

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

FIRST SECTION

CASE OF MASKHADOVA AND OTHERS v. RUSSIA

(Application no. 18071/05)

JUDGMENT

STRASBOURG

6 June 2013

FINAL

07/10/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Maskhadova and Others v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 14 May 2013,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 18071/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Russian nationals, Mrs Kusama Yazedovna Maskhadova, Mrs Fatima Aslanovna Maskhadova and Mr Anzor Aslanovich Maskhadov ("the applicants"), on 4 May 2005.

2. The applicants were represented before the Court by Interights, an NGO specialising in the legal protection of human rights based in London. The Russian Government ("the Government") were initially represented by Mr P. Laptev and Mrs V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative Mr G. Matyushkin.

3. Referring to Article 2 of the Convention, the applicants alleged, in particular, that the respondent Government had been directly responsible for the death of Aslan Maskhadov and had failed to investigate the incident. The refusal of the authorities to return the body of Aslan Maskhadov to his family was unlawful and disproportionate, in breach of Articles 8 and 9, taken alone and in conjunction with Articles 13 and 14 of the Convention.

4. By a decision of 8 July 2008, the Court declared the application partly admissible.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1950, 1983 and 1975, respectively, and live in Azerbaijan, Norway and Sweden.

7. The first applicant is the widow of Aslan (also spelled Oslan) Aliyevich Maskhadov. The second and third applicants are their children.

A. Background to the case

8. Aslan Maskhadov, born in 1951, was one of the military and political leaders of the Chechen separatist movement during and after the armed conflict of 1994-96.

9. For some time after the elections held in Chechnya on 27 January 1997 he was President of the so-called Chechen Republic of Ichkeriya.

1. Criminal case no. 59027

10. In 1999 Chechen armed groups began a military incursion into Dagestan.

11. On 18 February 2000 a criminal investigation was initiated by the Russian authorities on suspicion of military revolt and sedition in this connection.

12. On 2 March 2000 Aslan Maskhadov acquired the status of accused in this case.

13. On the same date the investigator decided to detain him. Since the whereabouts of Aslan Maskhadov could not be established, the investigator placed his name on the national and international lists of wanted persons.

2. Criminal case no. 14/17

14. On an unspecified date the authorities also opened a criminal investigation into terrorist activity in the Nadterechnyy District of the Chechen Republic in 2000.

3. Criminal case no. 20/849

15. On 1 September 2004, the day of the terrorist attack on a school in the town of Beslan, the authorities instituted criminal investigations in connection with this event on suspicion of hostage-taking, murder, illegal arms trafficking and terrorist acts.

16. On 8 September 2004, having collected various items of evidence indicating the involvement of Aslan Maskhadov in masterminding the

attack, which left some 334 people, including 86 children dead, the investigator formally identified him as an accused.

17. On the same date Aslan Maskhadov's name was again put on the national and international wanted lists.

4. Applicants' allegations concerning attempts on the life of Aslan Maskhadov

18. The applicants alleged that repeated attempts on Aslan Maskhadov's life had taken place in 1996, 1998 and 2000 and that these attacks had been "conducted by or with the connivance of State agents".

19. According to the applicants, on 9 September 2004 the Russian Federal Security Service (*Федеральная Служба Безопасности РФ* – "the FSB") offered 300 million Russian roubles for information leading to his arrest.

B. Events of 8 March 2005

20. It appears that prior to 8 March 2005 Aslan Maskhadov lived in hiding as a fugitive in various unspecified locations in Chechnya.

21. On 8 March 2005 between 9 and 10 a.m. the FSB conducted a special operation aimed at tracking down and arresting members of unlawful military formations at 1 Suvorov Street in Tolstoy-Yurt, a village in the Groznenskiy Selskiy District of the Chechen Republic.

22. According to the authorities, the operation resulted in the discovery of a concealed underground shelter and the arrest of four individuals, including V.U. Khadzhimuradov and V.L. Murdashev, who were Aslan Maskhadov's bodyguard and press officer, respectively.

23. The authorities also discovered the corpse of an "unidentified person" bearing traces of injuries. On the same date the four detained individuals identified the person as Aslan Maskhadov.

24. In the afternoon of 8 March 2005 investigator Sh. from the Investigative Unit of the Directorate of the FSB in the Chechen Republic (*следователь следственного отдела Управления ФСБ России по Чеченской Республике*) arrived on the scene and, in the presence of two witnesses and with the assistance of a military mining specialist, conducted an inspection of the house and grounds.

25. The resulting report, containing numerous colour photographs, described the property in detail, including the location of the house, the adjacent structures and the concealed underground shelter.

26. It further described the corpse in the following manner:

> "... In the middle of the aforementioned concrete platform, under the canopy, was the corpse of an unidentified man, apparently resembling Aslan Maskhadov. The corpse was lying on its back with arms and legs spread wide. There were socks on the corpse's feet. The corpse was shoeless. The person was wearing dark-grey trousers

heavily stained with dirt. The left trouser leg was rolled up. Grey pants with black vertical stripes were visible. The upper part of the body was naked, and no visible signs of injuries were detected. There were some remnants of rolled-up clothes (blue T-shirt and dark-blue jacket) on the right forearm and left wrist. The corpse's eyes were closed; the person had a moustache and beard of medium length. There was an entry hole in the area of the right temple, bordered by dried blood of a dark-brown colour. There was dried blood on the left outside ear. ..."

27. The report also described various items which had been found at the scene, apparently piled up in the yard of the property. Among these items were a number of arms and ammunitions, including four AK-74 automatic rifles, two Stechkin machine pistols, one PM semi-automatic pistol, six grenades and an explosive belt. In addition, there were a few laptop computers and portable radio transceivers with accessories.

28. With regard to the concealed underground shelter, the report noted its location and mentioned that it was three metres deep and was equipped with a metal ladder with five steps. The floor of the shelter was covered with rubble due to the fact that the entrance had been broken down using mechanical force. No detailed inspection of the shelter was conducted because of the "justified fear that the shelter may have been booby-trapped". The report contained two photographs of the entrance to the shelter.

29. It appears that on the same date the corpse was transported to the military base in the village of Khankala.

30. According to the applicants, on 13 March 2005 the authorities blew up the house and its cellar.

31. The respondent Government submitted that the case file did not contain any information about the alleged destruction of the house in question on that date.

C. Official investigation into the circumstances of the death of Aslan Maskhadov

32. It appears that the circumstances of the death of Aslan Maskhadov were investigated by the authorities of the Prosecutor General's Office in the context of the criminal investigation in case no. 20/849 (the Beslan school massacre, see paragraphs 15-17 above).

1. Investigator's actions in respect of the corpse and various items found at the scene of the incident

33. On 9 and 10 March 2005 investigator K. from the Prosecutor General's Office (*следователь Генеральной прокуратуры РФ*) examined the corpse and other items found at the scene and decided that a number of expert examinations should be carried out. On 9 March 2005 the corpse of Aslan Maskhadov was identified by his bodyguard V.U. Khadzhimuradov and R.S. Maskhadov, apparently one of Aslan Maskhadov's relatives.

(a) Examination report of 9 March 2005

34. On 9 March 2005 investigator K. conducted an examination of the corpse in the presence of two witnesses and with the participation of Deputy Prosecutor General Sh., two medical experts Mal. and Mat., and prosecutor S. It appears that both video and photographic records of the examination were made. The report contained the following description of the injuries found on the corpse:

> "... In the right temple area, two centimetres above the right eyebrow and five centimetres towards the outer edge of the right eye there is a round-shaped wound one centimetre in diameter. On the edges of the wound are grazes one and a half to two millimetres wide. The wound is gaping. There is an irregular oval-shaped bruise surrounding the wound measuring three and a half to four centimetres. ...
>
> ... In the left cheekbone area, four centimetres towards the outside of the bridge and half a centimetre below the lower edge of the left eye socket there is a wound of an irregular star-like shape measuring between 1.2 and 1.7 cm. The wound has six rays pointing at twelve, three, five, six, eight and nine o'clock, assuming that the body is placed in a straight vertical position. ...
>
> ... In both eye-sockets there are crimson-violet bruises measuring 3.5 to 4 cm on the right side and 1.8 to 4.5 cm on the left side. ...
>
> ... In the parietal region there is a wound of an irregular round shape with six rays at one, three, five, seven, eight, and eleven o'clock. The wound measures between 1.4 and 1.10 cm. ...
>
> ... In the right scapular area along the central scapular line, in the area of the fifth intercostal space and 131 cm from the soles of the feet, there is a round-shaped wound with its longitudinal axis pointing at four and ten o'clock. The right edge has grazes of up to four millimetres with a sloped wall. The opposing left edge has grazes of up to two millimetres with a sapped wall, the wound is open ..."

(b) Forensic medical examination of 10 to 24 March 2005

35. On 10 March 2005 investigator K. ordered a forensic medical examination of the corpse, having put fourteen questions to the expert (see the list of questions and answers below). On the same date between 2 and 4 p.m. a medical expert, NK, carried out the examination of the body. The resulting report, dated 24 March 2005, contained a brief summary of the circumstances of the case, a very detailed description of the condition of the corpse both internally and externally, the forensic diagnosis and the expert's conclusions, together with the answers to the fourteen questions put by investigator K.

36. The forensic diagnosis was the following:

> "Firearm injury. Multiple (five) gunshot perforating wounds to the head (four) and one blind multi-trauma penetrating wound to the chest and the upper extremity:

– on the head: four perforating wounds penetrating the cavity of the skull with a one-sided buttonhole fracture to the left temporal, left parietal and cervical bones and a multi-fragment fracture to the frontal bone, with damage to brain tissue, haemorrhaging in its ventricles and above and beneath the hard and soft brain tunic, a perforating fracture to the big wing of the main bone on the left, a fracture to the left cheekbone and haemorrhaging into the soft tissue of the head;

– on the chest and the upper extremity: one blind multiple wound to the chest perforating the pleural cavities, with a fracture of the seventh right rib and damage to the lungs, a double-sided buttonhole fracture to the main part of the seventh thoracic vertebra, damage to the soft tissue of the left half of the sternum and the soft tissue of the back surface of the upper part of the left shoulder, with the presence of a bullet at the end of the wound tract.

Double haemothorax (550 ml).”

37. The report gave the following answers to the fourteen questions:

“1. Answer to question no. 1: ‘What are the injuries to the presented corpse, what is their location, what was the method used and from what distance were they inflicted?’

Maskhadov had five gunshot wounds to the head, chest and the left upper extremity:

– on the head: four perforating wounds penetrating the cavity of the skull with a one-sided buttonhole fracture to the left temporal, left parietal and cervical bones and a multi-fragment fracture to the frontal bone, with damage to brain tissue, haemorrhaging in its ventricles and above and beneath the hard and soft brain tunic, a perforating fracture to the big wing of the main bone on the left, a fracture to the left cheekbone and haemorrhaging into the soft tissue of the head;

– on the chest and the upper extremity: one blind multiple wound to the chest perforating the pleural cavities, with a fracture of the seventh right rib and damage to the lungs, a double-sided buttonhole fracture to the main part of the seventh thoracic vertebra, damage to the soft tissue of the left half of the sternum and the soft tissue of the back surface of the upper part of the left shoulder, with a bullet at the end of the wound tract.

No other injuries or marks have been found on the body of Maskhadov.

The following proves that the wounds were inflicted by gunfire: the perforating and multiple character of the injuries; the presence of the bullet at the end of the wound tract ...; bleeding in a cylindrical pattern along the line of the wound tracts; the oval shape and small size of the wounds; the slightly irregular, tucked-in edges of the wounds; the tissue damage in the centre of the wounds and the contusion collar on the edges of the wounds.

The gunshot entry wounds are situated:

– no. 1: in the left postotic area;

– no. 2: two and a half centimetres towards the back and two centimetres lower than wound no. 1;

– no. 3: 3.3 cm to the right of wound no. 2;

– no. 4: in the left parietal area, one centimetre to the left of the midline of the head;

– no. 8: in the projection of the sixth intercostal space on the right, along the midline of the scapula.

The following features indicate that these are entry wounds: the oval shape, the relatively small size, the presence of damaged skin in the centre, the slightly irregular edges, the presence of a contusion collar on the edges and the circular haemorrhage in the subjacent tissues.

The exit wounds are situated:

– no. 5: on the front to the left;

– no. 6: on the front to the right;

– no. 7: in the left cheekbone area.

The following features indicate that these are exit wounds: the irregular star-like and slot-like shape of the wounds; the irregular, ragged edges.

...

The entry wounds (nos. 1-3) on the head were inflicted as a result of a burst of fire from a hand firearm, which could have been an APS (Stechkin automatic) or a PM (Makarov) pistol, as suggested by the following indications: (a) the presence of a few entry holes situated on the same body surface; (b) the similar morphology of the entry wounds, which suggests that they were inflicted almost simultaneously, by the same type of arm and from the same or almost the same range. Entry wound no. 8 on the back of the corpse of Maskhadov could have been inflicted as the result of a burst of automatic fire or as the result of a single shot from a manual gun of the type described above.

Entry wound no. 4 was inflicted as the result of a single shot from a gun. The diameter of the shell was no less than 0.9 cm, as confirmed by the size of the wound and the perforating fracture of the left parietal bone. Most probably the shell exited through the open mouth. ...

The shots which wounded Maskhadov were not fired from close range (*с неблизкой дистанции*), a finding confirmed by the absence in the area of the entry gunshot wounds of any traces of impact from the by-products of shooting (gunpowder gases, soot, gunpowder particles, metal particles). The way in which the injuries are formed ... suggests that they were probably inflicted from a distance of one metre.

All injuries were inflicted shortly before death, as confirmed by:

– the character of the wounds – perforating wounds with massive destruction of the brain tissue as well as damage to the internal organs in the chest;

– slight haemorrhaging coupled with pronounced bone fractures;

– the lack of indication of healing of the injuries.

2. Answer to question no. 2: ‘In what sequence were the injuries inflicted?’

On the head the first to be inflicted was wound no. 1, then wound no. 2 and wound no. 3, then wound no. 4; this is confirmed by the smaller space between wounds no. 1 and no. 2 in comparison to the space between wounds no. 2 and no. 3 and the location of wound no. 4.

It is impossible to answer the question concerning the sequence in which the wounds on the head and the wound on the chest were inflicted because of the absence of objective signs indicating the sequence.

3. Answer to questions nos. 3, 4, 5 and 12: ‘Which injury exactly was the cause of death?’, ‘Did death occur immediately or within a certain period of time?’, ‘Would [Maskhadov] have been capable of performing any actions after receiving the injuries?’, ‘What was the cause of death?’

The cause of death of Maskhadov was bullet injuries to the head with damage to (destruction of) the cerebral hemispheres and membranes.

The death of Maskhadov occurred immediately on infliction of the gunshot wounds to the head (in a period of time ranging from a few seconds to a few minutes). This is confirmed by:

– the character of the injuries (perforating wounds with massive destruction of brain tissue);

– the slight haemorrhaging coupled with the presence of pronounced injuries to the bones;

– the absence of indications of healing of the said injuries.

After infliction of the said injuries Maskhadov could have performed actions (for a period ranging from a few seconds to a few minutes) during the stage of compensatory reaction of the organism.

4. Answer to question no. 6: ‘What was the body’s position when the injuries were being inflicted?’

The direction of the wound tracts in the head was (on the assumption that the body is in a straight vertical position): (a) from right to left; (b) from bottom to top as regards wound tracts nos. 1-3, and from top to bottom as regards channel no. 4; (c) slightly from back to front.

The direction of the wound tract in the area of the chest was (on the assumption that the body is in a straight vertical position): (a) from left to right; (b) slightly from bottom to top; (c) slightly from back to front.

Hence, during the shooting the perpetrator’s weapon was situated behind, to the right and slightly below the level of the wounds to the head and the chest of Maskhadov, his head being turned to the left.

5. Answer to question no. 7: ‘Was the corpse’s position changed?’

The corpse’s position could have been changed as a result of its retrieval, inspection and transport.

6. Answer to question no. 8: ‘Are there any signs indicating the possibility that the injuries were inflicted by the victim himself?’

None of the injuries found on Maskhadov could have been self-inflicted. This is confirmed by the range from which the shots were fired, the location of the entry gunshot wounds in places inaccessible to the individual himself and the direction of the wound tracts.

7. Answer to question no. 9: ‘What is the victim’s blood group?’

Report no. 148 on the forensic biological examination shows that Maskhadov belonged to blood group Aβ (II).

8. Answer to question no. 10: ‘Had the victim consumed alcohol or narcotic substances shortly before death and in what quantities?’

During forensic chemical examination of the biological samples taken from the corpse of Maskhadov, no ethyl alcohol or narcotic substances were detected.

9. Answer to question no. 11: ‘Did the victim take any food shortly prior to death and, if so, what did he eat?’

Maskhadov did not consume any food prior to death, as evidenced by the lack of food in the stomach.

10. Answer to question no. 13: ‘How long ago did death occur?’

The timing of death of Maskhadov does not contradict the timing indicated in the order [of 10 March 2005], namely 8 March 2005.

11. Answer to question no. 14: ‘Is there a causal link between the injuries received and death?”

There is a direct causal link between the injuries received by Maskhadov in the form of gunshot wounds to the head and his death.”

(c) Forensic molecular genetic examination dated 17 March 2005

38. On 10 March 2005 the investigator ordered a forensic medical examination of samples of the corpse’s blood, muscle tissue and nail plate and samples taken from Aslan Maskhadov’s two nephews once removed. The expert, Ko., was asked to establish whether the body in question was that of Aslan Maskhadov.

39. On 11 March 2005 Ko. received the order of 10 March 2005 and on the same date started the examination. The expert finalised the examination on 14 March 2005. The resulting report was completed on 17 March 2005

and contained a detailed description of the scientific methods used. The expert's conclusion was that a combination of genetic features found in the samples taken from the corpse and from the dead man's nephews confirmed the blood relationship between them with a probability of 99.92 percent.

(d) Decision to terminate criminal proceedings in respect of Aslan Maskhadov dated 29 March 2005

40. On 29 March 2005 the investigator issued a decision recapitulating the events of 1 September 2004 and the nature of the charges against Aslan Maskhadov, and noted that the investigation had collected evidence of the latter's involvement in masterminding the attack. The decision went on to state that on 8 March 2005 the authorities had found the body of an unidentified man who was later identified as Maskhadov. The decision then concluded that the criminal case against him should be closed owing to his death.

(e) Forensic ballistic examinations in respect of the bullet found in the corpse and the firearms

41. On an unspecified date between 10 and 28 March the investigator ordered a ballistic examination of the bullet found in the corpse and of the two Stechkin pistols and the PM pistol, found at the scene on 8 March 2005 (see paragraph 27 above). An expert was requested to identify the gun which had fired the bullet in question. As a result of this examination, the expert concluded that the bullet had been fired from the PM pistol. It appears, however, that the report contained contradictions concerning the methods of comparative examination, and on 28 March 2005 the investigator ordered a fresh report.

42. Between 28 March and 4 April 2005 ballistics experts R. and Yu. carried out a fresh examination of the bullet and the guns. They also came to the conclusion that the bullet had been fired from the PM pistol.

2. The investigator's actions in respect of the persons arrested at the scene of the incident

43. The case file materials submitted by the Government contain records of interviews with three persons arrested on 8 March 2005 and, in particular, V.U. Khadzhimuradov, V.L. Murdashev and S.S. Yusupov. In the case of Khadzhimuradov, the authorities also carried out a psychiatric examination.

44. The relevant parts of the interview records and the psychiatric report are reproduced in chronological order.

(a) Record of interview with S.S. Yusupov dated 10 March 2005

45. On 10 March 2005 between 7.30 and 9.50 p.m. an investigator from the Prosecutor General's Office conducted an interview with Skandarbek Sultanovich Yusupov, who had the status of suspect in criminal

case no. 20/849. The interview was conducted in the presence of his lawyer, L.L. Dzardanova. The suspect was given formal notice of his rights and also made a statement to the effect that no pressure had been put on him by the authorities in connection with the criminal investigations.

46. During the interview Yusupov explained that on 8 or 9 November 2004 he had been asked by his cousin to shelter Aslan Maskhadov in his house in the village of Tolstoy-Yurt. The suspect described the circumstances of the arrival of Aslan Maskhadov, his stay in the house and the cellar and the latter's subsequent meeting with Shamil Basayev (a well-known militant Islamist and one of the leaders of Chechen separatism), who reportedly died in July 2006 on 12 or 13 November 2004.

47. As regards the events of 8 March 2005, Yusupov gave the following statement:

> "... On 8 March 2005 at around 9 o'clock I was sitting with my wife and daughter in the kitchen when armed men entered by the yard and started shouting: 'Come out with raised hands one by one'. My wife and daughter and I came out and they asked me whether there were any strangers in the house. I told them that my cousin Ilyas was there, whereupon he came out. Then I was asked whether the building had any cellars, and I showed them the cellar situated under the new house, which is accessed through the new house. They then started a search and in the old house they found the entrance to the cellar in which Aslan Maskhadov, Vakhid and Viskhan were staying. The servicemen blew up the entrance to the cellar and, as a result, the entrance became obstructed. They then started digging underneath and one of them shouted: 'I see a corpse!'. They started shouting through the hole they had made to see whether there was anyone alive in there and some time later I saw them taking Vakhid and Viskhan out of the old house."

(b) Record of interview with V.U. Khadzhimuradov dated 10 March 2005

48. On 18 March 2005 between 5.05 and 6.55 p.m. an investigator from the Prosecutor General's Office, in the presence of the lawyer A. Elkanov, interviewed Viskhan Umarovich Khadzhimuradov, who had the status of suspect in criminal case no. 20/849.

49. He was given formal notice of his rights and also made a statement to the effect that no pressure had been put on him by the authorities in connection with the criminal proceedings and that he had decided to give evidence in the case voluntarily.

50. Khadzhimuradov explained that he was Aslan Maskhadov's nephew and had also been his personal bodyguard and assistant. He described various episodes from their work together.

51. He also stated as follows:

> "On 8 March 2005 at 9 o'clock I was with my uncle Aslan and Vakhid Murdashev in the bunker under the private house situated in the village of Tolstoy-Yurt; I cannot remember the exact address. At that moment the sound of blows rang out. Then there was an explosion near the cellar's hatch leading to the bunker. Uncle Aslan took his Stechkin pistol and fired a shot at his head. After that moment I can hardly remember what happened. I only recall that the servicemen dragged me and Vakhid out of the

cellar. I would like to clarify that Uncle Aslan, Vakhid and I had lived in the house in question in the village of Tolstoy-Yurt since the beginning of December 2004. Before that, Uncle Aslan and I had been living in the forest near the mountain village of Avturi in the Kurchaloyevskiy District of the Chechen Republic."

(c) Record of interview with V.L. Murdashev dated 18 March 2005

52. On 18 March 2005 between 3.40 and 5.25 p.m. an investigator from the Prosecutor General's Office interviewed Vakhid Lakayevich Murdashev, who had the status of suspect in criminal case no. 20/849, in the presence of the lawyer A.A. Pliev. V.L. Murdashev was suspected of having been a member of the armed group and of being in possession of firearms. The suspect was given formal notice of his rights and also made a statement to the effect that no pressure had been put on him by the authorities in connection with the criminal proceedings and that he had decided to give evidence in the case voluntarily.

53. It appears that the suspect had been questioned previously on at least one occasion, as the record stated that it was an "additional interview" and that he had "fully endorsed his earlier statements".

54. Murdashev explained that he had been Aslan Maskhadov's political assistant, and described various episodes from their work together.

55. As regards the events of 8 March 2005, Murdashev gave the following statement:

"On 8 March 2005 Maskhadov and Viskhan Khadzhimuradov and I were in the bunker under the house of Mr Yusupov. At around 9.30 a.m. we heard heavy footsteps on the ground above and thought that there were many people up there. We switched the light off. After about an hour the entrance was discovered, as there was a glimmer of light coming through the cover blocking access to the bunker. In a few minutes a few shots were fired at the cover from the outside. At this point I was on the floor (at the place marked 'C' on the sketch map I drew earlier). Maskhadov was on the trestle bed (at the place marked 'A' on the map). V. Khadzhimuradov was on the trestle bed facing Maskhadov (at the place marked 'B' on the map). After the shots were fired I moved to the trestle bed and sat near V. Khadzhimuradov (at the place marked '1' on the map). At that point I had in my right hand my APS-Stechkin pistol which was at half-cock and was not loaded, although it had a cartridge full of bullets. Maskhadov stayed where he was and held his APS-Stechkin gun. I don't know whether it was loaded with bullets. At that moment Maskhadov said, in particular, 'While I am alive, the enemy won't touch me', so I understood that he wanted to commit suicide. Also, there was an explosive device next to him, for personal self-destruction, which he did not use so as not to hurt me and V. Khadzhimuradov. Then V. Khadzhimuradov asked Maskhadov, in particular 'What are we to do[?]' to which the latter responded 'You should not do it', meaning that we should not kill ourselves. Then there was an explosion, as a result of which I lost consciousness. When I came round I was lying on the floor (at the place marked '2' on the map). There was dust in the bunker and nothing could be seen. There was no gun in my hand at that moment. I called V. Khadzhimuradov and asked him, in particular: 'How is Aslan?' to which he responded in Chechen: 'He is no more'. I moved to the place where I had been sitting (at the place marked '1' on the sketch). The body of Maskhadov was in the same place as before and was obstructed by a foam-rubber mattress, but I could not see it.

> Then ... I remember the fumes started to appear and V. Khadzhimuradov and I started choking. I shouted in the direction of the passage 'There are people alive!' and started climbing upwards, with V. Khadzhimuradov following. There were people in military uniform upstairs who escorted me and V. Khadzhimuradov to the yard."

56. In response to the investigator's question whether the suspect had heard any shots being fired inside the bunker, the suspect replied as follows:

> "I myself did not shoot and did not see or hear Maskhadov or V. Khadzhimuradov shooting while in the bunker."

57. Responding to the investigator's question concerning the cause of death of Aslan Maskhadov, the suspect stated as follows:

> "I think that Maskhadov shot himself with his APS-Stechkin pistol. But I don't know how this actually happened, as I lost consciousness after the explosion."

(d) Record of interview with V.U. Khadzhimuradov dated 18 March 2005

58. On 18 March 2005 between 5.05 and 6.55 p.m. an investigator from the Prosecutor General's Office again interviewed V.U. Khadzhimuradov, this time in the presence of the lawyer E. Dzhioyeva.

59. The suspect was given formal notice of his rights and also made a statement to the effect that no pressure had been put on him by the authorities in connection with the criminal proceedings and that he had decided to give evidence in the case voluntarily.

60. Khadzhimuradov explained that he was Aslan Maskhadov's nephew and had also been his personal bodyguard and assistant. He described various episodes from their work together.

61. As regards the events of 8 March 2005, the suspect made the following statement:

> "On 8 March 2005 at around 9 a.m., Uncle Aslan, Vakhid and I were in the cellar. At that moment, we heard some knocks and understood that someone was trying to break down the door leading to the cellar. In response, Uncle Aslan, using his right hand, put the pistol to the temple area of his head. At that moment there was an explosion. At the moment of the explosion Uncle Aslan was kneeling in front of me, facing me, and Vakhid was sitting half a metre to the left. As result of the explosion, I lost consciousness. After some time, a couple of seconds as I understood, I started gradually to come round. I saw that Uncle Aslan's head was lying on my right leg, I felt warmth and realised that the blood was oozing out of my uncle's wounded head down my right leg. Then Vakhid and I started shouting that we were coming out. We came out and the Spetznaz soldiers told me to go downstairs to the cellar and tie Uncle Aslan's chest and legs so that it would be more comfortable to lift him up from the cellar. I carried out the instruction, after which Vakhid and I were arrested by the Spetznaz soldiers. I would like to explain that at the moment when the Spetznaz soldiers were breaking down the doors leading to the cellar, Uncle Aslan told me and Vakhid: 'If I am still alive, shoot me in the heart'."

(e) Record of interview with V.U. Khadzhimuradov dated 19 March 2005

62. During the interview which took place on 19 March 2005 between 3.25 and 4.05 p.m., V.U. Khadzhimuradov gave the following statement:

> "I wish to amend my previous statements. According to my previous statements, on 8 March 2005 at 9 o'clock, the Spetznaz servicemen started breaking down the door leading to the cellar where I was staying with my uncle, Aslan Alievich Maskhadov, and my uncle's assistant, Murdashev Vakhid. We were in the cellar, under the one-storey private house situated in the village of Tolstoy-Yurt in the Chechen Republic. After we heard the knocks in the cellar, Uncle Aslan told me and Vakhid: 'Be prepared! Don't think about yourselves, think about me! If I am still alive, shoot me in the heart!' After hearing these words I cocked my PM pistol. At that moment Uncle Aslan was sitting in front of me, at a distance of half a metre; Vakhid was sitting near me, to the left. Then the explosion happened. I felt bad, my head felt like it was being squeezed. At that moment Aslan Maskhadov fell on me so that his head was on my right leg. At that very second, without taking aim, I fired two shots in a row at Uncle Aslan. I don't know where the bullets went. Then in a few seconds I lost consciousness. Afterwards I came round and along with Vakhid surrendered to the Spetznaz fighters. I would like to clarify that I took Uncle Aslan's words as an order; according to Chechen custom, I cannot disobey and fail to execute an order given by Aslan Maskhadov."

(f) Record of interview with V.U. Khadzhimuradov dated 7 June 2005

63. On 7 June 2005 between 12.55 and 3.30 p.m. an investigator from the Prosecutor General's Office interviewed V.U. Khadzhimuradov, who by then had the status of accused. The interview took place in the presence of the lawyer A.B. Elkanov. The record noted that Khadzhimuradov was giving evidence in the case voluntarily.

64. The accused described his relationship with Aslan Maskhadov as well as various instances of collaboration between them, and meetings between Aslan Maskhadov and Shamil Basayev.

65. As regards the events of 8 March 2005 Khadzhimuradov gave the following statement:

> "Around one month after the departure of Shamil Basayev, on 8 March 2005, Maskhadov, Vakhid Murdashev and I were in the cellar. Ilyas Iriskhanov was in the house. We were all asleep, and were woken up because we heard some people walking in the yard, talking and looking for an entrance to the cellar. Then they started knocking on the hatch covering the entrance to the cellar. At that moment I was sitting on the bed, with Maskhadov sitting in front of me and V. Murdashev sitting beside him on the mattress. Maskhadov told me and V. Murdashev that they were coming after him, but that he would not surrender and that if he remained alive I should shoot him in the heart. After saying these words, he put a gun to his right temple. I held my PM pistol in my right hand, it was loaded and cocked, and at that moment the explosion happened. I was thrown back by the blast, I struck my head against the wall and lost consciousness. Some time later I came round, my head was aching badly, as if it were being squeezed. I could hardly see anything, there was a mist in my eyes, I had no idea what was going on at that moment. At the moment of the explosion I could hear the shots but I cannot say who was shooting and where. I cannot exclude the possibility that at the moment of the explosion, when I was thrown

back, my pistol might have gone off, but I cannot say what direction the shot went in. After the explosion when I came round I felt that someone was lying on my right leg, then it occurred to me that it was Maskhadov and that his head was bleeding. Then Vakhid Murdashev and I started shouting to the people above that we were coming out. Murdashev Vakhid was the first to come out of the cellar. I followed straight behind, then went back into the cellar again and tied up the body of Maskhadov so that it could be taken out of the cellar."

(g) Psychiatric examination of V.U. Khadzhimuradov by a group of experts dated 8 June 2005

66. On 3 June 2005 the investigator ordered a psychiatric expert examination of V.U. Khadzhimuradov, in view of the seriousness of the charges against him and the cerebrocranial injury he had received on 8 March 2005. The investigator put the following questions to the board, consisting of four experts in psychiatry and psychology, Doctors S., T., Kh. and B.:

"1. Taking into account his particular sensory faculties (eyesight, hearing, etc.) and the circumstances of his arrest on 8 March 2005, was V.U. Khadzhimuradov capable of accurately perceiving the main circumstances of the case?

2. Does V.U. Khadzhimuradov display any indications of increased propensity towards exaggeration of the events he describes?

3. Does V.U. Khadzhimuradov display any indications of increased suggestibility and submissiveness?

4. Did V.U. Khadzhimuradov, or does he, suffer from a mental illness and, if so, which one?

5. If so, how long has he been suffering from the illness and is it temporary or permanent?

6. Is he suffering from any temporary mental disorder or the presence of a particular mental condition which could have influenced his proper perception of the events which took place on 8 March 2005?

7. If so, what is the nature of this temporary disorder and would V.U. Khadzhimuradov have been aware of his actions and able to control them?

8. Would he have been aware of his actions and able to control them before 8 March 2005?

9. What is the mental state of V.U. Khadzhimuradov at present and is he aware of his actions and capable of controlling them?

10. Is V.U. Khadzhimuradov in need of medical treatment?"

67. The board of experts was given access to the evidence in criminal case no. 20/849 and also examined the accused in person.

68. The examination apparently took place on 8 June 2005.

69. The resulting report recounted the circumstances of the case in the following manner:

> "... On 8 March 2005, during the investigation of the present criminal case, in the course of carrying out measures aimed at detaining persons suspected of having organised and carried out illegal acts in school no. 1, V.U. Khadzhimuradov was arrested. Immediately before his arrest there was an explosion at the entrance to the cellar during which, as made clear by the interview records, he lost consciousness for an indefinite period of time. During the interview he gave evidence to the effect that he was the grandson of the sister of Maskhadov, and that since 2003 he had been constantly in his company. He was in charge of protecting Maskhadov, supervised the cooking and kept an eye on the state of his wardrobe and firearms. Since October 2003 they had been living in the village of Tolstoy-Yurt. For the last two weeks they had been hiding in the cellar of the house. On 8 March 2005 at around 9 o'clock they were in the cellar with Maskhadov and his advisor V.L. Murdashev. Having heard the talk and commotion in the yard they realised that they had been located. Maskhadov told them that he would not give in alive and that if he should remain alive, V.U. Khadzhimuradov would have to shoot him in the heart. After these words, he put a cocked pistol to his temple. At that moment the explosion occurred and V.U. Khadzhimuradov struck his head against the wall and lost consciousness. He had difficulty remembering what happened next. ..."

70. The report then summarised various statements that the accused had given earlier in connection with the events following the explosion:

> "At one of the interviews he stated that Maskhadov had shot himself in the head. He did not remember clearly the events which took place after that moment; the servicemen had dragged him and Murdashev out of the cellar (10.03.05).
>
> Subsequently he gave contradictory statements. Hence, during the interview dated 18.03.05 he stated that 'having gradually come round', he had seen Maskhadov's head on his leg, felt the warmth and realised that blood was spilling out of his uncle's injured head.
>
> During the interview of 19.03.05 he stated that when the explosion occurred his head felt as if it were being squeezed. Maskhadov had fallen on him and 'at that moment, without taking aim', he had fired two consecutive shots, after which he lost consciousness.
>
> At the interview on 07.06.05 he confirmed his previous statements to the effect that Maskhadov, before the explosion in the cellar, had told him to shoot him in the heart if he should remain alive. At the same time Maskhadov himself had put a pistol to his temple. The accused had held his cocked gun in his hand. When the explosion occurred, he was thrown back by the blast, struck his head against the wall and lost consciousness. When he came round some time later, his head was aching badly as if it were being squeezed and he could hardly see anything. His mind was in a 'fog', and at that moment he could not perceive the events around him. At the moment of the explosion he heard the shots but could not say who was shooting and where. He could not rule out that his gun might have gone off when the blast threw him back, but could not say what direction the shots went in. When he came round, he felt that someone was lying on his leg. Later he realised that it was Maskhadov, whose head was bleeding. After that he and Murdashev started shouting upstairs that they were coming out. Murdashev was the first to come out, followed by him. On the orders of the

Spetznaz soldiers he returned to the cellar, where he tied up the body of Maskhadov so that it could be taken out (data from the interview record of 07.06.05)."

71. The board of experts examined the accused's physical and mental condition and talked to him about his memories of 8 March 2005. The report described the perception of the events by the accused immediately after the explosion in the following manner:

"As regards his condition immediately following the explosion in the cellar [the accused] speaks vaguely and inconsistently, saying that he has trouble remembering that period of time. He remembers the moment of the explosion, seeing a flame and hearing shots, after which he struck his head against the wall and lost consciousness, 'blacking out'. When he regained consciousness he was unable to hear, felt like vomiting and suffered from dizziness. His head felt like it was being squeezed, he could hear a ringing in his head, a humming noise. There was a 'mist' before his eyes, and everything was fading. He could not understand what had happened. He felt that someone was lying on his leg, something warm was leaking. He does not remember how exactly he took the decision to come out of the cellar, he only heard the voice of Murdashev calling 'Let us come out!'. He vaguely remembers crawling up through the trapdoor. He cannot say how much time passed from the moment of the explosion until he came out: 'Maybe an hour, maybe half an hour'."

72. The board of experts came to the following conclusions as regards the state of mind of Khadzhimuradov before 8 March 2005:

"... the person examined, V.U. Khadzhimuradov, does not suffer from any mental disorder or disability. Accordingly, he would have been aware of the acts of which of he was accused and could understand their danger to society and control them. At present, V.U. Khadzhimuradov is aware of his acts and capable of controlling them, of correctly perceiving the relevant circumstances of the case before 8 March 2005 and of giving accurate evidence in that connection."

73. These are the conclusions of the experts as regards the psychological condition of the accused on 8 March 2005:

"On 8 March 2005 V.U. Khadzhimuradov received a closed craniocerebral injury (brain contusion), which was accompanied by loss of consciousness and later manifested itself in acute loss of hearing, with symptoms affecting the entire brain (severe headache, vertigo, nausea, ringing and buzzing in the head), the aforementioned state of being stunned and, as a result, distorted perception of the surrounding circumstances ('could hardly see', 'there was a mist before [his] eyes', 'fading', 'could not understand what had happened', 'could not understand anything about what was happening' – extracts from the interview records and the clinical consultation with Mr Khadzhimuradov). This is also confirmed by the fragmentary character of his memories and contradictions in his statements concerning the period of time in question and the fact that he currently displays symptoms of moderate post-traumatic cerebral asthenia. The said disorders deprived V.U. Khadzhimuradov of the capacity adequately to perceive the surrounding circumstances and relevant events of the case and to control his actions at the moment of and immediately following the craniocerebral injury sustained on 8 March 2005. No indication exists for compulsory medical treatment."

(h) Record of interview with V.L. Murdashev dated 9 June 2005

74. On 9 June 2005 between 12.37 and 4.19 p.m. an investigator from the Prosecutor General's Office again interviewed Vakhid Lakayevich Murdashev, who by then had the status of accused in criminal case no. 20/849. The interview took place in the presence of the lawyer I.T. Ostayeva.

75. The accused recounted various episodes from his work with Aslan Maskhadov.

76. As regards the events of 8 March 2005 Murdashev stated as follows:

> "About two weeks before we were found, information reached us that Yusupov's nephew was being looked for. Allegedly the military authorities were looking for him. Out of fear that he would be looked for in Yusupov's house, Maskhadov ordered us to stay in the cellar during the daytime. We kept awake during the night, and after morning prayer we entered the cellar and slept. Even in the cellar Maskhadov worked on the computer. Maskhadov and Khadzhimuradov slept on the couch. I slept on the mattress on the floor. The size of the cellar was 2.5 m by 2.5 m. The walls were made of concrete and brick, the floor was made of concrete, and there was electric wiring in the cellar. We lived a monotonous life. During those two weeks Iriskhanov started living in Yusupov's house. On 8 March 2005 between five and six o'clock three of us went down to the cellar and went to sleep. We woke up because of the noise upstairs. It was clear that people were moving upstairs. I think I looked at my watch, it was around 9 o'clock. The entrance to the cellar could be locked by a wooden hatch, there was linoleum on it ... which could be covered by a carpet. Every morning we were locked into the cellar by Yusupov and Iriskhanov. If it was necessary we could knock and they would open it for us. It happened only once. Before that our knocks could not be heard. Maskhadov took his weapon. He had previously mentioned that he would not surrender. On that day he literally said that 'the enemy would not touch him while he was alive'. The light in the cellar was switched on. Maskhadov was sleeping in his sleeping bag. He started looking for his explosive belt. Maskhadov himself asked Khadzhimuradov where his explosive device was. Then it became apparent that our location had been discovered; a gap appeared in the hatch. Maskhadov was holding his gun in his hand. Khadzhimuradov asked him what we were supposed to do. Maskhadov replied that we should not do it. Some time after that shots rang out; they seemed to be coming from the hatch. The size of the hatch was 60 cm by 60 cm. I moved sideways, away from the hatch. After that at some point I lost consciousness, and when I came round I was on the floor. Before losing consciousness I had taken out my gun and held it in front of me near the belt. After I came round I discovered that everything was full of smoke. My first thought was that Maskhadov had detonated the explosive device. When I came round I was wondering why I was not injured. I called to Khadzhimuradov and asked him what had happened to Aslan. He replied that Aslan was no more, so I understood that he was already dead. Then I went upstairs and Khadzhimuradov came out following me. I saw Maskhadov lying covered with a mattress. After we came out I did not speak to Khadzhimuradov. Some time after that they took Maskhadov out of the cellar. As soon as I got upstairs I realised that the explosion had occurred when they tried to open up the hatch."

3. Conclusions of the authorities concerning the circumstances of the death of Aslan Maskhadov

(a) Death certificate issued on 2 June 2005

77. On 2 June 2005 the head of the civil registry of the Groznenskiy District of the Chechen Republic, A., issued a death certificate in respect of Oslan Aliyevich Maskhadov, born on 21 September 1951. The certificate stated that death had occurred in the village of Tolstoy-Yurt on 8 March 2005.

(b) Decision of 14 July 2005 not to initiate criminal proceedings in respect of the death of Aslan Maskhadov

78. On 14 July 2005 the investigator examined the evidence in criminal case no. 20/849. He noted that Aslan Maskhadov had been sought on charges relating to his alleged involvement in the terrorist attack on the school in the town of Beslan on 1 September 2004. The decision further stated:

> "In the course of carrying out special measures aimed at discovering the location of Maskhadov it was established that he had been hiding in the property belonging to S.S. Yusupov ...
>
> On 8 March 2005 in the cellar of the said property the corpse of Maskhadov, bearing traces of multiple gunshot injuries, was found. At the same time V.L. Murdashev and V.U. Khadzhimuradov, who had been in the same cellar, as well as I.G. Iriskhanov and S.S. Yusupov, who were in charge of outside protection, were arrested and found to be in possession of ammunition and firearms.
>
> According to the conclusions of forensic medical report no. 13-e of 24 March 2005, the death of Maskhadov occurred as a result of gunshot wounds to the head with damage (destruction) to the brain hemispheres and its membranes. The victim had:
>
> – four perforating wounds penetrating the cavity of the skull with a one-sided buttonhole fracture to the left temporal, left parietal and cervical bones and a multi-fragment fracture to the frontal bone, with damage to brain tissue, haemorrhaging in its ventricles and above and beneath the hard and soft brain tunic, a perforating fracture to the big wing of the main bone on the left, a fracture to the left cheekbone and haemorrhaging in the soft tissue of the head;
>
> – one blind multiple wound to the chest perforating the pleural cavities, with a fracture of the seventh right rib and damage to the lungs, a double-sided buttonhole fracture to the main part of the seventh thoracic vertebra and damage to the soft tissue of the left half of the sternum and to the soft tissue on the back of the upper part of the left shoulder, with a bullet at the end of the wound tract.
>
> The entry gunshot wounds were situated in the occipitoparietal areas and in the projection of the sixth intercostal space on the right, along the middle scapular line. The entry wounds on the head were inflicted within moments of each other, not from

close range, from the same type of weapon, and from the same or almost the same range.

At the moment of shooting the weapon was situated behind the victim, towards the right side, slightly below the level of the wounds to the head and chest of Maskhadov, the victim's head having been turned to the left. The resulting injuries could not have been self-inflicted.

On 8 March 2005 during examination of the place where the corpse was discovered and the persons located in the cellar of the house were arrested ... an APS pistol no. VP 1918 I and an APS pistol no. GN 2020 I, belonging to Maskhadov and V.L. Murdashev, and a PM pistol no. MA 7863, belonging to V.U. Khadzhimuradov, were recovered from V.L. Murdashev and V.U. Khadzhimuradov.

According to the [ballistics] examination of the recovered weapon and the bullet, as detailed in the [ballistics] experts' report no. 3-k dated 4 April 2005, the bullet removed from the corpse of Maskhadov was fired from a Makarov (PM) pistol no. MA 7863, that is from the pistol belonging to V.U. Khadzhimuradov.

In the course of the examination which was carried out, it was established that on 8 March 2005, in the course of the search of the property of S.S. Yusupov, the latter categorically denied the presence of any strangers on the property and the presence of other cellar rooms equipped for a long-term stay in which fugitives from the law-enforcement bodies could be located. In the course of measures aimed at examining the ... location due to be demolished, a secret passageway was located leading to the underground shelter, with a hatch blocking access from the outside. With a view to enabling the underground bunker to be examined unhindered, an explosive device of small capacity was used, providing free access to the cellar. V.L. Murdashev, V.U. Khadzhimuradov and the corpse of Maskhadov were then located.

V.U. Khadzhimuradov, when questioned concerning the circumstances of what happened, stated that he, Maskhadov and V.L. Murdashev had been hiding for a long time in an underground bunker situated in Mr Yusupov's house. On 8 March 2005 he, Maskhadov and V.L. Murdashev had been in the cellar. They were awoken by the sound of people talking while looking for the entrance to the cellar. At that moment, Khadzhimuradov was sitting on the couch and Maskhadov, who said that they were coming after him but that he would not surrender alive, was sitting in front of him. Maskhadov then put a gun to his temple, having said that if he was still alive, then Khadzhimuradov, who was holding a cocked gun in his right hand, should shoot him in the heart. After the explosion occurred [Khadzhimuradov] was thrown back and struck his head against the wall. For some time he lost consciousness. He did not know what happened next: his head was aching and he felt as if there was a mist in his head. At the moment of the explosion he heard shots, but could not say who was shooting or from where: he thought the shots could have been from his gun. Then he discovered that Maskhadov, whose head was bleeding, was lying on his right leg.

According to the statements of the accused V.L. Murdashev, on 8 March 2005 at around 9 o'clock, after Maskhadov realised that their shelter had been discovered, he said that 'while he was alive the enemy would not touch him'. [V.L. Murdashev] understood this to mean that Maskhadov wanted to commit suicide. Khadzhimuradov asked what he should do. Maskhadov replied: 'You should not kill yourself'. Then the explosion occurred and he, Murdashev, lost consciousness. When he came round, he

discovered that he was on the floor. He asked Khadzhimuradov about Maskhadov and heard that Maskhadov was no more.

According to the report of psychiatric examination ... no. 241 dated 8 June 2005 V.U. Khadzhimuradov received a closed craniocerebral injury (brain contusion) during the explosion, accompanied by a loss of consciousness and later manifesting itself in an acute loss of hearing, with symptoms affecting the entire brain (severe headache, vertigo, nausea, ringing and buzzing in the head), the state of being stunned, as referred to, and, as a result, distorted perception of the surrounding circumstances. This is also confirmed by the fragmentary character of his memories and contradictions in his statements concerning the period of time in question and the fact that he currently displays symptoms of moderate post-traumatic cerebral asthenia. The said disorders deprived V.U. Khadzhimuradov of the capacity adequately to perceive the surrounding circumstances and relevant events of the case and to control his actions at the moment of and immediately following the craniocerebral injury sustained on 8 March 2005.

Following analysis of the circumstances established during the investigation – the statements of V.U. Khadzhimuradov and V.L. Murdashev and the conclusions of the [ballistics] expert's examination indicating that the bullet extracted from the corpse of Maskhadov had been fired from the pistol of V.U. Khadzhimuradov – it can be stated that the death of Maskhadov occurred as a result of shots fired by V.U. Khadzhimuradov. The data received in the course of the [psychiatric] examination of V.U. Khadzhimuradov confirms that Khadzhimuradov did not kill Maskhadov intentionally. The fact that he was suffering from a specific condition caused by the explosion, which prevented him from accurately perceiving his environment, being aware of the nature of his actions and controlling them, indicates that V.U. Khadzhimuradov, when he killed Maskhadov, was in a state of insanity [*состояние невменяемости*]. Accordingly, his actions do not constitute *corpus delicti* as defined in part 1 of Article 105 of the Criminal Code."

79. The investigator accordingly concluded that there were grounds for a decision not to initiate a criminal prosecution against V.U. Khadzhimuradov for the killing of Aslan Maskhadov.

4. Official notification of Aslan Maskhadov's family

80. The decision of 14 July 2005 did not state whether the family or any of the relatives of Aslan Maskhadov were to be notified.

81. Since Aslan Maskhadov's family had previously gone into hiding and were living abroad, it is also unclear whether the authorities were in a position to notify them.

5. Applicants' efforts to exhaust domestic remedies in respect of the decision of 14 July 2005

82. By letters of 29 March 2005, 13 November 2005 and various dates in 2006, the applicants requested, among other things, that they be granted access to the medical documents stating the cause of their relative's death, that they be provided with copies of the decisions relating to the procedural

status of the deceased in the criminal proceedings against him and that a criminal case be opened in connection with his death.

83. On 10 February 2006 I.V. Tkachev, head of department in the Directorate General of the Prosecutor General's Office with responsibility for the Southern Federal District, responding to the applicants' request to see the medical documents showing the cause of death of Aslan Maskhadov, stated that the possibility existed in principle but that there were no grounds for providing the applicants with a copy of the relevant medical documents at that time.

84. In another letter dated 10 February 2006 I.V. Tkachev further stated as follows in response to the request to initiate criminal proceedings in connection with the death of Aslan Maskhadov:

> "... It has been established that during the investigation of case no. 20/849 into the terrorist act committed in the town of Beslan in the Republic of Northern Ossetia-Alaniya, the circumstances surrounding the death of Maskhadov were examined. The evidence in the criminal case indicates that the death of Maskhadov occurred as a result of the use of firearms by V.U. Khadzhimuradov, who happened to be in the same secret shelter.
>
> According to the conclusions of the psychological/psychiatric examination, ... at the time of the explosion V.U. Khadzhimuradov sustained a closed craniocerebral injury coupled with loss of consciousness, general cerebral symptoms (severe headache, dizziness, nausea, ringing and buzzing in the head), pronounced obnubilation and, as a consequence, distorted perception of surrounding events. This is confirmed by the fragmentary nature of his memories and the incoherent character of his statements concerning that period of time and the presence of symptoms of mild post-traumatic cerebral asthenia.
>
> In view of the above, a decision was taken not to initiate criminal proceedings in respect of V.U. Khadzhimuradov for the murder of Maskhadov, in accordance with Article 24-1 (2) of the Code of Criminal Procedure.
>
> Under Article 148 of the Code, a copy of the decision not to initiate criminal proceedings is sent to an applicant. Since the prosecution never received any crime report [from anyone in this connection], no copy of [the decision] was sent to the [widow of Aslan Maskhadov]. At present, the prosecution has no reason to furnish a copy of [the decision] to anyone.
>
> A decision to recognise an individual as a victim in connection with the damage sustained ... is taken only within the framework of criminal proceedings already initiated. Since it was decided not to initiate criminal proceedings in respect of V.U. Khadzhimuradov in relation to the murder of Maskhadov, there are no legal grounds for recognising you as victims."

85. As regards the applicants' request that they be given copies of documents relating to Aslan Maskhadov and his procedural status as an accused in the criminal case concerning the terrorist act committed in the town of Beslan in the Republic of Northern Ossetia-Alaniya, the same prosecutor noted as follows:

"... Under Article 172 of the Code of Criminal Procedure, a copy of the decision to charge an individual [with commission of a crime] is served by an investigator on the accused, his counsel and the competent prosecutor. The [relevant] law does not list any other person as having the right to receive a copy of [that decision].

Article 108 of the Code contains an exhaustive list of persons who have the right to receive copies of decisions on the application of a preventive measure (detention) in respect of the suspect or the accused.

Under ... Decree no. 164 of the Government of the Russian Federation dated 20 March 2003, the official in charge of the investigation must notify the relatives of a person [whose criminal prosecution for terrorist activity was discontinued because of his or her death] of the location of the civil registry office that is to issue them with the death certificate. [The official also has discretion as to whether to provide the relatives with a copy of the autopsy report]. At present, there are no grounds for providing the relatives with a copy of the medical forensic report on the corpse of Maskhadov.

[In view of the above, the applicant's requests are rejected.]"

86. It does not appear that the applicants were provided with a copy of the decision of 14 July 2005 not to initiate criminal proceedings in respect of the death of Aslan Maskhadov.

87. The Government produced information notes dated 19 February 2007 from Moscow City Court, Rostov Regional Court and Stavropol Regional Court, certifying that the applicants had never applied to any of the courts in the Moscow, Rostov or Stavropol regions in connection with the decision not to initiate criminal proceedings in respect of the death of Aslan Maskhadov.

D. Evidence from various official investigations and decision of 25 March 2005 not to return the body of Aslan Maskhadov to the family

88. It appears that Aslan Maskhadov's alleged terrorist activities were investigated by the authorities in the context of criminal cases nos. 20/849 and 14/17, referred to above.

1. Evidence in criminal investigation no. 14/17

89. On 26 August 2002 the investigation questioned a former driver of Aslan Maskhadov, Aslan Bitiyev, who, in the presence of his lawyer, gave a statement to the effect that in August 2000 Aslan Maskhadov had appointed him as commander in charge of the Nadterechnyy District of Chechnya and had given him a direct order to organise attacks against Russian servicemen with a view to destabilising the situation and intimidating the population. A. Bitiyev also described the organisational structure of his military units and the method of financing their operations and acquiring weapons and

ammunition. According to him, money was provided by Aslan Maskhadov on a regular basis. A. Bitiyev also described in detail all the activities in which he had been involved and gave the names of all those who had taken part in such activities, and those of his contacts in other regions.

2. Evidence in criminal investigation no. 20/849

(a) Evidence collected before 8 March 2005

90. On 6 September 2004 Nurpash Kulayev, apparently the only surviving participant in the terrorist attack in the town of Beslan, gave a statement during questioning to the effect that one of the men in charge of the attack, nicknamed "the Colonel", had told him that the order to attack the school in Beslan had come directly from "Maskhadov and Basayev". The statement was given in the presence of a lawyer named Sikoyev and in the context of an interview concerning the circumstances of the attack.

91. N. Kulayev confirmed this statement during another interview on 10 September 2004.

92. On 14 September 2004 Ruslan Sultanovich Aushev, former President of the Republic of Ingushetia and one of the principal negotiators during the terrorist attack in the town of Beslan on 1 September 2004, gave a witness statement to the effect that the terrorists had explained to him during the negotiations that they had been acting on the orders of Shamil Basayev, but that the list of demands to be satisfied had been formulated by and was to be discussed with Aslan Maskhadov rather than with Shamil Basayev.

93. The negotiations between "the Colonel" and R. Aushev were videotaped. The transcript of the video recording demonstrates that the terrorists indeed named Aslan Maskhadov as the person with whom the authorities were to conduct negotiations.

94. On 8 December 2004 the investigator took a decision to formally identify Shamil Basayev as an accused in case no. 20/849, having described in detail the events of 1 September 2004 as established by the investigation and having also stated that Shamil Basayev and Aslan Maskhadov had been behind the attack and had been acting in concert.

(b) Evidence collected after 8 March 2005

95. During an interview on 10 March 2005 S.S. Yusupov mentioned that Aslan Maskhadov had had contact with and had received visits from Shamil Basayev in November-December 2004.

96. On the same day V.U. Khadzhimuradov stated during an interview that he had personally seen plans for the terrorist attack in the town of Beslan on the personal computer of Aslan Maskhadov. He said that the

plans had been discussed by Aslan Maskhadov and Basayev in December 2004.

97. During an interview of 18 March 2005 V.L. Murdashev stated that Aslan Maskhadov's activities had consisted of two components, a military one involving the organisation of attacks and a political one involving talks and negotiations. According to Murdashev, the military operations were usually devised by Aslan Maskhadov with the assistance of other guerrilla leaders such as Shamil Basayev, A. Avdarkhanov, someone by the name of Aslanbek and someone by the name of Mussa.

98. On the same date Khadzhimuradov said during an interview that he and his uncle had been travelling around Chechnya and living in different secret military bases run by guerrilla leaders.

99. On 7 June 2005 Khadzhimuradov mentioned during an interview that there had been a meeting between Shamil Basayev and Aslan Maskhadov shortly before the events of 8 March 2005.

100. During an interview of 9 June 2005 Murdashev described the staging of an attack on the village of Avtury and the visit by Shamil Basayev in December 2004.

3. Decision of 25 March 2005 not to return the body of Aslan Maskhadov to his relatives

101. On 25 March 2005 investigator K. examined the evidence in case no. 20/849 and, having briefly described the circumstances of the terrorist attack of 1 September 2004, stated that according to the data collected by the investigation there had been four persons behind the attack: Shamil Basayev, Aslan Maskhadov, M.Kh. Khashiyev and Taufik-al-Djedani, also called Abu-Dzeit, a Saudi Arabian national.

102. The decision further noted that on 8 March 2005 the corpse of a man had been found in the cellar of one of the houses in the village of Tolstoy-Yurt and that the corpse had been identified as Aslan Maskhadov. At the same location various objects (home-made explosive devices, firearms and ammunition), as well as documents, were found confirming the active involvement of Aslan Maskhadov in terrorist activities, which had been interrupted as a result of his death. The decision went on to state that all the forensic examinations had already been carried out and that it was necessary to bury the corpse.

103. Referring to Article 3 of Decree no. 164 of the Government of the Russian Federation, dated 20 March 2003, and section 16(1) of the Suppression of Terrorism Act, the investigator decided to bury the corpse of "the terrorist Aslan Maskhadov", to delegate the task of burial to the Government of the Chechen Republic and to notify a Deputy Prosecutor General of the decision.

104. The applicants alleged that they had received a copy of this decision for the first time in May 2007, along with the respondent Government's observations on the admissibility of the case.

4. Applicants' attempts to exhaust domestic remedies in respect of the decision of 25 March 2005 not to return the body of Aslan Maskhadov to his relatives

105. By letters of 29 March and 13 November 2005 as well as various dates in 2006 the applicants requested, among other things, the return of Aslan Maskhadov's body.

106. On 4 April 2005 N.Ts. Khazikov, acting head of the department in charge of the Northern Caucasus at the Prosecutor General's office, rejected the request for return of the body. He referred to the fact that Aslan Maskhadov had been accused in a few criminal cases of having committed terrorist crimes and that a decision had been taken to subject him to a preventive measure in the form of deprivation of liberty. With reference to the Federal Suppression of Terrorism Act and Decree no. 164 of the Government of the Russian Federation, dated 20 March 2003, the official noted that the burial of terrorists who had died as a result of the suppression of their terrorist actions was to be carried out in accordance with the procedure established by the Government of Russia. Their bodies were not to be returned and the location of burial could not be disclosed (see paragraphs 122-124 below).

107. It appears that the applicants received this letter on 15 April 2005.

108. The Government produced information notes dated 19 February 2007 from the Moscow City Court, the Rostov Regional Court and the Stavropol Regional Court certifying that the applicants had never applied to any of the courts in the Moscow, Rostov or Stavropol regions in connection with the decision not to return the body of the person in question to his relatives for burial.

E. Media coverage of the events of 8 March 2005

109. It appears that the events of 8 March 2005 were widely reported in the Russian media, with photos of the deceased's body with a naked torso taken shortly after the incident being broadcast by some TV channels.

F. Criminal proceedings against V.L. Murdashev, V.U. Khadzhimuradov and S.S. Yusupov

110. On 4 December 2005 the Supreme Court of the Chechen Republic convicted V.L. Murdashev, V.U. Khadzhimuradov and S.S. Yusupov on charges of active participation in military sedition with a view to breaching

the territorial integrity of the Russian Federation, participation in unlawful military formations and illegal possession of arms and explosives. They were sentenced to various terms of imprisonment.

111. The court reported the trial statements of Murdashev as follows:

> "... The accused Murdashev explained during the court hearing that [he was loyal to the idea of Chechen independence and that he had collaborated with Aslan Maskhadov on various occasions since 1999. He then described various instances of such collaboration.] ... As regards the role played by Khadzhimuradov, he stated that the latter was a personal assistant of Maskhadov and accompanied him each time he went out into the yard, carrying his 'PM' gun with bullets. He, Murdashev, was also in a sense the bodyguard of the president of the Chechen Republic of Ichkeriya and had an APS [automatic pistol Stechkin] gun with bullets. ...
>
> Early in the morning of 8 March 2005 he, Maskhadov and Khadzhimuradov entered the cellar as usual and went to bed. They were awoken at around 9 o'clock by a noise outside. They realised that someone was looking for an entrance to the cellar and that the persons looking for it were obviously not friendly. Maskhadov told them that he would not surrender alive and that he had the permission of religious experts to do that. He also told [Murdashev] and Khadzhimuradov that they did not have such permission. At some point a powerful explosion occurred, following which [Murdashev] lost consciousness. Having regained consciousness, he asked Khadzhimuradov what had happened to Maskhadov and from the response he understood that the latter was dead. There was no light in the cellar, there was dust and fumes, and there was no fresh air. Someone outside called them to come out and he and Khadzhimuradov went out. Once outside, they were detained and then transported to the village of Khankala. From Khankala they were transported by helicopter on 10 March 2005 to the airport of the town of Beslan and then to RUBOP [the department of the Ministry of Interior in charge of fighting organised crime] in the town of Vladikavkaz. There, for the first month and a half, they were beaten up by unknown officials whose faces [the accused] could not see as they had put a plastic bag over his head. He was beaten because of his suspected involvement in the attack on the school in Beslan, to which they demanded that he confess. Having established that he was innocent in that respect, they stopped the beatings. There were no marks from the beatings, but serious problems remained with his liver and kidneys. ..."

112. The trial statements of Khadzhimuradov, as reported by the court, were as follows:

> "[V.U. Khadzhimuradov mentioned various instances when he had worked with Aslan Maskhadov and meetings with Shamil Basayev ... He then said that] when they were arrested, two Stechkin pistols and one PM pistol were seized. The Stechkin pistols were attributed to Maskhadov and Murdashev and the PM pistol to him, although he had nothing to do with that pistol or any other weapon. During the early period after their arrest, while being held in Vladikavkaz, they were suspected of involvement in the hostage-taking in the town of Beslan and were beaten up and told to confess. The beatings stopped when [the authorities] became convinced that they had not been involved. ..."

113. As regards Yusupov, the court judgment referred to the following statement made by him during the trial:

> "On the morning of 8 March 2005 ... he went out of the house and was arrested. In the afternoon of that day they were transported to the village of Khankala, and on

10 March 2005 were taken by helicopter to the airport of the town of Beslan and from there immediately to the town of Vladikavkaz, where for a month and a half they were beaten and told to confess to the attack on the school in Beslan. The beatings stopped only when it became clear that these suspicions were unfounded. ...”

114. The court noted the following with regard to the complaints made by the accused concerning beatings during the pre-trial stage of the investigation:

“At the court hearing, the arguments of the accused ... were carefully checked. In respect of these arguments the Directorate General of the Prosecutor General’s Office with responsibility for the Southern Federal District carried out an inquiry, as a result of which it was decided on 8 November 2005 not to initiate criminal proceedings in that connection. The said decision was not appealed against by the defence ... In connection with the complaints ... a forensic examination was carried out which [did not detect any injuries or traces] ... . The court also takes note of the fact that, according to the accused, they had been beaten to make them confess to [the attack on the school in Beslan] and had not been required to [admit] anything else. They did not make any confessions in that connection and are not accused on account of those acts. They were questioned at the pre-trial stage of the investigation in the presence of their counsel; this also excluded the possibility of violence being used against them. Regard being had to the above circumstances, the court rejects the arguments of the accused alleging the use of inadmissible means of investigation as unfounded and unsubstantiated ...”

115. It is unclear whether any further appeal proceedings were brought against this judgment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant provisions of the Interment and Burial Act

116. The Interment and Burial Act (no. 8-FZ, dated 12 January 1996) contains the following provisions:

Section 3: Interment

“The present Federal Law defines interment as the ritual actions of burying a body (or its remains) of a person after his or her death in accordance with customs and traditions which are not contrary to sanitary or other requirements. The interment may be carried out by way of placing the body (or its remains) in the earth (burial in a grave or in a vault), in fire (cremation with subsequent burial of the urn with ashes), in water (burial at sea). ...”

Section 4: Locations of interment

“1. The locations of interment are specially designated [in accordance with relevant rules] areas with ... cemeteries for burial of bodies (remains) of the dead, walls of

sorrow for storage of urns with ashes of the dead ..., crematoriums ... as well as other buildings ... designed for carrying out burials of the dead. ...”

Section 5: Statement of wishes of a person concerning dignified treatment of the body after death

“1. The statement of wishes of a person concerning the dignified treatment of his or her body after death (the will of the dead) is a wish expressed in oral form in the presence of witnesses or in writing:

- about consent or lack of consent to undergo an autopsy;

- about consent or lack of consent to have parts or tissues of the body removed;

- to be buried in a specific location, in accordance with a specific set of customs and traditions, next to specific people who died previously;

- to be cremated;

- entrusting the fulfilment of these wishes to a specific person.

2. Actions in respect of the dignified treatment of the body of a dead person should be carried out in accordance with [his or her] wishes, unless there are circumstances that render impossible the fulfilment thereof or if the [national] legislation provides for different rules.

3. Where a deceased made no statement of wishes, the right to authorise actions specified in part 1 of this section shall belong to a spouse, close family members (children, parents, adopted children and adoptive parents, brothers and sisters, grandchildren and grandparents), other relatives or the legal representative of the dead, and in the absence of such persons, other persons who have assumed responsibility for burying the dead person.”

Section 6: Executors of the wishes of a deceased

“The executors of a deceased person’s statement of wishes shall be persons as nominated in the statement, if they agree to act accordingly. Where there is no specific indication regarding the executors of the statement of wishes or if the nominated persons do not agree to act accordingly, the directions in the statement shall be executed by the surviving spouse, close family members or other relatives or legal representatives of the deceased. In the event of a reasoned refusal by the nominated persons to execute the directions of the deceased’s statement of wishes, he or she may be buried by another person who has agreed to assume this obligation, or by a specialised funeral service.”

Section 7: Execution of the deceased’s wishes as regards interment

“1. On the territory of the Russian Federation every human being shall be guaranteed that after his or her death interment will be carried out regard being had to his or her wishes, with the provision for free of a plot of land for burial of a body (remains) or ashes in accordance with the present Federal Act. ...”

Section 8: Guarantees during the burial of a deceased

"A spouse, close family members, other relatives, legal representatives of a deceased person or another person who has assumed the obligation to bury the deceased, shall all enjoy the following guarantees:

(1) the issuance of documents necessary for interment of a deceased within one day from the time when the cause of death is established; in cases where there were reasons to place the deceased in a mortuary for an autopsy, the delivery of the body of the deceased at the request of a spouse, close family members, other relatives, legal representative or another person who has assumed the obligation to bury the deceased cannot be delayed for more than two days from the time when the cause of death is established; ..."

B. Legal definitions of terrorist activity and terrorism

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

"... violence or the threat of its use against physical persons or organisations, and also destruction of (or damage to) or the threat of destruction of (or damage to) property and other material objects which creates a danger for people's lives, causes significant loss of property or entails other socially dangerous consequences, perpetrated with the aim of undermining public safety, 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; an attempt on the life of a State or public figure, committed with the aim of halting his or her State or other political activity or in revenge for such activity; or an attack on a representative of a foreign State or an official of an international organisation who is under international protection, or on 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 straining international relations."

118. Terrorist activity within the meaning of the Act encompasses:

"(1) organisation, planning, preparation and commission of a terrorist act;

(2) incitement to commit a terrorist act or violence against physical persons or organisations, or to destroy material objects for terrorist purposes;

(3) organisation of an illegal armed formation, a criminal association (criminal organisation) or an organised group for the commission of a terrorist act, or participation therein;

(4) recruitment, arming, training and deployment of terrorists;

(5) intentional financing of a terrorist organisation or terrorist group or other assistance provided thereto."

119. Section 3 defines a terrorist act as:

"... the direct commission of a crime of a terrorist nature in the form of an explosion, an act of arson, the use or threat of the use of nuclear explosive devices or of

radioactive, chemical, biological, explosive, toxic, or strong-acting poisonous substances; destruction of, damage to or seizure of means of transport or of other objects; attempts on the life of State or public figures or of representatives of national, ethnic, religious or other population groups; seizure of hostages or abduction of persons; causing of danger to the life, health or property of an indefinite number of persons by creating the conditions for accidents or disasters of a technogenic character or a real threat of such danger; the spreading of threats in any form or by any means; other actions that endanger people's lives, cause significant loss of property or entail other socially dangerous consequences."

120. In the same section a terrorist is defined as:

"... a person who takes part in carrying out terrorist activity in any form."

C. Legislation governing the interment of terrorists

121. On 26 October 2002 a terrorist attack took place in the Nord-Ost Theatre in the city of Moscow, resulting in a hostage incident which produced heavy casualties, including the death of several dozen hostages (see *Finogenov and Others v. Russia*, nos. 18299/03 and 27311/03, §§ 8-14, ECHR 2011 (extracts)).

122. Shortly after the attack, on 11 December 2002, Russia adopted changes to the Suppression of Terrorism Act by adding section 16(1), which reads as follows:

"[The] interment of terrorists who die as a result of the interception of a terrorist act shall be carried out in accordance with the procedure established by the Government of the Russian Federation. Their bodies shall not be handed over for burial and the place of their burial shall remain undisclosed."

123. On the same date Russia also adopted changes (FZ-No. 170) to the Interment and Burial Act (see paragraph 116 above) by adding section 14(1):

"[The] interment of persons against whom a criminal investigation in connection with their terrorist activities has been closed because of their death following interception of the said terrorist act shall take place in accordance with the procedure established by the Government of the Russian Federation. Their bodies shall not be handed over for burial and the place of their burial shall not be revealed."

124. Decree no. 164 of the Government of the Russian Federation dated 20 March 2003, adopted 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 committed by them:

"... 3. Interment of [these] persons shall take place in the locality where the death occurred and shall be carried out by agencies specialising in funeral arrangements, set up by organs of the executive branch of the subjects of the Russian Federation or by organs of local government ...

4. Services provided by the specialist funeral agency in connection with the interment of [these] persons shall include: processing of documents necessary for interment; clothing of the body; provision of a grave; transfer of body (remains) to the place of burial (cremation); burial.

The transfer of the body (remains) to the place of burial (cremation) by rail or air shall be carried out on the basis of a transfer permit issued under an established procedure.

The place of burial shall be determined with reference to the limitations laid down by the Interment and Burial Act.

5. For the purposes of the burial the official carrying out the preliminary investigation shall send the necessary documents to the specialist funeral agency, including a copy of the decision to close the criminal case and the criminal investigation with regard to [these] persons; he or she shall also send a statement confirming the death to the civilian registry office in the person's last place of permanent residence.

6. The relatives of the persons [concerned] shall be notified by the official conducting the preliminary investigation of the location of the registry office from which they can obtain a death certificate.

7. At the discretion of the official carrying out the preliminary investigation, the relatives of [these] persons may be provided with copies of the medical documents concerning the death, produced by a medical organisation, and the report on the autopsy (if conducted); personal belongings shall also be returned if they are not subject to confiscation.

8. The specialist funeral agency shall produce a report on the completed burial, which shall be sent to the official conducting the preliminary investigation; the document shall become part of the criminal case file."

D. Ruling no. 8-P of the Constitutional Court dated 28 June 2007

125. On 28 June 2007 the Constitutional Court of the Russian Federation examined and, in essence, 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, see *Sabanchiyeva and Others v. Russia* (dec.), no. 38450/05, 6 November 2008. The ruling stated, in particular, that the impugned legal provisions were, in the circumstances, necessary and justified. The court reached the following conclusions regarding the legitimate aims and necessity of the legislation in question:

"... At the same time the interest in fighting terrorism, and in preventing terrorism in general and specific terms and providing redress for 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 ... Those provisions 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 the weakening of its propaganda effect, 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 increasing inter-ethnic and religious tension.

In the conditions which have arisen 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 engage in 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 legislature 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 were taking part. ...”

126. The ruling further noted that the application of the measures prescribed in the legislation concerned 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 123-127 of the Code of Criminal Procedure provided for such review (see paragraph 142 below).

127. In sum, the court upheld the impugned provisions as being in conformity with the Constitution but at the same time interpreted them as requiring that the authorities not bury bodies unless a court confirmed 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 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 thereto with the requirements concerning the identification of the deceased ... the time, location and cause of death. ..."

128. Judge G.A. Gadzhiyev issued a separate opinion in which he agreed that the impugned provisions were in conformity with the Constitution but held a different view as to how they should be interpreted. The opinion stated as follows:

"... if the relevant law-enforcement agencies find, as a result of a preliminary investigation, that a terrorist act has been committed and that a given person was involved, but the criminal proceedings against that person ... are discontinued on account of his or her death following interception of the terrorist act, and if they then 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 safety of others, they have the right to take a decision refusing to hand over the body and applying special arrangements for 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. ..."

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

"... The impugned norms, banning the return of the deceased's bodies to their relatives and providing for their anonymous burial, are, in our view, absolutely immoral and reflect the most uncivilised, barbaric and base views of previous generations. ...

The right of every person to be buried in a dignified manner in accordance with the traditions and customs of his family hardly requires special justification or even to be

secured in written form in law. This right is clearly self-evident and stems from human nature as, perhaps, no other natural right. Equally natural and uncontested is the right of every person to conduct the burial of a person who is related and dear to them, to have an opportunity to perform one's moral duty and display one's human qualities, to bid farewell, to grieve, mourn and commemorate the deceased, however he may be regarded by society and the state, to have the right to a grave, which in all civilisations represents a sacred value and the symbol of memory. ..."

E. Ruling no. 16-P of the Constitutional Court dated 14 July 2011

130. On 14 July 2011 the Constitutional Court of the Russian Federation examined a complaint lodged by two individuals challenging the constitutionality of sub-part 4 of the first part of Article 24 (Grounds for a decision refusing to institute or to discontinue criminal proceedings) and the first part of Article 254 (Discontinuance of criminal proceedings in a court hearing) of the Code of Criminal Procedure. The court concluded that the above-mentioned statutory provisions were unconstitutional, in so far as they provided for a possibility of terminating a criminal case owing to the death of a suspect (or an accused person) without obtaining the consent of that person's close relatives. The court noted, in particular, as follows:

"... the respect for fundamental procedural guarantees of individual rights, including the presumption of innocence, must be secured also in resolving the question concerning the termination of a criminal case with reference to non-rehabilitating circumstances. In taking their decision to refuse the institution of a criminal case or to terminate the criminal case at the pre-trial stages of the criminal proceedings, the competent bodies should take it as a point of departure that persons in respect of whom the criminal proceedings have been discontinued [were not pronounced guilty of an offence] and cannot be viewed as such – in the constitutional sense these persons can only be regarded as having been involved in criminal proceedings at the said stage owing to the relevant suspicions or accusations ...

At the same time, by discontinuing a criminal case owing to the death of a suspect (or an accused) [the authority] also stops the process of proving his or her guilt, but with this the accusation or suspicion is not being lifted, quite the contrary; in reality [the authority] reaches a conclusion as to the commission of the criminal act by ... a specific person and the impossibility of criminal prosecution owing to the said person's death. By this logic, the person in question, without the adoption or entry into force of any verdict, is declared guilty, and this constitutes a breach by the State of its duty to secure the judicial protection of that person's honour, dignity and good name protected by [various provisions of] ... the Constitution, and as regards the persons whose interests may be affected by this decision – it constitutes a breach of their right of access to a court ...

... [in other words,] the termination of a criminal case with reference to non-rehabilitating circumstances in general is possible only if the rights of the participants in the criminal proceedings are respected, which means, in particular, that there is a need to secure the consent of the suspect (or the accused person) to take [such decision] ...

... If, however, the person in question objects to [such a decision], he must be entitled to have the case against him proceed to the stage of its examination by the trial court ...

[The court, having analysed the applicable domestic provisions, concludes that] the Code of Criminal Procedure does not provide that [the relatives of the deceased person in respect of whom the criminal case was discontinued] have any rights which would allow them to protect the rights of their deceased formerly accused relative. Since the interested persons, and first of all the close relatives of the deceased, are not allowed to take part in the proceedings, the [relevant] procedural decisions ... are taken by an investigator or a court – without participation of the defence ...

Such limitations do not have an objective or reasonable justification and entail a breach of [the constitutional rights of the persons in question] ...

[The court further decides that] the protection of the rights and legal interests of the close relatives of the deceased person ... aimed at his or her rehabilitation should take place by the provision to them of the necessary legal status and the resulting legal rights within the framework of the criminal proceedings ...

[The court concludes that the rights provided for by Article 125 of the Code of Criminal Procedure were insufficient to guarantee an adequate level of judicial protection to the interested persons ...]

[Thus, in cases where] the close relatives object to the discontinuance of the proceedings owing to the death of the formerly suspected or accused person, the competent investigative body or the court should proceed with the examination of the case. At the same time, the interested persons should enjoy the same rights as the deceased person [himself or herself] would have enjoyed. ...”

F. Relevant provisions of the Criminal Code

131. Article 105 (“Murder”) of the Criminal Code, as in force at the relevant time, read as follows:

“1. Murder, that is an intentional infliction of death on another person, shall be punishable by deprivation of liberty for a term of six to fifteen years.”

132. Article 205 (“Terrorism”) of the Criminal Code, as in force at the relevant time, read as follows:

“1. Terrorism, that is the commission of an explosion, arson or other action, creating a danger for people’s lives, or causing considerable pecuniary damage or other socially dangerous consequences, if such actions were committed with the aim of undermining public safety, threatening the population or influencing decision-making by the authorities, or the threat of committing such actions with the same aims, shall be punishable by deprivation of liberty for a term of eight to twelve years.”

G. Relevant provisions of the Code of Criminal Procedure

133. Article 5 of the Code of Criminal Procedure defines close relatives as spouses, parents, children, adoptive parents, adopted children, brothers and sisters, grandparents and grandchildren.

134. Part 1 of Article 11 of the Code provides that:

> "... a court, a prosecutor and an investigator shall be obliged to inform a suspect, an accused, a victim, a civil claimant and other participants in criminal proceedings of their respective rights, duties and liability and to provide them with the possibility of enforcing such rights."

135. Articles 20 and 21 of the Code and Chapter 16 of the Criminal Code of Russia provide that cases resulting in the death of a person are cases of public prosecution which are investigated and prosecuted irrespective of the will of the victim of the crime. In all cases displaying signs of the commission of a crime the relevant officials take the measures set out in the Code of Criminal Procedure aimed at an investigation into the event, and the identification of the person responsible or the persons guilty of the criminal offence in question.

136. Article 22 of the Code describes the status of victim in the criminal proceedings:

> "The victim, his legal representative and (or) legal counsel shall have the right to take part in the criminal prosecution of the accused ..."

137. Article 24 of the Code lists possible grounds for a decision refusing to institute a criminal case or discontinuing the proceedings:

> "1. A criminal case cannot be instituted and an instituted criminal case should be discontinued on one of the following grounds:
>
> ...
>
> (4) the death of an accused or a suspect, except for cases where the continuation of the proceedings is necessary for rehabilitation of the deceased person. ..."

138. Article 27 of the Code also states that:

> "1. Criminal prosecution in respect of a suspect or an accused shall be discontinued with reference to one of the following grounds: ...
>
> (2) discontinuance of a criminal case with reference to [one of the grounds mentioned in part 1 of Article 24, including sub-part 4] ..."

139. Part 2 of Article 27 lists the situations in which it is necessary for the relevant official to obtain the consent of a suspect or an accused to discontinue a criminal prosecution. There is no need to obtain anyone's consent in the event of this person's death.

140. Article 42 of the Code defines the victim as a "physical person, who has sustained physical, pecuniary or non-pecuniary damage" as a result

of the criminal offence, the decision on recognising someone as a victim being taken by an investigator or a court. It further states that:

"... 2. The victim shall have the right: ...

(4) to submit evidence;

(5) to make challenges and applications; ...

(8) to appoint a representative;

(9) to take part, with leave from an [investigator] in investigative actions which take place at his or her request ...; ...

(12) upon termination of the preliminary investigation, to study all the materials of the criminal case ...;

(13) to receive copies of decisions instituting a criminal case, recognising him or her as a victim or refusing to do so, on discontinuance of a criminal case ...; ...

(22) to avail himself or herself of other rights set out in this Code."

Part 8 of this provision states as follows:

"In criminal cases concerning offences which resulted in the death of a person, the rights of the victim, as set out in the present provision, shall be transferred to one of his close relatives."

141. Article 45 of the Code states as follows:

"1. A victim ... may be represented by counsel ...

4. Personal participation in a criminal case by the victim ... does not preclude him or her from enjoying the right to be represented [by counsel in that criminal case]."

142. Article 19 of the Code provides for the possibility of appeal against the decisions of various authorities, in accordance with the procedure set out in the Code and in particular Articles 123-127 thereof:

Article 123: Right of appeal

"The actions (or inaction) and decisions of the body of inquiry, the inquiring officer, the investigator, the public prosecutor or the court shall be 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 actions in question and the procedural decisions adopted affect their interests."

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

"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 be taken for checking the complaint, it shall

be admissible to consider it within a period of up to ten days; the applicant 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 applicant shall be immediately notified of the decision taken on the complaint and of the further procedure for lodging an appeal 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 actions (inactions) and decisions of the public prosecutor."

Article 125: Court procedure for consideration of complaints

"1. Decisions by the inquiring officer, the investigator and the public prosecutor concerning a refusal to institute a criminal case or the termination of the criminal case, and other decisions and actions (or lack of action) on their part which are liable to inflict damage on 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 before the district court at the place where the preliminary inquiry is conducted.

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

3. The judge shall check the legality and well-foundedness of the actions (or lack of action) and the decisions taken by the inquiring officer, the investigator and the public prosecutor, not later than five days after the date of the lodging of the complaint, at a court session in the presence of the applicant and his or her defence counsel, legal representative or representative, if they are taking part in the criminal case, other persons whose interests are directly affected by the action (or lack of action) or by the decision against which the appeal has been lodged, and the public prosecutor. Failure to attend by persons who have been duly informed of the time of consideration of the complaint and have not insisted that they be present, shall not be seen as an obstacle to 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 what complaint is being considered, introduce himself to the persons attending the court session and explain their rights and responsibilities. The applicant, if he is taking part in the court session, shall then adduce the grounds for the complaint, following which evidence shall be heard from other persons in attendance. The applicant shall have the right to respond.

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

(1) a decision finding the action (or lack of action) or the decision of the corresponding official to be illegal or ill-founded and finding him or her liable to provide redress for the violation;

(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 action and the 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 courts, as well as complaints and prosecutors' appeals against court decisions taken in the course of the pre-trial proceedings in the criminal case, shall be lodged in accordance with the arrangements laid down in ... [other provisions of the Code].

2. Complaints and prosecutors' appeals against court decisions which have acquired legal force shall be lodged in accordance with the arrangements laid down by [other provisions of the Code]."

143. Article 148 of the Code establishes the arrangements governing 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 take 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 admissible only with respect to the individual concerned.

2. When taking the decision not to institute criminal proceedings after checking the available information about the crime based on the suspicion of its perpetration by the person or persons concerned, the public prosecutor, the investigator or the body of inquiry shall be obliged to consider the possibility of instituting criminal proceedings against the person who reported or spread false information about the crime on a charge of making deliberately false accusations.

3. The decision not to institute criminal proceedings following verification of the information about a crime disseminated through the mass media must be made public.

4. A copy of the decision not to institute criminal proceedings shall be sent to the applicant and to the public prosecutor within 24 hours of the time the decision was given. In this case, the applicant 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 shall

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 adopt the corresponding decision, forward it for execution to the public prosecutor and notify the applicant."

144. Article 254 of the Code establishes the arrangements governing appeals against a decision to discontinue criminal proceedings if such decision is taken by a court.

H. Relevant Resolutions of the Plenary Supreme Court of Russia

145. By Resolution no. 16 dated 1 November 1985 "On the practice of application by the courts of the legislation governing the participation of a victim in criminal proceedings" the Plenary Supreme Court summarised and explained the existing practice in relation to the status of the victim in criminal proceedings under the old 1960 Code of Criminal Procedure:

"... 2. ... is recognised as a victim an individual who has sustained non-pecuniary, physical or pecuniary damage directly. The recognition of such individual as the victim does not depend on his age, physical or psychological condition. ...

4. Since ... in cases about crimes which resulted in the death of a victim, the [relevant] rights [are transferred] to [his or her] close relatives, one of which, regard being had to the agreement between them, is recognised as the victim. If a few persons outside the circle of the close relatives of the deceased insist on having victim status, they may also be recognised as such ..."

146. By Resolution no. 17 dated 29 June 2010 "On the practice of application by the courts of the norms governing the participation of a victim in criminal proceedings", which fully replaced Resolution no. 16 of 1 November 1985, the Plenary Supreme Court summarised and explained the existing practice in relation to the status of the victim in criminal proceedings under the new 2001 Code of Criminal Procedure:

"... 2. In accordance with the law, a victim, being a physical person who has suffered physical, pecuniary or non-pecuniary damage ... has in the criminal proceedings his or her own interests, for the protection of which he or she, as a participant in the criminal proceedings on the side of the prosecution, enjoys the rights of a party.

A person who has suffered as a result of a criminal offence shall be recognised as a victim irrespective of his or her nationality, age, physical or psychological condition or other aspects of his or her personality, and irrespective of whether anyone has been identified as being involved in the commission of that offence.

The courts should also take into account any damage inflicted on the victim by the offence, or by a criminally prohibited act committed in a state of insanity. ...

3. In accordance with part 1 of Article 42 of the Code of Criminal Procedure a person who sustained damage [from an offence] shall acquire the rights and obligations set out in the legislation governing criminal procedure as of the time of adoption by a [competent] investigator ... or a court of the decision recognising that person as a victim. At the same time, it should be borne in mind that the legal status of that person as a victim is determined on the basis of his or her factual situation... [thus, this procedural decision does nothing but reflect the existing factual situation and does not determine it].

The person in question can obtain recognition as a victim by making a relevant application ... The refusal to recognise someone as a victim, as well as the inaction of the [relevant official] leading to a failure to recognise that person as a victim can be appealed against in court by way of a pre-trial procedure in a criminal case set out in Articles 124 and 125 of the Code of Criminal Procedure. ...

5. In criminal cases concerning crimes which resulted in the death of a person, the rights of a victim shall be transferred to one of his or her close relatives (part 8 of Article 42 of the Code of Criminal Procedure). By virtue of part 4 of Article 5 of the Code of Criminal Procedure the close relatives are spouses, parents, children, adoptive parents, adopted children, brothers and sisters, grandparents and grandchildren.

If the criminal offence affected the rights and legal interests of a few close relatives at the same time and they all insist on acquiring the rights of victims, these persons can also be recognised as victims. ...

7. The meaning of part 1 of Article 45 of the Code of Criminal Procedure is that representatives of the victim ... could be not only counsel, but also other persons ... capable of providing them with qualified legal assistance. ...

9. The courts must comply with the requirements of the law in that the victim, acting with the aim of using his ... powers as set out in the legislation on criminal procedure ... has the right to receive copies of the decision on the institution of a criminal case, recognition of his victim status ... on the discontinuance of a criminal case ... and copies of other procedural documents affecting his interests (Article 42 of the Code of Criminal Procedure). ...

11. On the basis of the principle of equality of the rights of the parties (Article 244 of the Code of Criminal Procedure) a victim has the same rights as the defence to make challenges and applications, to submit evidence, to participate in its examination, to plead ...

The victim, his or her representative or legal representative at any stage of the criminal proceedings should be given an opportunity to inform the court about his or her position on the substance of the case and the arguments he or she deems necessary to justify that position. At the same time, the court should take into account the arguments of the victim in respect of the questions which affect his or her rights and legal interests, and to give them a reasoned assessment in taking the judicial decision. ...

With a view to creating the necessary conditions for the victim to carry out his procedural duties and to enforce his rights ..., the courts, where there are justified grounds, should take measures to assist the victim in collecting the evidence (receipt of documents, lodging of requests for certificates, etc.).

12. The victim, his legal representative, representative ... shall have the right to take part in all court proceedings in the examined case for the protection of his or her rights and legal interests. In order to secure that right, the presiding judge should inform them of the date, time and place of the court proceedings. ...”

III. OTHER RELEVANT SOURCES

147. The UN Human Rights Committee has issued several opinions 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 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 [her] 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”.

148. On 15 June 2005 the Inter-American Court of Human Rights delivered a judgment in the case of *Moiwana Village v. Suriname* (Inter-Am Ct. H.R., (Ser. C) No. 145 (2005). In that case State agents attacked Moiwana village in 1986, killing thirty-nine 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 been 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."

149. The Inter-American Court held in paragraph 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. ..."

150. 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".

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 2 OF THE CONVENTION

151. Relying on Article 2 of the Convention, the applicants complained that Aslan Maskhadov had been killed by State agents on 8 March 2005, contrary to requirements of this provision. They also complained that there had been no effective investigation into the events of Aslan Maskhadov's death. The provision in question provides as follows:

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

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

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

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

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

A. The parties' submissions

1. The applicants

152. The applicants argued, referring to the TV still shots, that the body of Aslan Maskhadov bore injuries other than gunshot wounds, that he had been effectively trapped and detained by State agents during the events of 8 March 2005, and that his death was therefore attributable to the State. The applicants also complained of the lack of any precise information concerning the orders, objectives, equipment and participants connected with the special operation of 8 March 2005.

153. The death of Aslan Maskhadov in the circumstances which obtained in the present case called for an effective examination and a plausible explanation from the Government even in the absence of any complaint by an interested party. The applicants further reiterated that they had exhausted all available domestic remedies in respect of the complaints under Article 2 of the Convention and that they were deprived of the opportunity to appeal against the relevant decision of 14 July 2005 not to initiate a criminal prosecution against V.U. Khadzhimuradov for the killing of Aslan Maskhadov. The applicants referred to two arguments in support of the latter point.

154. First, the authorities' refusal to recognise the applicants as victims in that criminal case and also to provide them with access to the evidence deprived an appeal to the court of any prospects of success. Second, they had felt powerless and apprehensive in the circumstances, since the operation leading to the death of Aslan Maskhadov had been supervised by the highest authorities in Russia, which on a few occasions had praised the operation and labelled the death of Aslan Maskhadov as the "destruction of a terrorist".

155. The applicants argued that the conclusions of the investigation had been erroneous and flawed. They submitted that Aslan Maskhadov had been killed by the authorities and not by his bodyguard. The investigation generally had been marked by flaws and errors and, among other things, the statements of Viskhan Khadzhimuradov and Vakhid Murdashev had been obtained under torture.

156. They maintained that there had been suspicious inconsistencies in the authorities' conduct, in particular as regards the refusal to conduct an official search of the cellar and the decision to blow up the crime scene shortly after the events. The evidence collected had formed an insufficient basis for a reasoned decision concerning the circumstances of the death of Aslan Maskhadov. The authorities should have broadened the scope of their investigation by collecting statements from further witnesses such as the State agents who had taken part in the special operation, by carrying out additional searches on the spot with a view to finding further traces on pistols, used cartridges or bullets, and by collecting the clothes worn by the victim and the alleged perpetrator at the time and subjecting them to forensic examination.

157. In that connection the applicants also submitted that the destruction of the scene of the incident had been suspicious and premature and that the death of Aslan Maskhadov should have been investigated as a separate case and not in the context of criminal case no. 20/849, which concerned a different set of facts and excluded the participation of the victim's family. The applicants also disagreed with the way in which the investigative authority had assessed the existing evidence. They considered that the authorities could not rely in any sense on the witness statements of V.U. Khadzhimuradov, since they had been self-contradictory and inconsistent with the autopsy report and had allegedly been obtained under torture, and also because of the injuries the latter had received as a result of the explosion of 8 March 2005.

158. In their post-admissibility observations, the applicants maintained that the investigation had been deficient in that it had failed sufficiently to establish the identity of the person who had fired the Makarov pistol. The authorities had failed to study a possible bullet fragment recovered from Aslan Maskhadov's head and also to locate and study further bullets which had passed through the body as well as the spent cartridges. The conclusions of the investigation had been based on the statements of an unreliable witness, Khadzhimuradov, and the authorities had failed to examine the arms and ammunition used by the security forces during the operation.

159. For the applicants, the above-mentioned defects were sufficient to call into question the conclusions of the official investigation and suggested execution rather than assisted suicide.

2. The Government

160. The Government maintained that the State had not been liable for the death of Aslan Maskhadov and that the investigation had fully complied with the requirements of the procedural aspect of Article 2 of the Convention. The Government reiterated their earlier request to declare the case inadmissible as the applicants had failed to exhaust the domestic remedies by bringing court proceedings under Articles 123 and 125 of the Code of Criminal Procedure in respect of the relevant decisions and replies of the investigation authorities. They pointed out that copies of the case-file materials and documents could have been obtained by the applicants if they had made the relevant requests before the courts.

B. The Court's assessment

161. Having regard to the fact that the Court in its decision of 8 July 2008 considered that the question of exhaustion of domestic remedies was closely linked to the substance of the applicants' complaints under Article 2 of the Convention, it is appropriate to begin by examining the applicants' submissions in so far as they concern the alleged defects in the domestic investigation and then to turn to their allegations concerning the State's alleged involvement in the death of Aslan Maskhadov.

1. Alleged inadequacy of the investigation

(a) General principles relating to the effectiveness of the investigation

162. The Court reiterates that where lives have been lost in circumstances potentially engaging the responsibility of the State, Article 2 entails a duty for the State to ensure, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are prevented and punished (see, *mutatis mutandis*, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 54, ECHR 2002-II, and *Öneryıldız v. Turkey* [GC], no. 48939/99, § 91, ECHR 2004-XII).

163. The Court further reiterates that, in cases of homicide, the interpretation of Article 2 as entailing an obligation to conduct an official investigation is justified not only because any allegations of such an offence normally give rise to criminal liability, but also because often, in practice, the true circumstances of the death are, or may be, largely confined within the knowledge of State officials or authorities. Therefore the applicable principles are rather to be found in those which the Court has already had occasion to develop in relation notably to the use of lethal force – principles

which lend themselves to application in other categories of cases (see *Öneryıldız*, cited above, § 93).

164. Accordingly, the system required by Article 2 must provide for an independent and impartial official investigation that satisfies certain minimum standards as to effectiveness. In that connection the competent authorities must act with diligence and promptness and must of their own motion initiate investigations which would be capable of, firstly, ascertaining the circumstances in which the incident took place and, secondly, identifying the person or persons responsible for the death in question (see, for example, *McCann and Others v. the United Kingdom*, 27 September 1995, § 161, Series A no. 324; *Güleç v. Turkey*, 27 July 1998, §§ 81-82, *Reports* 1998-IV; *Oğur v. Turkey* [GC], no. 21594/93, § 88, ECHR 1999-III; *Mahmut Kaya v. Turkey*, no. 22535/93, §§ 106-07, ECHR 2000-III; and *İlhan v. Turkey* [GC], no. 22277/93, § 63, ECHR 2000-VII). This is not an obligation of result, but one of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident. Any deficiency in the investigation which undermines its ability to identify the perpetrator or perpetrators will risk falling foul of this standard (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 223, ECHR 2004-III).

(b) Application of those principles to the present case

165. The Court notes that the domestic investigation was carried out by the Prosecutor General's Office in the context of criminal case no. 20/849 (see paragraph 32 above) and, in so far as the circumstances of the death of Aslan Maskhadov were concerned, resulted in the decision of 14 July 2005 not to initiate criminal proceedings (see paragraphs 78-79 above). The decision relied on various items of evidence obtained from the scene of the incident, from interviews with witnesses and from a number of forensic examinations. On the basis of that evidence, it was decided that Aslan Maskhadov had been killed by V.U. Khadzhimuradov and that no criminal proceedings could be brought against the latter because of his temporary "state of insanity" during the events in question.

166. It is clear to the Court that the investigation was reasonably prompt, as it was instituted at once after the discovery of the body, lasted only about four months and was concluded with a decision reaching specific conclusions concerning the factual circumstances of the incident in question.

167. The Court also takes note of the fact that the entire investigation was conducted by the Prosecutor General's Office (see paragraph 32 above), an authority which was institutionally independent from the FSB officials in charge of the special operation of 8 March 2005 (see paragraph 21 above). It remains to be examined whether the investigation conducted was effective in the sense of being capable of ascertaining the

circumstances in which the incident had taken place and identifying the person or persons responsible for the death in question.

168. The cause of Aslan Maskhadov's death – bullet injuries to the head with damage to the cerebral hemispheres and membranes – was established by a forensic expert (see paragraphs 36-37 above), and the applicants in their submissions did not seem to dispute this conclusion. The Court further takes into consideration that the investigating authority examined the scene of the incident, listed and described the items present there, including the corpse, guns and ammunition (see paragraphs 22-28 above), carried out repeated examinations and identifications of the corpse (see paragraphs 34, 35-37 and 38-39 above), repeatedly questioned those who had stayed with Aslan Maskhadov in the same cellar and in the house (see paragraphs 43-65 and 74-76 above), carried out a forensic psychiatric examination of Aslan Maskhadov's bodyguard V.U. Khadzhimuradov (see paragraphs 66-73 above) and identified the gun from which had been fired the bullet extracted from the corpse (see paragraphs 41-42 above).

169. The version of events resulting from the documents submitted by the Government and the decision of 14 July 2005 (see paragraphs 78-79 above) is as follows:

(a) on the morning of 8 March 2005 Aslan Maskhadov, V.U. Khadzhimuradov and V.L. Murdashev were hiding in the cellar of the house of S.S. Yusupov;

(b) the FSB servicemen then started their search and those in the cellar heard noises;

(c) Aslan Maskhadov announced his intention not to surrender and to kill himself or be killed so as not to be apprehended alive – he also put a gun to the temple area of his head;

(d) all the men in the cellar were armed with loaded guns: Aslan Maskhadov and Murdashev each had loaded PS pistols, whilst Khadzhimuradov had a loaded PM pistol;

(e) an explosion occurred near the hatch of the cellar and Khadzhimuradov and Murdashev were struck by the resulting blast;

(f) Murdashev lost consciousness at once;

(g) Khadzhimuradov received craniocerebral injuries and, being in a state of shock, shot Maskhadov several times, then lost consciousness;

(h) some time later Khadzhimuradov and Murdashev regained consciousness, saw Maskhadov's corpse and surrendered to the authorities;

(i) both came out;

(j) Khadzhimuradov then returned to the cellar to tie a rope around the corpse.

170. Having considered the parties' submissions and the case-file materials, the Court finds that the evidence collected by the authorities was generally consistent with the version of the facts as set out above.

171. Point (a) about three persons hiding in the cellar was confirmed by Yusupov (see paragraphs 46 and 47 above), Khadzhimuradov (see paragraphs 51, 61, 62 and 65 above) and Murdashev (see paragraphs 55 and 76 above) during all their interviews; the existence of the cellar was also confirmed in the report describing the scene of the incident of 8 March 2005 (see paragraph 28 above). Point (b) concerning FSB servicemen was confirmed by both Khadzhimuradov and Murdashev. Point (c) about Maskhadov's intentions not to surrender was confirmed by Murdashev, whilst Khadzhimuradov did not mention this at all in his first interview of 10 March 2005 (see paragraph 51 above), but recalled it later during interviews of 18 and 19 March and 7 June 2005 (see paragraphs 61, 62 and 65 above).

172. Point (d) concerning the guns was consistently confirmed by both Murdashev (see paragraph 55 above) and Khadzhimuradov (see paragraphs 61, 62 and 65 above). The presence of two PS guns and one PM gun at the scene was also confirmed by the report describing the scene of the incident of 8 March 2005 (see paragraph 27 above). Point (e) about the explosion was confirmed by both Khadzhimuradov (see paragraphs 61, 62 and 65 above) and Murdashev (see paragraph 55 above). Point (f) about Murdashev's loss of consciousness was confirmed by himself (see paragraph 55 above).

173. As to point (g), the existence of Khadzhimuradov's craniocerebral injuries is confirmed by the medical report of 8 June 2005 (see paragraphs 66-73 above) and appears well-established. His subsequent loss of consciousness was confirmed by himself (see paragraphs 61, 62 and 65 above). As regards the shooting, it was established that Aslan Maskhadov was shot repeatedly (see the examination report of 9 March 2005, paragraph 34 above). The investigation was unable to establish with certainty how exactly Aslan Maskhadov had been shot: Murdashev lost consciousness and did not see or hear anything, whilst Khadzhimuradov gave conflicting evidence ranging from a version claiming suicide to an admission that he had shot Maskhadov twice. The investigation apparently assumed that since the bullet found in the chest of the corpse had been fired from the PM gun (see the ballistics report of 28 March-4 April 2005, paragraphs 41 and 42 above) – the gun allegedly owned by Khadzhimuradov – the latter had fired the shots. The inconsistencies in Khadzhimuradov's accounts were resolved by reference to the psychiatric report which stated that he had not been able "adequately to perceive the surrounding circumstances" and had trouble recalling them (see paragraphs 66-73 above).

174. Points (h) and (i) were consistently confirmed by Murdashev and Khadzhimuradov in the sense that both agreed that Aslan Maskhadov was already dead when they regained consciousness and then left the cellar. The exact description differs only slightly. The presence of the corpse after the explosion was also indirectly confirmed by S.S. Yusupov, who had

allegedly heard a serviceman saying "I see a corpse" (see paragraph 47 above). Point (j) that Khadzhimuradov returned to the cellar to tie a rope around the body was mentioned by him only once, on 7 June 2005 (see paragraph 65 above). There is, however, nothing in the statements of Murdashev or Yusupov or in other evidence to contradict this point.

175. The applicants argued, among other things, that the evidence collected had formed an insufficient basis for a reasoned decision concerning the circumstances of the death of Aslan Maskhadov and that the authorities should have broadened the scope of their investigation by collecting additional evidence. They also submitted that the assessment of the evidence collected had been unjustified and incorrect.

176. The Court is of the view that only two points, (d) and (g), could arguably give rise to criticism. As to point (d), it could be argued that the investigative authority apparently did not attempt to trace the PM gun to V.U. Khadzhimuradov by trying to find his fingerprints on it, or to the cellar, the place where the gun should have been located after the incident. It simply assumed that the gun belonged to him. The investigative authority could indeed have gone further and collected the fingerprints on the PM gun found at the scene, examined Khadzhimuradov's hands for traces of gunshot residue, tried to trace the gun back to the cellar, carried out additional searches on the spot with a view to finding further traces on pistols, used cartridges or bullets, and collected the clothes worn by the victim and the alleged perpetrator at the time. As to point (g), one could arguably criticise the uncertainty as regards the exact circumstances in which Aslan Maskhadov was shot.

177. However, as regards point (d), the Court finds that on the assumption that the statements of V.U. Khadzhimuradov, V.L. Murdashev and S.S. Yusupov could be viewed as credible, there was nothing irrational in the conclusion that the PM gun did belong to Khadzhimuradov. He had repeatedly and consistently mentioned having been armed with a gun of this type and that was the only such gun found at the scene. On the basis of the evidence collected, it would also seem obvious that Aslan Maskhadov had died before the servicemen entered the cellar, that the death resulted from the shooting and not from the explosion, and that, even despite some uncertainty regarding the exact course of events at this point, with a considerable degree of probability it was Khadzhimuradov who shot him.

178. Having considered the case-file materials, the Court finds no reason to call the above-mentioned statements into question. It takes note of the applicants' allegation aimed at discrediting the statements of witnesses Khadzhimuradov, Murdashev and Yusupov by suggesting that they had been obtained under torture. It cannot conclude, however, that the relevant case-file materials support this version. It is true that these three witnesses mentioned before the court in the criminal proceedings against them that they had been allegedly coerced into admitting their participation in the

terrorist attack in the town of Beslan (see paragraphs 110-115 above). The domestic courts examined this allegation in detail and rejected it as unsubstantiated (see paragraph 114 above). It is clear from the judgment of 4 December 2005 that the court ordered separate criminal enquiries into the matter and that, following an additional check and a medical examination of all three witnesses the Prosecutor General's Office, in a decision of 8 November 2005, decided not to initiate criminal proceedings in that connection.

179. Even despite claiming torture during the investigation, in his trial statement Murdashev essentially confirmed that Aslan Maskhadov had been shot before the authorities could enter the cellar (see paragraph 111 above). It should also be noted that Khadzhimuradov did not allege or even mention torture during the examination of his psychiatric condition of 8 June 2005 (see paragraphs 66-73 above). Thus, the Court cannot conclude that, in the particular circumstances of the present case, the further steps mentioned by the applicants, such as the collection of further evidence from the scene of the incident and the interviewing of the FSB agents who had taken part in the special operation, were an indispensable part of the investigation or that their omission rendered the investigation inadequate.

180. Turning to the alleged uncertainty concerning point (g), the Court observes that the domestic investigation noted on a few occasions that the statements of Khadzhimuradov had been inconsistent. The inconsistencies were explained in the psychiatric report of 8 June 2005 with reference to a brain contusion sustained by the witness on 8 March 2005 (see paragraphs 66-73 above), and the Court has no basis to contest this explanation for the following reasons.

181. The inconsistencies only concerned a very limited period of time between the moment when those persons who remained in the cellar realised that the entrance to the cellar had been detected and the moment when Khadzhimuradov and Murdashev eventually came out of it. The remaining story does not contain serious contradictions: both Murdashev and Khadzhimuradov essentially confirmed that on the morning of 8 March 2005 they had been with Aslan Maskhadov in the cellar of S.S. Yusupov's house, where they had been hiding from the authorities, that they had heard sounds of a search and that following the explosion they had lost consciousness. They both submitted that when they regained consciousness Aslan Maskhadov had already been killed. After that, both of them went outside and surrendered to the servicemen. This account was also essentially confirmed by Yusupov, the owner of the house in question, who had witnessed the search, explosion and subsequent arrest of Khadzhimuradov and Murdashev.

182. The Court finds that the surrounding circumstances, as established by the domestic investigation, essentially supported the account that the authorities tried to open the cellar by blowing up the entrance and that the

explosion resulted in the short-term loss of consciousness of those trapped inside. It thus appears natural that, in order to learn more about what had happened in that cellar right after the explosion, the authorities had to rely mostly on the witness statements of these persons. Given the medical conclusions reached by the doctors in the report of 8 June 2005 as regards the effects of the explosion on Khadzhimuradov, the Court accepts that this witness may have had difficulties recalling the exact course of events, and the authorities faced divergent and to some extent conflicting statements by that witness. In such circumstances, the Court is of the view that the inconsistencies were not such as to cast doubt on the overall reliability of the findings of the investigative body as stated in the decision of 14 July 2005. Nor can the Court conclude that the way in which the authorities reconciled those inconsistencies in the decision of 14 July 2005 fell foul of the requirements of the procedural aspect of Article 2 of the Convention.

183. As regards the applicants' argument that the TV still shots showed that the body of Aslan Maskhadov had borne injuries other than gunshot wounds, the Court notes that on 9 March 2005 the investigator conducted an examination of the corpse. In the resulting detailed report, the full description of the visible parts of the body made no mention at all of any injuries other than gunshot wounds (see paragraph 34 above). The subsequent forensic medical examination carried out on 10 March 2005 essentially confirmed this. Moreover, this time the report enumerated the gunshot wounds and then stated specifically that "... no other injuries or marks were found on the body of Aslan Maskhadov ..." (see paragraph 37 above). Having assessed the relevant case-file materials and the parties' submissions, the Court finds no reason not to believe the assessments of the medical expert in this connection.

184. Likewise, the Court does not accept the applicants' argument suggesting that the authorities deliberately destroyed the crime scene in order to conceal the evidence in the case and, more generally, investigated the incident in such a way so as to cover up the alleged murder of Aslan Maskhadov by State agents. The Court finds that the case file does not contain any indication to the effect that the authorities had acted in bad faith during the domestic investigation into this case.

185. To sum up, regard being had to the above considerations, the Court finds that the domestic investigation into the death of Aslan Maskhadov on 8 March 2005 conducted by the authorities was in compliance with the requirements of the procedural aspect of Article 2 of the Convention.

186. Having reached this conclusion, the Court does not consider it necessary to examine the Government's preliminary objection that the applicants have failed to bring court proceedings in respect of the decisions and replies of the investigation authorities in this case (see paragraph 160 above).

2. Alleged responsibility of the respondent State for the death of Aslan Maskhadov

187. The Court will now turn to the applicants' allegation that the respondent Government killed Aslan Maskhadov and that the killing had been made to appear to have been perpetrated by his bodyguard.

188. It reiterates that Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which deprivation of life may be justified must therefore be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *McCann and Others*, cited above, §§ 146-147).

189. Turning to the facts of the case, the Court would refer back to its earlier conclusions concerning the overall quality of the investigation (see paragraph 185 above) and finds no reason to disregard the outcome of particular investigative actions or the factual findings made by the investigative body in its decision of 14 July 2005. It further notes that the investigation established that on the morning of 8 March 2005 Aslan Maskhadov, a fugitive from justice wanted on charges of terrorism, military revolt and sedition, acting along with his companions V.U. Khadzhimuradov and V.L. Murdashev, was on the run and hiding in the cellar of a house belonging to a third person. All of them were armed, capable of offering armed resistance and unwilling to be detected or to surrender. During the search of the house the authorities located the hatch of their cellar, which was apparently locked from the inside. Without knowing whether anyone was hiding inside, but having good reason to suspect that the cellar may have contained armed insurgents, the authorities opened it by blowing up the entrance with an explosive charge of small capacity. This resulted in, among other things, the accidental shooting of Aslan Maskhadov by Khadzhimuradov (see paragraph 78 above).

190. The Court would underline that, judging by the timing of the events and the overall circumstances of the case, when conducting the search the authorities could not have known in advance whether anyone would be hiding in that cellar, let alone expect that one of them would be Aslan Maskhadov. Furthermore, the case file contains no evidence which would confirm the entry of the FSB officials of the cellar before the death of Maskhadov. Against this background, the applicants' allegations of conspiracy or collusion involving the authorities and the former companions of Maskhadov remain speculative and implausible. Having examined the evidence in the case file and the parties' submissions, the Court finds that

there is no proof to support the applicants' allegations that the authorities' actions were the direct cause of the death of Aslan Maskhadov.

191. Against this background, the Court finds that there has been no breach of the substantive aspect of Article 2 of the Convention in the present case.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

192. The applicants restated, under Article 13 of the Convention, their complaints about the inadequate investigation into the death of Aslan Maskhadov. The Government denied that Article 13 had been violated.

193. In view of its analysis under Article 2 of the Convention and the conclusions made, the Court considers that in the circumstances of the present case it is not necessary to examine any further complaint under Article 13 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

194. Relying on Article 8 of the Convention, the applicants complained about the refusal of the authorities to return the body of Aslan Maskhadov. This Convention provision provides as follows:

Article 8

"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."

A. The parties' submissions

1. The applicants

195. The applicants stated that the authorities' refusal of 25 March 2005 to return the body amounted to an interference with their Article 8 rights and that it had been unlawful and disproportionate.

196. First, they noted that Aslan Maskhadov had not died as a result of the interception of a terrorist act within the meaning of section 16(1) of the Suppression of Terrorism Act and that, accordingly, the decision in question

had been unlawful. They also argued that the applicable legal provisions failed to meet the quality-of-law standard, in that they were in general "inherently at odds with the spirit of the Convention" because of the excessively broad definitions of notions such as "terrorist" and "terrorist act" and the lack of procedural guarantees to protect against arbitrariness and abuse. In the latter respect they also referred to the decision of the Constitutional Court dated 28 June 2007 which, among other things, acknowledged the lack of judicial review in respect of decisions of this type.

197. Secondly, they submitted that the contested measure lacked clearly defined legitimate aims; the Government had simply enumerated such aims without demonstrating their connection with the circumstances of the applicants' case. In any event, the measure in question had not had any visible impact on the overall level of terrorist activity in Russia but rather had imposed a collective punishment on the families of the deceased.

198. Thirdly, the applicants argued that in refusing access to the body of Aslan Maskhadov the authorities had failed to take account – in any degree or form – of what was at stake for the applicants. There was no evidence that the authorities had even considered taking other, less restrictive measures in that connection.

2. The Government

199. The Government maintained that the decision not to return the body of Aslan Maskhadov had been taken under the Suppression of Terrorism Act, the Interment and Burial Act and the decree on combating terrorism. They argued that the suppression of terrorist activity could not always be regarded as an instantaneous act conducted at the place of commission of a given terrorist act and that it could also include the arrest of other members of the terrorist group, due regard being had to the distribution of roles within the group.

200. They submitted that the question concerning the return of the body of such a person should be decided on a case-by-case basis in the light of the following considerations: whether criminal proceedings had been instituted; the circumstances of the death; various national security, public order and economic welfare factors; the need to prevent disorder resulting from the activities of the supporters of Aslan Maskhadov and other persons, motivated by revenge or personal enmity; and the need to protect the health and rights and freedoms of others.

201. Taking into account the above considerations, the evidence in the case, the fact that the terrorist act of which Aslan Maskhadov was accused had already taken place, and his terrorist activity, which had continued until the moment of his death, the decision refusing to return his body to the family should be regarded as justified. In addition, the decision had been motivated by the need to weaken the ideology of terrorism as an ideology of violence and destruction aimed at violating the rights and freedoms of

citizens and undermining the foundations of the constitutional order and State security. The measure in question was one of the means of preventing and fighting the phenomenon of terrorism.

202. Hence, in view of the factual circumstances of the case, the measure could not be regarded as a disproportionate limitation of the rights of the deceased and his family and did not constitute discrimination. In sum, the rights of the applicants had not been breached. The Government also maintained its objection that the applicants had failed to exhaust the domestic remedies by bringing court proceedings under Articles 123 and 125 of the Code of Criminal Procedure against the decision of 25 March 2005.

B. The Court's assessment

203. The Court notes that, in its decision of 8 July 2008, it considered that the question of the exhaustion of domestic remedies was closely linked to the substance of the applicants' complaints and that it should be joined to the merits. It will now proceed to assess the parties' arguments in the light of the Convention provisions and its relevant practice.

1. The Government's preliminary objection

204. The Court notes that the Government essentially argued that the procedure set out in Articles 123 and 125 of the Code of Criminal Procedure constituted, in respect of the decision of 25 March 2005, a domestic remedy within the meaning of Article 35 § 1 of the Convention which the applicants could and ought to have used.

205. Having examined the case file and the applicable domestic law, the Court cannot accept this argument. It notes that at the relevant time there was some uncertainty in domestic law as regards the status of decisions taken under section 16 (1) of the Suppression of Terrorism Act. Neither that section nor Decree no. 164 of 20 March 2003 specified which body was competent to take decisions in individual cases under this law, the scope of its authority, the need to furnish the family of the deceased with a copy of the relevant decision and access to the relevant case-file materials, or the availability and scope of judicial review in respect of such decisions. Given that the applicants had not received a full copy of the decision of 25 March 2005 until May 2007 (see paragraph 104 above), the Court doubts that at the relevant time there existed any prospects of success by bringing court proceedings in respect of the decision of 25 March 2005 under Articles 123 and 125 of the Code of Criminal Procedure.

206. The Court further notes that some judicial review in respect of such decisions became available after 28 June 2007, the date on which the Constitutional Court in its Ruling no. 8-P obliged the courts to examine complaints about the decisions taken pursuant to the above-mentioned

legislation under Article 125 of the Code of Criminal Procedure (see paragraph 125 above). It should be noted, however, that the effect of this Ruling was limited, because it only enabled an applicant to ask for a review of formal lawfulness of the relevant decision, but not to disagree with the well-foundedness and proportionality of the measure as such. Since the applicants in the present case contested that the measure in question was justified, the Court is unable to accept that the procedure set forth in Article 125 of the Code of Criminal Procedure constituted a remedy that the applicants could and should have used.

207. In the light of the foregoing, the Court considers that it has not been established with sufficient certainty that the remedy advanced by the Government had a reasonable prospect of success. The Court therefore dismisses the preliminary objection.

2. Alleged violation of Article 8

(a) Whether Article 8 was applicable in the present case

208. The Court reiterates that under its Article 8 case-law the concepts of "private life" and "family life" are broad terms not susceptible to exhaustive definition (see, for example, *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III). In the cases of *Pannullo and Forte v. France* (no. 37794/97, §§ 35-36, ECHR 2001-X) and *Girard v. France* (no. 22590/04, § 107, 30 June 2011) the Court recognised that an excessive delay in the restitution of a body after an autopsy or samples of the body after the end of relevant criminal proceedings may constitute an interference with both the "private life" and the "family life" of the surviving family members. In the case of *Elli Poluhas Dödsbo v. Sweden* (no. 61564/00, § 24, ECHR 2006-I) the refusal to transfer an urn containing the ashes of the applicant's husband could also be seen as falling within the ambit of Article 8. Lastly, in the case of *Hadri-Vionnet v. Switzerland* (no. 55525/00, § 52, 14 February 2008) the Court decided that the possibility for the applicant to be present at the funeral of her still-born child, along with the related transfer and ceremonial arrangements, was capable of falling within the ambit of both "private" and "family life" within the meaning of Article 8.

209. The Government did not dispute that its refusal of 25 March 2005 to return the body of Aslan Maskhadov (see paragraphs 103-105 above) constituted an interference with the applicants' rights to private and family life protected by Article 8 of the Convention. The Court sees no reason to hold otherwise. It notes that the decision was taken in accordance with Article 3 of Decree no. 164 dated 20 March 2003 and section 16 (1) of the Suppression of the Terrorism Act, which precluded the competent authorities from returning the bodies of terrorists who died as a result of the interception of a terrorist act.

210. According to the applicable domestic law, the relatives of a deceased person willing to organise the interment of that person generally enjoy the statutory guarantee of having the body of such person returned to them for burial promptly after the establishment of the cause of death. They also benefit from a legal regime entitling them to enforce the will of the deceased as regards the burial arrangements or otherwise to decide on the way in which the burial takes place, with both options being subject only to general rules of safety and hygiene (see sections 3 to 8 of the Interment and Burial Act quoted in paragraph 116 above).

211. Against this background, the Court finds that the decision of 25 March 2005 constituted an exception from that general rule and clearly deprived the applicants of an opportunity to organise and take part in the burial of Aslan Maskhadov's body and also to ascertain the location of the grave-site and to visit it subsequently.

212. Regard being had to its case-law and the above-mentioned circumstances of the case, the Court finds that the measure in question constituted an interference with the applicants' "private" and "family life" within the meaning of Article 8 of the Convention. It remains to be seen if this interference was justified under the second paragraph of that provision.

(b) Whether the interference was justified

(i) "In accordance with the law"

213. Under the Court's case-law, the expression "in accordance with the law" in Article 8 § 2 requires, among other things, that the measure or measures in question should have some basis in domestic law (see, for example, *Aleksandra Dmitriyeva v. Russia*, no. 9390/05, §§ 104-07, 3 November 2011), but also refers to the quality of the law in question, requiring that it should be accessible to the person concerned and foreseeable as to its effects (see *Rotaru v. Romania* [GC], no. 28341/95, § 52, ECHR 2000-V). In order for the law to meet the criterion of foreseeability, it must set forth with sufficient precision the conditions in which a measure may be applied, to enable the persons concerned – if need be, with appropriate advice – to regulate their conduct.

214. The Court notes that the measure in question was taken in accordance with the relevant provisions of the Suppression of Terrorism Act, the Internment and Burial Act and Decree no. 164 dated 20 March 2003 which provided that "[the body of a] terrorist who died as a result of an interception of a terrorist act" would not be handed over for burial, and that the place of the burial would not be revealed.

215. The Court finds that the decision of 25 March 2005 and the relevant case-file documents clearly demonstrated the joint involvement of Aslan Maskhadov and Shamil Basayev on multiple occasions in organising terrorist acts (see paragraphs 46 and 90-101 above). It also notes that

Maskhadov died in a special operation by the FSB, aimed at tracking down and arresting armed insurgents, which clearly was in connection with the interception of his terrorist activities. On the basis of the material before it, the Court is satisfied that the refusal of the authorities to return the body of Aslan Maskhadov to his family for burial had a legal basis in Russian law.

216. In the Court's view, the remaining questions related to the measure's lawfulness, such as the foreseeability and clarity of the legal acts, and in particular, with regard to the automatic nature of the rule and the alleged vagueness of some of its notions, are closely linked to the issue of proportionality and fall to be examined as an aspect thereof, under paragraph 2 of Article 8 (see, *mutatis mutandis*, *T.P. and K.M. v. the United Kingdom*, [GC], no. 28945/95, § 72, ECHR 2001-V, and *Chapman v. the United Kingdom* [GC], no. 27238/95, § 92, ECHR 2001-I).

(ii) Legitimate aim

217. The Court notes that the Government justified the measure in question with reference to "various factors concerning national security, public order and economic welfare", the need to prevent disorders resulting from the activities of the supporters of Aslan Maskhadov and other persons motivated by possible revenge or personal enmity, as well as the need to protect the health and rights and freedoms of others.

218. In its ruling no. 8-P dated 28 June 2007 the Constitutional Court concluded that section 14 (1) of the Internment and Burial Act and Decree no. 164 of 20 March 2003 were necessary and justified for several reasons (see paragraph 125 above). It referred to "the interest in fighting terrorism, and in preventing terrorism in general and specific terms and providing redress for 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 officials, and lastly the threat to human life and limb". It also mentioned the need "to minimise the informational and psychological impact of the terrorist act on the population, including the weakening of its propaganda effect". Furthermore, the Constitutional Court stated that 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 increasing inter-ethnic and religious tension".

219. Regard being had to the above explanations, the Court is satisfied that the refusal to return the body could be seen as having been taken "for the protection of the rights and freedoms of others" in pursuance of the following aims:

(a) the need to prevent disorders resulting from the activities of the supporters of Aslan Maskhadov;
(b) the need to prevent disorders resulting from possible clashes between various ethnic groups, the next of kin of those involved in terrorist activity and the population at large;
(c) the need to minimise the informational and psychological impact of the terrorist act on the population, including the weakening of its propaganda effect;
(d) the need to protect the feelings of relatives of the victims of the terrorist acts in question.

220. It remains to be seen whether the adopted measure was "necessary in a democratic society" for the stated aims.

(iii) Necessary in a democratic society

(α) General principles

221. An interference will be considered "necessary in a democratic society" for a legitimate aim if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it are "relevant and sufficient" (see, for example, *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 101, ECHR 2008, and *Coster v. the United Kingdom* [GC], no. 24876/94, § 104, 18 January 2001).

222. The object and purpose of the Convention, being a human rights treaty protecting individuals on an objective basis (see *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 145, ECHR 2010), call for its provisions to be interpreted and applied in a manner that renders its guarantees practical and effective (see, among other authorities, *Artico v. Italy*, 13 May 1980, § 33, Series A no. 37). Thus, in order to ensure "respect" for private and family life within the meaning of Article 8, the realities of each case must be taken into account in order to avoid the mechanical application of domestic law to a particular situation (see, as a recent authority, *Nada v. Switzerland* [GC], no. 10593/08, §§ 181-185, 12 September 2012).

223. The Court has previously found that, for a measure to be regarded as proportionate and as necessary in a democratic society, the possibility of recourse to an alternative measure that would cause less damage to the fundamental right at issue whilst fulfilling the same aim must be ruled out (see *Nada*, cited above, § 183).

224. The final evaluation of whether the interference is necessary remains subject to review by the Court for conformity with the requirements of the Convention. A margin of appreciation must be left to the competent national authorities in this connection. The breadth of this margin varies and depends on a number of factors including the nature of the Convention right

in issue, its importance for the individual, the nature of the interference and the object pursued by the interference (see *S. and Marper*, cited above, § 102). The Court has on many occasions stressed that it was aware that States faced particular challenges posed by terrorism and terrorist violence (see, *mutatis mutandis*, *Brogan and Others v. the United Kingdom*, 29 November 1988, § 61, Series A no. 145-B; *Öcalan v. Turkey* [GC], no. 46221/99, §§ 104, 192-196, ECHR 2005-IV; *Ramirez Sanchez v. France* [GC], no. 59450/00, §§ 115-116, ECHR 2006-IX; and *Finogenov and Others v. Russia*, cited above, § 212). The margin will tend to be narrower where the right at stake is crucial to the individual's effective enjoyment of intimate or key rights (see *Connors v. the United Kingdom*, no. 66746/01, § 82, 27 May 2004, with further references). Where a particularly important facet of an individual's existence or identity is at stake, the margin allowed to the State will be restricted (see *Evans v. the United Kingdom* [GC], no. 6339/05, § 77, ECHR 2007-I).

(β) Application of these principles

225. In order to address the question whether the measure taken in respect of the applicants in relation to the body of Aslan Maskhadov was proportionate to the legitimate aims that they were supposed to pursue, and whether the reasons given by the national authorities were "relevant and sufficient", the Court must examine whether the Russian authorities took sufficient account of the particular nature of the case and whether the measure in question, in the context of their margin of appreciation, was justified in view of the relevant circumstances of the case.

226. In doing so, the Court is prepared to take account of the fact that the threat of terrorism was quite serious at the time of the adoption of the decision of 25 March 2005. However, the use of the measure in question must be explained and justified convincingly (see, *mutatis mutandis*, *Nada*, cited above, § 186).

227. The Court would note at the outset, as regards the applicants' criticism of the allegedly excessive breadth of some of the notions and other alleged defects in the applicable parts of the legislation, that in cases arising from individual petition its task is usually not to review the relevant legislation or a particular practice in the abstract. Instead, it must confine itself as far as possible, without losing sight of the general context, to examining the issues raised by the case before it. Here, therefore, the Court's task is not to review, *in abstracto*, the compatibility with the Convention of the above rule, but to determine, *in concreto*, the effect of the interference on the applicants' right to private and family life (see, as a recent authority, *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, §§ 69-70, 20 October 2011).

228. Turning to the circumstances of the present case, the Court notes that as a result of the decision of 25 March 2005 the applicants were

deprived of an opportunity otherwise guaranteed to close relatives of any deceased person in Russia to organise and take part in the burial of the body of a deceased family member and also to ascertain the location of the grave-site and to visit it subsequently (see paragraph 116 above). The Court finds that the interference with the applicants' Article 8 rights resulting from the said measure was particularly severe in that it completely precluded them from any participation in the relevant funeral ceremonies and involved a complete ban on the disclosure of the location of the grave, thus permanently cutting any link between the applicants and the location of Aslan Maskhadov's remains. In this connection the Court would also refer to the practice of various international institutions which in cases involving the application of similar measures considered such interference with the applicants' rights as particularly severe (see paragraphs 147-150 above).

229. On the other hand, the Court observes that the investigation has established that Aslan Maskhadov was one of the leaders of the armed insurgency operating in the Chechen Republic at the time and that he was engaged in organising and carrying out a terrorist attack on a school in the town of Beslan on 1 September 2004. Having observed the case-file materials, the Court is prepared to use these factual findings in its further analysis (see paragraphs 88-100 above).

230. Having regard to the nature of this activity and more specifically the prominent role that Aslan Maskhadov was said to have played in the insurgency movement, the Court accepts that measures limiting the applicants' rights in respect of his funeral arrangements could be justified under Article 8 of the Convention in pursuance of goals (a) to (d) mentioned by the Government (see paragraph 219 above).

231. In principle, depending on the exact location at which the ceremonies and the burial were to take place, in view of the character and consequences of the deceased person's unlawful activities and other relevant contextual factors, the authorities could be reasonably expected to intervene with a view to avoiding possible disturbances or unlawful actions by people supporting or opposing the causes of Aslan Maskhadov and his activities, during or after the relevant ceremonies as well as addressing other issues mentioned by the Government which may arise in this connection.

232. The Court is also able to accept that in organising the relevant intervention the authorities were entitled to act with a view to minimising the informational and psychological impact of the terrorist act on the population and protecting the feelings of relatives of the victims of the terrorist acts. Such intervention could certainly limit the applicants' ability to choose the time, place and manner in which the relevant funeral ceremonies and the burial were to take place or even directly regulate such proceedings.

233. At the same time, the Court finds it difficult to agree that the goals mentioned above were a viable justification for denying the applicants any

participation in the relevant funeral ceremonies or at least some kind of opportunity for paying last respects to the deceased person.

234. There is no evidence that the authorities carried out any such assessment in the present case (see paragraphs 101-104 above). The possibility of inquiring into the applicants' intentions, even if it existed, was never attempted by the relevant authorities. In fact, contrary to the respondent Government's assertions (see paragraph 200 above), the relevant official did not take the decision using a case-by-case approach, as the decision failed to mention the relevant factors referred to by the Government and included no analysis which would take into account the individual circumstances of Aslan Maskhadov's case or those of his family members.

235. In the Court's view, that was so because of the way the law was formulated, the decision of 25 March 2005 being a purely automatic measure. In view of what was at stake for the applicants, the Court considers that this "automatic" character ran contrary to the authorities' duty under Article 8 to take appropriate care that any interference with the right to respect for private and family life should be justified and proportionate in the individual circumstances of the case (see, *mutatis mutandis*, *Płoski v. Poland*, no. 26761/95, §§ 35-39, 12 November 2002; and *Nada*, cited above, § 182).

236. The Court reiterates that in order to act in compliance with the proportionality requirements of Article 8, the authorities should first rule out the possibility of having recourse to an alternative measure that would cause less damage to the fundamental right at issue whilst fulfilling the same aim (see *Nada*, cited above, § 183 and *Płoski*, cited above, § 37). In the absence of such an individualised approach, the adopted measure mainly appears to have a punitive effect on the applicants by switching the burden of unfavourable consequences in respect of activities of the deceased person from that person onto his or her close family members.

237. In sum, having regard to the automatic nature of the measure, the authorities' failure to give due consideration to the principle of proportionality and the absence of effective judicial supervision, the Court finds that the measure in question did not strike a fair balance between the applicants' right to the protection of private and family life, on the one hand, and the legitimate aims of the protection of the rights and freedoms of others, on the other, and that the respondent State has overstepped its margin of appreciation in this regard.

238. It follows that the decision of 25 March 2005 violated the applicants' right to respect for their private and family life, as guaranteed by Article 8 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 TAKEN IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

239. Relying on Article 13 of the Convention read in conjunction with Article 8 of the Convention, the applicants also complained about the lack of an effective remedy in respect of the authorities' refusal to return the body of Aslan Maskhadov.

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."

A. The submissions by the parties

240. The applicants maintained their grievances. In respect of the possibility of challenging the relevant decision denying access to the body, the applicants noted that the applicable legislation lacked clarity and evidently did not provide for a judicial review of that decision. They also referred to the lack of any judicial practice which could confirm the existence of reasonable prospects of success in this connection and the authorities' failure to notify them about that decision.

241. The Government stated that the applicants had received official notification and replies from the authorities and that no restrictions on access to a court had been imposed in connection with the decisions in question.

B. The Court's assessment

1. Applicable principles

242. The Court observes that Article 13 guarantees the availability at national level of a remedy by which to complain about a breach of the Convention rights and freedoms. Therefore, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision, there must be a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention, but the remedy must in any event be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the State (see *Büyükdağ v. Turkey*, no. 28340/95, § 64,

21 December 2000, with the cases cited therein, especially *Aksoy*, cited above, § 95). Under certain conditions, the aggregate of remedies provided for under domestic law may satisfy the requirements of Article 13 (see, in particular, *Leander v. Sweden*, 26 March 1987, § 77, Series A no. 116).

243. However, Article 13 requires that a remedy be available in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention (see, for example, *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 54, Series A no. 131). It does not go so far as to guarantee a remedy allowing a Contracting State's laws to be challenged before a national authority on the ground of being contrary to the Convention (see *Costello-Roberts v. the United Kingdom*, 25 March 1993, § 40, Series A no. 247-C), but seeks only to ensure that anyone who makes an arguable complaint about a violation of a Convention right will have an effective remedy in the domestic legal order (ibid., § 39).

2. Application of those principles to the present case

244. The Court is of the opinion that, in view of its finding that the grievance under Article 8 was admissible (see *Maskhadova and Others v. Russia* (dec.), no. 18071/05, 8 July 2008), the complaint is arguable. It therefore remains to be ascertained whether the applicants had, under Russian law, an effective remedy by which to complain of the breaches of their Convention rights.

245. Having regard to the circumstances of the case, the Court would note the absence of effective judicial supervision in respect of the decision of 25 March 2005 (see also its conclusion in paragraph 207 above). Admittedly, the situation has improved to some extent with the adoption by the Constitutional Court of its Rulings no. 8-P of 28 June 2007 and no. 16-P of 14 July 2011 (see paragraphs 125-130 above). Nevertheless, even after these changes the courts remained competent to review only the formal lawfulness of the measure and not the need for the measure as such. In this respect, the Court finds that the relevant legislation did not provide the applicants with sufficient procedural safeguards against arbitrariness (see, *mutatis mutandis*, *Al-Nashif v. Bulgaria*, no. 50963/99, § 123, 20 June 2002).

246. In these circumstances, the Court concludes that the applicants did not enjoy an effective possibility of appealing the decision of 25 March 2005 on account of a number of factors, including the authorities' refusal to furnish them with a copy of that decision and the limited competence of the courts in reviewing such decisions. In view of the foregoing, the Court finds that the applicants did not have any remedy in respect of the Convention violations alleged by them.

247. Accordingly, the Court finds that there has been a violation of Article 13, taken together with Article 8.

V. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

248. The applicants complained that the refusal of the authorities to return the body of Aslan Maskhadov had been contrary to Article 9 of the Convention.

249. Regard being had to the particular circumstances of the present case and to the reasoning which led it to find a violation of Article 8 and Article 13 taken together with Article 8, the Court finds that there is no cause for a separate examination of the same facts from the standpoint of Article 9.

VI. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

250. Lastly, the applicants were of the view that the refusal of the authorities to return the body of Aslan Maskhadov had been discriminatory, because the legislation in question was aimed exclusively at followers of the Islamic faith and members of the Chechen ethnic community. They relied on Article 14 of the Convention, which provides as follows:

> "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."

251. The applicants maintained their complaints.

252. The Government denied this allegation and submitted that the decision in question was not discriminatory.

253. Having considered the materials submitted by the parties, the Court finds no indication which would enable it to conclude that the legislation in question was directed exclusively against followers of the Islamic faith and members of the Chechen ethnic community or that the applicants were treated differently from people in a relevantly similar situation solely on the basis of their religious affiliation or ethnicity (see, by contrast, *Timishev v. Russia*, nos. 55762/00 and 55974/00, §§ 53-59, ECHR 2005-XII).

254. There has, therefore, been no violation of Article 14 of the Convention read in conjunction with Article 8 of the Convention in this case.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

255. Article 41 of the Convention provides:

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

A. Damage

256. The applicants claimed compensation in the amount of 74,016 euros (EUR) in respect of their alleged pecuniary losses on account of the loss of income resulting from the death of Aslan Maskhadov. They also claimed that they had sustained very serious non-pecuniary damage in the total amount of EUR 1,200,000. The applicants also requested that the Court order the respondent Government to hand over the remains of Aslan Maskhadov to his family or to disclose information regarding the circumstances of his burial, including the whereabouts of his grave.

257. The Government submitted that these claims were unfounded and generally excessive.

258. The Court does not find any causal link between the alleged pecuniary losses and the violations found. It therefore dismisses the applicants' pecuniary claim. As regards their claim in respect of non-pecuniary damage, the Court considers that, in the circumstances of the present case, the finding of a violation of Article 8 of the Convention, taken alone and in conjunction with Article 13, constitutes sufficient just satisfaction for the applicants.

B. Costs and expenses

259. The applicants also claimed EUR 32,724 for the legal and other costs incurred in the Strasbourg proceedings, comprising EUR 31,139 for two hundred and thirty-nine hours spent by the lawyers on preparing and representing the applicants' case and EUR 1,584 for administrative costs, including travel expenses, international courier post and translation fees.

260. The Government submitted that the amounts claimed were excessive.

261. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court, having regard to the documents submitted by the applicants, is satisfied that their claim was generally substantiated. It further notes that this case has been relatively complex and has required a certain amount of research work. On the other hand, once the preparation of the initial submissions and the observations on the admissibility of the case had been completed, the work did not involve a large number of documents and the Court therefore has doubts as to whether at its later stages the case required the amount of research and preparation claimed by the applicants' representatives.

262. In these circumstances, having regard to the details of the claims submitted by the applicants, the Court awards them the reduced amount of EUR 18,000, together with any tax that may be chargeable to the applicants.

C. Default interest

263. The Court considers it appropriate that the default interest rate 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

1. *Holds* unanimously that it is not necessary to examine the Government's preliminary objection that the applicants have failed to exhaust domestic remedies in connection with their grievances under Article 2 of the Convention;

2. *Holds* unanimously that there has been no violation of the procedural aspect of Article 2 of the Convention on account of the investigation into the circumstances of Aslan Maskhadov's death;

3. *Holds* unanimously that there has been no violation of the substantive aspect of Article 2 of the Convention on account of the circumstances of Aslan Maskhadov's death;

4. *Holds* unanimously that, in view of its previous findings under Article 2 of the Convention, it is not necessary to examine the complaint about the investigation of the circumstances of Aslan Maskhadov's death under Article 13 of the Convention;

5. *Dismisses* unanimously the Government's preliminary objection that the applicants have failed to exhaust domestic remedies in respect of their grievances under Article 8 of the Convention;

6. *Holds* by five votes to two that there has been a violation of Article 8 of the Convention;

7. *Holds* by five votes to two that there has been a violation of Article 13, taken together with Article 8, on account of the lack of an effective remedy in order to challenge the decision of 25 March 2005;

8. *Holds* unanimously that, in view of its previous findings under Articles 8 and 13 of the Convention, the case requires no separate examination under Article 9 of the Convention;

9. *Holds* unanimously that there has been no violation of Article 14 of the Convention, read in conjunction with Article 8;

10. *Holds* unanimously that the finding of a violation constitutes sufficient just satisfaction for the non-pecuniary damage sustained by the applicants;

11. *Holds* unanimously
(a) that the respondent State is to pay the applicants jointly EUR 18,000 (eighteen thousand euros), in respect of costs and expenses, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicants on the above amount;
(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;

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

Done in English, and notified in writing on 6 June 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Isabelle Berro-Lefèvre
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint dissenting opinion of Judges Hajiyev and Dedov is annexed to this judgment.

I.B.L.
A.M.W.

JOINT DISSENTING OPINION OF JUDGES HAJIYEV AND DEDOV

We regret that we cannot share the view of the majority that there has been a violation of Article 8. The general idea of the judgment in these cases is that, while the State is authorised to regulate the funeral ceremonies, it should not overstep its margin of appreciation, in order to ensure respect for relatives' rights to participate in such ceremonies, and should not limit those rights automatically, without an individualised approach. However, as stated by the Russian Constitutional Court (see paragraph 125 of the judgment) and also confirmed by the Court as a basis for the legitimate aim (see paragraphs 214-216), there exists a risk of further violence. Once the location and date of the ceremony have been disclosed, it is extremely difficult or even impossible for the State to avoid completely such a risk, engendered by stress and hatred. In such a situation of uncertainty it is hard for the State to determine whether and where it "overstepped" its margin of appreciation.

Thus, the measure proposed by the Court would be proportional only if it were to be proved (it is not) that the Article 8 right in question is more important than the rights of others to live, and to live in peace. The importance of the right in question is undermined by the fact that the terrorists waived their social obligation to maintain peace and left their homes to wage war - and not merely war, but a war against civilians - and that terrorists usually sacrifice their own bodies in their attacks; the applicants must accept this from the very outset, and thus they must adjust their expectations in the light of the dramatic consequences incurred by society as a whole.