



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

1959 · 50 · 2009

FIRST SECTION

CASE OF ZABIYEVA AND OTHERS v. RUSSIA

(Application no. 35052/04)

JUDGMENT

STRASBOURG

17 September 2009

FINAL

01/03/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Zabiyeva 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 Søren Nielsen, *Section Registrar*,

Having deliberated in private on 27 August 2009,

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

PROCEDURE

1. The case originated in an application (no. 35052/04) 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 four Russian nationals listed below (“the applicants”), on 11 November 2003.

2. The applicants 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 Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 1 September 2005 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application.

4. On 3 September 2007 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3 of the Convention).

5. 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

6. The applicants are:

- (1) Ms Tamara Zabiyeva, born in 1937;
- (2) Ms Eset Kotiyeva, born in 1973;
- (3) Mr Khamzat Zabiyeu, born in 2000; and
- (4) Mr Belan Zabiyeu, born in 2002.

They live in the village of Galashki, in the Republic of Ingushetia.

7. The first applicant is the mother of Mr Ali Zabiyeu, Mr Musa Zabiyeu and Mr Umar Zabiyeu, who was born in 1972. Umar Zabiyeu was the second applicant's husband; they are the parents of the third and fourth applicants.

A. Killing of Umar Zabiyeu

1. The applicants' account

8. On 10 June 2003 the first applicant and her sons, Ali and Umar Zabiyeu, were working in a field outside the village of Galashki. At some point they noticed a helicopter flying in circles above them.

9. At about 7 p.m. they rode home in a ZIL-130 lorry; Umar Zabiyeu was driving. When they were within 4 kilometres of the village of Galashki, their vehicle came under heavy gunfire. Apparently the shots were fired from machine guns and came from the nearby forest. The first applicant was wounded in the back, neck and head. Umar Zabiyeu lost control of the lorry, which crashed into a roadside tree. The Zabiyeu brothers took the first applicant, unconscious, out of the vehicle. Then Ali Zabiyeu ran to the village for help; Umar Zabiyeu stayed with his mother. At some point the lorry exploded. Then the gunfire ceased.

10. About forty minutes later Ali Zabiyeu, accompanied by Musa Zabiyeu, policemen and fellow villagers, arrived at the scene of the incident to find the first applicant lying on the ground and no trace of Umar Zabiyeu. The first applicant was then transported to hospital; two bullets were extracted from her body.

11. Having heard about Umar Zabiyeu's disappearance, the villagers started searching for him. At about 10 p.m. on 10 June 2003 two of them, Mr D. and Mr O., met in a forest a group of around thirty or forty armed men speaking unaccented Russian. The armed men forced the two villagers to the ground and questioned them. Then they contacted someone via a

portable radio transmitter, ordered the villagers to lie still for another half an hour and left.

12. In the morning of 11 June 2003 a group of Russian servicemen, under the command of an officer with the rank of major-general, arrived at the scene of the incident. The major-general suggested that the Zabiyevs had been attacked by unknown Chechen insurgents and denied any possible involvement of Russian military personnel.

13. At 12 noon on 11 June 2003 Umar Zabiyeu's dead body, with gunshot wounds and bruises, was found around two kilometres from the scene of the incident and some twenty metres from the place where Mr D. and Mr O. had met the armed men the night before. The corpse was partly covered with soil.

2. Information submitted by the Government

14. At about 7.10 p.m. on 10 June 2003 unidentified persons were hiding in the forest on the left side of the road leading from the village of Dattykh at a distance of 4 kilometres from the village of Galashki. They fired from machine guns at the ZIL-130 lorry in which the first applicant, Umar Zabiyeu and Ali Zabiyeu were travelling. As a result of the shooting the first applicant suffered injuries to her neck and back, Ali Zabiyeu received tangential soft-tissue wounds and Umar Zabiyeu went missing.

15. On 11 June 2003 the dead body of Umar Zabiyeu was found buried at a distance of 1.7 kilometres from the scene of the incident. The body bore traces of numerous gunshot wounds to the head and body.

3. NGO reports on Umar Zabiyeu's murder

16. On 16 July 2003 Human Rights Watch released a paper entitled "Russia: Abuses Spread Beyond Chechnya. Neighboring Ingushetia Now Affected", which described the Zabiyeu's case as follows:

"On June 10, three Ingush civilians – sixty-five-year-old Tamara Zabiyeu and two of her sons, Ali and Umar Zabiyeu – were returning from their potato field near the village of Galashki, when their truck came under heavy machinegun fire, injuring Zabiyeu in the back, neck, and head. The brothers took their mother out of the car and Umar stayed with her while Ali ran to the village for help.

Local Ingush police who arrived about an hour later found Zabiyeu unconscious and sent her to the local hospital, but were unable to find Umar. His body, bearing clear marks of torture and gun shot wounds, was discovered the next morning in a nearby forest. The Ingush police said that evidence suggests involvement by federal servicemen, but the military procuracy has refused to take over the case.

While Galashki has in the past been the scene of clashes between Russian federal forces and Chechen rebel fighters, Human Rights Watch has no indication that any such activity took place in the area that day."

17. Later, Human Rights Watch gave a more detailed description of the Zabiyevs' case in its article entitled "Spreading Despair: Russian Abuses in Ingushetia", issued in September 2003.

B. Investigation into the killing of Umar Zabiyeu

1. The applicants' account

18. In the afternoon of 11 June 2003 investigators examined the scene of the incident. They found many used cartridges and an empty machine-gun cartridge belt, used bandages, empty water bottles, canned pork and plastic bags bearing the Russian Ministry of Defence logo. The investigators took fingerprints from the bottles and tins. Then Umar Zabiyeu's dead body was transported to the morgue.

19. At 5.20 p.m. on 11 June 2003 a forensic expert commenced a post-mortem examination of Umar Zabiyeu's body. According to the forensic report, there were numerous gunshot wounds to the body, namely three perforating wounds to the head; one penetrating, two perforating and two non-penetrating wounds to the chest; three perforating wounds to an arm; a wound to a shoulder joint and a wound to a buttock. It was also established that Umar Zabiyeu's lower jaw had been broken by a blunt hard item. The expert concluded that Umar Zabiyeu's death had been caused by the penetrating and perforating wounds to the head and chest and that the lethal shots had been fired from machine guns aimed at Umar Zabiyeu while he had been either standing or lying down. The death had occurred some eighteen to twenty-four hours before the beginning of the autopsy.

20. On 12 June 2003 Umar Zabiyeu was buried. His family received 100,000 Russian roubles (RUB) from the President of Ingushetia as a burial allowance, which was a common practice at the material time.

21. On an unspecified date the head of the local administration confirmed in writing that there had been no armed clashes between the federal troops and rebel fighters in the area around the village of Galashki between 9 and 11 July 2003.

22. On 25 June 2003 Musa Zabiyeu wrote to the Prosecutor General of Russia, the Prosecutor of Ingushetia and the military prosecutor of the United Group Alignment (UGA), complaining about the military attack on his relatives and the murder of his brother.

23. On 14 July 2003 the prosecutor's office of the Sunzhenskiy District of the Republic of Ingushetia ("the district prosecutor's office") informed Musa Zabiyeu that his complaint concerning the events of 10 June 2003 would be examined within the course of the investigation in case no. 23600032.

24. On 17 April 2004 the Ministry of the Interior of Ingushetia informed the second applicant that the investigation into the murder of Umar Zabiyeu

in case no. 03600032 had been commenced by the district prosecutor's office. It noted, in particular, the following:

“As a result of the investigative measures taken it was established that the crime had been committed by the servicemen of military intelligence unit no. 194 KTG (*«разведполка 194 КТГ»*) with the direct involvement of the head of that unit, [S.P.], nicknamed 'the Snake' (*«Змея»*), who is unable to leave the location of the unit in the village of Dattikh in the Sunzhenskiy District of Ingushetia as the military prosecutor's office has charged him with another crime and instituted criminal proceedings on that account.”

25. On 7 July 2006 a member of the Parliament of Ingushetia received a letter from the Prosecutor General's Office stating that the investigation into Umar Zabiyeu's killing had been suspended on 19 June 2004 and resumed on 2 February 2006.

2. Information submitted by the Government

26. On 11 June 2003 the district prosecutor's office instituted an investigation into the killing of Umar Zabiyeu under Article 105 § 1 (murder) and Article 222 § 1 (unlawful acquisition and possession of firearms) of the Russian Criminal Code. The case file was assigned the number 23600032.

27. On 11 June 2003 the crime scene was inspected and a post-mortem examination of Umar Zabiyeu's body was ordered.

28. On 12 June 2003 the first applicant was granted victim status and questioned. She stated that at about 7 p.m. on 10 June 2003, while she had been travelling with her two sons in the ZIL-130 lorry, unidentified persons had opened fire. As a result she had suffered wounds to her neck and back. Ali and Umar Zabiyeu had taken her out of the car and brought her into the forest. Ali had gone to the village for help, while Umar had dragged the first applicant to a hill. At some point she had lost consciousness. The first applicant had recovered her senses after the arrival of the police and the villagers of Galashki. Umar Zabiyeu had not been seen anywhere around. The first applicant had not heard any voices and did not know who had shot at the car.

29. On 12 June 2003 Ali Zabiyeu was granted victim status and questioned. He stated that at 7.10 p.m. on 10 June 2003 their ZIL-130 lorry had been fired at from machine guns. The vehicle had hit a tree and stopped. Ali and Umar had taken their wounded mother out of the lorry and brought her into the forest. Umar had asked Ali to go searching for help, which Ali had done. Having returned to the scene of the incident, Ali, the police and the fellow villagers had found the first applicant, who had then been transferred to hospital. Umar Zabiyeu had disappeared; on 11 June 2003 his dead body had been found.

30. On 13 June 2003 Mr D. and Mr O. were questioned. They stated that at about 8 p.m. on 10 June 2003 Ali Zabiyeu had run towards them and told

them that the ZIL lorry had been fired at. They had reported the shooting to the police and gone to the scene of the incident. There they had found the first applicant unconscious; Umar Zabiyeu had disappeared. While searching for Umar Zabiyeu, Mr D. and Mr O. had stumbled across a group of armed men. The men had pointed their firearms at Mr D. and Mr O., verified whether they had had any weapons and checked their identity papers. Then they had questioned Mr D. and Mr O. about their reasons for being in the forest and left in the direction of the village of Dattykh. On the following day Umar Zabiyeu's dead body had been found buried some 20 or 30 metres from the place where the witnesses had met the armed men.

31. The investigators verified Mr D.'s and Mr O.'s statements. Within 20 metres from Umar Zabiyeu's grave they found an area with eight sleeping berths and the following items: empty plastic mineral water bottles, empty plastic bags, empty tin cans marked "Boiled Buckwheat", "Cooked Rice", "Liver Pâté with Pork Fat" and other items bearing the stamp "Military Supply of Provisions" (*«Оборонпродкомплект»*), a pair of worn socks, a piece of bandage with traces of blood and a portable remote-control detonator PM-4 No. 3144 1-99 (*«переносная подрывная машинка ПМ-4»*).

32. The items found at the scene of the incident, the ZIL-130 lorry and a bullet extracted from Umar Zabiyeu's body were subjected to forensic, ballistic, dactylographic, medical, olfactory and biological expert examinations carried out in July and August 2003.

33. The ballistic expert examinations established that the bullet extracted from Umar Zabiyeu's dead body had been fired from a Kalashnikov machine gun of 7.62 mm calibre. 217 cartridge cases presented for examination had been parts of cartridges of 7.62 mm calibre produced in Russia according to the 1981 standards and suitable for Mosin and Dragunov sniper rifles, as well as for Kalashnikov machine guns. The cartridge cases in question had been fired from two firearms. Cartridge belts presented for examination had been additional parts for a Kalashnikov machine gun of 7.62 mm calibre.

34. The forensic expert examination established that the ZIL-130 lorry had had 112 penetrating bullet holes that could have been fired from a firearm of 7.62 mm calibre.

35. The medical forensic expert examination found no traces of shots fired from short range on Umar Zabiyeu's clothes.

36. On 16 June 2003 a dactylographic expert examination of servicemen of military intelligence unit no. 194 KTG was ordered.

37. On 1 July 2003 the district prosecutor's office requested the military commander of the Leninskiy District of Grozny to submit a list of servicemen who had participated in search activities in the vicinity of the villages of Galashki and Dattykh between 8 and 10 June 2003 and to carry out investigative measures in respect of them.

38. The dactylographic expert examinations established that fingerprints left on the items found at the scene of the incident were not identical to those of the servicemen who had been checked regarding their possible involvement in the crime, including S.P.

39. The biological expert examination of saliva left on the cigarette butts found at the crime scene and the olfactory expert examination of the socks and the piece of bandage produced no significant results.

40. The investigators requested information on the portable remote-control detonator from the UGA. On 7 June 2004 the head of engineer troops of the North Caucasus Circuit replied that portable remote-control detonators PM-4 No. 3144 issued in 1999 had not been supplied to the North Caucasus Circuit armouries and had not been sent to its military units.

41. The medical expert examination of the first applicant established that she had sustained mildly severe bodily injuries inflicted by hand-held firearms.

42. On an unspecified date an investigation into the infliction of bodily injuries on the first applicant was instituted under Article 112 § 1 of the Russian Criminal Code. It is unclear what number the case was assigned and whether any progress was made in the investigation.

43. On 7 and 10 July 2003 the district prosecutor's office sent unspecified orders to the Sunzhenskiy District Department of the Interior and to the UGA military prosecutor respectively.

44. On 23 July 2003 the district prosecutor's office sent an unspecified order to the Ingushetia Department of the Federal Security Service.

45. On 8 December 2003 the district prosecutor's office sent an unspecified order to the prosecutor of the North Caucasus Circuit.

46. In January and February 2004 ballistic and dactylographic expert examinations were carried out.

47. On 3 February 2004 the fingerprints of S.P. and sixteen servicemen of military intelligence unit no. 194 KTG were taken and compared with the fingerprints detected on the cans found near the scene of the incident. None of the fingerprints left on the cans corresponded to those of the servicemen in question.

48. On an unspecified date the firearms used by the servicemen of military intelligence unit no. 194 KTG were subjected to a ballistic expert examination.

49. On 13 February 2004 the district prosecutor's office sent an unspecified order to the Sunzhenskiy District Department of the Interior.

50. On 20 May 2004 the district prosecutor's office sent an unspecified order to the UGA military prosecutor.

51. On 19 June 2004 the investigation was suspended.

52. According to the Government, it follows from the investigation file that on 10 June 2003 there was an armed confrontation between federal servicemen and a group of around ten insurgents in the vicinity of the

village of Galashki, as a result of which two insurgents were killed and three wounded. An intelligence squad under the command of Lieutenant S.P. participated in the confrontation. In their submissions of 25 December 2007 the Government submitted that it had been impossible to either prove or refute the involvement of S.P. or other federal servicemen in the killing of Umar Zabiyeu.

53. Lieutenant-Colonel N.B. was questioned as a witness and stated that the information on the armed confrontation of the federal troops with the group of around ten insurgents, as a result of which two insurgents had been killed and three wounded, had been based on a report made by a duty officer of the UGA information centre and then issued as a press release. No other sources of that information had been found and its veracity was being checked.

54. In their submissions of 12 May 2008 the Government stated that no reliable evidence had been obtained by that time to prove the involvement of S.P. or other federal servicemen in Umar Zabiyeu's killing.

55. The investigation was resumed and suspended a number of times. It failed to find any evidence to support the involvement of the Russian federal military in the crime but was pending. Investigative measures were being taken to solve the murder of Umar Zabiyeu.

56. Despite specific requests by the Court the Government did not disclose any material from the investigation file in case no. 2360032. Relying on the information obtained from the Prosecutor General's Office, the Government stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained information of a military nature and personal data concerning the witnesses or other participants in the criminal proceedings.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. THE GOVERNMENT'S OBJECTION REGARDING *LOCUS STANDI*

58. The Government pointed out that the application form had been signed by three lawyers of the SRJI named in the powers of attorney issued by the applicants and two other persons who had not been officially

authorised to represent the applicants. Referring to the Court's decision in *Vasila and Petre Constantin in the name of Mihai Ciobanu v. Romania* (no. 52414/99, 16 December 2003), the Government concluded that there was a lack of *locus standi* in the present case.

59. The Court notes that the applicants had given authority to act to the SRJI and its three lawyers. The application form was signed by five persons in total. The names of three of these persons appeared in the powers of attorney, while two other lawyers worked with the SRJI. In such circumstances the Court considers that the SRJI lawyers were duly authorised to submit an application form on the applicants' behalf. Accordingly, the Government's objection must be dismissed.

II. THE GOVERNMENT'S OBJECTION REGARDING NON-EXHAUSTION OF DOMESTIC REMEDIES

A. The parties' submissions

60. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into Umar Zabiyeu's murder had not yet been completed. The Government emphasised that the first applicant had not complained either to prosecutors or to a court about the infliction of injuries on her. They further argued that it had been open to the applicants to challenge in court or before a higher prosecutor any acts or omissions of the investigating authorities. They also submitted that the applicants could have brought civil claims for damages but had failed to do so.

61. The applicants contested that objection and stated that the remedies referred to by the Government were ineffective.

B. The Court's assessment

62. The Court reiterates that the rule of exhaustion of domestic remedies under Article 35 § 1 of the Convention obliges applicants to use first the remedies which are available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain both in theory and in practice, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used. However, there is no obligation to have recourse to remedies which are

inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI, and *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, no. 41964/98, § 64, 27 June 2006).

63. It is incumbent on the respondent Government claiming non-exhaustion to indicate to the Court with sufficient clarity the remedies to which the applicants have not had recourse and to satisfy the Court that the remedies were effective and available in theory and in practice at the relevant time, that is to say that they were accessible, were capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Cennet Ayhan and Mehmet Salih Ayhan*, cited above, § 65).

64. The Court notes that the Russian legal system provides, in principle, two avenues of recourse for the victims of illegal and criminal acts attributable to the State or its agents, namely civil and criminal remedies.

65. As regards a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention. A civil court is unable to pursue any independent investigation and is incapable, without the benefit of the conclusions of a criminal investigation, of making any meaningful findings regarding the identity of the perpetrators of fatal assaults or disappearances, still less of establishing their responsibility (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-21, 24 February 2005, and *Estamirov and Others v. Russia*, no. 60272/00, § 77, 12 October 2006). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies.

66. As regards criminal-law remedies provided for by the Russian legal system, the Court observes that Ali Zabiyeve reported the armed attack on his family to the local police immediately after it had taken place. An investigation into the killing of Umar Zabiyeve has been pending since 11 June 2003. An investigation into the infliction on the first applicant of mildly severe bodily injuries was opened on an unspecified date. The applicants and the Government disputed the effectiveness of the investigations in question.

67. The Court considers that this part of the Government's objection raises issues concerning the effectiveness of the investigations into the killing of Umar Zabiyeve and the infliction of injuries on the second applicant which are closely linked to the merits of the applicants' complaints. Thus, it decides to join this objection to the merits of the case and considers that the issue falls to be examined below.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

68. In their initial application of 18 November 2004 the applicants complained that Umar Zabiyeu had been killed by Russian servicemen and that the domestic authorities had failed to carry out an effective investigation of the matter. They relied on Article 2 of the Convention, which reads:

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

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

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

A. The parties' submissions

1. The Government

69. The Government denied the involvement of State servicemen in Umar Zabiyeu's killing. They emphasised that the information on the armed clash in the vicinity of Galashki had not been confirmed. In any event, the information as to the number of insurgents did not correspond to the number of sleeping berths found in the forest or to the number of armed men seen by the villagers. The items bearing the Ministry of the Defence logo could have been stolen from the federal troops by insurgents. Groups of Ukrainian and ethnic Russian mercenaries who had no religious reasons to abstain from eating pork had fought the federal troops in the Chechen Republic. Even if the items in question had been left by Russian servicemen, this could have been done before 10 June 2003.

70. The Government claimed that the letter by the Ministry of the Interior of Ingushetia of 17 April 2004 had not proved the participation of military intelligence unit no. 194 KTG in the events but had merely referred to a hypothesis examined in the course of the investigation. The Government emphasised that S.P.'s fingerprints had not been found on the items discovered near the scene of the incident. The allegation that a military convoy had been passing by Galashki on 10 June 2003 had not been confirmed.

71. In the Government's submission, the investigation into Umar Zabiyeu's murder had been effective. It had been carried out by a competent prosecutor's office. The applicants had been allowed to study certain documents from the investigation file but pursuant to Russian procedural laws could not have access to the entire file prior to the completion of the investigation.

72. The first applicant did not raise the issue of an alleged violation of her right to life in the initial application form.

2. The applicants

73. The applicants maintained that it was beyond reasonable doubt that the men who had shot at the Zabiyeu's lorry and killed Umar Zabiyeu had been State agents. Referring to the letter of 17 April 2004 from the Ministry of the Interior of Ingushetia, they claimed that the domestic investigation had proved military involvement in the crime. Witnesses had seen military vehicles and servicemen in the vicinity of the crime scene. Items with military logos had been found near Umar Zabiyeu's dead body; moreover, among those items there had been empty tins of pork liver pâté whereas Chechen insurgents, being Muslims, could not eat pork.

74. The applicants also complained that the investigation into Umar Zabiyeu's murder had been ineffective. There had been lengthy periods of inactivity on the part of the investigators and the investigation had not established whether there had been an armed clash between the federal troops and insurgents in the vicinity of Galashki on 10 June 2003 or not.

75. In the applicants' observations of 7 April 2008 on the admissibility and merits of the case the first applicant complained for the first time, relying on Article 2 of the Convention, that she had been the victim of an unlawful attempt on her life by State servicemen, which she had survived merely by chance, and that the domestic authorities had failed to investigate the matter. The applicants further maintained their complaints regarding the alleged violation of Umar Zabiyeu's right to life.

B. The Court's assessment

1. Admissibility

(a) Alleged violation of the right to life of the first applicant

76. The Court first reiterates that Article 35 § 1 of the Convention requires that it may only deal with a matter where it has been introduced within six months from the date of the final decision. Where it is clear from the outset, however, that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from

the date of knowledge of that act or its effect on, or prejudice to, the applicant (see *Dennis and Others v. the United Kingdom* (dec.), no. 76573/01, 2 July 2002). It is not open to the Court to set aside the application of the six-month rule solely because a Government have not made a preliminary objection based on it (see *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I).

77. The Court further points out that in the initial application form the applicants' representatives described the circumstances of the infliction of the wounds on the first applicant on 10 June 2003 and made a complaint on the subject under Article 3 of the Convention. The Court will examine the alleged ill-treatment of the first applicant from the standpoint of that Convention provision in due course (see paragraphs 123-126 below).

78. It is noteworthy that the first applicant produced no explanation of the fact that she had not raised the issue of an alleged violation of her right to life before the Court prior to 7 April 2008. At the same time the Court observes that as early as 18 November 2004, when the application form was submitted, the applicants themselves emphasised that, in their view, no effective remedies for the alleged violations existed at domestic level.

79. The Court notes that it has no reason to assume that the first applicant or her representatives were in any manner precluded from bringing to its attention the relevant complaint with a reference to Article 2 of the Convention at an earlier stage of the proceedings. In such circumstances it concludes that the first applicant failed to comply with the six-month limit as regards the alleged violation of her right to life.

80. It follows that the complaint under Article 2 of the Convention in respect of the first applicant was lodged out of time and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

(b) Alleged violation of the right to life of Umar Zabiyeu

81. The Court considers, in the light of the parties' submissions, that this part of the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government's objection concerning the alleged non-exhaustion of criminal domestic remedies should be joined to the merits of the complaint (see paragraph 66 above). The complaint concerning the alleged violation of the right to life in respect of Umar Zabiyeu must therefore be declared admissible.

2. Merits

(a) Establishment of the facts

82. 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, from 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 paragraph 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* 1997-V).

83. The Court observes that it has developed a number of general principles relating to the establishment of facts in dispute, in particular when faced with allegations of violations of 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).

84. The applicants maintained that it was beyond reasonable doubt that the ZIL-130 lorry in which the first applicant and her two sons had been travelling had been fired at by Russian servicemen and that the latter had killed Umar Zabiyeu. They emphasised that the domestic authorities had established military involvement in the armed attack on the ZIL-130 lorry.

85. The Government insisted that the death of the applicants' relative was not imputable to the State.

86. The Court notes that, despite its requests for a copy of the entire file on the investigation into the murder of Umar Zabiyeu, the Government refused to produce the documents from the case file on the ground that they were precluded from providing them by Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has 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-XIII).

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

88. The Court first observes that the Government referred to certain documents from the investigation file that had contained information about an armed confrontation on 10 June 2003 between federal servicemen and insurgents near Galashki (see paragraph 52 above). However, they claimed that the information in question had remained unconfirmed (see paragraph 53 above). The Court is perplexed by the ambiguity of the Government's assertions. In any event, it does not deem it necessary to establish whether there were any clashes between the Russian military and insurgents on the day of the attack on the Zabiyevs' lorry because it is not relevant for the establishment of the facts in the present case. The Court will need, however, to determine whether the persons who attacked the Zabiyevs belonged to State agencies.

89. The Court considers in this connection that the applicants have presented a coherent and convincing picture of the events in question. Their account of the events was supported by the witnesses and the domestic investigation.

90. In particular, Mr D. and Mr O. informed both the applicants and the investigators that they had seen a large group of armed men not far from the place where the Zabiyevs' lorry had come under fire and that those men had checked their identity papers (see paragraphs 11 and 30 above). In the Court's view, the fact that the armed men wearing camouflage uniforms carried out an identity check supports the applicants' allegation that those were State servicemen.

91. Furthermore, the Ministry of the Interior of Ingushetia unequivocally stated in its letter of 17 April 2004 that it had been established in the course of the investigation that military unit no. 194 KTG was responsible for the attack on the Zabiyevs' lorry. The Court is not persuaded by the Government's assertion that the letter in question merely referred to a hypothesis, because it is clear from the wording of the letter that in the course of the investigation the involvement of certain servicemen in the crime had been established, not merely looked into (see paragraph 24 above).

92. Moreover, a number of items bearing the Russian Ministry of Defence's logo were found in the vicinity of the site of the attack on the lorry and Umar Zabiyeu's grave (see paragraph 31 above). The Court takes note of the Government's assertions that those items could have been stolen from Russian military bases by insurgents or left by federal servicemen prior to 10 June 2003. Nonetheless, it would appear a simpler, and more probable explanation that the items in question were left by the armed men seen by Mr D. and Mr O. in the evening of 10 June 2003. The Government's mere allegation that the fingerprints discovered on the items did not

correspond to those of S.P. does not in itself suffice to rule out the possibility of military involvement in the events.

93. The Court also takes note of the Government's argument that the number of berths found in the forest did not correspond to the number of armed men who had checked the identity papers of Mr D. and Mr O., but it is not convinced that this argument refutes the applicants' allegations.

94. Given that Mr D. and Mr O. encountered the armed men who checked their identity papers only three hours after the ZIL-130 lorry had been attacked, the Court is satisfied that those who fired at the vehicle belonged to the Russian military.

95. The Court further points out that there were no witnesses who could say what had happened to Umar Zabiyeu after his brother Ali had run to the village for help at about 7 p.m. on 10 June 2003. At the same time it follows from the post-mortem report that Umar Zabiyeu's death occurred between 5.20 p.m. and 11.20 p.m. on that day (see paragraph 19 above). Accordingly, Umar Zabiyeu died of gunshot wounds between 7 p.m. and 11.20 p.m. on 10 June 2003. Moreover, according to ballistic expert examinations, the bullet extracted from Umar Zabiyeu's body and bullets that left holes on the ZIL-130 lorry were fired from weapons of the same calibre (see paragraphs 33 and 34 above).

96. The Court doubts that more than one group of armed men in camouflage uniforms could have been present at the same time in the same area and thus considers that the applicants have made a *prima facie* case that Umar Zabiyeu was killed by the same persons who had attacked the ZIL-130 lorry.

97. The Court observes that where the applicants make out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to a lack of documents, it is for the Government to show conclusively why the documents in question cannot serve to corroborate the allegations made by the applicants, or to provide a satisfactory and convincing explanation of how the events in question occurred. The burden of proof is thus shifted to the Government and if they fail in their arguments, issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II).

98. The Court points out in this connection that the Government's assertion that the investigation did not find any evidence pointing to the involvement of the special forces in the attack on the Zabiyeus' lorry that led to the first applicant's injuries and Umar Zabiyeu's killing 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 of the events in question, the Court considers it established that

the first applicant was wounded and Umar Zabiyeu was killed by State servicemen on 10 June 2003.

(b) The State's compliance with Article 2

99. 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).

100. The Court has already found it established that Umar Zabiyeu was killed by State servicemen (see paragraph 98 above). Since the authorities did not rely on any grounds to justify the use of lethal force by their agents or otherwise account for the killing, the Court considers that liability for the death is attributable to the respondent Government.

101. Accordingly, the Court finds that there has been a violation of Article 2 of the Convention in respect of Umar Zabiyeu.

(c) Alleged inadequacy of the investigation

102. 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", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see *Kaya v. Turkey*, 19 February 1998, § 86, *Reports* 1998-I). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. This investigation should be independent, accessible to the victim's family and carried out with reasonable promptness and expedition. It should also be effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances or otherwise unlawful, and should afford a sufficient element of public scrutiny of the investigation or its results (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-09, ECHR 2001-III, and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

103. In the present case, the murder of Umar Zabiyeu was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

104. The Court notes at the outset that the information on the course of the investigation at its disposal is extremely sparse because the documents from the case file remain undisclosed by the Government.

105. The Government vaguely referred to investigative steps taken to solve the murder of Umar Zabiyeu. For instance, they stated that the investigators had sent a number of orders to various State agencies (see paragraphs 43-45, 49 and 50 above). However, they did not clarify the nature of those orders and did not indicate what aim the district prosecutor's office had pursued when sending them. Hence, it remains unclear whether the orders in question could have contributed in any manner to the overall effectiveness of the investigation.

106. The Court further points out that such a basic investigative step as a dactylographic expert examination of the servicemen of military unit no. 194 KTG was not carried out promptly. It follows from the Government's submissions that it was ordered on 16 June 2003 – that is, five days after the discovery of Umar Zabiyeu's dead body (see paragraph 36 above). However, the fingerprints of those servicemen were taken only on 3 February 2004 (see paragraph 47 above). The Government produced no explanation of the fact that a vital investigative measure capable of identifying persons involved in a killing had been delayed by seven months.

107. Furthermore, nothing in the Government's submissions warrants the conclusion that the servicemen of military unit no. 194 KTG have ever been questioned, although it was crucially important for the investigation to clarify whether they had indeed participated in the armed clash with insurgents referred to by the Government (see paragraph 52 above).

108. Accordingly, the Court considers that the domestic investigative authorities demonstrably failed to act of their own motion and breached their obligation to exercise exemplary diligence and promptness in dealing with such serious crimes as murder and kidnapping (see *Öneryildiz v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII).

109. The Court also notes that the applicants were not promptly informed of significant developments in the investigation and considers therefore 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 *Oğur v. Turkey* [GC], no. 21594/93, § 92, ECHR 1999-III).

110. Lastly, the Court notes that the investigation into the murder of Umar Zabiyeu was repeatedly suspended and then resumed, which led to lengthy periods of inactivity on the part of the investigators. For instance, no proceedings whatsoever were pending between 19 June 2004 and 2 February 2006, that is, for one year and seven months (see paragraph 25 above). It also appears that no meaningful investigative measures have been taken since 19 June 2004. Such handling of the investigation could not but have had a negative impact on the prospects of identifying the perpetrators.

111. Having regard to the limb of the Government's objection that was joined to the merits of the complaint concerning the alleged violation of

Umar Zabiyeu's right to life, in so far as it concerns the fact that the domestic investigation into his murder is still pending, the Court notes that the investigation in case no. 23600032, having been repeatedly suspended and resumed and plagued by inexplicable delays, has been ongoing for almost six years and has produced no tangible results. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and rejects their objection in this part.

112. The Government also mentioned that the applicants had the opportunity to apply for judicial review of the decisions of the investigating authorities in the context of exhaustion of domestic remedies and to complain to higher prosecutors. The Court observes that, 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 be usefully conducted. The Court finds therefore that it is highly doubtful that the remedies relied on by the Government would have had any prospects of success and considers that they were ineffective in the circumstances of the case. It thus rejects the Government's objection in this part as well.

113. In the light of the foregoing, the Court finds that the domestic authorities failed to carry out an effective criminal investigation into the killing of Umar Zabiyeu, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

114. The applicants complained that as a result of their relative's killing and the State's failure to investigate it properly they had endured profound mental suffering. Furthermore, referring to the forensic expert examination report, the applicants alleged that Umar Zabiyeu had sustained an injury to his lower jaw prior to his death and that no investigation had been carried out in respect of his ill-treatment. Lastly, the first applicant complained that on 10 June 2003 she had been seriously wounded by State agents and that no effective investigation had been conducted into the incident. They relied on Article 3 of the Convention, which reads:

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

A. The parties' submissions

115. The Government disagreed with these allegations. They stated that the first applicant and Umar Zabiyeu had not been subjected to ill-treatment by State agents and that the allegations of the ill-treatment had been investigated. They emphasised it was impossible to find a violation of Article 3 of the Convention in respect of Umar Zabiyeu given that those responsible for his injuries mentioned in the forensic report of 11 June 2003

had not been identified. They further asserted that the first applicant had sustained mildly severe bodily injuries and that an investigation into their infliction had been opened, but submitted no information on progress in that investigation. The first applicant had also been granted victim status in case no. 23600032 concerning her son's killing.

116. The applicants maintained their submissions regarding the alleged ill-treatment of Umar Zabiyeu, the alleged ill-treatment of the first applicant and the lack of investigation into it and the applicants' mental suffering. In their observations of 7 April 2008 on the admissibility and merits of the case they stated that they no longer wished to have their complaint concerning the lack of effective investigation into Umar Zabiyeu's ill-treatment examined.

B. The Court's assessment

1. Admissibility

117. The Court notes that the complaints under Article 3 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds and must therefore be declared admissible.

2. Merits

(a) The complaint concerning Umar Zabiyeu

118. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, cited above, § 161 *in fine*).

119. The Court has found it established that Umar Zabiyeu died on 10 June 2003 as a result of the use of force by State servicemen (see paragraph 98 above).

120. The Court points out that neither the first applicant nor Ali Zabiyeu mentioned that Umar Zabiyeu had had any injuries when he had been seen alive for the last time. It further notes that the post-mortem expert examination report of 11 June 2003 confirmed the presence of numerous wounds and injuries to Umar Zabiyeu's body, including a broken lower jaw. The Government provided no plausible explanation as to the origin of those injuries, which must therefore be considered attributable to a form of ill-treatment for which the authorities were responsible. The Court considers that this treatment reached the threshold of "inhuman and degrading".

121. Therefore, there has been a violation of Article 3 of the Convention in respect of Umar Zabiyeu on account of the ill-treatment inflicted by State servicemen prior to his death.

122. Considering that the applicants no longer wished to have an examination of their complaint in respect of the alleged deficiencies in the investigation into the infliction of injuries on Umar Zabiyeu, the Court does not deem it necessary to make a separate finding under Article 3 of the Convention.

(b) The complaint concerning the first applicant's ill-treatment

(i) Compliance with Article 3

123. The Court observes at the outset that the Government admitted that the first applicant had suffered wounds to her neck and chest in the course of the armed attack of 10 June 2003 (see paragraph 14 above) and claimed that those wounds amounted to mildly severe bodily injuries. Moreover, they stated that the investigation into the infliction of the injuries was still pending.

124. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see *Tekin v. Turkey*, 9 June 1998, § 52, *Reports* 1998-IV).

125. The Court has found it established that the attack on the ZIL-130 lorry was carried out by Russian servicemen (see paragraph 98 above). Therefore, the first applicant sustained serious injuries as the result of the use of firearms by State agents. The Court considers that this treatment reached the threshold of “inhuman and degrading”.

126. Therefore, there has been a violation of Article 3 of the Convention in respect of the first applicant on account of her ill-treatment by the servicemen.

(ii) Effectiveness of the investigation

127. The Court notes that the first applicant raised the complaint concerning her ill-treatment by State servicemen before the investigating authorities when describing the events of 10 June 2003. According to the Government, an investigation into the incident was opened. The Court must now assess whether that investigation met the requirements of Article 3 of the Convention.

128. The Court notes at the outset that it remains unknown on what date and by which body the investigation was instituted. Nor is it clear whether it produced any tangible results. None of the documents from the investigation

were disclosed by the Government. Moreover, they did not communicate to the Court the number which had been assigned to the investigation.

129. Owing to the lack of information at its disposal, the Court is not in a position to establish whether any progress has been achieved in the investigation into the infliction of injuries on the first applicant. Nonetheless, it is clear that the perpetrators have not yet been identified. Drawing inferences from the Government's refusal to provide any material from the case file or to submit at the very least a summary outline of the investigation, the Court finds that the domestic investigating authorities have failed to take requisite measures to solve the crime.

130. Having regard to the limb of the Government's objection that was joined to the merits of the complaint concerning the first applicant's ill-treatment, in so far as it concerns the fact that the domestic investigation into it is still pending, the Court notes that nothing in the material submitted by the Government warrants the conclusion that the investigation has produced any results so far. Accordingly, the Court finds that the remedy relied on by the Government was ineffective and rejects their objection in this part.

131. The Government also mentioned in the context of exhaustion of domestic remedies that the first applicant had the opportunity to apply for judicial review of the decisions of the investigating authorities or to complain to higher prosecutors. The Court observes that the first applicant was not even informed of the fact that an investigation into the infliction of injuries on her had been opened. In such circumstances it finds that these remedies referred to by the Government would not have had any prospects of success and considers that they were ineffective in the circumstances of the case. It thus rejects the Government's objection in this part as well.

132. In the light of the foregoing the Court concludes that the Government have failed to conduct an effective investigation into the ill-treatment of Umar Zabiyeu's mother. Accordingly, there has been a violation of Article 3 of the Convention in its procedural aspect in respect of the first applicant.

(c) The complaint concerning the applicants' mental suffering

133. The Court notes that while a family member of a "disappeared person" can 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 the person taken into custody has later been found dead (see *Tanli v. Turkey*, no. 26129/95, § 159, ECHR 2001-III). However, if a period of initial disappearance is long it may in certain circumstances give rise to a separate issue under Article 3 (see *Gongadze v. Ukraine*, no. 34056/02, §§ 184-86, ECHR 2005-XI).

134. The Court observes that the applicants' relative went missing under suspicious circumstances after 7 p.m. on 10 June 2003. His remains were

found at 12 noon on 11 June 2003, that is, some nineteen hours later. In the Court's opinion, the period during which the applicants suffered uncertainty, anguish and distress characteristic of the specific phenomenon of disappearances was not sufficiently long to give rise to an issue under Article 3 of the Convention (see, by contrast, *Luhuyev and Others v. Russia*, no. 69480/01, § 115, ECHR 2006-XIII, and *Kukayev v. Russia*, no. 29361/02, § 107, 15 November 2007).

135. In view of the above, the Court finds that there has been no breach of Article 3 of the Convention in respect of the applicants.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

136. The applicants complained that they had been deprived of effective remedies in respect of the alleged violations of Articles 2 and 3, contrary to Article 13 of the Convention, which provides:

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

A. The parties' submissions

137. The Government contended that the applicants had had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using them.

138. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

140. 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. According to the Court's settled case-law, the effect of Article 13 of the Convention is to require the provision of a remedy allowing the competent domestic authority both to deal with the substance of a relevant Convention complaint and to grant appropriate

relief, although Contracting States are afforded some discretion as to the manner in which they comply with their obligations under this provision. However, such a remedy is only required in respect of grievances which can be regarded as “arguable” in terms of the Convention (see *Halford v. the United Kingdom*, 25 June 1997, § 64, *Reports* 1997-III).

141. As regards the alleged lack of effective remedies in respect of the complaints under Articles 2 and 3 concerning Umar Zabiyeu, as well as the first applicant's complaint of ill-treatment under Article 3, the Court emphasises that Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and infliction of treatment contrary to Article 3, including effective access for the complainant to an investigation procedure leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-62, ECHR 2002-IV, and *Süheyra Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005). The Court further reiterates that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see *Khashiyev and Akayeva*, cited above, § 183).

142. It follows that in circumstances where, as here, a violent death and the infliction of bodily injuries were not investigated effectively 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.

143. Consequently, there has been a violation of Article 13 in conjunction with Articles 2 and 3 of the Convention in respect of Umar Zabiyeu, and in conjunction with Article 3 of the Convention in respect of the first applicant.

144. The Court notes that, despite its above finding that there has been no violation of Article 3 on account of the applicants' mental suffering, this complaint is “arguable” for the purposes of Article 13 of the Convention. Nevertheless the Court has already found a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention, *inter alia*, on account of the authorities' attitude towards the applicants. In such circumstances the Court considers that no separate issue arises under Article 13 in respect of the alleged violation of Article 3 of the Convention on account of the applicants' mental suffering.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

145. 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

146. The second, third and fourth applicants claimed damages in respect of the lost wages of their husband and father, who would have supported them financially. They submitted that prior to his death Umar Zabiyeu had worked as a security guard in a private company with annual income of 31,836.48 Russian roubles (RUB) (861 euros (EUR)). They provided a certificate from Umar Zabiyeu's former employer confirming the amount of the income and submitted their calculations of the sums they could have expected to receive from Umar Zabiyeu. The second applicant claimed RUB 271,419.36 (EUR 7,340), the third applicant claimed RUB 96,981.98 (EUR 2,622) and the fourth applicant claimed RUB 107,440.48 (EUR 2,905) in respect of pecuniary damage.

147. The first applicant submitted that she had spent a considerable amount of money on medical treatment after she had been wounded on 10 June 2003. She had not kept any receipts to confirm the expenses in question. She also stated that she would need constant paid assistance from third persons in the future owing to her disability sustained as a result of the wounds. The first applicant claimed EUR 5,000 in respect of pecuniary damage.

148. The Government noted that the applicants could have claimed a pension for the loss of a breadwinner at national level.

149. 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”.

150. The Court reiterates that an award for pecuniary damage may be made in respect of loss of earnings and considers that there is a direct causal link between the violation of Article 2 in respect of Umar Zabiyeu and the loss by his wife and children of the financial support which he could have provided. It therefore awards in respect of pecuniary damage EUR 7,340 to the second applicant, EUR 2,622 to the third applicant and EUR 2,905 to the fourth applicant, plus any tax that may be chargeable thereon.

151. The Court observes at the same time that the first applicant failed to substantiate her claims in respect of pecuniary damage as regards past and future medical costs and thus makes no award in this respect.

B. Non-pecuniary damage

152. The first applicant claimed EUR 60,000 in respect of non-pecuniary damage for the suffering she had endured as a result of the armed attack on her and her son's death, as well as the indifference shown by the authorities towards her. The second applicant claimed EUR 40,000, while the third and fourth applicants claimed EUR 30,000 each in respect of non-pecuniary damage for the suffering caused by the loss of their husband and father.

153. The Government found the amounts claimed exaggerated.

154. The Court has found violations of Articles 2, 3 and 13 of the Convention in respect of the applicants' late relative, as well as a violation of Article 3 in respect of the first applicant. The Court thus accepts that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It finds it appropriate to award in respect of non-pecuniary damage EUR 15,000 to the first applicant and EUR 30,000 to the second, third and fourth applicants jointly, plus any tax that may be chargeable thereon.

C. Costs and expenses

155. 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. They also claimed translation fees, confirmed by invoices, and administrative expenses, which were not supported by any evidence. The aggregate claim in respect of costs and expenses relating to the applicants' legal representation amounted to EUR 7,127.76.

156. The Government submitted that the applicants' claims for just satisfaction had been signed by five lawyers, although two of them had not been mentioned in the powers of attorney issued by the applicants. They also doubted the reasonableness of the postal costs.

157. 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 the other two 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. It also sees no reason to

conclude that the applicants were not entitled to send their submissions to the Court via courier service.

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

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

160. As to the necessity of the expenses, the Court notes that this case was rather complex and required a certain amount of research and preparation. It notes at the same time that, owing to the application of the joint examination procedure (Article 29 § 3) in the present case, the applicants' representatives submitted their observations on admissibility and merits in one set of documents. Furthermore, the case involved little documentary evidence, in view of the Government's refusal to submit the case file. The Court thus doubts that the legal drafting was necessarily time-consuming to the extent claimed by the representatives.

161. Having regard to the details of the claims submitted by the applicants, the Court finds it appropriate to award them EUR 4,500, together with any value-added tax that may be chargeable to the applicants, the award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

162. 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 objection as to the alleged lack of *locus standi*;
2. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;
3. *Declares* the complaints under Article 2 of the Convention in respect of Umar Zabiyevev, as well as the complaints under Articles 3 and 13 of the Convention, admissible and the remainder of the application inadmissible;

4. *Holds* that there has been a violation of Article 2 of the Convention in respect of Umar Zabiyeu;
5. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances of Umar Zabiyeu's death;
6. *Holds* that there has been a violation of Article 3 of the Convention in respect of Umar Zabiyeu on account of his ill-treatment by State servicemen;
7. *Holds* that no separate finding is necessary under Article 3 of the Convention in respect of the alleged deficiencies in the investigation into the ill-treatment of Umar Zabiyeu;
8. *Holds* that there has been a violation of Article 3 of the Convention in respect of the first applicant on account of her ill-treatment by State servicemen;
9. *Holds* that there has been a violation of Article 3 of the Convention in respect of the failure to conduct an effective investigation into the ill-treatment of the first applicant;
10. *Holds* that there has been no violation of Article 3 of the Convention in respect of the applicants on account of their mental suffering;
11. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violations of Articles 2 and 3 of the Convention concerning Umar Zabiyeu and of Article 3 of the Convention concerning the ill-treatment of the first applicant;
12. *Holds* that no separate issue arises under Article 13 in respect of the alleged violation of Article 3 of the Convention on account of the applicants' mental suffering;
13. *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 7,340 (seven thousand three hundred and forty euros) to the second applicant, EUR 2,622 (two thousand six hundred and twenty-two euros) to the third applicant and EUR 2,905 (two thousand nine hundred and five euros) to the fourth applicant, in respect of pecuniary damage, to be converted into Russian roubles

at the rate applicable at the date of settlement, plus any tax that may be chargeable on these amounts;

(ii) EUR 15,000 (fifteen thousand euros) to the first applicant and EUR 30,000 (thirty thousand euros) to the second, third and fourth applicants jointly, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on these amounts;

(iii) EUR 4,500 (four thousand five hundred euros), in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands, plus any tax that may be chargeable to the applicants;

(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;

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

Done in English, and notified in writing on 17 September 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President