



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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 38450/05
by Kelimat Akhmatovna SABANCHIYEVA and Others
against Russia

The European Court of Human Rights (First Section), sitting on 6 November 2008 as a Chamber composed of:

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having regard to the above application lodged on 26 October 2006,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court.

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants are 50 Russian nationals who live in the Republic of Kabardino-Balkaria and, unless stated otherwise, residents of the town of Nalchik. They are:

(1) Mrs Kelimat Akhmatovna Sabanchiyeva, who was born in 1961, and whose complaint concerns the death of her son Mr Khadjimurat Kurbanovich Kurbanov, who was born on 25 October 1984;

- (2) Mr Khusen Leonidovich Shibzukhov, born in 1949, referring to the death of his son Mr Anzor Khusenovich Shibzukhov, born on 23 June 1984;
- (3) Mr Anatoliy Narychevich Bitokov, born in 1947, referring to the death of his son Mr Murat Anatolyevich Bitokov, born on 22 September 1980;
- (4) Mrs Raya Bilyalevna Chechenova, born in 1952, referring to the death of her son Mr Stanislav Borisovich Chechenov, born on 1 December 1973;
- (5) Mrs Larisa Saradinovna Alakayeva, born in 1957, referring to the death of her son Mr Saradin Khautiyevich Alakayev, born on 13 September 1980;
- (6) Mr Barasbi Khudovich Boziyev, born in 1947 and lives in the village of Ardugan and referring to the death of his son Mr Sosruko Barasbiyevich Boziyev, born on 17 February 1977;
- (7) Mr Yuriy Natribovich Khagov, born in 1937, living in the village of Terek and referring to the death of his son Mr Zalim Yurievich Khagov, born on 11 August 1968;
- (8) Mrs Raisa Albiyanovna Mamresheva, born in 1951, living in the village of Terek and referring to the death of her son Mr Vyacheslav Borisovich Shoghemov, born on 20 September 1975;
- (9) Mrs Anzhelika Yuryevna Arkhestova, born in 1970, referring to the death of her brother Mr Anzor Yurievich Kertbiyev, born on 13 April 1974;
- (10) Mrs Fatimat Khazritovna Tkhagalegova, born in 1963, living in the village of Nartan and referring to the death of her brother Anzor Khazritovich Bichoyev, born on 18 August 1972;
- (11) Mrs Rita Ramazanovna Dzantuyeva, born in 1959, referring to the death of her son Mr Alexandr Lenovich Bashloyev, born on 29 December 1980;
- (12) Mrs Fatima Amerkhanovna Mamayeva, born in 1973, referring to the death of her husband Mr Timur Makhtyevich Mamayev, born on 22 September 1972;
- (13) Mrs Yelena Khabidovna Karmova, born in 1952, referring to the death of her son Mr Martin Nikolayevich Karmov, born on 19 February 1972;
- (14) Mrs Alesya Khazritovna Shidakova, born in 1955, living in the village of Inarkoy and referring to the death of her son Mr Dzhambulat Khamishevich Shidakov, born on 6 November 1978;
- (15) Mr Timofey Alesovich Nabitov, born in 1942, referring to the death of his sons, Mr Azamat Timofeyevich Nabitov, born on 20 December 1979, and Mr Djambulat Timofeyevich Nabitov, born on 9 January 1982;
- (16) Mrs Raisa Shamgunovna Keresheva, born in 1956, referring to the death of her sons, Mr Rustam Ruslanovich Kereshev, born on 4 December 1979, and Mr Anzor Ruslanovich Kereshev, born on 16 March 1984;
- (17) Mr Betal Muradinovich Kerefov, born in 1946, referring to the death of his son Mr Kazbulat Betalovich Kerefov, born on 15 May 1980;
- (18) Mr Magomed Khasymovich Attoyev, born in 1941, referring to the death of his son Mr Murat Magomedovich Attoyev, born on 27 April 1978;
- (19) Mrs Zhanna Fedorovna Ifraimova, born in 1968, referring to the death of Mr Ruslan Borisovich Tamazov, born on 31 March 1980;

- (20) Mrs Aysha Ismailovna Chagiran, born in 1952, referring to the death of her son Mr Djambulat Muhamedovich Bittirov, born on 1 April 1985;
- (21) Mr Aserbi Lanovich Makoyev, born in 1956, referring to the death of his son Mr Murat Aserbiyevich Makoyev, born on 1 June 1981;
- (22) Mr Sait Mukhamedovich Bashora, born in 1949, referring to the death of his son Mr Ruslan Saitovich Tishkov, born on 1 August 1980;
- (23) Mrs Taya Alekseyevna Khavzhokova, born in 1958, living in the village of Nartan and referring to the death of her son Mr Alim Khataliyevich Khavzhokov, born on 8 September 1979;
- (24) Mr Kunak Ismailovich Guziyev, born in 1944, referring to the death of his son Mr Ramazan Konakovich Guziyev, born on 26 September 1975;
- (25) Mr Amerbi Yakhiyaevich Afov, born in 1937, referring to the death of his son Mr Zaur Amerbiyevich Afov, born on 3 April 1975;
- (26) Mrs Yulia Anurdinovna Khagabanova, born in 1982, referring to the death of her brother Mr Edik Rasimovich Abidokov, born on 23 March 1973;
- (27) Mrs Lidiya Zhambulatovna Zhelikhazheva, born in 1942, referring to the death of her son Mr Alim Sultanovich Zhelikhazhev, born on 23 March 1976;
- (28) Mr Tengiz Valeryevich Mokayev, born in 1987, referring to the death of his brother Mr Alexandr Valeriyevich Mokayev, born on 17 July 1978;
- (29) Mrs Emma Auzinovna Sherdiyeva, born in 1963, referring to the death of her son Mr Rustam Ruslanovich Nafedzov, born on 13 January 1981; this applicant died on 26 August 2006 and the deceased's widow, Ms Zhanneta Khamidbiyevna Khazhbiyeva, born on 3 December 1982, decided to pursue the application;
- (30) Mrs Zhanetta Martinovna Kushkhova, born in 1944, referring to the death of her son Mr Zaurbek Huseynovich Kushkhov, born on 25 November 1977;
- (31) Mr Khazret-Ali Islamovich Khalilov, born in 1950, referring to the death of his son Mr Murat Khazret-Aliyevich Khalilov, born on 9 January 1981; this applicant died on 25 December 2006 and the deceased's widow, Ms Zyuzanna Khazretovna Khalilova, born on 29 April 1983, decided to pursue the application;
- (32) Mr Ladin Khazhisetovich Gendukov, born in 1955 and living in the village of Altud, referring to the death of his son Mr Roman Ladinovich Gendukov, born on 3 October 1981;
- (33) Mr Vladimir Khazeshevich Vorokov, born in 1946, referring to the death of his son Mr Azamat Vladimirovich Vorokov, born on 22 April 1978;
- (34) Mr Murat Yuryevich Pshikhachev, born in 1974, referring to the death of his brother Mr Muslim Yurievich Pshikhachev, born on 16 February 1976;
- (35) Mr Fedor Aliyevich Abidov, born in 1957, referring to the death of his son Mr Zaurbek Fedorovich Abidov, born on 9 June 1983;

- (36) Mr Liuan Mukhazhirovich Kardanov, born in 1952 and living in the village of Urvani, referring to the death of his son Mr Mukharbi Liuyanovich Kardanov, born on 11 December 1979;
- (37) Mr Atabi Sakhatgeriyevich Kardanov, born in 1948, referring to the death of his son Mr Oleg Atabiyevich Kardanov, born on 16 November 1981;
- (38) Mrs Rita Aslamurzovna Anzorova, born in 1960 and living in the town of Nartkala, referring to the death of her son Mr Artur Khasanovich Ezdekov, born on 14 September 1979;
- (39) Mr Karalbi Masadovich Amshokov, born in 1933, referring to the death of his son Mr Akhmed Karalbiyevich Amshokov, born on 13 May 1977;
- (40) Mr Boris Betalovich Kuchmenov, born in 1942, referring to the death of his son Mr Anzor Borisovich Kuchmenov, born on 19 November 1973;
- (41) Mrs Aminat Umarovna Psanukova, born in 1949, referring to the death of her son Mr Zaur Isufovich Psanukov, born on 10 September 1977;
- (42) Mrs Fatima Nakhupshovna Arkhagova, born in 1951, referring to the death of her son Mr Aslan Karalbiyevich Arkhagov, born on 30 January 1979;
- (43) Mr Khuseyn Hazhmuratovich Atalikov, born in 1952, referring to the death of his son Mr Islam Khuseynovich Atalikov, born on 15 October 1982;
- (44) Mrs Lyubov Mikhaylovna Gonibova, born in 1952, referring to the death of her son Mr Akhmed Khasanbiyevich Gonibov, born on 3 September 1985;
- (45) Mrs Zoya Ibragimovna Afaunova, born in 1955, referring to the death of her son Mr Gisa Musovich Afaunov, born on 1 January 1975;
- (46) Mrs Fatimat Abubachirovna Erzhibova, born in 1956, referring to the death of her son Mr Beslan Leonidovich Erzhibov, born on 17 July 1983;
- (47) Mrs Fatima Khursanovna Gudova, born in 1959, referring to the death of her son Mr Ruslan Aslanbiyevich Gudov, born on 7 January 1980;
- (48) Mr Oksana Nikolayevna Daova, born in 1977, referring to the death of her brother Mr Valeriy Nikolayevich Tleuzhev, born on 22 July 1975, and her husband Mr Zurab Nazranovich Daov, born on 18 March 1972;
- (49) Mr Zaur Mukhamedovich Terkulov, born in 1981, referring to the death of his brother Mr Eldar Mukhamedovich Terkulov, born on 1 May 1983;
- (50) Mr Boris Zaudinovich Bagov, born on an unspecified date and referring to the death of his nephews Mr Anzor Yuriyevich Bagov, Mr Zaur Yuriyevich Bagov and Mr Aslan Yuriyevich Bagov, born on 12 September 1977 and in 1979 and 1987 respectively.

The applicants are represented before the Court by Mrs D. I. Straisteanu, Mrs N. Maltseva, Mrs E. Yezhova and Mr A. Nikolayev, lawyers from Stichting Russian Justice Initiative, Moscow, and Mrs L. Dorgova, a lawyer practising in the town of Nalchik.

The Russian Government (“the Government”) were represented by Mr P. Laptev and Mrs V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

1. The family links of the applicants and the deceased

The applicants submitted that they were relatives of the people who died in the events at Nalchik on 13 and 14 October 2005 or shortly afterwards.

The Government did not dispute this with the exception of the nineteenth applicant, Mrs Zhanna Fedorovna Ifraimova, who, in their view, was not in any way related to the deceased Mr Ruslan Borisovich Tamazov.

According to the nineteenth applicant’s initial statement, the deceased Mr Ruslan Borisovich Tamazov was her husband. She later changed this submission by stating that they were not officially married, but had lived together since February 2005. At the time of the events in October 2005 she was eight months pregnant (presumably by Mr Tamazov).

2. The attack of 13 October 2005 and subsequent events

Early in the morning of 13 October 2005 law-enforcement agencies in the town of Nalchik, including the Republican Department of the Ministry of the Interior, Centre T of the Main Department of the Ministry of the Interior, various district departments of the Ministry of the Interior, the Special Purpose Police Unit of the Republican Ministry of the Interior, various checkpoints of the Traffic Police, the Republican Department of the Federal Security Service, the Republican Department of the Federal Service for the Execution of Penalties, the office of the Border Guard Service of the Federal Security Service as well as a few privately owned weapon shops, were attacked by a number of heavily armed people, who appear to have been local insurgents. According to the Government, there were over 250 participants in the attack.

The ensuing fight between the governmental forces and the insurgents lasted at least until 14 October 2005.

According to the information initially provided by the Government, on 13 and 14 October 2005 its forces successfully repelled the attack and killed eighty-seven local insurgents. The Government did not specify the names of those killed.

The Government also stated that on 14 October 2005 they had arrested Mr Aslan Yuriyevich Bagov (one of the two nephews of the fiftieth applicant), who had gunshot wounds to the head and chest. He had died in prison on 23 October 2005.

On 18 October 2005 Mr Kerefov Kazbulat Betalovich (one of the seventeenth applicant's sons and a participant in the attack on 13-14 October 2005) had fired shots at police officers manning a local checkpoint and was killed when the officers returned fire.

In their observations on admissibility of the case, the Government stated that in the antiterrorist operations mounted in response to the attack of 13 October 2005 the authorities had killed a total of 95 insurgents.

In essence, they admitted that all the deceased referred to by the applicants were among those killed by the authorities.

3. Criminal case no. 25/78-05

(a) Decision to initiate proceedings of 13 October 2005

It would appear that on 13 October 2005 the authorities instituted criminal proceedings no. 25/78-05 in connection with the attack (in accordance with Article 209, part 3 of Article 205, Article 317, part 2 subparagraphs "e" and "z" of Article 105 of the Criminal Code).

In the course of the investigation it was established that between 1999 and February 2005 a group of individuals including Aslan Maskhadov, Shamil Basayev, I. Gorchkhanov, A. Astemirov, Abu-Valid Khattab and Abu-Dzeit had formed a terrorist group. It was this group which organised the attack. 35 law-enforcement officers and 15 civilians were killed, whilst 131 law enforcement-officers and 92 civilians were injured. Massive damage was done to property.

The applicants did not have any formal status in the proceedings in case no. 25/78-05.

(b) The applicants' letters to the authorities in the initial stages of the investigation

Immediately following the attack, on 13, 20, 21 and 25 October 2005 an unspecified number of people (including, it would seem, applicants in the instant case) signed collective petitions requesting various officials, including the prosecutors, to return the bodies for burial.

Between the end of October 2005 and until at least April 2006 the applicants received replies from the prosecution and other authorities informing them that they would receive definite answers once the investigation of the events was over.

Attempts by some of the applicants to challenge these replies in the domestic courts were unsuccessful, as they were rejected as premature both at first instance and on appeal.

(c) Decisions not to prosecute insurgents killed in the attack

On 13 April 2006 the investigation authority terminated the proceedings in respect of the 95 deceased because of their deaths. It appears that the

deceased referred to by the applicants were among those concerned by this decision.

The Prosecutor General's Office notified the applicants concerned of the above decisions on 14 April 2006. It appears that no copies of the decisions in question were attached to the notification.

Some of the applicants (see the table below) applied to the domestic courts in connection with the authorities' failure to deliver them copies of the decisions of 13 April 2006. It would appear that as a result of the proceedings the applicants in question were furnished with a copy of the relevant decision and afforded access to certain procedural documents from the case-file (medical expert reports, the decisions to discontinue the criminal proceedings). However, they were refused standing to take part in the proceedings as the official representatives of the deceased or to have the deceased's personal belongings returned to them.

Thereafter some applicants brought court proceedings contesting the decisions of 13 April 2006. In most of the cases (apart from those of the thirty-sixth and forty-eighth applicants, who were unsuccessful), the outcome of the proceedings is unclear (see the table below).

As regards the thirty-sixth and forty-eighth applicants, the domestic courts examined their complaints at two levels of jurisdiction and, having noted that the investigators had reached reasoned and well-supported conclusions regarding the involvement of the applicants' relatives in the terrorist attack, rejected the complaints as unfounded. On each occasion the courts effectively reviewed the factual conclusions made by the investigators and carried out a critical assessment of the underlying evidence.

No.	The applicants	Proceedings to obtain copies of the decisions of 13/04/2006		Whether copy received (Y/N)	Proceedings contesting the decisions of 13/04/2006		
		1st instance	Appeal instance		1st instance	Appeal	Outcome
1	Mrs Kelimat Akhmatovna Sabanchiyeva	Did not claim a copy		No	Did not pursue any proceedings		
2	Mr Khusen Leonidovich Shibzukhov						
3	Mr Anatoliy Narychevich Bitokov						
4	Mrs Raya Bilyalevna Chechenova						
5	Mrs Larisa Saradinovna Alakayeva	6/06/2006	29/08/2006	Yes	5/06/2007 (complaint accepted)	No information	Unclear

6	Mr Barasbi Khudovich Boziyev	No information on proceedings, but the applicant did receive a copy		Yes	23/3/2007 (complaint rejected)	No information	Unclear
7	Mr Yuriy Natribovich Khagov	Did not claim a copy		No	Did not pursue any proceedings		
8	Mrs Raisa Albiyanovna Mamresheva						
9	Mrs Anzhelika Yuryevna Arkhestova	7/06/2006	29/08/2006	Yes	19/03/2007 (complaint rejected)	No information	Unclear
10	Mrs Fatimat Khazritovna Tkhagalegova	16/08/2006	29/09/2006	Yes	5/06/2007 (complaint accepted)	No information	Unclear
11	Mrs Rita Ramazanovna Dzantuyeva	27/12/2006	No information on appeal proceedings	Yes	27/03/2007 (complaint rejected)	No information	Unclear
12	Mrs Fatima Amerkhanovna Mamayeva	29/11/2006	23/01/2007	Yes	Did not pursue any proceedings		
13	Mrs Yelena Khabidovna Karmova	No information on proceedings, but the applicant did receive a copy		Yes	25/07/2007 (complaint accepted)	No information	Unclear
14	Mrs Alesya Khazritovna Shidakova	Did not claim a copy		No	Did not pursue any proceedings		
15	Mr Timofey Alesovich Nabitov						
16	Mrs Raisa Shamgunovna Keresheva	6/06/2006	No information on appeal proceedings	Yes	5/03/2007 (complaint accepted)	No information	Unclear
17	Mr Betal Muradinovich Kerefov	Did not claim a copy		No	Did not pursue any proceedings		
18	Mr Magomed Khasymovich Attoyev						
19	Mrs Zhanna Fedorovna Ifraimova						
20	Mrs Aysha Ismailovna Chagiran	30/08/2006	No information on appeal proceedings	Yes	15/03/2007 (complaint rejected)	No information	Unclear
21	Mr Aserbi Lanovich Makoyev	25/08/2006	No information on appeal proceedings	Yes	Did not pursue any proceedings		
22	Mr Sait Mukhamedovich	No information on proceedings, but the applicant		Yes	31/05/2007 (complaint	No information	Unclear

	Bashora	received a copy			accepted)		
23	Mrs Taya Alekseyevna Khavzhokova	Did not claim a copy		No	Did not pursue any proceedings		
24	Mr Kunak Ismailovich Guziyev	6/06/2006	No information on appeal proceedings	Yes	5/03/2007 (complaint accepted)	No information	Unclear
25	Mr Amerbi Yakhiyaevich Afov	Did not claim a copy		No	Did not pursue any proceedings		
26	Mrs Yulia Anurdinovna Khagabanova						
27	Mrs Lidiya Zhambulatonova Zhelikhazheva	16/10/2006	No information on appeal proceedings	Yes	9/03/2007 (complaint refused)	No information	Unclear
28	Mr Tengiz Valeryevich Mokayev	Did not claim a copy		No	Did not pursue any proceedings		
29	Mrs Emma Auzinovna Sherdiyeva	This applicant applied but died during the proceedings, the eventual outcome is unclear		?			
30	Mrs Zhanetta Martinovna Kushkhova	27/11/2006	6/02/2007	Yes			
31	Mr Khazret-Ali Islamovich Khalilov	16/08/2006	29/09/2006	Yes	5/06/2007 (complaint accepted)	No information	Unclear
32	Mr Ladin Khazhisetovich Gendukov	Did not claim a copy		No	Did not pursue any proceedings		
33	Mr Vladimir Khazeshevich Vorokov	20/10/2006	Upheld by the supervisory review body on 8/2/2007	Yes			
34	Mr Murat Yuryevich Pshikhachev	Did not claim a copy		No			
35	Mr Fedor Aliyevich Abidov						
36	Mr Liuan Mukhazhirovich Kardanov	7/09/2006	No information on appeal proceedings	Yes	26/12/2006 (complaint refused)	6/02/2007 (refusal upheld)	Decision of 13/04/2006 confirmed
37	Mr Atabi Sakhatgeriyevich Kardanov	Did not claim a copy		No	Did not pursue any proceedings		
38	Mrs Rita						

	Aslamurzovna Anzorova						
39	Mr Karalbi Masadovich Amshokov						
40	Mr Boris Betalovich Kuchmenov	6/09/2006	10/11/2006	Yes	19/06/2007 (complaint accepted)	No information	Unclear
41	Mrs Aminat Umarovna Psanukova	Did not claim a copy		No	Did not pursue any proceedings		
42	Mrs Fatima Nakhupshovna Arkhagova						
43	Mr Khuseyn Hazhmuratovich Atalikov						
44	Mrs Lyubov Mikhaylovna Gonibova						
45	Mrs Zoya Ibragimovna Afaunova	30/08/2006	No information on appeal proceedings	Yes			
46	Mrs Fatimat Abubachirovna Erzhibova	No information on proceedings, but the applicant received a copy		Yes	25/06/2007 (complaint accepted*)	No information	Unclear
47	Mrs Fatima Khursanovna Gudova	Did not claim a copy		No	Did not pursue any proceedings		
48	Mr Oksana Nikolayevna Daova	16/08/2006	29/09/2006	Yes	26/12/2006 (complaint refused in respect of the brother) 5/03/2007 (complaint refused in respect of the husband)	6/02/2007 (refusal upheld in respect of the brother) No information	Decision of 13/04/2006 in respect the brother confirmed Outcome unclear in respect of the husband
49	Mr Zaur Mukhamedovich Terkulov	Did not claim a copy		No	Did not pursue any proceedings		
50	Mr Boris Zaudinovich Bagov	1/12/2006	13/2/2007	Yes	20/06/2007 (complaint accepted)	No information	Unclear

(d) Decisions not to return the bodies of the deceased to their families dated 15 May 2006

The Government said that, on 22 June 2006, 95 corpses of the presumed terrorists were cremated. From the applicants' submissions, it appears that they first learned of the cremation from the Government's observations in the present case.

According to the Government, the cremation took place pursuant to the decision not to return the bodies of the deceased to their families dated 15 May 2006. They did not submit a copy of the decision. They also stated that the authorities had notified the applicants of the decision of 15 May 2006.

It appears that on several occasions the Prosecutor General's Office, in substance, informed the applicants of the refusal to return the bodies.

It does not appear that any of the applicants brought any court proceedings to contest the refusal or ever attempted to obtain a copy of the decision by applying to the courts.

(e) Proceedings before the Constitutional Court

Some of the applicants contested before the Constitutional Court the legislation governing the interment of terrorists. Their initial complaints were rejected as premature. Eventually, the complaints of the twenty-fourth and thirteenth applicants were accepted for examination.

On 28 June 2007 the Constitutional Court delivered a judgment in which, in essence, it rejected the complaints of a number of individuals alleging that section 14(1) of the Interment and Burial Act and Decree no. 164 of the Government of the Russian Federation dated 20 March 2003 were unconstitutional. The ruling noted, in particular, that the measure in question was permissible and, in the circumstances, necessary and justified. The Constitutional Court reached the following conclusions regarding the legitimate aims of and necessity for the legislation in question:

"... At the same time the interest in fighting terrorism, and in preventing terrorism in general and specific terms and remedying the effects of terrorist acts, coupled with the risk of mass disorder, clashes between different ethnic groups and aggression by the next of kin of those involved in terrorist activity against the population at large and law-enforcement officials, and lastly the threat to human life and limb, may, in a given historical context, justify the establishment of a particular legal regime, such as that provided for by section 14(1) of the Federal Act, governing the burial of persons who escape prosecution in connection with terrorist activity because of their death as a result of the interception of a terrorist act ... The provisions of that Act are logically connected to the provisions of paragraph 4 of Recommendation 1687 (2004) of the Parliamentary Assembly of the Council of Europe on combating terrorism through culture dated 23 November 2005, in which it was stressed that extremist interpretations of elements of a particular culture or religion, such as heroic martyrdom, self-sacrifice, apocalypse or holy war, as well as secular ideologies (nationalist or revolutionary) could also be used for the justification of terrorist acts.

3.2. Action to minimise the informational and psychological impact of the terrorist act on the population, including action to lessen its effectiveness as propaganda, is one

of the means necessary to protect public security and the morals, health, rights and legal interests of citizens. It therefore pursues exactly those aims for which the Constitution of the Russian Federation and international legal instruments permit restrictions on the relevant rights and freedoms.

The burial of those who have taken part in a terrorist act, in close proximity to the graves of the victims of their acts, and the observance of rites of burial and remembrance with the paying of respects, as a symbolic act of worship, serve as a means of propaganda for terrorist ideas and also cause offence to relatives of the victims of the acts in question, creating the preconditions for heightened interethnic and religious tension.

In the conditions which arose in the Russian Federation as a result of the commission of a series of terrorist acts which produced numerous human victims, resulted in widespread negative social reaction and had a major impact on the collective consciousness, the return of the body to the relatives ... may create a threat to social order and peace and to the rights and legal interests of other persons and their security, including incitement to hatred and incitement to acts of vandalism, violence, mass disorder and clashes which may produce further victims. Meanwhile, the burial places of participants in terrorist acts may become a shrine for some extremist individuals and be used by them as a means of propaganda for the ideology of terrorism and involvement in terrorist activity.

In such circumstances, the federal legislator may introduce special arrangements governing the burial of individuals whose death occurred as a result of the interception of a terrorist act in which they had taken part. ...”

The ruling further noted that the application of the measures prescribed in the legislation could be regarded as justified if proper procedural safeguards, such as effective judicial review, were in place to protect individuals from arbitrariness. The court noted that Articles 19 and 123-127 of the Code of Criminal Procedure provided for such review.

In sum, it gave a so-called pro-constitutional interpretation of the impugned provisions upholding them *de jure* while modifying them *de facto* by forbidding the authorities to bury the bodies until a court had endorsed the competent authority’s decision. It reasoned as follows:

“... The constitutional and legal meaning of the existing norms presupposes the possibility of bringing court proceedings to challenge a decision to discontinue, on account of the deaths of the suspects, a criminal case against or prosecution of participants in a terrorist act. Accordingly, they also presuppose an obligation on the court’s part to examine the substance of the complaint, that is, to verify the lawfulness and well-foundedness of the decision and the conclusions contained therein as regards the participation of the persons concerned in a terrorist act, and to establish the absence of grounds for rehabilitating [the suspects] and discontinuing the criminal case. They thus entail an examination of the lawfulness of the application of the aforementioned restrictive measures. Until the entry into force of the court judgment the deceased’s remains cannot be buried; the relevant State bodies and officials must take all necessary measures to ensure that the bodies are disposed of in accordance with custom and tradition, in particular through the burial of the remains in the ground ... or by [cremation], individually, if possible, and to ensure compliance prior to this with the requirements concerning the identification of the deceased ... the time, location and cause of death ...”

Judge A.L. Kononov issued a dissenting opinion in which he described the legislation in question as patently immoral, illegal and generally incompatible with the Constitution. In particular, he noted:

“Since long ago law has been regarded as an art of good and justice. It is considered that moral basics and ethical principles are the main and irrefutable criteria of the validity of any law. In the case at hand, they were hopelessly breached.

The contested norms banning the return of bodies of the deceased to their relatives and fixing the rule on their anonymous burial are, in our view, absolutely immoral and reflecting the most uncivilised, barbaric and base views of the past.

This is brightly reflected in rather frank motives cited in defence of that law in the State Duma, media and were even reflected in the present proceedings: in justification of the departure from humanness and the conventional standard of treatment of an individual, in the need for cruelty and brutality adequate to the terror, in the usefulness of ostentatious intimidation through the use of corpses of enemy, in the validity of making the families pay for being relatives with them and in the requirement “to leave them without memory and all the rest”, in the references to “traditions” of Stalinist repressions and the eastern experience of wrapping up corpses in pork skins.

The right of every person to be buried in a dignified manner in accordance with traditions and customs of his family is hardly in need of special justification or even being secured in a written form in law. This right is obviously self-evident and stems from human nature as, may be, no another natural right. Equally natural and uncontested is the right of every one to carry out the burial of a related and dear person, to have an opportunity to display one’s moral duty and human qualities, to bid farewell, to grieve, mourn and commemorate the deceased, however he may be regarded by the society and the state, to have the right to a grave, which in all civilisations represents a sacred value and the symbol of memory.

It is not by accident that the violation of the bodies of dead and of the graves is a crime against the common morality and is prosecuted under Article 244 of the Criminal Code of Russia.

As a matter of principle, these rights are too sensitive, too delicate, too private, to be interfered with by the State through their legal regulation, let alone by restricting them in public interest. The legislator may only set out sanitary and ecological requirements in respect of the places of burial, which is rather obvious, but may not touch upon emotional or moral side of the rite itself, which is a deeply private individual matter.
...”

Judge G.A. Gadzhiyev issued a separate opinion in which he agreed with the majority of the court that the pro-constitutional interpretation of the impugned provisions was an appropriate solution, but disagreed on the nature and extent of the *de facto* modifications. He stated as follows:

“... if, having found, as a result of a preliminary investigation, that a terrorist act was committed and that a given person was involved against whom criminal proceedings ... were discontinued on account of his/her death following the interception of the terrorist act, the respective law-enforcement bodies conclude that the decision to return the body to the family for burial is capable of threatening public order and peace and the health, morals, rights, lawful interests and security of others, they have

the right to refuse to hand over the body and to make special arrangements for its burial.

At the same time, in the event of a refusal to return the body of an individual whose death occurred as the result of the interception of a terrorist act committed by him, the authorities competent to take a decision concerning the burial must secure compliance with all the requirements concerning the establishment of the deceased's identity, the time and place of death, the cause of death, the place of burial and the data necessary for the proper identification of the grave (a given location and number). The burial must take place with the participation of the relatives, in accordance with custom and tradition and with humanitarian respect for the dead. The administrative authorities of a State governed by the rule of law must respect the cultural values of a multiethnic society transmitted from generation to generation. ...”

4. The conditions of storage of the bodies of the deceased following the attack of 13 October 2005

(a) The conditions of storage in the immediate aftermath of the attack

According to the applicants who took part in the identification of the bodies, for several days following the events of 13 and 14 October 2005 the corpses were kept in the town morgue and other locations in wholly unsatisfactory conditions. In particular, they gave off an intense smell owing to the lack of proper refrigeration and were chaotically piled on top of each other.

On an unspecified date Mrs G.G. Kushkhova, one of the relatives who took part in the identification of the bodies, complained in writing that the bodies had been piled up and kept at street temperature, noting that some of the corpses were decomposing and giving off an intense putrid smell. On an unspecified date Mrs F.N. Arkhagova, the forty-second applicant, stated that she had seen the bodies on the ninth day after the events in question and that some of them were decomposing and had worms in them. Mr Kereshev, the husband of the sixteenth applicant, said that when he had taken part in the identification procedure on 15 October 2005, the bodies had been piled on top of each other stripped naked. Similar written observations were made by Mr Alakayev, the fifth applicant's husband, and Mrs Sabanchiyeva, the first applicant.

The applicants produced a video recording in support of their submissions, essentially confirming the above description.

(b) The Government's response of 6 December 2005

In response to an enquiry by the Court dated 4 November 2005, the Government submitted that the bodies of those who had attacked the town had been kept at “premises specifically designed for the long-term storage of corpses and having all the necessary equipment”.

(c) The Prosecutor General's letter of 14 April 2006

In response to a letter from the applicants requesting an explanation for the appalling storage conditions, the Prosecutor General's office said in a letter of 14 April 2006 that until a procedural decision in respect of the corpses had been taken they had been kept in specially equipped rooms in refrigerated chambers set to the appropriate temperature. The authorities refused to disclose the whereabouts of the place where the bodies were stored.

(d) The Government's observations

In their observations of 22 May 2007, the Government explained that following the events in question the corpses had first been directed to the Nalchik morgue. They had then been stripped naked and the clothes sent for forensic expert examination. Thereafter all the corpses had been put in two refrigerated wagons equipped with all necessary storage facilities and sent to the town of Rostov-on-Don for genetic examination. The Government also acknowledged that immediately after the attack no facilities had been available to keep the bodies and that this had probably been noted on the record submitted by the applicants.

(e) The applicants' observations

The following applicants gave statements to the effect that they had participated in the identification of the corpses and witnessed the aforementioned conditions: the fifth, ninth (not personally, but via his older brother and daughter-in-law, statement of 13 June 2007), fourteenth (statement of 13 June 2007), sixteenth (via her husband, statement of 12 June 2007), nineteenth (statement of 17 July 2007), twenty-first (28 June 2007), twenty-second (statement of 12 June 2007) and twenty-seventh (statement of 12 June 2007).

B. Relevant domestic law

1. Legal definitions of terrorist activity and terrorism

Section 3 of Law no. 130-FZ of the Russian Federation (the Suppression of Terrorism Act) defines terrorism as:

“... (a) violence or the threat of its use against individuals or organisations, or the destruction of (or damage to) or the threat of destruction of (or damage to) property and other material objects that endangers people's lives, causes significant loss of property, or entails other socially dangerous consequences and is perpetrated with the aim of putting public safety at risk, intimidating the population, or exerting pressure on state bodies to take decisions favourable to terrorists or to satisfy their unlawful property and/or other interests; (b) an attempt on the life of a state or public figure, committed with the aim of halting his state or other political activity or in revenge for such activity; or (c) an attack on a representative of a foreign state, an official of an international organisation who is under international protection, or the official

premises or means of transport of persons under international protection, if this act is committed with the aim of provoking war or of complicating international relations.”

Terrorist activity within the meaning of the said law encompasses:

- “1) the organisation, planning, preparation and commission of a terrorist act;
- 2) incitement to commit a terrorist act, to violence against individuals or organisations, or to the destruction of physical objects for terrorist purposes;
- 3) the organisation of an illegal armed formation, criminal association or organisation, or organised group for the commission of a terrorist act, or participation therein;
- 4) the recruitment, arming, training and use of terrorists;
- 5) the intentional financing of or giving of assistance to a terrorist organisation or terrorist group.”

Section 3 defines terrorist acts as:

“... the direct commission of a crime of a terrorist character in the form of an explosion, arson, the use or threat of the use of nuclear explosive devices or of radioactive, chemical, biological, explosive, toxic or strong-acting poisonous substances; the destruction or seizure of, or damage to means of transport or other objects; an attempt on the life of a state or public figure or of a representative of a national, ethnic, religious or other population group; the seizure of hostages or abduction of a person; the endangerment of the life, health or property of unlimited numbers of people by creating conditions ripe for accidents or disasters of a technogenic nature or a real threat to create such a danger; the making of threats in any form or by any means; other acts that endanger people’s lives, cause significant loss of property, or lead to other socially dangerous consequences.”

In the same section a terrorist is defined as:

“... a person who takes part in any form of terrorist activity.”

2. Legislation governing the interment of terrorists

On 26 October 2002 a terrorist attack took place in the Nord-Ost Theatre in the city of Moscow, resulting in a hostage crisis with heavy casualties, including the deaths of dozens of hostages.

Shortly after the attack, on 11 December 2002 Russia made changes to the Suppression of Terrorism Act by adding section 16.1, which stated:

“... the interment of terrorists who die as a result of the interception of a terrorist act shall take place in accordance with a procedure established by the Government of the Russian Federation. Their bodies shall not be handed over for burial and the place of burial shall not be disclosed.”

On the same date Russia also introduced changes (FZ - No. 170) to the Interment and Burial Act by adding section 14.1, which states:

“... the interment of persons against whom a criminal investigation in connection with their terrorist activities has been closed because of their death as a result of the interception of the said terrorist act shall take place in accordance with a procedure

established by the Government of the Russian Federation. The bodies shall not be handed over for burial, and the place of burial shall not be revealed.”

A decree issued by the Government of the Russian Federation (no. 164 of 20 March 2003) in accordance with section 16.1 of the Suppression of Terrorism Act defines the procedure for the interment of persons whose death was caused by the interception of terrorist acts they were carrying out:

“... 3. [Such] persons shall be interred in the place where they died by special funeral agencies created by organs of the executive branch of the subjects of the Russian Federation or by organs of the local government...

4. Services provided by the special funeral agency in connection with the interment of [such] persons shall include the processing of the documents necessary for interment; the clothing of the body; the provision of a grave; the transfer of the body or remains to the place of burial or of cremation; and the burial.

The transfer of the body or remains to the place of burial or cremation by rail or air shall require authorisation in accordance with a procedure to be established.

The limitations prescribed by the Interment and Burial Act shall be taken into account when determining the place of burial.

5. In order to arrange for the burial the official carrying out the preliminary investigation shall send to the relevant special funeral agency the necessary documents, including a copy of the decision to close the criminal case and investigation with regard to the persons concerned, and a statement of death to the civilian registry office for the area in which the deceased had his or her last permanent residence,.

6. The relatives of [such] persons shall be notified by the official conducting the preliminary investigation of the location of the registry office competent to deliver a death certificate.

7. Subject to obtaining the approval of the official carrying out the preliminary investigation, relatives of [such] persons may obtain copies of the document confirming death issued by a medical organisation, and the autopsy report (if one was performed). Personal belongings shall also be returned if no confiscation order has been made.

8. The special funeral agency shall produce a certificate that the burial has taken place, which will be sent to the official conducting the preliminary investigation, and shall be included in the criminal file.”

3. Relevant provisions of the Code of Criminal Procedure

Article 19 of the Code of Criminal Procedure provides a right of appeal against the decisions of various authorities, in accordance with the procedure set out in the Code and in particular in Articles 123-127 thereof:

Article 123: Right of appeal

“The acts (or omissions) and decisions of the body of inquiry, the inquiring officer, the investigator, the public prosecutor or the court are amenable to appeal in

accordance with the procedure established in the present Code, by the participants in the criminal court proceedings and by other persons in so far as the procedural acts in question and the procedural decisions adopted affect their interests.”

Article 124: Procedure for the consideration by the public prosecutor of a complaint

“1. The public prosecutor shall consider the complaint within three days of the date of its receipt. In exceptional cases, where it is necessary to request that additional materials be supplied or other measures taken to check it, the complaint may be considered within a period of up to ten days; the complainant shall be duly informed.

2. Following consideration of the complaint, the public prosecutor shall take a decision allowing it in whole or in part or rejecting it.

3. The complainant shall be immediately notified of the decision taken on the complaint and of the further procedure for appealing against it.

4. In the cases stipulated by the present Code the inquiring officer, the investigator or the public prosecutor shall have the right to lodge an appeal with a higher-ranking prosecutor against the acts or omissions and decisions of the public prosecutor.”

Article 125: Court procedure for the consideration of complaints

“1. Decisions by the inquiring officer, the investigator and the public prosecutor concerning a refusal to institute criminal proceedings or the discontinuance of criminal proceedings, and other decisions and acts or omissions on their part which are liable to infringe the constitutional rights and freedoms of the participants in the criminal court proceedings or interfere with citizens’ access to the administration of justice may be appealed against to the district court for the place where the preliminary inquiry was conducted.

2. The complaint may be lodged with the court by the complainant or his or her counsel, legal or other representative, either directly or through the inquiring officer, investigator or public prosecutor.

3. The court shall check the legality and well-foundedness of the acts, omissions and decisions of the inquiring officer, the investigator and the public prosecutor not later than five days after the date the complaint is lodged, at a court hearing in the presence of the complainant and his or her counsel, legal or other representative, and if they are taking part in the criminal case, other persons whose interests are directly affected by the act, omission or decision against which the appeal has been lodged, and the public prosecutor. Any failure to attend by persons who have been duly informed of the time the complaint would be considered and have not insisted on being present shall not be seen as an obstacle to the consideration of the complaint by the court. Complaints shall be considered by the court at a public hearing unless stipulated otherwise...

4. At the start of the court session, the judge shall announce which complaint is being considered, introduce himself to those present and explain their rights and responsibilities. The complainant, if in attendance, shall then set out the grounds for the complaint, following which evidence shall be heard from other persons in attendance. The complainant shall have the right to reply.

5. After considering the complaint, the judge shall adopt either of the following decisions:

(1) a decision finding the act, omission or decision of the corresponding official to be illegal or ill-founded and finding him or her liable to redress the violation; or

(2) a decision rejecting the complaint.

6. Copies of the judge's decision shall be sent to the applicant and to the public prosecutor.

7. The lodging of a complaint shall not suspend performance of the act or decision appealed against unless the body of inquiry, the inquiring officer, the investigator, the public prosecutor or the judge deems it necessary."

Article 127: Complaints and prosecutors' appeals against judgments, decisions or resolutions of the court

"1. Complaints and prosecutors' appeals against judgments, rulings and resolutions of the courts of first instance and appeal, as well as complaints and prosecutor's appeals against court decisions taken in the course of the pre-trial proceedings in the criminal case, shall be lodged in accordance with the procedure laid down in ... [other provisions of the Code].

2. Complaints and prosecutors' appeals against court decisions which have become legally binding shall be lodged in accordance with the procedure laid down by [other provisions of the Code]."

Article 148 of the Code establishes the procedure for lodging appeals against decisions not to institute criminal proceedings:

"1. If there are no grounds for the institution of criminal proceedings the public prosecutor, the investigator, the body of inquiry or the inquiring officer shall issue a decision not to institute criminal proceedings. A decision not to institute criminal proceedings on the ground set out in point 2 of the first paragraph of Article 24 of the present Code shall be effective only with respect to the individual concerned.

2. When issuing a decision not to institute criminal proceedings and after checking the available information about the [alleged] offence based on the suspicion of its perpetration by the person or persons concerned, the public prosecutor, investigator or body of inquiry shall consider whether to institute criminal proceedings against the person who reported or spread false information about the [alleged] offence on a charge of deliberately making false accusations.

3. A decision not to institute criminal proceedings following verification of the information about the [alleged] offence must, if the offence has been reported in the mass media, be made public.

4. A copy of the decision not to institute criminal proceedings shall be sent to the complainant and the public prosecutor within 24 hours of the decision being given. In such cases, the complainant shall be informed of his or her right to appeal against the decision and of the procedure for lodging an appeal.

5. A decision not to institute criminal proceedings may be appealed against to the prosecutor or the court in accordance with the procedure laid down in Articles 124 and 125 of the present Code.

6. If the prosecutor finds a decision not to open criminal proceedings to be unlawful or unfounded, he or she shall revoke the decision not to open the case and institute criminal proceedings in the manner established by the present Article or return the materials for additional verification.

7. If the judge finds the decision not to institute criminal proceedings to be unlawful or unfounded, he or she shall issue a decision to that effect, forward it for execution to the public prosecutor and notify the complainant.”

C. Other relevant sources

The applicants submitted that no other European countries had laws on their statute books similar to Article 14.1 of the Interment and Burial Act.

They also submitted that a similar practice had existed *de facto* in Israel and been used at an administrative level without ever being codified in a law. They also referred to the judgment in the case of *Barake and Others v. Minister of Defence & Others*, 14 April 2002, No. HCJ 3114/02, in which the Israeli High Court of Justice condemned the practice. According to the applicants, in 2004 the Israeli authorities announced that they were putting an end to the practice of refusing to return the bodies of Palestinians, “except in exceptional circumstances”.

The applicants also referred to seven opinions of the Human Rights Committee issued under the International Covenant on Civil and Political Rights in cases against Belarus, Tajikistan and Uzbekistan in which the authorities had refused to inform the relatives of a prisoner under sentence of death of the date of execution, to return the body for burial or to disclose the place of burial (No. 886/1999, *Bondarenko v. Belarus*, 3 April 2003, paragraph 10.2; No. 887/1999, *Lyashkevich v. Belarus*, 3 April 2003, paragraph 9.2; No. 915/2000, *Sultanova v. Uzbekistan*, 30 March 2006, paragraph 7.10; No. 959/2000, *Bazarova v. Uzbekistan*, 14 July 2006, paragraph 8.5; No. 973/2001, *Khalilova v. Tajikistan*, 30 March 2005, paragraph 7.7; No. 985/2001, *Aliboeva v. Tajikistan*, 18 October 2005, paragraph 6.7; No. 1044/2002, *Shukurova v. Tajikistan*, 17 March 2006, paragraph 8.7). In particular, in the case of *Aliboeva v. Tajikistan* (No. 985/2001) the Human Rights Committee ruled as follows:

“6.7 The Committee has taken note of the author’s claim that the authorities did not inform her about husband’s execution but continued to acknowledge her intercessions on his behalf following the execution. The Committee notes that the law then in force did not allow for a family of an individual under sentence of death to be informed either of the date of execution or the location of the burial site of the executed prisoner. The Committee understands the continued anguish and mental stress caused to the author, as the wife of a condemned prisoner, by the persisting uncertainty of the circumstances that led to his execution as well as the location of his gravesite. It recalls that the secrecy surrounding the date of execution and the place of burial, as

well as the refusal to hand over the body for burial, have the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress. The Committee considers that the authorities' initial failure to notify the author of the execution of her husband and the failure to inform her of his burial place, amounts to inhuman treatment of the author, in violation of article 7 of the Covenant”.

The applicants also relied on the judgment of the Inter-American Court of Human Rights of 15 June 2005 in the case of *Moiwana Village v. Suriname*. In that case state agents attacked Moiwana village in 1986, killing 39 members of the N'djuka clan (paragraph 86 (15)). The authorities also prevented the survivors from recovering the bodies. It was further reported that some of the corpses were cremated. The Court gave a detailed account of the specific funeral rituals of the N'djuka, having noted that:

“86(7). The N'djuka have specific rituals that must be precisely followed upon the death of a community member. A series of religious ceremonies must be performed, which require between six months and one year to be completed; these rituals demand the participation of more community members and the use of more resources than any other ceremonial event of N'djuka society.

86(8). It is extremely important to have possession of the physical remains of the deceased, as the corpse must be treated in a specific manner during the N'djuka death rituals and must be placed in the burial ground of the appropriate descent group. Only those who have deemed evil do not receive an honourable burial. Furthermore, in all Maroon societies, the idea of cremation is considered very offensive.

86(9). If the various death rituals are not performed according to N'djuka tradition, it is considered a moral transgression, which will not only anger the spirit of the individual who died, but may also offend other ancestors of the community. This leads to a number of 'spiritually-caused illnesses' that become manifest as actual physical maladies and can potentially affect the entire natural lineage. The N'djuka understand that such illnesses are not cured on their own, but rather must be resolved through cultural and ceremonial means; if not, the conditions will persist through generations.”

The Inter-American Court held in paragraphs 98-100 of its judgment that the applicants had suffered inhuman treatment, contrary to Article 5 of the American Convention on Human Rights because:

“... one of the greatest sources of suffering for the Moiwana community members is that they do not know what has happened to the remains of their loved ones, and, as a result, they cannot honor and bury them in accordance with fundamental norms of N'djuka culture. The Court notes that it is understandable, then, that community members have been distressed by reports indicating that some of the corpses were burned... (paragraphs 98-100)

As part of the just satisfaction award (paragraph 208 of the judgment) the Government of Suriname was ordered:

“... to recover promptly the remains of the Moiwana community members killed during the 1986 attack. If such remains are found by the State, it shall deliver them as soon as possible thereafter to the surviving community members so that the deceased may be honoured according to the rituals of N'djuka culture”.

COMPLAINTS

The first 38 applicants lodged this application with the Court on 26 October 2005. The remaining applicants joined the proceedings on 15 November 2005.

1. The applicants complained that the refusal to return the bodies of their deceased relatives had violated the rights of the deceased guaranteed by Article 3 of the Convention.

2. They also complained under Article 3 about the conditions in which the bodies were stored in the Nalchik Town Morgue in the immediate aftermath of the attack of 13 October 2005.

3. Under Article 6 of the Convention they submitted that the impugned provisions of the law applied in their case had violated the deceased's rights to be presumed innocent and to a fair trial.

4. The applicants complained under Articles 3, 8 and 9, taken alone and in conjunction with Articles 13 and 14 of the Convention, about the State's refusal to return the bodies of their relatives for burial.

In observations of 21 August 2007, the applicants made two additional complaints.

5. They complained, firstly, that the Government had refused to produce copies of the documents from the investigation case file and other information, in breach of the State's obligations under Article 38 § 1 of the Convention.

6. Secondly, they complained that the Russian authorities had violated Article 34 of the Convention by secretly cremating the bodies of their relatives on 22 June 2006 while the case was pending before the Court.

THE LAW

A. Alleged hindrance with the applicants' right of individual petition

In their submissions on the admissibility of the case the applicants complained that the Government had interfered with their right of individual petition by secretly cremating the bodies of their relatives.

The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 that applicants or potential applicants should be able to communicate freely with the Convention organs without being subjected to any form of pressure from the authorities to withdraw or modify their complaints (see *Akdivar and Others v. Turkey*, 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, § 105). The applicants alleged that the cremation of the bodies of their relatives had effectively destroyed the object of their application, "namely the return of the bodies ...". This allegation, however, is merely a

restatement of their complaints under Articles 3, 8 and 9, taken alone and in conjunction with Articles 13 and 14 of the Convention, and raises no substantive issues under Article 34 of the Convention. The event in question did not prevent the applicants from pursuing the proceedings or corresponding with this Court and there is nothing to suggest that it affected their ability to take part in the domestic proceedings.

The Court accordingly dismisses this part of the application.

B. Standing of Mrs Zhanna Fedorovna Ifraimova to complain in connection with the death of Mr Ruslan Borisovich Tamazov

In their observations of 22 May 2007 the Government submitted that Mrs Zhanna Fedorovna Ifraimova had no standing to complain about the authorities' refusal to return the body of Mr Ruslan Borisovich Tamazov. In support of their contention, they referred to a statement she had allegedly made in an interview by the authorities to the effect that she had lived with Mr Tamazov for just one month after February 2005. In the Government's view, this was insufficient to enable the applicant to be considered to be related to Mr Tamazov.

In reply, Mrs Ifraimova, the nineteenth applicant, submitted that Mr Tamazov was her partner, that they had lived together following a religious wedding ceremony in February 2005 and had continued to meet in secret after Mr Tamazov was put on a wanted list. The applicant also submitted that when she had identified Mr Tamazov's body in October 2005 she was eight months pregnant.

The Court finds that the information contained in the case file is insufficient to resolve this issue at the present stage of proceedings. In view of its conclusions concerning the admissibility of the nineteenth applicant's complaints under Article 3 of the Convention about the conditions of storage of the bodies and under Articles 3, 8 and 9, taken alone and in conjunction with Articles 13 and 14 of the Convention, about the refusal to return Mr Tamazov's body (see below), the Court decides to join this objection to the merits.

C. Admissibility of the complaints under Article 3 of the Convention

Under Article 3 of the Convention the applicants complained that they had suffered inhuman and degrading treatment by the authorities because of the appalling conditions in which corpses they had had to identify were stored. They also maintained that the Article 3 rights of the deceased had been breached by the refusal to return their bodies to the families. This Convention provision provides as follows:

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

The Government disagreed and stated that Article 3 had not been breached. They admitted that following the events in question the corpses had first been directed to the Nalchik morgue, where they had been stripped naked and the clothes sent for forensic examination. Thereafter all the corpses had been put in two refrigerated wagons equipped with all necessary storage facilities and sent to the town of Rostov-on-Don for genetic examination. They also acknowledged that immediately after the attack no facilities had been available to keep the bodies and that this had probably been mentioned on the record submitted by the applicants.

The applicants disagreed and maintained their complaints.

The Court finds that in the light of the parties' submissions this part of the application raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It concludes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

D. Admissibility of the complaints under Article 6 of the Convention

The applicants complained that the authorities' refusal to return their relatives' bodies violated their relatives' right to be presumed innocent, as guaranteed by Article 6 § 2 of the Convention, which provides:

“Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

The Court notes that the conclusion by a competent authority that each of the deceased referred to by the applicants was an active terrorist constituted an integral part of the decision not to return their bodies. This factual finding was made in respect of the deceased alone and did not concern the applicants or other members of their families. It cannot thus be said that in so far as the applicants relied on Article 6 § 2 of the Convention they were affected by the measure in question. Furthermore, in so far as the finding in question may have affected the rights of the applicants, the Court notes that this complaint will be examined under Articles 3, 8 and 9 taken alone and in conjunction with Articles 13 and 14 of the Convention.

It follows that this part of the application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

E. Admissibility of the complaints under Articles 3, 8 and 9, taken alone and in conjunction with Articles 13 and 14 of the Convention

Relying on Articles 3, 8 and 9, taken alone and in conjunction with Articles 13 and 14 of the Convention, the applicants also complained of the authorities' refusal to return the bodies. The provisions in question provide:

Article 3 of the Convention

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

Article 8 of the Convention

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Article 9 of the Convention

“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

Article 13 of the Convention

“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.”

Article 14 of the Convention

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

The Government maintained that the decisions not to return the bodies of the applicants’ relatives had been taken pursuant to the Suppression of Terrorism Act, the Interment and Burial Act and the decree on combating terrorism. They stated that all of the applicants had received official notification and answers from the authorities and that no restrictions on access to court had been placed in connection with the decisions in question.

The applicants disagreed. They stated that the authorities’ refusal to return the bodies was unlawful and disproportionate. Firstly, they argued that the refusal had been unlawful in that the Constitutional Court’s judgment imposed on the authorities an obligation to await the outcome of

the investigation before deciding whether to return the bodies and that the authorities had clearly failed to comply with that obligation. Secondly, they submitted that the law contained vague notions such as “terrorist action”, “terrorist activity” and “terrorist act”, that it was unclear as regards: the cremation policy (the applicants were aggrieved that their relatives had been cremated rather than buried), the exact official with authority to take the decision, the possibility of bringing appeal proceedings, the policy concerning the disclosure of the date of the burials and the need to observe rituals during the burials. Thirdly, they submitted that the measure was disproportionate in that no other European countries had similar legislation; that while the Israeli authorities had had a similar administrative policy, this had since been condemned by the Israeli courts; that international humanitarian law prohibited such treatment and that other, less restrictive, measures were available to the authorities to address terrorism-related concerns. They further claimed that the relevant law was discriminatory. The applicants also complained that the domestic legal system afforded them no effective remedy to complain about the refusal to return the bodies.

In the light of the parties’ submissions, the Court finds that these complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It concludes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

For these reasons, the Court unanimously

Decides to join to the merits the examination of the issue of the standing of the nineteenth applicant to lodge a complaint in connection with the death of Mr Tomazov;

Declares admissible, without prejudging the merits

(a) the applicants’ complaints under Article 3 of the Convention concerning the conditions in which bodies of the deceased were stored and their complaints that the Article 3 rights of the deceased had been breached by the refusal to return their bodies to the families;

(b) their complaints under Articles 3, 8 and 9, taken alone and in conjunction with Articles 13 and 14 of the Convention about the refusal to return the bodies of the deceased to their families;

Declares inadmissible the remainder of the application.

Søren Nielsen
Registrar

Christos Rozakis
President