



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

FIRST SECTION

CASE OF KHALITOVA v. RUSSIA

(Application no. 39166/04)

JUDGMENT

STRASBOURG

5 March 2009

FINAL

14/09/2009

This judgment may be subject to editorial revision.

In the case of Khalitova v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 12 February 2009,

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

PROCEDURE

1. The case originated in an application (no. 39166/04) 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, Ms Luiza Dungalovna Khalitova (“the applicant”), on 20 October 2004.

2. The applicant was represented by lawyers of the Memorial Human Rights Centre (Moscow) and the European Human Rights Advocacy Centre (London). 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 complained that her husband had been killed by State agents, that the authorities had failed to carry out an adequate investigation into the matter, and that there were no effective remedies in respect of those violations. She relied on Articles 2 and 13 of the Convention.

4. On 1 September 2005 the President of the First Section decided to grant priority to the application under Rule 41 of the Rules of Court.

5. On 3 September 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).

6. The Government objected to the joint examination of the admissibility and merits of the application. Having considered the Government’s objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1966 and lives in the village of Goyskoye in the Urus-Martan District of the Chechen Republic.

A. The facts

1. Killing of the applicant's husband

8. The applicant did not witness the killing of her husband and the account of events given below is based on witness statements by the applicant's fellow villagers. She submitted statements by a Mr A. and a Mr K.

9. On 11 September 2000 Mr A. and Mr K. were guarding agricultural fields to the north of the village of Goyskoye near the Goitinka River in the Urus-Martan District of the Chechen Republic. At about 3 p.m. they met the applicant's husband, Mr Lecha Adamovich Khazhmuradov, born in 1964, and Mr D., who had come to get some wood in the nearby forest area.

10. Some time later a number of armed men arrived in two armoured personnel carriers. According to the witnesses, they were servicemen of the Russian armed forces. Without any prior warning the servicemen opened indiscriminate fire across the field. The witnesses hid so that they could observe the events in safety. The servicemen also fired at the applicant's husband and Mr D. Mr Lecha Khazhmuradov was killed on the spot. Then the servicemen crossed the river and shot Mr D. They dropped the two dead bodies in the river, got in the armoured personnel carriers and drove away in the direction of Urus-Martan.

11. According to Mr A. and Mr K., the armoured personnel carriers should have passed near a federal military unit located at that time on the north-western outskirts of the village. They should also have passed through a federal check-point which blocked the motorway leading from Goyskoye to Urus-Martan.

12. After the soldiers had left, Mr A., Mr K. and several other residents of Goyskoye, who had come from the village having heard the shooting, took the corpses out of the water and took them back to the village.

13. Later that day the villagers informed the law-enforcement agencies of the incident.

14. The killing of Mr D. does not form part of the present application.

2. Official investigation

15. According to the Government, on 12 September 2000 the prosecutor's office of the Urus-Martan District ("the district prosecutor's office") instituted an investigation into the murder of Mr Lecha Khazhmuradov and Mr D. under Article 105 § 2 of the Russian Criminal Code (aggravated murder). The case file was assigned the number 24376. It does not appear that the applicant was duly informed of that decision.

16. In the Government's submission, on 12 September 2000 the status of victim was given to Mr Lecha Khazhmuradov's brother. The applicant's request that she be declared a victim of a crime was rejected, since she had not furnished the authorities with documents confirming that she was married to Mr Lecha Khazhmuradov.

17. According to the Government, on 12 September 2000 the investigating authorities inspected the scene of the incident, which was heavily saturated with a substance of a brown colour resembling blood, and found fragments of biological material resembling brain matter. They also found six bullet cases of 7.62 mm calibre. At a certain distance from that place, on the other river bank, the investigating authorities found twenty-five bullet cases of 7.62 x 39 mm calibre, eight bullet cases of 7.62 x 51 mm calibre and two bullet cases of 5.45 mm calibre. Also, the tyre tracks of a motor vehicle, presumably an armoured personnel carrier, were found at the scene of the incident. According to an expert examination carried out on an unspecified date, the bullet cases found at the scene of the incident were of the type used for firing from various modifications of machine-guns, sniper rifles and self-loading rifles.

18. According to the Government, a medical examination of Mr Lecha Khazhmuradov's body carried out on an unspecified date reported that he had died due to an extensive open wound to the head with calvarias bone fracture and complete ejection of his brain matter.

19. The Government further submitted, without specifying the dates, that the investigating authorities had identified and questioned eyewitnesses to the incident, Mr E., Mr Lit. and Mr A. In particular, Mr E., a warden of agricultural fields, stated that on 11 September 2000 he had been guarding the field and the applicant's husband and Mr D. had been working in the nearby wood, when at about 4 p.m. a group of men in green uniforms had arrived in two armoured personnel carriers and started indiscriminate shooting. After the men in armoured personnel carriers had left, he and his workmate, Mr Lit., had approached the place where the applicant's husband and Mr D. had been working and had found their corpses in the river nearby.

20. According to the Government, Mr Lit. stated during his witness interview that on 11 September 2000 he had been guarding the field, together with Mr E., whilst Mr Lecha Khazhmuradov and Mr D. had been working in the nearby wood. Then servicemen in two armoured personnel

carriers had arrived and opened indiscriminate shooting from automatic firearms. Fifteen or twenty minutes later the soldiers had ceased fire, then five or six of them had crossed the river and entered the wood in which the applicant's husband and Mr D. had been working. Mr Lit. had heard the soldiers curse, then several shots followed, and then he had seen the soldiers throw the dead bodies of Mr Lecha Khazhmuradov and Mr D. into the river. After the soldiers had left in their armoured personnel carriers in the direction of the motorway, Mr Lit. and Mr E. had taken the corpses out of the river and delivered them to their homes.

21. In the Government's submission, Mr A. had given similar oral evidence.

22. The Government also submitted, without specifying the date, that the investigating authorities had also questioned the applicant, who had stated that on 11 September 2000 her husband and Mr D. had left to get some firewood to the north of the village near the river. Some time later she had heard machine-gun fire coming from that direction, and some time later the dead bodies of her husband and Mr D. had been brought back by other residents of their village who had seen the incident and had stated that her husband and Mr D. had been killed by Russian servicemen.

23. In their additional memorial of 8 May 2008 submitted in reply to the applicant's observations, the Government further stated that the investigating authorities had also questioned a certain Mr L., a serviceman who had been on duty at a check-point in the vicinity of the scene of the incident on 11 September 2000. According to the Government, Mr L. had submitted that on the date in question at about 6 p.m. two armoured personnel carriers had passed through the check-point, their registration numbers being covered with cartridge boxes, and that some time later local residents had arrived in several cars and had stated that unidentified persons had shot down their fellow-villagers. In the Government's submission, Mr L. was unable to recall whether the local residents mentioned that the murder had been committed by servicemen.

24. In the applicant's submission, she had regularly visited the district prosecutor's office and requested that she be informed of any progress in the investigation, but in vain.

25. On 29 August 2003 the applicant requested the district prosecutor's office to inform her of any progress in the investigation and allow her to join the proceedings as a victim and a civil claimant.

26. On 1 October 2003 the district prosecutor's office suspended the investigation in case no. 24376 for a failure to identify those responsible. The applicant was not promptly informed of the decision.

27. On 23 January 2004 the applicant requested the district prosecutor's office to inform her of the progress in the investigation and to admit her to the proceedings as a victim and a civil claimant.

28. On 18 February 2004 the district prosecutor's office quashed the decision of 1 October 2003 for the reason that the investigation was incomplete and resumed the proceedings in case no. 24376. They noted, in particular, that Mr Lecha Khazhmuradov and Mr D. had been killed "for no good reason" by "servicemen of an unknown military unit".

29. On 20 February 2004 the district prosecutor's office decided to allow the applicant to join the proceedings as a civil claimant. On 26 February 2004 they also granted her the status of victim of a crime. It was mentioned in both decisions that Mr Lecha Khazhmuradov and Mr D. had been killed "for no good reason" by "servicemen of an unknown military unit".

30. On 19 March 2004 the district prosecutor's office again stayed the proceedings in case no. 24376 for failure to identify those responsible.

31. In the applicant's submission, since April 2004 she has not even once been informed by the authorities of the progress in the investigation in case no. 24376.

32. On 7 December 2005 the applicant requested the district prosecutor's office to carry out a number of investigative actions; in particular, to question servicemen of the military unit from the DON-100 regiment of the Russian Ministry of the Interior, who had been stationed on the north-western outskirts of Goyskoye in September 2000; to question servicemen who had been on duty at the check-point on the motorway between Goyskoye and Urus-Martan, which the alleged perpetrators had passed through after the incident; to carry out ballistic tests; and to check the firearms which had been in use by the servicemen of the DON-100 regiment, among other steps. According to the applicant, she has not received any reply to her request.

3. The applicant's attempt to gain access to the investigation file

33. On 3 March 2004 the applicant requested the district prosecutor's office to allow her access to the investigation file.

34. On 5 March 2004 the district prosecutor's office observed that the investigation in case no. 24376 was pending and dismissed the applicant's request, stating that under domestic law access to a case file could only be allowed upon completion of the investigation.

35. On 12 March 2004 the applicant challenged the prosecutor's decision of 5 March 2004 before the Urus-Martan Town Court.

36. By a decision of 29 March 2004 the Urus-Martan Town Court dismissed the applicant's complaint, stating that "during the investigation a sufficient range of investigative steps aiming at resolving the crime and identifying those responsible [had been] undertaken", that the investigation had not yet been completed but had been suspended owing to the fact that it was impossible to establish those responsible, and that therefore the decision of 5 March 2004 was well-founded, as under national law a victim

could also gain access to the case file upon the completion of an investigation.

37. On 21 April 2004 the Supreme Court of the Chechen Republic dismissed the applicant's appeal and upheld the first-instance decision.

B. The Court's request for the investigation file

38. In September 2007, when the application was communicated to them, the Government were invited to produce a copy of the investigation file in criminal case no. 24376 opened in connection with the murder of the applicant's husband and Mr D. The Government refused to submit any documents from the file, stating that, under Article 161 of the Russian Code of Criminal Procedure, disclosure of the documents was contrary to the interests of the investigation and could entail a breach of the rights of the participants in the criminal proceedings. They also submitted that they had taken into account the possibility of requesting 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 those materials to the public. According to the Government, in the absence of any sanctions in respect of applicants for the disclosure of confidential information and material, there were no guarantees concerning compliance by the applicants with the Convention and the Rules of Court.

39. In January 2008 the Court reiterated its request. In reply, the Government again refused to produce any documents from the file for the aforementioned reasons. At the same time, they suggested that a Court delegation could be given access to the file in Russia, with the exception of those documents containing military and State secrets, and without the right to make copies of the case file.

II. RELEVANT DOMESTIC LAW

40. For a summary of the relevant domestic law see *Kukayev v. Russia*, no. 29361/02, §§ 67-69, 15 November 2007.

THE LAW

I. THE GOVERNMENT'S OBJECTION REGARDING EXHAUSTION OF DOMESTIC REMEDIES

41. The Government argued that the investigation into the murder of the applicant's husband had not been completed, and that therefore the domestic remedies had not been exhausted in respect of her complaints.

42. The applicant called into question the effectiveness of the investigation, stating that in her case it was not a remedy under Article 35 of the Convention. She also asserted that an administrative practice consisting of the authorities' continuing failure to conduct adequate investigations into offences committed by representatives of the federal forces in the Chechen Republic rendered any potentially effective remedies inadequate and illusory in her case. In this connection she relied on applications submitted to the Court by other individuals claiming to be victims of similar violations.

43. The Court considers that the Government's objection as to the exhaustion of domestic remedies raises issues which are closely linked to the question of the effectiveness of the investigation. It therefore decides to join this objection to the merits of the applicant's complaint under the procedural limb of Article 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

44. The applicant complained that her husband had been killed by unidentified Russian servicemen and that the domestic authorities had failed to carry out an effective investigation into the matter. She 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. Admissibility

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

B. Merits

1. Alleged failure to protect the right to life

(a) Submissions by the parties

46. The applicant insisted that it was beyond reasonable doubt that her husband had been killed by servicemen of the federal armed forces. She claimed to that end that at the material time the territory where her husband had been murdered had been under the firm control of the federal forces, that the alleged perpetrators had arrived in armoured personnel carriers, such heavy military vehicles being in exclusive possession of the State, and that after the murder the alleged perpetrators had passed a military unit located on the north-western outskirts of Goyskoye and then gone through a federal check-point on the motorway between Goyskoye and Urus-Martan.

47. The applicant further argued that the Government had not advanced any convincing argument to suggest that Mr Lecha Khazhmuradov had been killed by any persons other than federal servicemen. She also pointed to the Government's refusal to submit any documents from the file of the criminal investigation into her husband's death and suggested that the burden should be shifted to the Government to prove that State agents had not been responsible for Mr Lecha Khazhmuradov's murder. The applicant further argued that no evidence had been submitted that the deprivation of her husband of his life had been justified under Article 2 § 2 of the Convention.

48. The Government argued that the investigation had not obtained sufficient evidence that representatives of the federal forces had been involved in the murder of the applicant's husband. According to the Government, that possibility had been thoroughly checked, but was not proved so far; the motor vehicles the perpetrators had been driving were yet to be identified. They submitted that some procedural documents indeed stated that the applicant's husband had been killed "by servicemen of an unidentified military unit", however, that wording was based on the witness statements of Mr E., Mr Lit. and Mr A., who had taken the perpetrators for soldiers. According to the Government, the criminal case file contained no other evidence to corroborate those witness statements.

49. The Government further argued that whilst Mr E., Mr Lit. and Mr A. had claimed that the incident had occurred at around 4 p.m. and that

immediately thereafter the servicemen had left in two armoured personnel carriers in the direction of Urus-Martan, serviceman L., who had been on duty at the check-point, had indicated that two armoured personnel carriers had passed through at around 6 p.m. The Government thus argued that the former and the latter might have been different armoured personnel carriers.

50. The Government also noted that the events under examination had occurred in 2000, when violent confrontation had taken place between the federal forces and the rebel fighters and numerous murders had been committed by members of illegal armed groups, using firearms and military vehicles. The Government argued therefore that there were no grounds to claim that the right to life of the applicant's husband secured by Article 2 of the Convention had been breached by the State.

(b) The Court's assessment

51. 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*, 27 September 1995, §§ 146-50, Series A no. 324; *Andronicou and Constantinou v. Cyprus*, 9 October 1997, § 171, *Reports of Judgments and Decisions* 1997-VI; and *Oğur v. Turkey* [GC], no. 21594/93, § 78, ECHR 1999-III).

52. In cases where there are conflicting accounts of events, the Court is inevitably confronted when establishing the facts with the same difficulties as those faced by any first-instance court. When, as in the instant case, the respondent Government have exclusive access to information able to corroborate or refute the applicant's allegations, any lack of cooperation by the Government without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's

allegations (see *Taniş and Others v. Turkey*, no. 65899/01, § 160, ECHR 2005-VIII). As to the facts that are in dispute, the Court reiterates its jurisprudence requiring 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 *Taniş and Others*, cited above, § 160).

53. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Articles 2 and 3 of the Convention, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336; and *Avşar*, cited above, § 283) even if certain domestic proceedings and investigations have already taken place.

54. In the present case, the Court observes that although the Government denied the State’s responsibility for the killing of the applicant’s husband, they acknowledged that Mr Lecha Khazhmuradov had died as a result of murder committed by armed men on 11 September 2000. It has therefore to be established whether the armed men belonged to the federal forces.

55. In this connection, the Court observes that it is clear from the parties’ submissions that the incident of 11 September 2000 was witnessed by at least four persons. Two of them, Mr A. and Mr K., made written statements submitted by the applicant to the Court, whilst two others, Mr E. and Mr Lit., as well as Mr A., gave oral evidence to the investigating authorities, as indicated by the Government. All the eyewitnesses consistently held that on 11 September 2000 at about 4 p.m. they had come under indiscriminate machine-gun fire by Russian servicemen who had arrived in two armoured personnel carriers, and that those servicemen had then shot dead the applicant’s husband (see paragraphs 10 and 19-21 above).

56. The Government did not dispute the circumstances of the incident as submitted by eyewitnesses, and, more specifically, the fact that the alleged perpetrators had arrived at, and left, the scene of the incident in two armoured personnel carriers. Moreover, the Government referred to a report on the inspection of the scene of the incident which, according to them, attested the presence of the tyre tracks of a motor vehicle, presumably an armoured personnel carrier (see paragraph 17 above). The Government also referred to the witness statements of a certain serviceman, L., to the effect that on 11 September 2000 at about 6 p.m. two armoured personnel carriers with obscured registration numbers had passed through a check-point on the

road leading from Goyskoye to Urus-Martan (see paragraph 23 above). The Court, unlike the Government, does not consider that the alleged discrepancy between the time of the murder indicated by the eye-witnesses and the time the armoured personnel carriers passed through the check-point indicated by serviceman L. casts doubt on the reliability of the submissions of the eyewitnesses that the alleged perpetrators had moved around in armoured personnel carriers. The Court notes in this respect that the Government did not indicate the dates on which the statements had been obtained by the investigating authorities. It is not unlikely that if witnesses had been questioned after a considerable lapse of time they would have had difficulties in recalling the exact timing of the events in question. Moreover, the Government did not indicate whether the investigating authorities had taken any steps to resolve the alleged contradiction. Overall, having regard to the materials in its possession, the Court has little doubt that the armed men who killed the applicant's husband were equipped with armoured personnel carriers.

57. In this connection, the Court notes that heavy military vehicles such as armoured personnel carriers were presumably in the exclusive possession of the State. It further notes the applicant's arguments that during the period under examination the area where the applicant's husband was murdered had been under the firm control of the federal forces, that the events in question had taken place in the close proximity of a federal military unit, and that the perpetrators must have passed through a check-point on the road between the village of Goyskoye and Urus-Martan, none of these arguments having been disputed by the Government. In a situation where a group of armed men was able to move freely in heavy military vehicles, and to open heavy fire in broad daylight within a territory which was under the control of the federal forces, and, in particular, in the close proximity of a federal military unit, the Court cannot but reach the conclusion that those men were State agents. The Court therefore finds it established that the applicant's husband was killed on 11 September 2000 by State agents.

58. In the absence of any plausible explanation on the part of the Government as to the circumstances of the death of the applicant's husband, the Court further finds that the Government have not accounted for his death and that the respondent State's responsibility for this death is therefore engaged.

59. Accordingly, there has been a violation of Article 2 of the Convention in this respect.

2. Alleged inadequacy of the investigation

(a) Submissions by the parties

60. The applicant argued that the investigation in the present case had fallen short of the Convention standards. It has been pending for several

years but failed to produce any meaningful results. The applicant further argued that despite the overwhelming evidence confirming the involvement of military personnel, her husband's murder was being investigated by a civilian prosecutor's office rather than a military one. She argued that the civilian prosecutors lacked the competence to investigate crimes committed by the military. The applicant also contended that the authorities had failed to carry out a number of essential investigative measures, to inform her of the progress of the investigation, or to allow her access to any documents from the case file. In this latter respect the applicant thus argued that she had been excluded from the criminal proceedings.

61. The Government argued that the investigation into the murder of the applicant's husband met the Convention requirement of effectiveness, as all the measures envisaged in national law were being taken to identify those responsible. They submitted that the investigation was being carried out in full compliance with the domestic law and that a large number of investigative actions had been carried out, this fact having been confirmed by a decision of the Urus-Martan Town Court of 29 March 2004 given upon the applicant's complaint about the refusal of access to the case file (see paragraph 36 above). The Government also argued that once the applicant had been granted the status of victim, she had been duly informed of procedural decisions taken during the investigation. The Government also referred to the Court's case-law, stating that the procedural obligation under Article 2 of the Convention did not require applicants to have access to police files, or copies of all documents during an ongoing inquiry, or be consulted or informed about every step (see *Brecknell v. the United Kingdom*, no. 32457/04, § 77, 27 November 2007), and argued that by virtue of her status as a victim, the applicant would be able to gain access to the case file once the investigation was completed. The Government thus insisted that they had fulfilled their procedural obligation under Article 2 of the Convention.

(b) The Court's assessment

62. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force, in particular by agents of the State. The investigation must be effective in the sense that it is capable of leading to the identification and punishment of those responsible (see *Oğur*, cited above, § 88). In particular, there is an implicit requirement of promptness and reasonable expedition (see *Yaşa v. Turkey*, 2 September 1998, §§ 102-04, *Reports* 1998-VI, and *Mahmut Kaya v. Turkey*, no. 22535/93, §§ 106-07,

ECHR 2000-III). 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. 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).

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

64. In this connection, the Court notes that despite its repeated requests for a copy of the file on the investigation concerning the murder of Mr Lecha Khazhmuradov, the Government refused to disclose any of the documents from that file, referring to Article 161 of the Russian Code of Criminal Procedure. Drawing inferences from the respondent Government's conduct when evidence was being obtained (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25), the Court, in the light of these inferences, will have to assess the merits of this complaint on the basis of the information on the course of investigation submitted by the Government and the few documents produced by the applicant.

65. The Court further notes with concern that not only did the Government refuse to produce the case file documents, but they also failed to submit a detailed account of the relevant events, with the result that the Court is not even able to build a time line of the investigation. It remains unclear, as no information or relevant documents were submitted by the Government, whether any investigative activity took place between 12 September 2000, when, according to the Government, the criminal proceedings in connection with the murder of the applicant's husband were instituted (see paragraph 15 above) and 1 October 2003, when the district prosecutor's office decided to suspend the investigation, according to the information later received by the applicant. It is unclear, in particular, whether, and if so how often, the investigation was suspended and resumed during the period in question and which, if any, investigative measures were taken, apart from the inspection of the scene of the incident which, in the Government's submission, was carried out on 12 September 2000 (see paragraph 17 above), and the granting of the status of victim to Mr Lecha Khazhmuradov's brother (see paragraph 16 above) on the same date.

66. The Government also submitted that the investigating authorities questioned four witnesses, carried out a medical examination of the dead body of the applicant's husband, and performed ballistic tests, but failed to indicate the dates on which those steps had allegedly been taken. It therefore remains unclear whether these investigative measures were taken promptly, or with delay. Furthermore, the Government did not indicate whether any investigative steps other than those mentioned above had been taken to resolve the crime. In particular, it does not appear that any meaningful efforts were made to investigate the possible involvement of federal military personnel in the murder of the applicant's husband despite strong evidence of that possibility, and notably statements of at least three eyewitnesses to the effect that Mr Lecha Khazhmuradov had been shot dead by armed men moving around in two armoured personnel carriers. It does not appear, as the Government provided no information or documents in this respect, that the authorities attempted to establish any other witnesses in the case, to find and question the servicemen of a military unit located in the vicinity of the incident, or to take any other investigative steps, as suggested by the applicant in her request of 7 December 2005 (see paragraph 32 above).

67. The material in the Court's possession further reveals that the investigation was suspended on 1 October 2003, then resumed on 18 February 2004, and then again suspended on 19 March 2004. It is unclear whether the investigation has remained suspended since this latter date, or has been reopened at some point, the Government not having provided any concrete information apart from a general assertion that the investigation has not been completed to date.

68. Lastly, the Court observes that whilst, as asserted by the Government, the criminal proceedings in connection with the murder of the applicant's husband were instituted on 12 September 2000, the applicant was not declared a victim in those proceedings until 26 February 2004. Even if the Court is prepared to accept the Government's argument that such a significant delay in taking one of the most essential steps, which should have afforded minimum procedural guarantees to the applicant, could be explained by the applicant's failure to adduce the required documents, it notes that even after that date the applicant does not appear to have been duly informed of the course of the investigation. In this respect, the Court notes the applicant's argument that she was never informed of the conduct of the investigation after April 2004, an argument which the Government did not contest or produce any documents to refute, and which supports the supposition that the investigation has remained suspended since March 2004. The Court also observes that, despite her efforts, the applicant was never given access to the file of the investigation. In such circumstances, the Court considers that she was excluded from the criminal proceedings and that the authorities clearly and blatantly failed to ensure that the investigation received the required level of public scrutiny, or to

safeguard the legitimate interests of the next of kin of the victim in the proceedings (see *Oğur*, cited above, § 92).

69. In the light of the foregoing, and with regard to the inferences drawn from the respondent Government's submission of evidence, the Court is bound to conclude that the authorities failed to carry out a thorough and effective investigation into the circumstances surrounding the death of the applicant's husband. It accordingly dismisses the Government's preliminary objection as regards the applicant's failure to exhaust domestic remedies within the context of the criminal proceedings, and holds that there has been a violation of Article 2 of the Convention on that account.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

70. The applicant complained that she had had no effective domestic remedies in respect of the violation of her rights under Article 2 of the Convention, contrary to Article 13 of the Convention, which reads as follows:

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

71. The applicant insisted that in her case the domestic remedies available had proved to be ineffective, given that the domestic investigation, which had been ongoing for several years, had not brought any positive results, and that in the absence of any findings of the domestic investigation, the effectiveness of any other remedy was consequently undermined.

72. The Government contended that the applicant had had effective domestic remedies, as required by Article 13 of the Convention. They submitted that the applicant had been granted the status of victim and therefore had been afforded procedural rights in the criminal proceedings, and in particular, the right to give oral and other evidence, to file motions, to receive copies of procedural decisions, and to access the case file and make copies of the materials of the file on completion of the investigation.

73. The Government further argued that the applicant could have appealed in court against actions or omissions of the investigation authorities, in accordance with Article 125 of the Russian Code of Criminal Procedure. They cited several examples where individuals' complaints lodged under the said Article had been granted fully or in part. In the Government's submission, the applicant, too, had availed herself of the remedy afforded to her by challenging in court, though unsuccessfully, the investigating authorities' refusal to give her access to the case file. The Government further referred to a letter of the Supreme Court of Russia dated 16 October 2007 which stated that the applicant had not lodged any

other court complaints against the actions of law-enforcement officers. The Government did not submit the letter to which they referred.

74. Also, in the Government's view, if the applicant had considered that any action or omission of public officials had caused her damage, she could have sought compensation for that damage in court by virtue of the relevant provisions of the Russian Civil Code, but she had never attempted to avail herself of that opportunity.

A. Admissibility

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

B. Merits

76. 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 v. Turkey*, 18 December 1996, § 95, *Reports* 1996-VI).

77. Given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-62, ECHR 2002-IV; *Assenov and Others v. Bulgaria*, 28 October 1998, § 117, *Reports* 1998-VIII; and *Süheyla Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005). The Court further reiterates that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see *Orhan v. Turkey*, no. 25656/94, § 384, 18 June 2002).

78. In view of the Court's findings above with regard to Article 2, the applicant's complaint was 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.

79. The Court has held in a number of similar cases that in circumstances where, as in the present case, the criminal investigation into the death was ineffective and the effectiveness of any other remedy that may have existed, including the civil remedies, was consequently undermined, the State has failed in its obligation under Article 13 of the Convention (see, among other authorities, *Musayeva and Others v. Russia*, no. 74239/01, § 118, 26 July 2007, or *Kukayev*, cited above, § 117).

80. It therefore dismisses the Government's argument that the applicant had effective remedies under the criminal or civil law and finds that there has been a violation of Article 13 in conjunction with Article 2 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

81. 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

82. The applicant claimed 80,000 euros (EUR), on behalf of herself and her three minor children, in respect of non-pecuniary damage for the suffering which she had endured as a result of the loss of her husband – father to her children – and the authorities' failure properly to investigate the matter.

83. The Government contested the applicant's claim as excessive.

84. The Court observes that it has found a violation of Articles 2 and 13 of the Convention on account of the death of the applicant's husband and the absence of effective remedies to secure domestic redress for the aforementioned violations. The applicant must have suffered anguish and distress as a result of all these circumstances, which cannot be compensated by the mere finding of a violation. Having regard to these considerations, the Court awards the applicant, on an equitable basis, EUR 35,000 for non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

85. The applicant also claimed 2,036 United Kingdom pounds sterling (GPB – approximately EUR 2,400) for the costs and expenses she had incurred before the Court. This amount included GBP 500 for a lawyer of the European Human Rights Advocacy Centre, GBP 1,361.90 for translation of documents, and GBP 175 for administrative costs. The applicant requested that the amount sought be transferred directly into her representatives' account.

86. The Government did not dispute the details of the calculations submitted by the applicant, but argued that her claims were not supported by any documents.

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

88. The Court observes that in July 2004 the applicant gave authority to the lawyers of the Memorial Human Rights Centre and the European Human Rights Advocacy Centre to represent her interests in the proceedings before the European Court of Human Rights and that these lawyers acted as the applicant's representatives throughout the proceedings. The applicant also produced invoices from translators. The Court is therefore satisfied that the applicant's claims in this part were substantiated.

89. The Court further notes that this case was not particularly complex, but nevertheless required a certain amount of research work. Having regard to the amount of research and preparation claimed by the applicant's representatives, the Court does not find these claims excessive.

90. In these circumstances, the Court awards the applicant the overall amount of EUR 2,400, together with any tax that may be chargeable to the applicant. The amount awarded in respect of costs and expenses shall be payable to the representatives directly.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Joins to the merits* the Government's objection concerning the 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 as regards the death of the applicant's husband;
4. *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 death of the applicant's husband;
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), to be converted into Russian roubles at the rate applicable at the date of settlement, in respect of non-pecuniary damage;
 - (ii) EUR 2,400 (two thousand four hundred euros) in respect of costs and expenses, to be converted into United Kingdom pounds sterling at the rate applicable at the date of settlement and paid into the applicant's representatives' bank account in the United Kingdom;
 - (iii) any tax, including value-added tax, that may be chargeable to the applicant on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President