



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

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FIRST SECTION

CASE OF TAYSUMOV AND OTHERS v. RUSSIA

(Application no. 21810/03)

JUDGMENT

STRASBOURG

14 May 2009

FINAL

06/11/2009

This judgment may be subject to editorial revision.

In the case of Taysumov and Others 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 André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 14 April 2009,

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

PROCEDURE

1. The case originated in an application (no. 21810/03) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Russian nationals, Mr Supyan Yusupovich Taysumov, Ms Roza Shomsuyevna Idrisova and Ms Kheda Kazbekovna Taysumova (“the applicants”), on 16 June 2003.

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

3. The applicants alleged that their close relatives had died in an artillery attack by Russian military forces at their family house, that there had been no effective investigation into the deaths, that the applicants themselves had been left with severe mental suffering and that they had no effective domestic remedies at their disposal.

4. On 29 August 2004 the Court decided to apply Rule 41 of the Rules of Court.

5. By a decision of 27 March 2008, the Court declared the application admissible.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The first applicant was born in 1942, the second applicant was born in 1944 and the third applicant was born in 2002. They live in the village of Chechen-Aul, the Groznenskiy District, in the Chechen Republic.

8. The first and second applicants are spouses and the parents of Mr Kazbek Taysumov, born in 1972. Kazbek Taysumov was married to Ms Zulpat Eskirkhanova, born in 1978; the couple had two daughters – Ms Ayshat Eskirkhanova, born in 1999, and the third applicant. They all lived in a private house at Molodezhnaya Street, Chechen-Aul.

A. Attack of 7 September 2002 and death of the applicants' relatives

1. The applicants' account

9. At about 10.10 p.m. on 7 September 2002 Kazbek Taysumov, Zulpat Eskirkhanova and their elder daughter Ayshat were having dinner in the courtyard of the Taysumovs' house. Their neighbour, Mr D., who had come to visit Kazbek Taysumov, was also in the courtyard and was about to leave. The first applicant was with the then six-month-old third applicant inside the house. The second applicant was not at home.

10. At about 10.20 p.m. artillery fire commenced from three directions – from the federal military base of Khankala, from the village of Starye Atagi, in which a detachment of the Shali regiment was stationed, and from zone no. 56.

11. The first applicant heard a shell fall and burst near the house. The electricity was cut off. The first applicant took hold of the third applicant, rushed outside and hid in a ditch in the courtyard. Immediately thereafter he saw another shell hit the house and one of the walls collapsed. Part of the house, including the room which the first and third applicants had left a moment before, was ruined.

12. In total 15 to 18 shells were fired; three of them hit the applicants' house. The attack lasted some 20 minutes. When the gunfire ceased, the first applicant started moving slowly across the wreckage-strewn courtyard and stumbled on his daughter-in-law's dead body. She had been hit in the head. The first applicant saw his son nearby. The latter was seriously wounded and died half an hour later. The first applicant did not manage to find his elder granddaughter and shouted to his neighbours for help.

13. When the neighbours arrived, they and the first applicant started searching for other victims. They carefully examined the courtyard using

torches. Ayshat Eskirkhanova was found under the ruins not far away from her parents. The three-year-old girl was lethally wounded with several pieces of shrapnel in the abdomen. She died on her way to hospital. Mr D. was found seriously wounded and admitted to hospital. Eventually he survived, but lost his eyesight.

14. As a result of the attack of 7 September 2002 the applicants' house and a KavZ 685 minibus belonging to the first applicant were severely damaged. The applicants submitted a valuation report which had been drawn up by the head of the administration of Chechen-Aul and reflected the poor state of the applicants' property. The applicants further presented a hand-drawn plan of their house indicating the three directions from which the village had been shelled, and photographs of the destroyed house, the minibus and several shell craters around their house. The first applicant examined the shell craters and found several shell fuses. He wrote down the serial numbers of the fuse housings and delivered them to the prosecutor's office. One of the numbers was RGM-216-82.

15. On 8 September 2002 investigators from the prosecutor's office of the Groznenskiy District ("the district prosecutor's office") arrived at Molodezhnaya Street and inspected the scene of the incident and the dead bodies. However, no forensic medical examination of the bodies was performed. Instead the investigators suggested that they should take the bodies with them. The applicants refused and buried Kazbek Taysumov, Zulpat Eskirkhanova and Ayshat Eskirkhanova that same day.

16. On 26 September 2002 medical death certificates were drawn up in respect of Kazbek Taysumov, Zulpat Eskirkhanova and Ayshat Eskirkhanova. The documents stated that they had been killed on 7 September 2002 in the village of Chechen-Aul.

17. On 11 December 2002 the civil registry office of the Groznenskiy District certified the death of the applicants' relatives. The date and place of death were recorded as 7 September 2002, Chechen-Aul.

2. The Government's account

18. The Government submitted that the Prosecutor General's Office had established that at about 9.30 p.m. on 7 September 2002 explosive devices had been detonated in the immediate vicinity of the first applicant's house at Molodezhnaya Street, in the village of Chechen-Aul. The explosion had led to the deaths of Kazbek Taysumov, Zulpat Eskirkhanova, and Ayshat Eskirkhanova. Mr D. had sustained serious bodily injuries while Ms and Mr Yu. had received minor injuries. The explosion had also caused the partial destruction of the first applicant's house.

B. Investigation into the attack

1. Information submitted by the applicants

19. After the killing of their relatives the applicants repeatedly complained both in person and in writing to prosecutor's offices at different levels. They were supported in their efforts by the SRJI. In their letters to the authorities the applicants referred to the facts of their relatives' deaths and asked for assistance and details of an investigation. These enquiries mostly remained unanswered, or only met with formal responses to the effect that the applicants' requests were being forwarded to various prosecutor's offices.

20. At some point the first applicant was informed that he had been granted victim status in case no. 56136.

21. On 16 December 2002 the first applicant requested the prosecutor's office of the Chechen Republic and the military prosecutor of military unit no. 20102 ("the unit prosecutor's office") to inform him of developments in the case.

22. On 15 January 2003 the prosecutor's office of the Chechen Republic forwarded the first applicant's request to the unit prosecutor's office "for inclusion in the file of criminal case no. 34/33/0621-02 instituted under Article 109 § 2 of the Russian Criminal Code".

23. On 22 January 2003 the first applicant asked the district prosecutor's office about the results of the investigation.

24. By letter of 13 March 2003 the prosecutor's office of the Chechen Republic forwarded the first applicant's query, described as "erroneously transmitted to them", to the unit prosecutor's office. The letter also stated that criminal case no. 34/33/0621-02 received by the prosecutor's office of the Chechen Republic on 9 December 2002 had been returned to the unit prosecutor's office for "an additional investigation" on 11 December 2002.

25. On 25 March 2003 the Chief Military Prosecutor's Office forwarded the first applicant's letter concerning the death of his family and destruction of his property to the South Federal Circuit Department of the Prosecutor General's Office.

26. On 31 March 2003 the unit prosecutor's office notified the first applicant that on 8 September 2002 the district prosecutor's office had initiated criminal proceedings in connection with the deaths of his family members on 7 September 2002. They further noted that on 14 February 2003 the case file had been received by the unit prosecutor's office and given the number 34/33/0621-02, and that currently various investigative measures were being taken in order to establish who was responsible.

27. On 4 April 2003 the first applicant requested an update on progress in the investigation from the unit prosecutor's office. He also requested to be granted victim status, stating that since the date on which the criminal

proceedings had been brought he had received no news regarding the course of the investigation.

28. By letter of 6 May 2003 the unit prosecutor's office informed the first applicant that on 8 September 2002 the district prosecutor's office had instituted criminal proceedings under Article 105 § 2 of the Russian Criminal Code (aggravated murder) in connection with "a series of explosions" in Chechen-Aul on 7 September 2002, and that on 28 September 2002 the case file had been transferred to the unit prosecutor's office and given the number 34/33/0621-02 D. The reason for the transfer was the assumption that "the series of explosions" had been caused by the shelling of the village of Chechen-Aul by the federal troops. The letter then referred to the results of expert examination no. 615-C conducted on 12 September 2002 and stated that the above hypothesis had proved to be unfounded. The experts had found fragments of detonating devices for artillery shells of 122-mm calibre in the shell craters, but it had been established that those shells had been transformed into home-made explosive devices and dug into the ground by members of illegal armed groups rather than launched from artillery ordnance. Moreover, the federal troops stationed in Khankala had not conducted any artillery shelling on 7 September 2002 and, in any event, they had no shells of 122-mm calibre. The letter concluded that "the series of explosions" in Chechen-Aul was due to "terrorist activities of members of illegal armed groups, who had buried and then blown up the explosive devices", but not to artillery shelling by the federal military forces. In the absence of any evidence of the involvement of military personnel in the crime, the case file had been transmitted to the prosecutor's office of the Chechen Republic on 27 May 2003. The letter also informed the first applicant about the decision of 9 September 2002 by which he had been granted victim status, and enclosed a copy of that decision.

29. According to the first applicant, he first became aware of the expert examination of 12 September 2002 upon receipt of the above letter but had no access to the results of that examination.

30. On 4 June 2003 the prosecutor's office of the Chechen Republic forwarded the first applicant's complaint to the unit prosecutor's office.

31. On 9 July 2003 the SRJI, acting on the first applicant's behalf, requested an update on progress in the investigation into the killing of the Taysumov family from the unit prosecutor's office. They also requested that the first applicant be admitted to the proceedings as a victim.

32. On 14 August 2003 the unit prosecutor's office replied that by decision of the district prosecutor's office of 9 September 2002 the first applicant had been granted victim status and then questioned.

33. On 24 October 2003 the SRJI applied on the first applicant's behalf to the district prosecutor's office arguing that the expert examination of 12 September 2002 had been improperly conducted and its results were

rather controversial. In that connection, the SRJI requested the investigating authorities to carry out a new expert examination in the presence of the first applicant, his representative and an independent expert.

34. According to the first applicant, at some point a group of investigators visited his house and examined the destroyed minibus, but did not explain their actions.

35. On 20 November 2003 the district prosecutor's office informed the first applicant and the SRJI that the investigation into the deaths of the applicants' relatives had been instituted on 8 September 2002 and that case file no. 56136 had been referred to the unit prosecutor's office on 15 October 2002.

36. On 3 October 2005 the SRJI requested the unit prosecutor's office and the prosecutor's office of the Chechen Republic to carry out a new expert examination in the presence of the first applicant, his representative and an independent expert.

37. On 17 October 2005 the prosecutor's office of the Chechen Republic forwarded the SRJI's letter of 3 October 2005 to the UGA prosecutor's office, which in turn forwarded it to the unit prosecutor's office.

38. On 19 January 2007 the SRJI requested the unit prosecutor's office to carry out a new expert examination and to reply to their previous letter.

39. On 15 March 2007 the unit prosecutor's office informed the SRJI that the case file was provisionally with the UGA prosecutor's office.

2. Information submitted by the Government

40. On 8 September 2002 the district prosecutor's office opened a criminal investigation into the deaths of Kazbek Taysumov, Zulpat Eskirkhanova and Ayshat Eskirkhanova under Article 109 § 2 of the Russian Criminal Code (manslaughter by improper performance of one's professional duties). The case file was assigned the number 56136. In so far as relevant, the decision read as follows:

"At 9.25 p.m. on 7 September 2002 17 or 18 shots were fired from the village of Khankala [aiming] at the outskirts of the village of Chechen-Aul in the Groznenskiy District of the Chechen Republic. As a result of the direct hit [of a shell] on the unnumbered house at Molodezhnaya Street that belonged to the Taysumov family three persons died: K. Taysumov, his wife Z. Eskirkhanova and their daughter Ayshat."

41. On 8 September 2002 the applicants requested the district prosecutor's office not to carry out an autopsy on the dead bodies of their relatives for religious reasons.

42. On 9 September 2002 the district prosecutor's office granted the first applicant victim status in case no. 56136 and questioned him.

43. On the same date the district prosecutor's office granted victim status to two of Kazbek Taysumov's neighbours, Ms B. and Mr Yu., and questioned them. Ms B. stated that at 9.30 p.m. on 7 September 2002 an

artillery bombardment had begun and that during the attack she had had the impression that shells had been falling from every direction. Mr Yu. stated that at 9.30 p.m. on 7 September 2002 he had heard the noise of artillery shots and a few seconds later the sound of explosions. He further noted that two shells had fallen into his kitchen garden and that a hole had been punched in the roof of his house.

44. On 10 September 2002 the district prosecutor's office decided to transfer the case file to the unit prosecutor's office pursuant to the subject-matter jurisdiction rules. In so far as relevant, the decision read as follows:

"The case materials collected in the course of the preliminary investigation fully proved that the crime had been committed by servicemen of the federal military forces. The witnesses ... submitted that the shellfire had come from the village of Khankala and the location of the guard-post at the crossroads of the route Baku-Rostov-Grozny-Shatoy and from the direction of the village of Starye Atagy of the Groznenskiy District. Units of the federal troops that were stationed there had artillery pieces and mortars. All witnesses questioned submitted that flashes at the time of the shelling had been seen exactly where the military units had been located.

Identical fragments of shell fuse housings marked "RMG-2 16-82" found at the scene of the incident confirm in full the fact that Chechen-Aul was shelled by the military. Only military units are equipped with shells bearing such marks.

Shell craters at the scene of the incident indicated that the shells had been fired exactly from the places where the above-mentioned military units of the Russian Federation had been located. Units of the Ministry of the Interior located in the vicinity of Chechen-Aul had no artillery pieces or mortars."

45. On receipt by the unit prosecutor's office, the case file was assigned the number 14/33/0621-02. At some point the number was changed to 34/33/0621-02.

46. On an unspecified date in 2002 a commission composed of senior officers of the United Group Alignment and officers of the Ministry of the Interior carried out an inquiry into the explosions in Chechen-Aul. The commission established that no aeroplanes, artillery ordnance or engineering weapons had been used there. It further concluded that the explosions had presumably been caused by spontaneous detonation of several landmines, which had been placed by illegal armed groups in the Chechen-Aul area in order to damage the federal troops. The explosive devices had been home-made and probably radio-controlled.

47. On 26 November 2002 the unit prosecutor's office decided that the explosions of 7 September 2002 had been caused by spontaneous detonation of landmines laid by members of illegal armed groups and suspended the investigation in case no. 34/33/0621-02 for failure to identify those responsible.

48. At some point the case file was transferred to the prosecutor's office of the Chechen Republic.

49. On 11 December 2002 the case was transferred to the prosecutor's office of the United Group Alignment ("the UGA prosecutor's office").

50. On 15 May 2003 the unit prosecutor's office resumed the investigation in case no. 34/33/0621-02 in order to establish precisely the nature and origin of the explosive devices.

51. On 16 May 2003 the unit prosecutor's office suspended the investigation.

52. In June 2003 the UGA prosecutor's office studied the case file and recommended measures to be taken to solve the crime.

53. On 1 July 2003 the UGA prosecutor's office returned the case file to the unit prosecutor's office for the reason that the investigation had been suspended prematurely.

54. On 14 August 2003 the unit prosecutor's office suspended the investigation as the relevant time-limits had expired, and indicated that the Groznenskiy department of the interior ("the ROVD") should take investigative measures to find the perpetrators. The decision described the circumstances of the case as follows:

"Between 9 and 11 p.m. on 7 September 2002 seventeen or eighteen shots were fired by an unidentified artillery system [located] in the direction of Khankala on Molodezhnaya Street in the village of Chechen-Aul in the Groznenskiy District of the Chechen Republic. Shrapnel hit the house belonging to the Taysumov family; as a result K. Taysumov, Z. Eskirkhanova and A. Taysumova were killed."

55. On 6 October 2003 the unit prosecutor's office quashed the decision of 14 August 2003 and resumed the investigation. On the following day it was again suspended.

56. On 14 October 2003 the unit prosecutor's office granted victim status in case no. 34/33/0621-02 to the Taysumovs' neighbours, Mr and Ms Yu., and questioned their two minor children.

57. On 17 November 2003 the unit prosecutor's office granted Mr D. victim status and questioned him.

58. On 6 December 2003 the unit prosecutor's office suspended the investigation in case no. 34/33/0621-03 because the time allowed for a preliminary investigation had lapsed, and ordered the ROVD and the Groznenskiy district department of the Federal Security Service to take investigative measures to find the perpetrators. The description of the circumstances of the crime reproduced verbatim the one given in the decision of 14 August 2003.

59. On 27 April 2005 the UGA prosecutor's office quashed the decision of 6 December 2003 because not all requisite investigative measures had been taken and forwarded the case file to the unit prosecutor's office. They also mentioned that on 11 December 2002 the case file had been transferred to the UGA prosecutor's office because of "the lopsided assessment by the investigator of the collected evidence aimed at elimination of [a hypothesis of] federal military involvement in the artillery shelling". They also listed

the measures that had not been taken, in particular the fact that the investigators had not studied documentation of artillery units of the United Group Alignment, had not questioned officers of the artillery of those units, had not established which units could have sent the shells in question and had not determined whether any RGM-2 had been received by the military units of the United Group Alignment.

60. On 21 June 2005 the unit prosecutor's office resumed the proceedings.

61. On 21 July 2005 the unit prosecutor's office suspended the investigation in case no. 34/33/0621-02D for failure to identify those responsible.

62. On 28 December 2005 the UGA prosecutor's office quashed the decision of 21 July 2005 because not all requisite investigative measures had been taken and forwarded the case file to the unit prosecutor's office. They referred to the same deficiencies in the investigation that had been mentioned in their decision of 27 April 2005.

63. On 15 February 2006 the unit prosecutor's office received the case file.

64. From February 2006 onwards the investigators took a number of investigative measures. In particular, they questioned two witnesses, Mr D. and the first applicant, seized a videotape with a record showing the scene of the incident after the events in question, ordered an expert examination of that videotape and requested information on military orders and other documents from the military hierarchy. They further ordered and obtained an additional examination by an explosives expert and allowed the victims of the crime to study the decision ordering the examination. The investigators also collected documents confirming the amount of pecuniary damage sustained by the victims.

65. The investigation in case no. 34/33/0621-02 was ongoing and investigative measures were being taken to establish all the circumstances of the incident.

II. RELEVANT DOMESTIC LAW

66. For a summary of relevant domestic law see *Akhmadova and Sadulayeva v. Russia*, no. 40464/02, §§ 67-69, 10 May 2007.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

A. Arguments of the parties

67. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies, since the investigation into the killings of the applicants' relatives had not yet been completed. They also argued that it had been open to the applicants to challenge in court any actions or omissions by the investigating or other law-enforcement authorities during the investigation.

68. The applicants disputed that objection. In their view, the fact that the investigation had been pending for more than six years with no tangible results proved that it was an ineffective remedy in this case. They further argued that in the Chechen Republic a court appeal against a decision of an investigator would be futile and the remedy referred to was illusory and ineffective.

B. The Court's assessment

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

70. The Court reiterates that Article 35 § 1 of the Convention provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V, and *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII).

71. The Court further observes that an investigation into the killings of the applicants' relatives had been pending since 8 September 2002. The applicants and the Government dispute the effectiveness of this investigation.

72. The Court considers that this limb of the Government's preliminary objection raises issues concerning the effectiveness of the criminal

investigation which are closely linked to the merits of the applicants' complaints. It thus considers that this matter falls to be examined below under the substantive provision of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

73. The applicants complained under Article 2 of the Convention of a violation of the right to life in respect of their relatives and of the authorities' failure to conduct a proper investigation. Article 2 of the Convention reads as follows:

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

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

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

A. Alleged violation of the right to life

1. Arguments by the parties

74. The applicants argued that it was beyond reasonable doubt that their relatives had been killed by members of the federal forces. The applicants stressed that only the military had had artillery shells and that the craters proved that the shots had been fired from the military base in Khankala.

75. The Government submitted that federal military involvement in the killing of the applicants' relatives was not proven. They argued that the death of the applicants' relatives had been caused by the detonation of an explosive device in the immediate vicinity of the applicants' house. It was not established that there was a causal link between the applicants' relatives' deaths and the actions of the military. The applicants' neighbours had thought that Molodezhnaya Street had been shelled by the artillery. The investigators had described the events in question as a bombardment in procedural documents merely on the basis of the applicants' depositions. The hypothesis of shelling had been disproven in the course of the investigation.

76. The Government submitted that it followed from the undated report of the scene-of-incident inspection that experts had examined the oblong-shaped craters and established that they had been left by a horizontally-laid shell dug into the upper layers of soil in a manner typically associated with terrorists. According to those experts, the shells could have been detonated remotely by any radio signal, probably by accident. The explosion had taken place in the vicinity of a road leading to an illegal petrol factory and had caused demolition and casualties.

77. An explosive expert's examination carried out on an unspecified date had concluded that the fragments found at the scene of the incident had been parts of a 122-mm calibre artillery shell used with howitzers of types M-30, D-30, 2C1 "Carnation" and M-66, as well as with cannons of types A-19 and D-49. Detonators marked RGM-2 were used with artillery systems nos. 1-30, 2C1, 2Ch3, 2c19 and D-44. The federal military units located in the vicinity of Chechen-Aul had not carried out any operations in the area on 7 September 2002 and they did not have 122-mm shells or the other ammunition mentioned in the expert examination report.

78. At the scene investigators had found fragments of electromagnetic relay and wires that had been used by illegal armed groups for production of home-made explosive devices. The Government further submitted that the investigators were working on the hypothesis of spontaneous or deliberate detonation of a home-made explosive device placed by members of illegal armed groups or of an erroneous use of weapons by the federal troops.

79. In the Government's view any conclusions as to the identification of those responsible for the explosions would be premature because the investigation was still pending.

2. The Court's assessment

(a) General principles

80. 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, and *Andronicou and Constantinou v. Cyprus*, 9 October 1997, § 171, *Reports of Judgments and Decisions* 1997-V).

(b) Establishment of the facts

81. The Court observes that it has developed a number of general principles relating to the establishment of the facts in dispute, in particular when faced with allegations of disappearance under Article 2 of the Convention (for a summary of these, see *Bazorkina v. Russia*, no. 69481/01, §§ 103-09, 27 July 2006). The Court also notes that 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).

82. The applicants maintained that it was beyond reasonable doubt that Kazbek Taysumov, Zulpat Eskirkhanova and Ayshat Eskirkhanova had died as a result of the shelling carried out by the Russian military on 7 September 2002. They argued that only the federal troops could have organised the massive bombardment of a village and that the domestic investigators had established the military implication in the artillery attack.

83. The Government insisted that the applicants' relatives' deaths had been caused by an explosion of self-made bombs installed by insurgents and thus were not imputable to the State.

84. The Court notes at the outset that in order to be able to assess the merits of the applicants' complaints and in view of the nature of the allegations, the Court requested the Government to submit a copy of the complete criminal investigation file in the present case. The Government submitted 65 pages of copies of documents, mostly decisions to suspend and resume the investigation and records of several interviews with the victims and witnesses. No outline of the investigation or list of documents included in the case file was attached. It follows from the handwritten numbering of the documents submitted that the case file contained at least 150 pages. They explained their unwillingness to produce the entire investigation file, referring to Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has already found this explanation insufficient to justify the withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-...).

85. In view of the foregoing and bearing in mind the principles cited above, the Court finds that it can draw inferences from the Government's conduct in this respect.

86. The Court considers that the applicants have presented a coherent and convincing picture of the events in question. Their account of the events was supported by the domestic investigation from its very beginning (see paragraph 40 above). As early as on 10 September 2002, that is, two days after the commencement of the proceedings, the domestic investigation considered it established that the federal military forces were responsible for the deaths of the applicants' relatives (see paragraph 44 above).

87. The Court takes note of the Government's hypothesis that the deaths of the applicants' relatives had been caused by the explosion of self-made explosive devices made by insurgents. However, it observes that the applicants' neighbours who had been admitted to the proceedings as victims had allegedly witnessed an artillery attack and had seen shells falling (see paragraph 43 above). Furthermore, it is rather dubiously assumed that explosive devices dug into the upper layers of soil could have fallen from above to punch a hole in the roof of Mr Yu.'s house.

88. Moreover, the Court observes that, according to the Government, the hypothesis of artillery shelling of the applicants' house had been disproven in the course of the investigation. Indeed, it follows from the undated report by the commission composed of the military hierarchy that the deaths of the three members of the Taysumov family had been caused by a terrorist attack (see paragraph 46 above). That version was reproduced in the decision of 26 November 2002 by the unit prosecutor's office (see paragraph 47 above).

89. Nevertheless, the Court points out that on 11 December 2002 the investigation was found to be deficient as it had sought to whitewash the military units that had allegedly fired the artillery shells (see paragraph 62 above). It is clear from the documents submitted by the Government that the assumption of military involvement in the artillery shelling of the applicants' house was again used by the investigators as a working hypothesis in 2003 (see paragraphs 54 and 58 above). It appears that this version has not been dismissed as implausible by the investigators to date. The Court considers therefore that implication of federal troops in the crime has not been disproven throughout the proceedings. In such circumstances it is not persuaded by the Government's assertion that the investigators merely cited in the official documents the applicants' allegations that the village of Chechen-Aul had been fired at by the artillery on 7 September 2002.

90. The Court further points out that in their submissions the Government relied heavily on the undated scene-of-incident inspection report by the military commission (see paragraph 76 above). The Court assumes that this is the same report of which a copy has been submitted by the Government (see paragraph 46 above). However, it remains unknown what authority established the military commission and on what date its report was drawn up. The Court is thus disinclined to consider this document as irrefutable evidence to support the allegation that the Taysumovs' house had been destroyed by self-made explosive devices

rather than by artillery shelling. Moreover, it is not convinced by the assertion that the military units had not possessed ammunition of the type found at the scene of the incident, as it has not been provided with a copy of the report on the explosives examination referred to by the Government (see paragraph 77 above).

91. The Court reiterates that where the applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to the withholding of documents by the Government, it is for the latter to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicant, 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).

92. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that on 7 September 2002 the Taysumovs' house was shelled by the Russian artillery and that Kazbek Taysumov, Zulpat Eskirkhanova and Ayshat Eskirkhanova were killed in the course of shelling by federal troops. The Government's statement that the investigation did not find any evidence to support the involvement of State agents in the killings 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 Kazbek Taysumov, Zulpat Eskirkhanova and Ayshat Eskirkhanova died as a result of artillery shelling by the Russian military on 7 September 2002.

(c) The State's compliance with Article 2

93. The Court reiterates that, in the light of the importance of the protection afforded by Article 2, it 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 *McCann and Others*, cited above, § 147).

94. The Court has already found it established that Kazbek Taysumov, Zulpat Eskirkhanova and Ayshat Eskirkhanova were killed by State servicemen. Considering that the authorities did not rely on any grounds to justify the use of lethal force by their agents, or otherwise account for the killings, it follows that liability for the deaths is attributable to the respondent Government.

95. Accordingly, the Court finds that there has been a violation of Article 2 of the Convention in respect of Kazbek Taysumov, Zulpat Eskirkhanova and Ayshat Eskirkhanova.

B. Alleged ineffectiveness of the investigation

1. Arguments of the parties

96. The applicants claimed that the authorities had failed in their obligation to carry out an effective investigation into the circumstances of their relatives' deaths. They argued that the investigation had fallen short of the requirements of domestic law and Convention standards. In particular, it had been pending for more than six years and during that period it had been repeatedly suspended. The authorities had not kept the applicants abreast of developments in the investigation or informed them as to what investigative measures had been taken and had repeatedly denied them access to the criminal investigation file.

97. The Government claimed that the investigation carried out in the present case had met the Convention requirement of effectiveness. It had been expeditiously instituted on the day following the incident. The applicants had impeded the investigation by refusing to agree to an autopsy on their relatives' bodies. The proceedings had been repeatedly suspended and then resumed, which did not prove its ineffectiveness. The Government argued that the investigators' refusal to allow the applicants' access to the case file did not run counter to the procedural requirements of Article 2. Further, numerous investigative measures had been and were being taken and, accordingly, the investigation was compatible with the guarantees of Article 2 of the Convention.

2. The Court's assessment

98. 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 v. Turkey* [GC], no. 21594/93, § 88, ECHR 1999-III). 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, ECHR 2000-III, §§ 106-07). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating the use of lethal force may generally be regarded as essential in maintaining public confidence in their 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).

99. In the instant case, the Court observes that an investigation into the killing of the applicants' relatives was instituted on 8 September 2002 and remains ongoing to date. It must assess whether that investigation met the requirements of Article 2 of the Convention.

100. The Court notes at the outset that the majority 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 sparse information on its progress presented by the Government.

101. The Court observes that the investigation was commenced on the day after the attack. It also appears from the decision of 10 September 2002 that during the first two days of the investigation the district prosecutor's office questioned witnesses and took some investigative steps that allowed them to reach a conclusion concerning military involvement in the killings (see paragraph 44 above). However, after the case file had been transferred to a military prosecutor's office, the investigation appears to have become protracted and plagued with inexplicable shortcomings and delays.

102. In particular, despite the abundant evidence of the federal military personnel's involvement in the attack of 7 September 2002 and the killing of the applicants' three relatives, it is clear that by 28 December 2005 no meaningful efforts had been made to establish the identity of the State agents who had given the order to fire artillery shells at the populous village, or of those who had carried out the order (see paragraph 62 above). The Court notes in this connection that it is highly unlikely that the identity of those responsible for the artillery guns within the military units located in the vicinity of Chechen-Aul and involved in the attack was unknown to the authorities or that it was impossible to establish it immediately thereafter.

103. The Court points out that the investigation has remained pending since 8 September 2002, during which period it has been suspended and resumed at least six times. Its ineffectiveness and incompleteness were repeatedly acknowledged by senior prosecutors (see paragraphs 53, 59 and 62 above). However, such criticism proved to be futile as no corrective steps were taken between 27 April and 28 December 2005.

104. The Court observes that the investigation was on two occasions passed on from civilian prosecutor's offices to military prosecutor's offices, leading to delays for which no justification has been offered by the Government. For instance, it took the military prosecutors' offices five

months to resume the investigation following the transfer of the case (see paragraphs 49 and 50 above). However, even after this considerable period of indolence the investigation was suspended on the following day (see paragraph 51 above). Moreover, on another occasion the case was again re-opened for one day only (see paragraph 55 above).

105. The Court further points out that no proceedings whatsoever were pending between 6 December 2003 and 27 April 2005 (see paragraphs 58 and 59 above), that is, for one year and almost five months. Such handling of the investigation could not but have had a negative impact on the prospects of identifying the perpetrators and solving the crime.

106. The Government produced no detailed information on eventual progress in the investigation made after February 2006. The Court therefore assumes that no meaningful results have been achieved in more than three years, which serves as yet further proof of the overall ineffectiveness of the criminal proceedings in question.

107. The Court also notes that even though the first applicant was granted victim status, he was not informed of any significant developments in the investigation apart from several decisions on its suspension and resumption. Accordingly, the Court finds that 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 (see *Oyur v. Turkey* [GC], no. 21594/93, § 92, ECHR 1999-III).

108. Having regard to the limb of the Government's preliminary objection that was joined to the merits of the complaint, inasmuch as it concerns the fact that the domestic investigation is still pending, the Court notes that the investigation, having been repeatedly suspended and resumed, and plagued by inexplicable delays, has been ongoing for over six years without producing any tangible results. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and dismisses their preliminary objection in this part.

109. The Government also mentioned the possibility for the applicants to apply for judicial review of the decisions of the investigating authorities in the context of exhausting domestic remedies. The Court observes that the applicants, having no access to the case file and not being properly informed of the progress of the investigation, could not have effectively challenged actions or omissions of investigating authorities before a court. Furthermore, the investigation was resumed by the prosecuting authorities themselves a number of times owing to the need to take additional investigative measures. However, they still failed to investigate the applicants' allegations properly. Moreover, owing to the time that had elapsed since the events complained of, certain investigative steps that ought to have been carried out much earlier could no longer usefully be conducted. Therefore, it is highly doubtful that the remedy in question would have had any prospects of success. Therefore, the Court finds that the

remedy relied upon by the Government was ineffective in the circumstances and rejects their preliminary objection in this part also.

110. In the light of the foregoing, the Court further concludes that the authorities failed to carry out a thorough and effective investigation into the circumstances surrounding the deaths of Kazbek Taysumov, Zulpat Eskirkhanova and Ayshat Eskirkhanova.

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

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

112. The applicants complained that the anguish and distress suffered by them as a result of the shelling of their house, their relatives' deaths and the authorities' reaction amounted to treatment in breach of Article 3 of the Convention, which reads as follows:

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

113. The applicants maintained their complaint.

114. The Government submitted that perception of the events was a subjective factor dependent upon the individual emotional characteristics of each person. The domestic investigation had found no evidence that the applicants had ever been subjected to any ill-treatment. The applicants had been granted victim status and thus enjoyed all the rights provided for by domestic law.

115. The Court reiterates that whilst a family member of a “disappeared person” may in certain circumstances claim to be a victim of treatment contrary to Article 3 (see *Kurt v. Turkey*, 25 May 1998, §§ 130-34, *Reports* 1998-III), the same principle would not usually apply to situations where a person dies at the hands of the authorities (see, for example, *Tanli v. Turkey*, no. 26129/95, § 159, ECHR 2001-III (extracts)). In the latter situations the Court would limit its findings to Article 2 of the Convention. Similarly, in the present case, while having no doubt as to the profound suffering caused to the applicants by the deaths of their relatives, the Court finds no basis for finding a violation of Article 3 in this context, as the Court's case-law on the issue refers to the specific phenomenon of disappearances.

116. Accordingly, there has been no violation of Article 3 of the Convention in respect of the applicants.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

117. The applicants complained under Article 13 of the Convention that they had had no effective remedies in respect of the alleged violations of the Convention. Article 13 of the Convention 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.”

118. The applicants argued that the operation of the legal system in the Chechen Republic had been disrupted and that there had been an administrative practice of ineffective investigation into alleged abuses of power on the part of the Russian military, thus, in their view, rendering all potential remedies ineffective.

119. The Government contended that the applicants had had effective domestic remedies as required by Article 13 of the Convention. For instance, they could have complained about the investigators’ actions both to higher prosecutors and to the courts. Their access to such remedies had not been restricted. The first applicant had been granted victim status and thus had had all relevant procedural rights. Moreover, he could have lodged civil claims for non-pecuniary damage. The Government referred to several cases concerning the events in the Chechen Republic in which awards for non-pecuniary damage had been made by Russian courts.

120. 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).

121. Given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *Khatsiyeva and Others v. Russia*, no. 5108/02, § 162, 17 January 2008). 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).

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

123. It follows that in circumstances where, as in the present case, the criminal investigation into the deaths was ineffective (see paragraph 110 above) and the effectiveness of any other remedy that may have existed, including civil remedies, was consequently undermined, the State has failed in its obligation under Article 13 of the Convention (see, among other authorities, *Khatsiyeva and Others*, cited above, § 164).

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

125. As regards the applicants' reference to Article 13 in connection with Article 3 of the Convention, the Court refers to its above finding that there has been no violation of the Convention on account of the applicants' mental suffering. In the absence of an "arguable claim" of a violation of a substantive Convention provision, the Court finds that there has been no violation of Article 13 in this respect.

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

126. The applicants argued that the Government's failure to submit the documents requested by the Court at the communication stage disclosed a failure to comply with their obligations under Article 38 § 1 (a) of the Convention, which provides, in so far as relevant:

"1. If the Court declares the application admissible, it shall

(a) pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities;

..."

127. The applicants invited the Court to conclude that the Government's refusal to submit a copy of the entire investigation file in response to the Court's requests was incompatible with their obligations under Article 38 of the Convention.

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

129. The Court reiterates that proceedings in certain types of applications do not in all cases lend themselves to a rigorous application of the principle whereby a person who alleges something must prove that allegation and that it is of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications.

130. This obligation requires the Contracting States to furnish all necessary facilities to the Court, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of applications. It is inherent in the proceedings relating to cases of this nature, where individual applicants accuse State agents of violating their rights under the Convention, that in certain instances it is only the respondent State that has access to information capable of corroborating or refuting these allegations. A failure on a Government's part to submit such information which is in their possession without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a) of the Convention. In a case where the application raises issues as to the effectiveness of the investigation, the documents of the criminal investigation are fundamental to the establishment of the facts and their absence may prejudice the Court's proper examination of the complaint both at the admissibility and at the merits stage (see *Tanrıkuş v. Turkey* [GC], no. 23763/94, § 71, ECHR 1999-IV).

131. The Court notes that despite its repeated requests for a copy of the entire investigation file opened into the killings of the applicants' relatives, the Government refused to produce such a copy, having provided only copies of decisions to suspend and resume the investigation and to grant victim status, several interview transcripts and the undated military commission report. Moreover, they failed to provide a copy of the expert report referred to in their written submissions. The Government explained their unwillingness to disclose material from the investigation, relying on Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has already found this reference insufficient to justify refusal (see, among other authorities, *Imakayeva*, cited above, § 123).

132. Considering the importance of a respondent Government's cooperation in Convention proceedings, and mindful of the difficulties associated with the establishment of facts in cases of such a nature, the Court finds that the Government fell short of their obligations under Article 38 § 1 of the Convention because of their failure to submit copies of the documents requested in respect of the killings of the applicants' relatives.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

133. Article 41 of the Convention provides:

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

A. Pecuniary damage

134. The first and third applicants claimed a sum for pecuniary damage on account of Kazbek Taysumov’s lost wages. They submitted that, even though their son and father had been unemployed at the time of his death, it was reasonable to assume that he would have earned at least the official minimum wage. In total the first applicant claimed 119,801.21 Russian roubles (RUB – approximately 2,700 euros (EUR)) and the third applicant claimed RUB 241,326.59 (approximately EUR 5,400).

135. The Government argued that no compensation for pecuniary damage should be awarded to the first and third applicants since it was not established that the State was responsible for their relatives’ deaths and found the claims unsubstantiated.

136. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention. Furthermore, under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”.

137. The Court finds that there is a direct causal link between the violation of Article 2 in respect of Kazbek Taysumov and the loss by the first and third applicants of the financial support which he could have provided. Having regard to the applicants’ submissions and to the fact that Kazbek Taysumov had been unemployed by the time of his death, the Court finds it appropriate to award the first and third applicants EUR 1,500 each in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

138. The first and third applicants claimed non-pecuniary damage for the suffering they had endured as a result of the loss of their family members and the indifference shown by the authorities towards them. The first applicant claimed EUR 75,000 and the third applicant claimed EUR 150,000.

139. The Government found the amounts claimed exaggerated.

140. The Court has found violations of Articles 2 and 13 of the Convention on account of the killing of the applicants' close relatives and the lack of an effective investigation into it. The Court accepts that the first and third applicants have suffered non-pecuniary damage which cannot be compensated for solely by the finding of violations. It finds it appropriate to award the first and third applicants EUR 52,500 each, plus any tax that may be chargeable thereon.

C. Costs and expenses

141. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research at a rate of EUR 50 per hour and the drafting of legal documents submitted to the Court and the domestic authorities at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff, as well as administrative expenses, translation and courier mail fees. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 9,046.24 less the amount received by way of legal aid from the Council of Europe.

142. The Government disputed the reasonableness and justification of the amounts claimed under this head. They also submitted that the applicants' claims for just satisfaction had been signed by five lawyers, whereas two of them had not been mentioned in the powers of attorney issued by the applicants. They also doubted that it had been necessary to send the correspondence to the Registry via courier mail.

143. The Court points out that the applicants had given authority to act to the SRJI and its three lawyers. The applicants' claims for just satisfaction were signed by five persons in total. The names of three of them appeared in the powers of attorney, while two other lawyers worked with the SRJI. In such circumstances the Court sees no reason to doubt that the five lawyers mentioned in the applicants' claims for costs and expenses took part in the preparation of the applicants' observations on the merits of the case. Moreover, there are no grounds to conclude that the applicants were not entitled to send their submissions to the Court via courier mail.

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

145. Having regard to the details of the information available, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representatives.

146. Further, it has to be established whether the costs and expenses incurred for legal representation were necessary. The Court notes that this case was rather complex and required a certain amount of research and

preparation. It notes, however, that the case involved little documentary evidence, in view of the Government's refusal to submit the entire case file. The Court thus doubts that research was necessary to the extent claimed by the applicants' representatives.

147. Having regard to the details of the claims submitted by the applicants and making its assessment on an equitable basis, the Court awards them the amount of EUR 7,500, less EUR 850 received by way of legal aid from the Council of Europe, plus any tax that may be chargeable to the applicants. The relevant sum is to be paid into their representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 2 of the Convention in respect of Kazbek Taysumov, Zulpat Eskirkhanova and Ayshat Eskirkhanova;
3. *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 in which Kazbek Taysumov, Zulpat Eskirkhanova and Ayshat Eskirkhanova were killed;
4. *Holds* that there has been no violation of Article 3 of the Convention in respect of the applicants on account of mental suffering;
5. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
6. *Holds* that there has been no violation of Article 13 of the Convention in conjunction with Article 3 of the Convention;
7. *Holds* that there has been a failure to comply with Article 38 § 1 (a) of the Convention in that the Government have refused to submit documents requested by the Court;

8. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 1,500 (one thousand five hundred euros) to the first and third applicants each in respect of pecuniary damage, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement;

(ii) EUR 52,500 (fifty-two thousand five hundred euros) to the first and third applicants each in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement;

(iii) EUR 6,650 (six thousand six hundred and fifty euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands;

(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;

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

Done in English, and notified in writing on 14 May 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President