



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

FIRST SECTION

CASE OF GANDALOYEVA v. RUSSIA

(Application no. 14800/04)

JUDGMENT

STRASBOURG

4 December 2008

FINAL

06/07/2009

This judgment may be subject to editorial revision.

In the case of Gandaloyeva v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 13 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 14800/04) 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 a Russian national, Mrs Lyuba Gandaloyeva (“the applicant”), on 10 March 2004.

2. The applicant, who had been granted legal aid, was represented by Mr D. Itsleyev, a lawyer practising in Nazran, the Republic of Ingushetia, Russia. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, the former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that her husband had been killed by Russian military servicemen, that domestic authorities had failed to conduct an effective investigation into the crime and that no effective domestic remedies were available to her in respect of these violations of the Convention.

4. On 1 September 2005 the Court decided to apply Rule 41 of the Rules of Court.

5. On 9 May 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1942 and lives in Achkhoy-Martan, Chechnya.

7. The applicant was married to Mr Alaudin Ayubovich Gandaloyev, born in 1938. They had two sons, Emir and Muslim Gandaloyev. Alaudin Gandaloyev worked as a forester in the Achkhoy-Martan district and had never been suspected of participation in illegal armed groups.

A. Killing of the applicant's husband

1. The applicant's account

8. In the morning of 17 September 2003 Emir Gandaloyev drove his father to the forest in his GAZ-2401 (*Volga*) car. At about 9.30 a.m. they arrived at their destination point near the village of Yandi (formerly called Orekhovo), in the Achkhoy-Martan district of Chechnya. There they met Alaudin Gandaloyev's colleague, Mr Viskha Badayev. The foresters had been working in this part of the forest assigning directions for lorries carrying firewood since the beginning of September 2003.

9. At about 9.45 a.m. three armed men wearing camouflage uniforms came out from the woods and, in unaccented Russian, ordered the Gandaloyevs and Viskha Badayev to produce their identity papers. Emir Gandaloyev reached for his wallet that he had left in the car and heard a machine-gun burst. Then he felt a gun barrel pressed against his neck. One of the armed men ordered him in Russian to prostrate himself. After that Emir Gandaloyev heard another machine-gun burst and four or five single gunshots. He looked under the car and saw his father's arm prostrated. He concluded that Alaudin Gandaloyev and Viskha Badayev had also been forced to the ground.

10. At that moment Emir Gandaloyev heard one of the armed men telling the others: "This is the driver". The men threw the papers on the ground and left in silence. Emir Gandaloyev rose and saw his father and Viskha Badayev lying on the ground. The two foresters were covered with blood, their identity documents were scattered around. Emir Gandaloyev put his father's body into the car and drove away.

11. Having driven for some time, he saw some Chechen police officers and told them what had happened. The policemen then reported the incident to the Achkhoy-Martan inter-district prosecutor's office ("the inter-district prosecutor's office").

12. Later the same day a doctor of the Achkhoy-Martan central district hospital examined Alaudin Gandaloyev's body. According to the certificate issued by the doctor on 22 October 2003, there were a large open gunshot wound in the front temporal area of the skull and numerous closed gunshot wounds in the body and its extremities. The certificate stated that the death of Alaudin Gandaloyev had been caused by those wounds.

13. On 29 September 2003 the Civil Registry Office of the Achkhoy-Martan district issued a death certificate to the effect that Alaudin Gandaloyev had died on 17 September 2003 in the village of Yandi of the Achkhoy-Martan district.

14. In support of her account of the events the applicant submitted copies of the following documents: witness statement of Emir Gandaloyev, two statements concerning Alaudin Gandaloyev's employment record and his salary, Alaudin Gandaloyev's death certificate, a medical statement describing Alaudin Gandaloyev's wounds, a character reference for Alaudin Gandaloyev and the newspaper article concerning the killing of Alaudin Gandaloyev and Viskha Badayev (see below).

2. Information submitted by the Government

15. The Government submitted that "at about 10 o'clock on 17 September 2003 two corpses of employees of the Achkhoy-Martan forestry agency, Mr V. Kh. Badayev and Mr A. A. Gandaloyev, were discovered on the outskirts of the village of Gekhi [the name of the village was stated incorrectly] in the Achkhoy-Martan district of Chechnya. Both corpses had gunshot wounds as the signs of a violent death. It was established that this crime had been committed by three unidentified armed men in camouflage uniform and masks. The three men had emerged from the woods and approached A. Gandaloyev and V. Badayev, who were on duty patrolling the forest. The armed men had asked the foresters to produce their identity papers. After that they had fired several shots from a close distance, lethally wounding the foresters and had then disappeared into the woods."

3. Media coverage of the killing of the applicant's husband and his colleague

(a) The applicant's submission

16. Between 17 and 19 September 2003 the radio station "Chechnya Svobodnaya" (*Чечня Свободная*) broadcast an announcement concerning "the elimination of two rebel fighters, Viskha Badayev and Alaudin Gandaloyev".

17. On 24 September 2003 a local newspaper "Stolitsa Plus" (*Столица плюс*) published an information note from the Regional Executive

Headquarters for Coordination of the Counter-Terrorist Operation in the Northern Caucasus (“the Headquarters”) based on the latter’s daily field report. One of the paragraphs read as follows:

“...Federal forces and law-enforcement agencies continue undertaking measures aiming at providing safety to residents of the Republic, suppression of criminal activities of illegal armed groups and those who assist them.

Machine-gun fire was opened from the woods at a unit of federal forces not far from the junction of the roads leading to the villages of Orekhovo and Stariy Achkhoy in the Achkhoy-Martan district. As a result of the return fire two rebel fighters were eliminated; their corpses were found during mopping-up of the outskirts of the forest. It was established that those eliminated had been active members of illegal armed groups: Badayev Viskha, born in 1958, and Gandaloyev Alaudin. The following items were seized at the scene: AK-74 5.45 machine-guns – 2 items, magazines for AK-74 – 4 items, F-1 [grenades] – 8 items, 5.45 cartridges – 275 items. The corpses were handed over for burial to residents of the Stariy Achkhoy village.”

(b) Information submitted by the Government

18. The Government referred to the witness statement of the head of the Headquarters, officer Sh. According to the officer, information concerning the killing of the two “rebel fighters” on 17 September 2003 had been received from a field report on the activities of the United Group Alignment (Forces) of the Russian military forces in the Northern Caucasus for 17-18 September 2003.

B. Official investigation into the murder of Alaudin Gandaloyev

1. The applicant’s account

19. On 17 September 2003 the inter-district prosecutor’s office instituted an investigation into the murder of Alaudin Gandaloyev and Viskha Badayev under Article 105 § 2 of the Russian Criminal Code (aggravated murder). The case file was given number 44073.

20. On 2 October 2003 the applicant’s other son, Muslim Gandaloyev, requested the inter-district prosecutor’s office to take the following investigative measures: to seize from the radio station a record of the announcement of Alaudin Gandaloyev’s killing; to demand that the Headquarters disclose their sources of information disseminated in the information note and prosecute those responsible for the defamation; to establish which unit of federal troops had killed the two “rebel fighters” and interrogate certain persons, including the forestry employees, as witnesses. He also requested the investigators to find the weapons and the ammunition allegedly seized at the crime scene and have them evaluated by an expert.

21. On 5 October 2003 Muslim Gandaloyev complained to the Chechnya prosecutor’s office about the defamation of his father and

requested that the Headquarters' information not be refuted, those responsible for its dissemination be identified and prosecuted, the machine-guns allegedly seized at the crime scene be found and their evaluation be carried out by an expert. He also requested the prosecutor's office to establish which federal military unit had been involved in the incident.

22. On 17 October 2003 the Chechnya prosecutor's office forwarded Muslim Gandaloyev's letter to the inter-district prosecutor's office ordering that it be included in the investigation file in criminal case no. 44073 and that the facts complained of be verified.

23. On 24 October 2003 the inter-district prosecutor's office granted the applicant the status of victim in criminal case no. 44073.

24. On 28 October 2003 the inter-district prosecutor's office informed Muslim Gandaloyev that an investigation into the murder of Alaudin Gandaloyev and Viskha Badayev by "three unidentified armed men wearing camouflage uniforms and masks" had been opened and that a number of investigative measures had been taken. In particular, they mentioned that requests had been sent to branches of the Russian Ministry of the Interior, the Federal Security Service (the FSB) and the military prosecutor's office "with a view to obtaining information concerning the perpetrators of the murders of Gandaloyev and Badayev".

25. On 29 October 2003 the investigation in criminal case no. 44073 was transferred to the military prosecutor's office of military unit no. 20102 ("the unit military prosecutor's office") in Khankala, where it was given number 34/33/0625-03. The applicant was not informed about this decision.

26. On 15 January 2004 the applicant requested the inter-district prosecutor's office to admit her to the criminal proceedings as a civil party and grant her permission to access the investigation file in criminal case no. 44073.

27. On 4 February 2004 the inter-district prosecutor's office replied to the applicant stating that the investigation into her husband's murder had established the involvement of military servicemen in the crime. Therefore, on 29 October 2003 the investigation in criminal case no. 44073 had been transferred to the unit military prosecutor's office.

28. On 18 February 2004 the applicant wrote to the unit military prosecutor's office requesting that she be admitted to the criminal proceedings as a civil party and be informed of the progress in the investigation into her husband's murder.

29. On 30 March 2004 the unit military prosecutor's office examined the applicant's request and granted it in part. The decision refused to admit the applicant to the proceedings as a civil party for the reason that she had failed to submit the necessary documents; at the same time the decision did not specify in which part the applicant's request had been granted. On the same date the prosecutor's office informed the applicant about its decision and

noted that investigative measures were being taken to solve the crime in criminal case no. 34/33/0625-03.

30. On 22 April 2004 the unit military prosecutor's office transferred the investigation into the murder of A. Gandaloyev and V. Badayev back to the inter-district prosecutor's office. The applicant was not informed of this decision.

31. On 17 May 2004 the inter-district prosecutor's office suspended the investigation in case no. 44073 owing to the failure to identify the perpetrators. On 18 May 2004 they informed the applicant about the decision and noted that notwithstanding the suspension of the investigation, measures were being taken to solve the crime.

32. On 8 June 2004 the inter-district prosecutor's office resumed the investigation in criminal case no. 44073; on 18 June 2004 it informed the applicant of this decision.

33. On 8 July 2004 the inter-district prosecutor's office suspended the investigation in criminal case no. 44073 owing to the failure to identify the perpetrators and informed the applicant of the decision. It also noted that investigative measures were being taken to solve the crime.

34. On 5 August 2004 the applicant complained to the inter-district prosecutor's office about the lack of information concerning the investigation in criminal case no. 44073 and requested to be provided with access to the investigation file. She stated that the absence of information about the investigation precluded her from appealing against the actions of the investigative authorities. In her letter the applicant also questioned the effectiveness of the criminal investigation by pointing out the excessive length of the investigation and the transfer of the criminal case file from the military prosecutor's office back to the inter-district prosecutor's office in spite of the involvement of representatives of federal forces in her husband's murder.

35. On 13 August 2004 the inter-district prosecutor's office informed the applicant that she was not allowed to access the case file prior to completion of the investigation into her husband's murder.

36. On 23 November 2004 the inter-district prosecutor's office resumed the investigation in criminal case no. 44073. It is unclear what investigative measures were taken in the investigation after the last reopening of the criminal proceedings.

37. In December 2007 the applicant was informed about the suspension of the criminal investigation into her husband's murder owing to the failure to identify the perpetrators. According to the applicant she has not received any information about the investigation in criminal case no. 44073 ever since.

(a) Court proceedings against the investigators

38. On 20 August 2004 the applicant complained about the investigators' actions to the Achkhoy-Martan District Court of Chechnya ("the District Court") and requested that the decisions to suspend the investigation in case no. 44073 and dismiss her request for access to the case file be found unlawful, that the inter-district prosecutor's office be obliged to resume the investigation into her husband's murder and that she be provided with access to the investigation file.

39. On 24 November 2004 the District Court rejected the applicant's complaint. It stated that the refusal to provide the applicant with access to the case file had not been unlawful since under domestic law the victim of a crime had no right of access to the case file prior to the completion of the criminal investigation, and the investigation into the murder of Alaudin Gandaloyev was still in progress. As to the reopening of the investigation, the court stated that taking into consideration that on 23 November 2003 the inter-district prosecutor's office had reopened the criminal proceedings, the applicant could participate in the investigation by lodging requests aimed at improving the effectiveness of the investigation and the taking of additional investigative steps. The court's decision also stated as follows:

"...The interim prosecutor of the Achkhoy-Martan inter-district prosecutor's office submitted at the hearing that...the investigation in the criminal case had collected sufficient information about the involvement of military servicemen in the crime; in this connection the investigation had been transferred to the military prosecutor's office in accordance with the rules of jurisdiction. ...on 22 April 2004 the case had been returned [by the military prosecutor's office] to the Achkhoy-Martan inter-district prosecutor's office. The Achkhoy-Martan inter-district prosecutor's office undertook all possible measures to carry out an objective and thorough investigation and solve the crime. However, as it is necessary for the investigation to verify the main theory about the involvement of military servicemen [in the crime], further investigation in the criminal case is possible only by the military prosecutor's office. He [the prosecutor] believes that the applicant should not have complained to the court about the Achkhoy-Martan inter-district prosecutor's office as the latter had undertaken all investigative measures prescribed by law and had obtained sufficient information about the involvement of the military servicemen [in the crime]....in accordance with the Code of Criminal Procedure the criminal case had been transferred to the military prosecutor's office, but the latter had returned it...

... On 22 April 2004 criminal case no.44073 was returned by the military prosecutor's office to the Achkhoy-Martan inter-district prosecutor's office, where after a number of investigative steps, the investigation was suspended...owing to the failure to identify the perpetrators..."

2. Information submitted by the Government

40. The Government submitted additional information about the investigation into the murder of Alaudin Gandaloyev. However, they did not submit to the Court the witness statements, forensic and ballistic reports

or a number of other documents to which they referred in their submission. The list of documents submitted by the Government is provided below (see paragraph 72 below).

41. On 17 September 2003 the inter-district prosecutor's office opened a criminal investigation into the murder of A. Gandaloyev and V. Badayev under Article 105 § 2 of the Code of Criminal Procedure (aggravated murder); relatives of the victims of the crime were informed about the decision on the same date.

42. On 17 September 2003 an investigator, K., conducted the crime scene examination and the examination of the corpses. As a result, two bullets and six bullet casings were collected and included as evidence in the investigation file.

43. On 22 September 2003 the investigators questioned an employee of the Achkhoy-Martan forestry agency, Mr S.M., who stated that in May 2003 a note with threats had been found in the agency's building.

44. On 22 September 2003 the investigators questioned another employee of the Achkhoy-Martan forestry agency, Mr M. D., who stated that in the middle of May 2003 he had found a dead rabbit next to the agency's building and a note on the door containing threats against the agency's employees and demands not to patrol the forest. The note was handed over to the agency's administration.

45. On 22 September 2003 the investigation collected the threat note. According to the Government, its relevant part stated "...Gandaloyev... if we see you and your people once again ... you will not return from there"; the note was included in the investigation file.

46. On 24 September 2003 the local newspaper "Stolitsa Plus" published the Headquarters' information report concerning the killing of two active members of illegal armed groups, Alaudin Gandaloyev and Viskha Badayev, who had supposedly opened fire on a unit of federal forces, and the seizure of weapons and ammunition from the crime scene. According to the Government, this publication provided the investigation with grounds to suspect that federal servicemen could have been involved in the murder of A. Gandaloyev and V. Badayev.

47. On 29 September 2003 the investigation questioned witness Emir Gandaloyev who stated that his father A. Gandaloyev had worked as a forester for 40 years. At about 8 a.m. on 17 September 2003 he and his father had driven in a GAZ-2401 (*Volga*) car to the outskirts of the Yandi village where his father had been working with his colleague V. Badayev. The two colleagues were talking when three masked men in camouflage uniforms armed with machine-guns appeared from the woods and requested identity papers. Alaudin Gandaloyev showed them his forester's identity document. Emir Gandaloyev was going to get his identity documents from the car when he heard a series of shots from a machine-gun and was ordered to lie on the ground. One of the men pressed a machine-gun against his

head. After that the witness heard more shots. Immediately after the three men left, Emir Gandaloyev found his father dead with numerous gunshot wounds; V. Badayev was also dead. At a crossroads next to Achkhoy-Martan the witness met police officers and told them about the events. The Government did not submit a copy of the witness statement.

48. On 24 October 2003 the applicant was granted the status of victim in criminal case no. 44073.

49. On 29 October 2003 the investigation was transferred from the inter-district prosecutor's office to the unit military prosecutor's office where the case file was attributed the number 34/33-0625-03.

50. The Government submitted that on an unspecified date the deputy head of the Temporary Operational Troops of the Ministry of the Interior in the Northern Caucasus ("the Operational Troops") (the Government did not provide any information concerning the officer's identity or service rank) had provided the investigation with an information statement to the effect that the newspaper's information about the killing of the two rebel fighters A. Gandaloyev and V. Badayev had been based on a field report of federal forces and law-enforcement agencies. According to the Government, this document had stated that A. Gandaloyev and V. Badayev had opened fire at a group of officers from the Achkhoy-Martan district department of the interior (the Achkhoy-Martan ROVD), the district military commander's office and the OMON (the special task force unit) from the Tver region; that the corpses of the two men had been discovered at the scene, that there had been information concerning their involvement in the activities of illegal armed groups and that an AKM machine-gun had been seized from the scene of the shooting.

51. On 18 February 2004 the unit military prosecutor's office questioned Mr K., an officer of the Chechnya Forensics Expertise Centre who stated that he had participated in the examination of the scene of the murder of A. Gandaloyev and V. Badayev and that the only items collected from the crime scene had been bullets and bullet casings.

52. On an unspecified date prior to March 2004 the investigators conducted a forensic evaluation of Alaudin Gandaloyev's body, which established numerous penetrating gunshot wounds to his head, chest and stomach.

53. On 10 March 2004 the military prosecutor's office of the United Group Alignment extended the time-limit for the investigation in criminal case no. 34/33/0625-03. The document stated that the following measures had been taken in the investigation into the murder of A. Gandaloyev and V. Badayev:

“- examination of the corpses of A. Gandaloyev and V. Badayev;

- crime scene examination;

- five ballistic evaluations;
- examined and added to the investigation file evidence relevant to the case;
- the following twelve persons questioned as witnesses...
- two forensic examinations of the corpses of A. Gandaloyev and V. Badayev;
- Kh. Badayev and L. Gandaloyeva were granted the status of victim in the criminal case and questioned;
- character references were collected for A. Gandaloyev and V. Badayev;
- examples of cartridges used by military unit no. 6844 were obtained;
- responses to information requests received [from law-enforcement agencies];
- the decision was taken to conduct an expert criminal-science evaluation;”

It also stated that it was necessary to conduct the following actions:

- “- identify persons involved in the killing of A. Gandaloyev and V. Badayev;
- obtain results of the expert criminal-science evaluation;
- conduct other investigative actions aimed at completion of the criminal investigation...”

54. On 23 March 2004 the unit military prosecutor’s office questioned the head of the Headquarters, officer Sh. According to his account, he had prepared the daily information notes based on the information provided by local law-enforcement agencies and other power structures. He stated that there had been a record in a registration log concerning the discovery of the corpses of A. Gandaloyev and V. Badayev, but no record about their killing as a result of a shooting.

55. On 23 March 2004 the unit military prosecutor’s office questioned the head of a military unit, officer I., who had submitted that on 17 September 2003 his military unit had not conducted special operations in the Achkhoy-Martan district.

56. On an unspecified date the head of the Headquarters of the Northern Caucasus Military Circuit provided an information statement to the effect that servicemen of the Ministry of Defence had not conducted special operations in the Achkhoy-Martan district of Chechnya on 17 September 2003.

57. On 9 April 2004 the unit military prosecutor’s office again questioned the head of the Headquarters, officer Sh. He stated that the information note about the killing on 17 September 2003 of the two rebel fighters had been based on the field report by the Temporary Operational

Troops of the Ministry of the Interior in the Northern Caucasus concerning their activities on 17-18 September 2003.

58. On the same date the unit military prosecutor's office refused to initiate criminal proceedings against the head of the Headquarters, officer Sh., under Article 129 of the Criminal Code (slander), owing to the lack of *corpus delicti*. The applicant's family was informed of this on the same date.

59. On 22 April 2004 the investigation into the murder of A. Gandaloyev and V. Badayev was transferred from the unit military prosecutor's office back to the inter-district prosecutor's office as the theory of the involvement of federal servicemen in the crime had not been confirmed by the investigation.

60. On 27 April 2004 the inter-district prosecutor's office questioned officer V., a senior investigator of the Sunzhenskiy district department of the interior (the Sunzhenskiy ROVD). He stated that at about 10 a.m. on 17 September 2003 their police station had received information about the discovery of the corpses of A. Gandaloyev and V. Badayev. Upon arriving at the crime scene, he had found the corpse of V. Badayev; the corpse of A. Gandaloyev had been taken away by E. Gandaloyev, who had witnessed the murder. Nothing other than bullets and bullet casings had been collected at the crime scene.

61. On 30 April 2004 the inter-district prosecutor's office questioned an employee of the forestry agency, Mrs L.D., who stated that she had found out about the murder of her colleagues A. Gandaloyev and V. Badayev from fellow villagers. She had no information as to who could have committed the crime. Four other employees of the forestry agency, Mrs R.B., Mr M.D., Mr A. Kh. and Mr T.U. provided the investigation with similar statements.

62. On 17 May 2004 the inter-district prosecutor's office suspended the investigation owing to the failure to identify the perpetrators. On 18 May 2004 the applicant was informed of this.

63. On 8 June 2004 the inter-district prosecutor's office resumed the investigation and informed the applicant.

64. On 8 July 2004 the inter-district prosecutor's office suspended the investigation owing to the failure to identify the perpetrators. The applicant was informed of this decision on the same date.

65. On 9 May 2007 the present application was communicated to the Russian Government and a copy of the investigation file concerning the murder of the applicant's husband was requested.

66. On 7 August 2007 the inter-district prosecutor's office refused to submit the investigation file in criminal case no. 44073 to the European Court of Human Rights. The document referred to the information obtained from the Prosecutor General's office and stated that the investigation was still in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained

information of a military nature and personal data concerning witnesses or other participants in the criminal proceedings.

67. According to the Government, prior to September 2007 the investigators had conducted a number of ballistic evaluations of the bullets and bullet-casings collected at the scene of the murder. According to the Chechnya Expert Evaluations Department, these samples did not match the weapons from their database; the samples were transferred for further expert evaluation to the federal bullet and shell-casing repository. The expert evaluations also established that these bullets and bullet casings were not identical to the ones used by military unit no. 6844.

68. The Government submitted that neither the investigation in criminal case no. 44073 nor those of any law-enforcement agencies in Chechnya, including the Chechnya FSB and the Achkhoy-Martan ROVD, had obtained any information about the involvement of A. Gandaloyev and V. Badayev in the activities of illegal armed groups.

69. The Government stated that the investigation into the murder of A. Gandaloyev and V. Badayev had been verifying the theory of the involvement of members of illegal armed groups in the crime. Two facts supported this theory: firstly, members of illegal armed groups had threatened the foresters in May 2003; secondly, the two foresters had been shot when they produced their identity documents.

70. The Government further stated that the investigation had been suspended and resumed on a number of occasions. The last decision concerning the suspension of the criminal investigation, owing to the failure to identify the perpetrators, was taken on 30 November 2007, but the operational-search measures aimed at solving the crime were under way. The Government submitted that although these operational-search measures had failed to identify the perpetrators of the crime, the investigation had not obtained any proof of the involvement of State agents in Alaudin Gandaloyev's murder.

71. From the Government's submission it follows that on 1 February 2008 the inter-district prosecutor's office resumed the investigation in criminal case no. 44073.

72. The Government did not submit to the Court the documents to which they referred in their submission. Despite a specific request by the Court the Government did not disclose most of the contents of criminal case no. 44073, providing only copies of the following documents:

a) Decision concerning the opening of criminal case no. 44073, dated 17 September 2003;

b) One letter informing the applicant about the opening of the criminal case, dated 17 September 2003; one letter informing her about the reopening of the investigation, dated 8 June 2004, and two letters informing her about the suspension of the investigation in criminal case no. 44073, dated 18 May 2004 and 8 July 2004.

c) Decision to grant extension of the time limits for the investigation in criminal case no. 44073, dated 10 March 2004.

d) Three investigators' decisions to take up criminal case no. 44073;

e) Letter, dated 9 April 2004, informing the applicant about the refusal to initiate criminal proceedings against officer Sh. owing to the lack of *corpus delicti*;

f) Decision, dated 7 August 2007, concerning the refusal to submit the investigation file in criminal case no. 44073 to the Court.

The Government stated that the submission of further documents from the investigation file in criminal case no. 44073 would violate Article 161 of the Code of Criminal Procedure as they contained information relating to the addresses and personal data of participants in the criminal proceedings.

II. RELEVANT DOMESTIC LAW

73. Until 1 July 2002 criminal-law matters were governed by the 1960 Code of Criminal Procedure of the Russian Soviet Federalist Socialist Republic. From 1 July 2002 the old Code was replaced by the Code of Criminal Procedure of the Russian Federation (CCP).

74. Article 125 of the new CCP lays down a judicial procedure for the consideration of complaints. Orders of the investigator or prosecutor to refuse to institute criminal proceedings or to terminate a case, and other orders and acts or omissions which are liable to infringe the constitutional rights and freedoms of the parties to criminal proceedings or to impede citizens' access to justice may be appealed against to a local district court, which is empowered to review the lawfulness and grounds of the impugned decisions.

75. Article 161 of the new CCP prohibits the disclosure of information from the preliminary investigation file. Under part 3 of the Article, information from the investigation file may be divulged only with the permission of a prosecutor or investigator and only in so far as it does not infringe the rights and lawful interests of the parties to the criminal proceedings or prejudice the investigation. Divulging information about the private lives of parties to criminal proceedings without their permission is prohibited.

76. Article 151 of the Civil Code of the Russian Federation stipulates that if certain actions impairing an individual's personal non-property rights caused him or her non-pecuniary damage (physical or mental suffering) the court may impose on the perpetrator an obligation to pay pecuniary compensation for that damage.

THE LAW

I. THE GOVERNMENT'S OBJECTION ON GROUNDS OF FAILURE TO EXHAUST DOMESTIC REMEDIES

A. The parties' submissions

1. The Government

77. The Government requested the Court to declare the case inadmissible as the applicant had failed to exhaust domestic remedies. They submitted that the investigation into the circumstances of Alaudin Gandaloyev's murder was continuing and that an examination of the complaint by the Court would be premature. They further argued that it had been open to the applicant to challenge in court any actions and omissions of the investigating authorities under Article 125 of the CCP. They pointed out that she had failed to appeal against the District Court's decision of 24 November 2004 and that the absence of a favourable outcome for the applicant's complaint should not be equated with a lack of effective domestic remedies. The Government also contended that it had been open for the applicant to bring a civil claim for non-pecuniary damage pursuant to Article 151 of the Civil Code, but she had failed to do so.

2. The applicant

78. The applicant disagreed with the Government's objection. She stated that the criminal investigation into her husband's murder had proved to be ineffective. Referring to the other cases concerning such crimes reviewed by the Court, she alleged that the existence of an administrative practice of non-investigation of crimes committed by State servicemen in Chechnya rendered any potentially effective remedies inadequate and illusory in her case.

B. The Court's assessment

79. The Court will examine the arguments of the parties in the light of the provisions of the Convention and its relevant practice. It has already found in a number of similar cases that the Russian legal system provides, in principle, two avenues of recourse for the victims of illegal and criminal acts attributable to the State or its agents, namely civil and criminal remedies (see *Estamirov and Others v. Russia*, no. 60272/00, §§ 73-74, 12 October 2006).

80. As regards a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, this procedure alone 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 incapable, without the benefit of the conclusions of a criminal investigation, of making any meaningful findings regarding the identity of the perpetrators of fatal assaults, still less of establishing their responsibility (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005, and *Estamirov and Others*, cited above, § 77). In the light of the above, the Court confirms that the applicant was not obliged to pursue civil remedies. The Government's objection in this regard is thus dismissed.

81. As regards criminal-law remedies, the Court observes that the applicant complained to the law-enforcement agencies immediately after the murder of Alaudin Gandaloyev and that an investigation has been pending since 17 September 2003. The applicant and the Government disputed the effectiveness of this investigation.

82. The Court considers that the Government's objection raises issues concerning the effectiveness of the criminal investigation which are closely linked to the merits of the applicant's complaints. Thus, it considers that these matters fall to be examined below under the relevant substantive provisions of the Convention.

II. THE COURT'S ASSESSMENT OF THE EVIDENCE AND THE ESTABLISHMENT OF THE FACTS

A. The parties' submissions

1. The applicant

83. The applicant maintained that it was beyond reasonable doubt that the men who had killed Alaudin Gandaloyev and his colleague had been State agents. In support of her complaint she referred to the following facts.

84. At the material time the Achkhoy-Martan district had been under the total control of the federal forces. The applicant's husband had been killed on 17 September 2003 by armed men who spoke unaccented Russian and wore uniforms similar to those of Russian military servicemen. Between 17 and 19 September 2003 the local radio station had broadcasted news about the "elimination of two rebel fighters Viskha Badayev and Alaudin Gandaloyev" by federal forces. On 24 September 2003 the local newspaper had published an article entitled "Report of the Regional Executive Headquarters for Coordination of the Counter-Terrorist Operation in the Northern Caucasus" stating that two rebel fighters, Alaudin Gandaloyev and Viskha Badayev, had been killed by a unit of federal forces. The information about the killing of the two "rebel fighters" had been provided

to the newspaper by officer Sh., who had obtained it from the official report about the activities of local law-enforcement agencies on 17-18 September 2003. The investigation into the murder of Alaudin Gandaloyev had obtained information about the involvement of military servicemen in the crime and therefore in October 2003 the case had been transferred to the unit military prosecutor's office. In November 2004 the District Court had examined the investigation file in criminal case no. 44073 and confirmed in its decision that the inter-district prosecutor's office had obtained the information proving the involvement of military servicemen in the crime. The applicant further contended that the Government had failed to provide any plausible explanation to refute her allegations and that their failure to submit a copy of the investigation file to the Court proved the involvement of military servicemen in the murder of Alaudin Gandaloyev.

2. The Government

85. The Government submitted that on 17 September 2003 unidentified armed men in camouflage uniforms and masks had killed Alaudin Gandaloyev and his colleague. They contended that the investigation into the crime was pending, that there was no evidence that the men had been State agents and that therefore there were no grounds for holding the State liable for the alleged violation of the applicant's rights. They further argued that there was evidence that the applicant's husband might have been killed by members of illegal armed groups. In support of their position they referred to the following facts.

86. The investigation established that neither Alaudin Gandaloyev nor his colleague V. Badayev had been involved in the activities of illegal armed groups. The Russian Ministry of Defence had not issued any orders to carry out a special operation in the Achkhoy-Martan district on 17 September 2003. Alaudin Gandaloyev and his colleague had been killed by three unidentified armed men. The fact that these men had spoken unaccented Russian, had a Slavic appearance and were wearing camouflage uniforms did not mean that these men could not have been members of illegal armed groups. The two foresters had been killed upon producing their service identity documents. In May 2003 the staff members of the forestry agency had received the threat note and the dead rabbit from members of illegal armed groups threatening retaliation against the employees for their collaboration with the federal forces. The Government further contended that the information provided in the newspaper article about "the elimination of two fighters" had been inaccurate. They pointed out that the applicant's son, who had witnessed the crime, had taken his father's body away immediately after the shooting, leaving the body of his colleague behind, whereas the newspaper article had stated that corpses of "two fighters" had been found during the mopping-up of the forest. The Government further stated that the calibre of the bullets collected from the

crime scene had not matched the calibre of the bullets used by military unit no. 6844. The Government contended that for the above reasons the involvement of State agents in the killing of the applicant's husband had not been confirmed by the investigation.

B. The Court's assessment of the facts

87. The Court relies on a number of principles that have been developed in its case-law in connection with the task of establishing facts on which the parties disagree. As to the facts in dispute, the Court refers to its jurisprudence confirming the standard of proof "beyond reasonable doubt" in its assessment of evidence (see *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII (extracts)). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25).

88. The Court has long held that where the events in issue lie wholly, or to a large extent, within the exclusive knowledge of the authorities – as in the case of persons in custody under those authorities' control – strong presumptions of fact will arise in respect of injuries and deaths occurring during such detention. Thus, it has found that where an individual is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which an issue will arise under Article 3 of the Convention (see *Tomasi v. France*, 27 August 1992, §§ 108-111, Series A no. 241-A; *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336; and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V). Indeed, in such situations the burden of proof may be regarded as resting on the authorities (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

89. The Court has also considered it legitimate to draw a parallel between the situation of detainees, for whose well-being the State is held responsible, and the situation of persons found injured or dead in an area within the exclusive control of the authorities of the State. Such a parallel is based on the salient fact that in both situations the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities (see *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II).

90. The Court notes that despite its request for a copy of the investigation file concerning the murder of Alaudin Gandaloyev, the Government produced very few documents from that file. The Government referred to Article 161 of the CCP. The Court observes that in previous cases it has already found this explanation insufficient to justify the

withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-...).

91. In view of the foregoing, and bearing in mind the above-mentioned principles, the Court finds that it can draw inferences from the Government's conduct in respect of the well-foundedness of the applicant's allegations. The Court will thus examine the crucial elements in the present case that should be taken into account when deciding whether the death of the applicant's husband can be attributed to the authorities.

92. The Court notes that it is undisputed by the parties that Alaudin Gandaloyev and his colleague were shot on 17 September 2003. The applicant alleged that their murder had been committed by State agents. The Government denied any involvement of State agents in the crime and submitted that the murder had been committed by unknown perpetrators, presumably members of illegal armed groups. However, this allegation was not specific and they did not submit any material to support it. The Court has stressed in this regard that the evaluation of the evidence and the establishment of the facts is a matter for the Court, and it is incumbent on it to decide on the evidentiary value of the documents submitted to it (see *Çelikkilek v. Turkey*, no. 27693/95, § 71, 31 May 2005).

93. The Court notes that the applicant's allegations that military servicemen were responsible for her husband's killing are primarily supported by Emir Gandaloyev's witness statement, the radio announcement and the newspaper article stating that federal forces had killed Alaudin Gandaloyev and his colleague as well as on the decision of the Achkhoy-Martan District Court of 24 November 2004 stating that the investigation had obtained sufficient information about the involvement of military servicemen in the crime. In this regard the Court observes that the information about the killing of Alaudin Gandaloyev was published on behalf of the Headquarters, which had received it from the field report about the activities of federal forces and law-enforcement agencies in the Achkhoy-Martan district on 17-18 September 2003. The Court further notes that the deputy head of the Operational Troops provided the criminal investigation with sufficiently detailed information concerning the contents of the field report. According to his statement, the document had stated that A. Gandaloyev and V. Badayev had opened fire on a group of officers from the Achkhoy-Martan district department of the interior (the Achkhoy-Martan ROVD), the district military commander's office and the OMON (the special task-force unit) from the Tver region (see paragraph 50 above). The Court further observes that the content of the radio announcement and the newspaper article announcing the killing of the applicant's husband by a unit of federal forces had never been refuted by the authorities. In that context, the Government have not asserted that the officer Sh. had provided incorrect information; nor have any proceedings been pursued against that officer for providing this information to the mass-media (see paragraph 58

above). The Court also pays attention to the fact that the decision of the Achkhoy-Martan District Court stating that the investigation into Alaudin Gandaloyev's murder had obtained enough information implicating military servicemen in the crime was taken in November 2004, that is to say six months after the transfer of the criminal case from the unit military prosecutor's office back to the inter-district prosecutor's office (see paragraph 39 above).

94. The Court notes that the Government pointed out that while the perpetrators of Alaudin Gandaloyev's murder had not been identified, there were reasons to believe that the crime could have been committed by members of illegal armed groups as retaliation against the employees of the forestry agency. The Government referred to the threat note and the dead rabbit found by the agency's employees in May 2003. In this regard the Court observes that the investigators in criminal case no. 44073 questioned two employees of the forestry agency about the discovery of the threat note shortly after the beginning of the investigation, on 22 September 2003, and collected the note on the same date. However, it appears that on the basis of all the information the investigators considered that military servicemen were implicated in the crime and on 29 October 2003 they transferred the investigation in the criminal case from the inter-district prosecutor's office to the unit military prosecutor's office.

95. The Court reiterates that the evidentiary standard required for the purposes of the Convention is proof "beyond reasonable doubt", and that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. The Court has also noted the difficulty for the applicants to obtain the necessary evidence in support of allegations in cases where the respondent Government are in possession of the relevant documentation and fail to submit it. Where the applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to the lack of such documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicants, or to provide a satisfactory and convincing explanation of how the events in question occurred. The burden of proof is thus shifted to the Government and if they fail in their arguments, issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II).

96. Taking into account the above elements, the Court is satisfied that the applicant has made out a *prima facie* case that Alaudin Gandaloyev was killed by State agents. The Government's statement that the investigation did not find any evidence to support the involvement of military servicemen in the crime is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to

submit the documents which were in their exclusive possession or to provide another plausible explanation for the events in question, the Court considers that Alaudin Gandaloyev was killed on 17 September 2003 by State agents during an unacknowledged security operation.

97. The Court further notes that, regrettably, it has been unable to benefit from the results of the domestic investigation, owing to the Government's failure to disclose most of the documents from the file (see paragraph 72 above). Nevertheless, it is clear that the investigation did not identify the perpetrators of Alaudin Gandaloyev's murder.

98. Accordingly, the Court finds that the evidence available permits it to establish to the requisite standard of proof that the death of the applicant's husband can be attributed to the State.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

99. The applicant complained under Article 2 that her husband, Alaudin Gandaloyev, had been killed by State agents and that the domestic authorities had failed to carry out an effective investigation into the crime. She relied on Article 2 of the Convention, which provides:

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

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

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

A. The parties' submissions

1. The applicant

100. The applicant maintained that State agents had deprived Alaudin Gandaloyev of his life.

101. The applicant argued that the authorities had failed to conduct an effective investigation into her husband's murder. She contended that the investigation had not met the requirements of effectiveness and adequacy, as required by the Court's case-law on Article 2. She pointed out that it had been ongoing for almost five years without any explanations for its delay

and that it had been suspended and resumed on several occasions yet had failed to produce any tangible results. The applicant alleged that the investigation into her husband's murder should have been conducted by the unit military prosecutor's office but it was being conducted by the inter-district prosecutor's office, which did not have jurisdiction to investigate crimes committed by military servicemen; that the reopening of the criminal proceedings on 23 November 2004 had been just play-acting on the part of the investigators in view of the examination of the criminal case by the District Court on 24 November 2004; that the investigation had failed to establish the source of information for the newspaper article and the radio announcement about the killing of the two alleged rebel fighters as that source could only have been the military servicemen who had committed the murder of the applicant's husband; that the applicant had not had effective access to the investigation, thus precluding her from effectively appealing against the actions of the investigating authorities; and that there had been an administrative practice of non-investigation of crimes committed by federal forces in Chechnya.

2. The Government

102. The Government did not dispute that the applicant's husband was killed on 17 September 2003. They asserted that no evidence had been collected to support the allegations that the State authorities were responsible for the crime.

103. The Government contended that the investigation was being carried out in accordance with domestic legislation and Convention standards and that all measures envisaged in national law were being taken to identify the perpetrators. They pointed out that the investigation had been promptly commenced on 17 September 2003. They further argued that even though the criminal investigation had been suspended and reopened on several occasions, it was still ongoing and measures aimed at identifying the perpetrators were being taken. The investigation was being carried out by the inter-district prosecutor's office as the version of the involvement of military servicemen in the crime had not been confirmed by the unit military prosecutor's office and that the applicant had been duly informed about all procedural decisions taken in the investigation; that the investigators had obtained information concerning the absence of special operations in the Achkhoy-Martan district on 17 September 2003 and that it had questioned a number of witnesses and forwarded information requests to a number of law-enforcement agencies.

B. The Court's assessment

1. Admissibility

104. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government's objection concerning the alleged non-exhaustion of domestic remedies provided for by criminal law should be joined to the merits of the complaint (see paragraph 80 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) Alleged failure to protect the right to life

105. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-47, Series A no. 324, and *Avşar v. Turkey*, cited above, § 391).

106. The Court has already found it established that the death of Alaudin Gandaloyev can be attributed to the State. In the absence of any justification put forward by the Government, the Court finds that there has been a violation of Article 2 in respect of Alaudin Gandaloyev.

(b) Alleged inadequacy of the investigation

107. The Court has on many occasions stated that the obligation to protect the right to life under Article 2 of the Convention also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. It has developed a number of guiding principles to be followed for an investigation to comply with the Convention's requirements (for a summary of these principles, see *Bazorkina v. Russia*, no. 69481/01, §§ 117-119, 27 July 2006).

108. In the present case, an investigation was carried out into the murder of Alaudin Gandaloyev. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

109. The Court notes at the outset that most of the documents from the investigation were not disclosed by the Government. It therefore has to assess the effectiveness of the investigation on the basis of the few documents submitted by the parties and the information about its progress presented by the Government.

110. The Court notes that the authorities were aware of the incident on the day it happened, on 17 September 2003, and that the criminal investigation into the killing of Alaudin Gandaloyev and his colleague was opened by the inter-district prosecutor's office the same day. Within the first few weeks of the investigation, the inter-district prosecutor's office carried out the crime-scene examination, examined the bodies of the victims, collected a number of important items of evidence, such as the threat note, bullets and bullet-casings from the crime scene and military unit no. 6844, and ordered several ballistic examinations of the evidence. Along with that, the investigators questioned Emir Gandaloyev, employees of the forestry agency and granted the applicant the status of victim in the criminal case. On the basis of information about the involvement of military servicemen in the murder of Alaudin Gandaloyev, the investigation in the criminal case was transferred to the unit military prosecutor's office.

111. However, it transpires from the documents submitted that regardless of the considerable number of investigative measures taken by the inter-district prosecutor's office, after the transfer of the criminal case to the unit military prosecutor's office, the ensuing investigation was far from satisfactory. In spite of having sole jurisdiction to conduct an investigation into the crimes allegedly committed by military servicemen, in almost six months of investigation the military investigators carried out only a few investigative actions, such as questioning three military officers and receiving responses to information requests made by the inter-district prosecutor's office. They failed to undertake a number of investigative measures which fell solely within their competence, such as identifying and questioning the officers from the district military commander's office and the OMON from the Tver region who, according to the statement of the deputy head of the Operational Troops, had opened fire on Alaudin Gandaloyev and his colleague and killed them (see paragraph 50 above). Furthermore, the investigators failed to obtain the registration log of local law-enforcement agencies and military forces which, according to the head of the Headquarters officer Sh., contained the record about the discovery of the corpses of Alaudin Gandaloyev and Viskha Badayev during the mopping-up operation (see paragraph 54 above). The investigation failed to explain the discrepancies between the content of the newspaper article concerning the evidence seized at the scene of Alaudin Gandaloyev's murder (AK-74 5.45 machine-guns – 2 items, magazines for AK-74 – 4 items, F-1 [grenades] - 8 items, 5.45 cartridges – 275 items) and the crime scene examination report of 17 September 2003 according to which only

2 bullets and 6 bullet casings had been collected from the scene and the witness statements obtained by the investigators from officer K. (questioned on 18 February 2004) and officer V. (questioned on 27 April 2004) to the same effect (see paragraphs 17, 42, 51 and 60 above).

112. It is obvious that these measures, if they were to produce any meaningful results, should have been taken immediately after the transfer of the criminal investigation to the military prosecutor's office. The Court reiterates that it is crucial in cases of death in contentious situations for the investigation to be prompt. The passage of time will inevitably erode the amount and quality of the evidence available and the appearance of a lack of diligence will cast doubt on the good faith of the investigative efforts, as well as drag out the ordeal for the members of the family (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II). These delays, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime.

113. The Court also notes that even though the applicant was granted victim status in criminal case no. 44073, she was only informed of the suspension and reopening of the proceedings, and not of any other significant developments. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny; or to safeguard the interests of the next-of-kin in the proceedings.

114. Finally, the Court notes that the investigation in case no. 44073 was suspended and resumed several times and that there were lengthy periods of inactivity on the part of the investigating authorities when no proceedings were pending.

115. The Government mentioned the possibility for the applicant to apply for judicial review of the decisions of the investigating authorities in the context of exhausting domestic remedies. The Court observes that the applicant did in fact make use of that remedy, which eventually led to resumption of the investigation. Nevertheless, the effectiveness of the investigation had already been undermined by the authorities' failure to take necessary and urgent investigative measures. The investigation was repeatedly suspended and resumed, but it appears that no significant investigative measures were taken to identify those responsible for the murder. In such circumstances, the Court considers that the applicant could not be required to challenge in court every single decision of the prosecutor's office. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and rejects their preliminary objection as regards the applicant's failure to exhaust domestic remedies within the context of the criminal investigation.

116. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the circumstances

surrounding the murder of Alaudin Gandaloyev and that there has therefore been a violation of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

117. The applicant submitted that she had had no effective remedies in respect of the above violations, in breach of Article 13 of the Convention, which provides:

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

A. The parties’ submission

118. The Government referred to the ongoing investigation into the murder and contended that the applicant had had effective remedies at her disposal as required by Article 13 of the Convention and that the authorities had not prevented her from using them. The applicant had had an opportunity to challenge the actions or omissions of the investigating authorities in court pursuant to Article 125 of the Code of Criminal Procedure and had availed herself of it. In sum, the Government submitted that there had been no violation of Article 13.

119. The applicant reiterated her complaint.

B. The Court’s assessment

1. Admissibility

120. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

121. According to the Court’s settled case-law, the effect of Article 13 of the Convention is to require the provision of a remedy at national level allowing the competent domestic authority both to deal with the substance of a relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their obligations under this provision. However, such a remedy is only required in respect of grievances which can be regarded as “arguable” in terms of the Convention (see, among many other authorities,

Halford v. the United Kingdom, 25 June 1997, § 64, *Reports of Judgments and Decisions* 1997-III).

122. As regards the complaint that there were no effective remedies in respect of the applicant's complaint under Article 2, the Court emphasises that, 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 and infliction of treatment contrary to Article 3, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-162, ECHR 2002-IV, and *Süheylya Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005). The Court further reiterates that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see *Khashiyev and Akayeva*, cited above, § 183).

123. In view of the Court's above findings with regard to Article 2, this complaint is clearly "arguable" for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). The applicant should accordingly have been able to avail herself 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.

124. It follows that in the circumstances of the present case, where the criminal investigation into the murder of Alaudin Gandaloyev has been ineffective and the effectiveness of any other remedy that may have existed, including civil remedies, has consequently been undermined, the State has failed in its obligation under Article 13 of the Convention.

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

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

126. 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

127. The applicant made no claims in respect of pecuniary damage. As for non-pecuniary damage, the applicant claimed 80 000 euros (EUR) under

this head for the suffering she had endured as a result of the loss of her husband. She further stated that State agents had slandered her husband by providing the mass-media with information about his alleged involvement in a serious crime he had not committed. She further claimed that the State's failure to conduct an effective investigation into her husband's murder and the failure of the State to submit a copy of the investigation file to the Court had caused her emotional suffering and distress, which required compensation in the above amount.

128. The Government regarded the amounts claimed as excessive.

129. The Court observes that it has found violations of the substantive and procedural limbs of Article 2 and a violation of Article 13 of the Convention on account of the murder of the applicant's husband. The Court accepts that the applicant has sustained non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the applicant EUR 35,000, plus any tax that may be chargeable on that amount.

B. Costs and expenses

130. The applicant was represented by Mr D. Itslyayev, a lawyer practising in Nazran. The overall claim in respect of costs and expenses related to the applicant's legal representation amounted to EUR 4,592. The applicant submitted the following breakdown of costs:

(a) EUR 3,864 for 48.3 hours of interview and drafting of legal documents submitted to the Court and the domestic authorities, at a rate of EUR 80 per hour;

(b) EUR 187.5 for 15 hours of travel expenses of the applicant's representative for field work and delivery of documents, at a rate of EUR 12.5 per hour;

(c) EUR 284 of administrative expenses in the proportion of 7% of the amount above;

(d) EUR 256 in translation fees based on the rate of EUR 80 per 1000 words.

131. The Government disputed the reasonableness of the amounts claimed for the travel expenses of the applicant's representative.

132. The Court has to establish first whether the costs and expenses indicated by the applicant were actually incurred and, second, whether they were necessary (see *McCann and Others*, cited above, § 220).

133. Having regard to the information submitted by the applicant, the Court is satisfied that these rates are reasonable. However, it notes that as a result of the application of Article 29 § 3 in the present case, the applicant's representative submitted the observations on admissibility and merits in one set of documents. The Court thus doubts that legal drafting was necessarily time-consuming to the extent claimed by the representative. It also notes that the applicant's representatives did not submit any documents either in

support of the claim for administrative costs or in support of the claim for travel expenses.

134. Having regard to the details of the claims submitted by the applicant and acting on an equitable basis, the Court awards her the amount of EUR 3,500, together with any value-added tax that may be chargeable to the applicant, less EUR 850 received by way of legal aid from the Council of Europe, the net award to be paid into the representative's bank account, as identified by the applicant.

C. Default interest

135. 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. *Decides* to join to the merits the Government's objection concerning non-exhaustion of domestic remedies and rejects it;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 2 of the Convention in respect of Alaudin Gandaloyev;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances of the murder of Alaudin Gandaloyev;
5. *Holds* that there has been a violation of Article 13 in conjunction with Article 2 of the Convention;
6. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 35,000 (thirty-five thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on this amount;

- (ii) EUR 2,650 (two thousand six hundred and fifty euros) in respect of costs and expenses, to be paid into the representative's bank account, plus any tax that may be chargeable to the applicant;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 4 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President