euros into the bank account in the Netherlands indicated by the applicants' representative;
    - (iv) any tax, including value-added tax, that may be chargeable to the applicants on the above amounts;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount[s] at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 14 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Christos Rozakis  
President

**ANNEX****List of the Applicants**

1. Mr Abzat (also spelled as Abzot) Abzuyevich<sup>1</sup> Akhmadov, born in 1943
2. Ms Marzhan Abdulayevna Mezhidova, born in 1947
3. Mr Amkhad Akhmedovich Mezhidov, born in 1949
4. Mr Vakha-Khazha Abubakarovich Gekhayev, born in 1963
5. Ms Ayna Abzatovna<sup>2</sup> Gekhayeva, born in 1968
6. Mr Makhmud Abzatovich<sup>3</sup> Akhmadov, born in 1978
7. Mr Magamed-Ali Makhmudovich Akhmadov, born in 1999
8. Ms Iman Makhmudovna<sup>4</sup> Akhmadova, born in 2001

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1. Rectified on 3 June 2009: the patronymic of the applicant was changed from “Abzotovich” to “Abzuyevich”.

2. Rectified on 3 June 2009: the patronymic of the applicant was changed from “Abzotovna” to “Abzatovna”.

3. Rectified on 3 June 2009: the patronymic of the applicant was changed from “Abzotovich” to “Abzatovich”.

4. Rectified on 8 June 2010: the patronymic of the applicant was changed from “Magomedovna” to “Makhmudovna”.