CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 74239/01
by Aminat Dautovna MUSAYEVA and others
against Russia

The European Court of Human Rights (First Section), sitting on 1 June 2006 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS,

and Mr S. NIELSEN, *Section Registrar,*

Having regard to the above application lodged on 20 September 2001,

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

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

Having deliberated, decides as follows:

THE FACTS

The applicants are Ms Aminat Dautovna Musayeva, born in 1954, Mr Alamat Reshetovich Musayev, born in 1946, and Ms Elza Uvaysovna Zurapova, born in 1977. The applicants are Russian nationals and live in the village of Gekhi, the Urus-Martan District, Chechnya. They are represented before the Court by Ms L. Khamzayeva, a lawyer practising in Moscow.

The respondent Government are represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

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

The first two applicants are spouses. They have four children, two of whom – Ali Musayev, born in 1972, and Umar Musayev, born in 1977 – lived together with their parents in a household comprising two houses in Gekhi. The third applicant was married to Ali Musayev.

1. Detention of Ali and Umar Musayev

On 8 August 2000 a Russian armoured personnel carrier (APC) was attacked and blown up in the vicinity of Gekhi and the military responded with a "sweeping" operation in the village.

During this operation an armed man, who was being pursued by soldiers, entered the applicants' household and hid in one of the rooms. According to the Government, the man was A., a member of illegal armed formations. The servicemen strafed the house, using machine-guns and grenade-launchers. Two daughters and a grandson of the first two applicants, the second applicant, the third applicant, Ali Musayev and Umar Musayev were inside the house at that moment. Besides, the first two applicants' two-year-old grandson was in a car parked in the courtyard.

A. was killed after the military had thrown nine grenades into the house and shelled it from the APC. Thereafter the servicemen wrapped the corpse in a blanket and put it into Ali Musayev's car, a white *Zhiguli*. They then searched the house. Umar Musayev, who felt ill that day and was lying in bed, was blindfolded and ordered to step out of the house and lie down.

Major Silantyev, an officer in command, seized the identity papers of Ali Musayev, his car documents and the car ignition key. Thereafter Ali Musayev was forced into the car, and Umar Musayev was put in an APC which had no visible hull number. They were both taken away.

The first applicant later found out that the APC number was 108 and it belonged to the Main Intelligence Department of the Ministry of Defence of Russia (*Главное разведывательное управление Министерства Обороны РФ*).

Referring to unnamed witnesses' accounts, the first applicant submits that Ali Musayev was brought to a check-point between Gekhi and Urus-Martan, at the command centre of the Western Alignment of the Armed Forces (*военная группировка «Запад»*) commanded by Generals Labunets, Nedobitko and Tikhomirov, and General Labunets severely beat him.

The Musayev brothers were then brought to the Urus-Martan Temporary Office of the Interior (*временный ОВД Урус-Мартановского района*, "the VOVD") and questioned. The first applicant submits by reference to the witnesses' accounts that after the interrogation her sons and three other persons apprehended in Gekhi that day were again brought to the location of the Western Alignment. At 5 p.m. the military released the latter three persons, but not Ali and Umar Musayev, of whom there was no further news.

2. Search for Ali and Umar Musayev

Between 8 and 10 August 2000 federal troops sealed off the village of Gekhi. On the latter date, after restrictions were lifted, the first applicant went to Urus-Martan and notified the head of the district administration (*глава администрации*) of the detention of her sons.

She then went to the district military commander's office (*районная военная комендатура*) and noticed her elder son's car in the courtyard. The first applicant applied to military commander Gadzhiyev with enquiries about her sons and the car. The military commander told the first applicant that he had no information concerning Ali and Umar Musayev and advised her to come back in two days. As regards the car, Gadzhiyev stated that it was "unclean".

On the same date the first applicant also applied to the Urus-Martan Prosecutor's Office (*прокуратура Урус-Мартановского района*), claiming that her sons had been unlawfully detained.

On 11 or 12 August 2000 the first applicant went to the military commander's office again. Gadzhiyev told her that he had not participated in the "sweeping" operation on 8 August 2000 and had no information on the whereabouts of her sons. Later the military commander stated that the Musayev brothers had been taken to the main Russian military base of Khankala. As to the car, Gadzhiyev told that a database check had confirmed that it was "clean" and that the first applicant had to produce a power of attorney to recover the vehicle. The first applicant stated that she did not have this paper, as all the documents had been in the seized car, and the military commander refused to return the vehicle.

The first applicant submits that the car was only returned on 4 October 2000, after her son-in-law had brought a copy of the power of attorney from a vendor from Dagestan.

During August and September 2000 the first applicant repeatedly applied to the military commander's office, the VOVD and prosecutors of various levels in connection with the disappearance of her sons. She hardly received any substantive information from official bodies in response to her enquiries. Mostly those were formal responses stating that her requests had been forwarded to different prosecutor's offices.

By letter of 11 September 2000 an acting prosecutor of the Urus-Martan District informed the first applicant that Ali and Umar Musayev were not detained in the VOVD, that they were not listed in the VOVD registration papers, and that no criminal proceedings had ever been brought against them. The letter further stated that information requests sent to military units had remained unanswered, and that the head of the Urus-Martan VOVD had been instructed to commence a criminal investigation into the disappearance of the Musayev brothers.

3. Discovery of the bodies of Ali and Umar Musayev

According to the applicants, on 11 August 2000 the Russian TV channel NTV showed Ali Musayev's body as that of a rebel fighter killed during the "sweeping" operation in Gekhi on 8 August 2000. The applicants did not submit a copy of that recording.

In early September a serviceman of a military unit stationed in the village of Tyangi-Chu produced a scheme of a burial site near the cemetery of Gekhi, where, he claimed, Ali and Umar Musayev had been buried. The applicants submit that they had to pay for the indication of the site.

On 13 September 2000 the applicants notified the head of the administration of Gekhi, the Urus-Martan District Prosecutor's Office, the military commander's office and the district administration of Urus-Martan (*администрация Урус-Мартановского района*) that they were going to excavate the grave.

On the same date the second applicant exhumed the grave in the presence of a police officer and a forensic expert and found four corpses bearing signs of violent death. He identified his sons' bodies by fragments of the remaining teeth. The other two bodies were identified as belonging to the man killed in the applicants' house on 8 August 2000, and to a resident of Gekhi, who had been detained along with the Musayev brothers.

The police officer and the expert undertook no investigative actions at the excavation site. According to the Government, the applicants refused to submit the bodies for post-mortem autopsy by reference to their national and religious traditions. The applicants buried the remains shortly after without taking photographs or inviting a medical doctor to attend before the burial.

4. Official investigation

On 18 October 2000 the Urus-Martan Prosecutor's Office instituted criminal proceedings under Article 105 § 2 (a) of the Criminal Code of Russia (murder of two or more persons). The case-file was assigned no. 24047.

By letter of 1 November 2000 the military prosecutor of military unit no. 20102 (*военная прокуратура – войсковая часть 20102*) informed the

first applicant that a suspect in the blowing-up of the APC had been found in their house, and that her sons had been detained for an identification check in this connection. After the apprehension Ali and Umar Musayev were brought to the VOVD. However, since they were not listed among the detained persons, no further information of them was available. The letter also stated that Major Silantyev, the officer in charge of the operation, had left for his permanent location in Penza, and that efforts were being made to obtain information from him on the detention of Ali and Umar Musayev.

On 27 November 2000 the Urus-Martan Prosecutor's Office received a letter from a district prosecutor of the Penza Region informing him that on 15 November 2000 Major Silantyev had been questioned about the operation on 8 August 2000. The transcript of this interrogation was enclosed. Major Silantyev stated the following:

> "From 18 June until 22 September 2000 I was seconded to the town of Urus-Martan, the Chechen Republic. ...
>
> In addition to the Urus-Martan VOVD, military personnel of the troops of the interior and of the army (*военнослужащие из внутренних и федеральных войск*) and the military commander's company (*комендантская рота*) also took part in the operation [on 8 August 2000]. I cannot tell what particular person was in command of the operation. From our department there was the head of the Urus-Martan VOVD, Lieutenant-Colonel Shigayev. There were also three generals, whose names I do not know, and military commander Gadzhiyev in the vicinity of the village of Gekhi.
>
> Acting on the instructions of the superiors of the alignment, I with a group of 30 – 35 men arrived by bus and APC in Gekhi around 11 a.m. ... About 20 men in the group were police officers, the rest were army servicemen. I was in charge of the police officers, and the [army] servicemen were under the command of an officer with the rank of captain, whose name I do not know. I do not know in which particular military units those servicemen served and at whose disposal the APC with the hull number 108 was.
>
> During the "sweeping" operation we went to the courtyard of one of the houses. It was subsequently established that the house belonged to the Musayev family. ...
>
> I approached one of the windows and looked inside. I saw a man wearing an ammunition jacket and holding a pistol. Having seen me, the man fired ... on me. ... In response to the shots from the house, our personnel opened fire. ... [During the fight another] man came to me and told that he lived in Moscow and was a relative of this family. ...
>
> One of the soldiers threw 6 grenades inside the house, but the shots from the house did not stop. Then [we] started shooting at the criminal from the APC, and only then the fire from the house seized, but the house caught fire. ...
>
> Only one man seemed to have been shooting from the house, and only one body was found inside. The soldiers put this corpse into a white car and the relative from Moscow also got into this vehicle. Then I went out and saw two cars near the house. The servicemen told that they had seized those cars. I cannot tell who ordered them to seize the cars. I did not give such an order. Besides, on the APC I noticed another detained man in a white shirt. I do not know who ordered that man to be detained. We escorted the detained men and two cars to the outskirts of Gekhi, where the command centre of the alignment was located. ... On the instructions of the superiors, the

> detained persons and the cars were left at the command centre. Upon my return from Gekhi, somebody told me that the detainees and the red car had been released. The detainees were not brought to the Urus-Martan VOVD, as upon my return there in the evening I saw neither the white car nor the persons apprehended during the fight at the Musayevs' house. I do not know whether they were brought to the military commander's office and who escorted them. ... Following the instruction of the superiors, we left these detainees at the command centre, and I have no further information of them, or of the white car."

Having regard to the transcript, the prosecutor of the Urus-Martan District ordered the interrogation of military commander Gadzhiyev. According to the first applicant, this order was never complied with.

By letter of 4 January 2001 the military prosecutor of military unit no. 20102 informed the Urus-Martan Prosecutor's Office and the first applicant that an inquiry had been carried out into the first applicant's allegations, and that no involvement of the military personnel of the Ministry of Defence or of the interior troops of the Ministry of the Interior in the detention of the Musayev brothers had been established, and therefore no criminal proceedings would be brought against the aforementioned personnel.

On 18 January 2001 the Urus-Martan Prosecutor's Office notified the first applicant that the criminal proceedings in case no. 24047 were suspended due to the failure to establish culprits.

On an unspecified date the first applicant received a letter from the Urus-Martan Prosecutor's Office dated 24 August 2001. The letter contained a restatement of the facts of the detention of Ali and Umar Musayev and the discovery of their bodies and informed the first applicant that a criminal investigation had been commenced and that the case file had been assigned no. 24047. The letter also stated that the first applicant would be informed of any further developments in the case.

On 7 September 2001 the Urus-Martan Town Court certified the death of Ali Musayev upon the first applicant's request. The court heard two witnesses who confirmed the first applicant's submissions about the detention of her son on 8 August 2000, the discovery of his body and burial on 13 September 2000 at the Gekhi village cemetery. The court certified that Ali Musayev's death had occurred on 13 September 2000 in the village of Gekhi. It does not appear that a court certification of death was made in respect of Umar Musayev.

On 18 September and 9 October 2001 respectively the civil registration office of the Urus-Martan District issued death certificates for Ali Alamatovich Musayev, born in 1972, and Umar Alamatovich Musayev, born in 1977. The date and the place of death were recorded as 12 September 2000, Gekhi.

On 22 August 2002 the Urus-Martan Prosecutor's Office granted the status of a crime victim and a civil claimant to the first applicant.

By letter of 27 August 2002 the General Prosecutor's Office of Russia informed the first applicant that on 19 July 2002 the investigation into her sons' death had been resumed and that the case was under the control of the General Prosecutor's Office. It appears that at some point the investigation was again suspended, and it is unclear whether there were any developments in the case during the next two years.

By letter of 14 October 2004 the Urus-Martan Prosecutor's Office informed the first applicant that the proceedings in criminal case no. 24047 had been recommenced on that date.

On 14 November 2004 the Urus-Martan Prosecutor's Office notified the first applicant of the suspension on the same date of the preliminary investigation into her sons' murder in the absence of those responsible.

According to the applicants, they are not aware of any further steps by the law-enforcement bodies as regards the investigation into the abduction and murder of Ali and Umar Musayev.

By reference to the information provided by the General Prosecutor's Office, the Government submitted in their memoranda dated 29 December 2004 and 26 April 2005 that the investigation into the murder of Ali and Umar Musayev had commenced on 18 October 2000 and then had been suspended and resumed on several occasions, but failed to identify those guilty so far. On the latest occasion the investigation was re-opened on 21 April 2005 and was being supervised by the General Prosecutor's Office. According to the Government, the applicants were duly informed about all decisions taken during the investigation. They further submitted that the first applicant had been interrogated on 20 October and 12 December 2000, 4 April 2002, 19 and 23 October 2004 and 1 April 2005 and was granted the status of a victim and civil claimant on 20 October 2000 and 22 August 2002 respectively. The second applicant was questioned as a witness on 23 October 2000, 5 April, 20 and 23 October 2002 and 12 April 2005. Apart from the first two applicants, the investigating authorities also interrogated at least 18 witnesses, including the applicants' relatives and acquaintances, residents of Gekhi and a number of public officials who worked in the Chechen Republic at the material time. The Government referred in particular to the statement of Mr M., an investigator of the Urus-Martan Prosecutor's Office, to the effect that military commander Gadzhiyev had told him that the Musayev brothers had been detained and thereafter released. The Government did not specify on which date this statement had been made. They also submitted that military commander Gadzhiyev had not been questioned during the investigation, as he had been killed on 29 November 2001 in a terrorist attack.

According to the Government, it was impossible to establish other witnesses in the case, but the search for them was currently underway. The Government next stated that the applicants had refused to disclose the place of burial of Ali and Umar Musayev and allow the investigating authorities

to exhume the bodies so as to enable forensic experts to examine them. Finally, the Government stated that the investigating authorities had sent a number of queries to various State bodies on 16 December 2000, 20 and 26 October 2002, 20 October, 1 and 14 November 2004, 28, 30, 31 January, 3 February, 23 and 25 March 2005 and undertaken other investigative actions, but did not specify what those actions had been.

Despite the Court's specific requests made on two occasions, the Government did not submit a copy of any document to which they refer. Relying on the information obtained from the Prosecutor's General Office, the Government stated that the investigation was in progress and the disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure since the file contained information of a military nature and personal data of the witnesses. At the same time, the Government suggested that a Court delegation could have access to the file at the place of the preliminary investigation with the exception of "the documents [disclosing military information and personal data of the witnesses], and without the right of making copies of the case-file and its transmission to the others".

4. Civil proceedings

On unspecified dates the first two applicants issued separate sets of civil proceedings against the Ministry of Finance in the Basmanny District Court of Moscow ("the District Court"), seeking compensation for non-pecuniary damage in connection with the unlawful detention of their sons.

On 23 December 2003 and 21 May 2004 the District Court delivered two similar judgments. It established that on 8 August 2000 in the house of the Musayev family in the village of Gekhi, the Urus-Martan District, a member of illegal armed formations had been found and killed, as he had shown armed resistance. The applicants' sons, Ali Musayev and Umar Musayev were detained and escorted to the Temporary Office of the Interior of the Urus-Martan District so as to find out the circumstances of the above incident. On 13 September 2000 their corpses were found at the outskirt of Gekhi, and criminal proceedings were instituted in this connection but later suspended, as no culprits could be established. The court further stated that under Article 1069 of the Civil Code of Russia the State was only liable for damages for its agents' actions that were unlawful. It then noted that the military operation in Chechnya had been launched by virtue of presidential decree no. 2166 of 30 November 1994, and governmental decree no 1360 of 9 December 1994 which had been found constitutional by the Constitutional Court of Russia on 31 July 1995, except for two provisions of the governmental decree. In this latter respect the court noted that the said two provisions had never been applied to the applicants and that "it did not follow from the submitted evidence that there was a causal link between the loss by [the first two applicants] of their sons and any unlawful actions on

the part of the State bodies". The court concluded that the applicants' claims were not based on domestic law and dismissed them accordingly.

On 8 July 2004 the Moscow City Court rejected the first applicant's appeal and upheld the judgment of 23 December 2003.

It is unclear whether the second applicant appealed against the judgment of 21 May 2004, and, if so, what the outcome of the appeal proceedings was.

5. Property

On 6 October 2000 the second applicant lodged a complaint with the Urus-Martan Prosecutor's Office, stating that his elder son's car, which had been seized and kept at the commandatura yard from 8 August until 4 October 2000, was plundered and damaged. It does not appear that any actions were taken in connection with the said complaint.

On 3 January 2001 the first applicant applied to the head of the Urus-Martan local council, seeking assistance in obtaining compensation for the damage inflicted on her house and property during the operation on 8 August 2000. She enclosed an evaluation report, reflecting in detail the poor state of the property. It does not appear that any measures were taken in this respect, or that the first applicant ever applied to law-enforcing bodies in connection with her complaint.

It does not appear that the applicants ever attempted to file a civil claim so as to receive compensation for their damaged property.

B. Relevant domestic law

Until 1 July 2002 criminal law matters were governed by the 1960 Code of Criminal Procedure of the RSFSR. As of 1 July 2002 the old Code was replaced by the Code of Criminal Procedure of the Russian Federation (CCP).

Article 161 of the new CCP establishes the rule of impermissibility of disclosure of the data of the preliminary investigation. Part 3 of the said Article provides that the information from the investigation file may be divulged upon permission of a prosecutor or investigator and only so far as it does not infringe the rights and lawful interests of the participants of the criminal proceedings and does not prejudice the investigation. It is prohibited to divulge information about private life of the participants of the criminal proceedings without their permission.

COMPLAINTS

1. The applicants complained under Article 2 of the Convention about a breach of the right to life in respect of Ali and Umar Musayev. They also complained that no proper investigation into their deaths had been conducted.

2. The applicants claimed that, before having being killed, Ali and Umar Musayev had been subjected to torture and inhuman treatment, contrary to Article 3 of the Convention.

3. The applicants next submitted that the provisions of Article 5 as a whole, relating to the lawfulness of detention and guarantees against arbitrariness, had been violated in respect of Ali and Umar Musayev.

4. The applicants complained under Article 13 that they had had no effective remedies to challenge the above violations.

5. The applicants further relied on Article 8 in that the intrusion by the Russian military into their house on 8 August 2000 had infringed their right to respect for their home.

6. The applicants complained about the destruction of their houses as a result of the actions of the Russian military on 8 August 2000. They referred to Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4 in this respect.

7. In their observations dated 4 March 2005 the applicant also complained under Article 8 and Article 1 of Protocol No. 1 that the military had seized Ali Musayev's car on 8 August 2000 and refused to return it until 4 October 2000.

THE LAW

1. The applicants complained under Article 2 of the Convention about the killing of their relatives and the failure of the domestic authorities to carry out an effective investigation in this respect. The applicant also referred on Article 3 of the Convention, alleging that their relatives had been tortured before having been killed. They next stated that Ali and Umar Musayev had been detained in breach of the guarantees of Article 5 of the Convention. Lastly, the applicants complained about the absence of effective remedies in respect of the aforementioned violations, contrary to Article 13 of the Convention. The respective Articles, in so far as relevant, read as follows:

Article 2

"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."

Article 3

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

Article 5

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

Article 13

"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."

Exhaustion of domestic remedies

(a) Submissions by the parties

The Government contended that the above complaints should be declared inadmissible for non-exhaustion of domestic remedies. By reference to the Constitution and other legal acts the Government argued that it had been

open to the applicants to file court complaints about the allegedly unlawful detention of their relatives or to challenge in court actions or omissions of the investigating or other law-enforcing authorities, but the applicants had not availed themselves of this remedy. The Government enclosed a number of letters from various higher courts in Russia, stating that the applicants had never lodged any of such complaints to the respective courts.

The applicants disagreed with the Government and maintained their complaints. They pointed out that immediately after their relatives' detention and thereafter they had repeatedly applied to law-enforcing bodies, including various prosecutors. This venue, however, proved futile, given that the criminal investigation has by now been pending for five years but failed to find and identify those responsible. The applicant also stated that there was no specific requirement in national law to have recourse to any other remedy once criminal proceedings were instituted and an investigation was underway. The applicant contended that in any event in the absence of an effective investigation any other remedy, including a civil claim, would also be rendered ineffective by the fact that court decisions would be based on the findings made within the context of criminal investigation, the latter so far having failed to establish whether State agents had been involved in the murder of their sons. In this latter respect they referred to the judgments of Basmanny District Court of 23 December 2003 and 21 May 2004 which dismissed their claims for compensation of non-pecuniary damage in connection with the unlawful detention on the ground that it had not been established that the applicants had lost their sons as a result of State agents' unlawful actions.

(b) The Court's assessment

The Court considers that the question of exhaustion of domestic remedies is so closely linked to the merits of the case that it is inappropriate to determine it at the present stage of the proceedings.

The Court therefore decides to join this objection to the merits.

As to the merits of the applicants' complaints

(a) The Government

The Government did not dispute the fact that the applicants' relatives had been apprehended by the federal officers and then found dead, but contended that there were no grounds to claim that the right to life of the applicants' relatives had been breached by the State. They referred to a reply of the Prosecutor's General Office stating that the investigation had not established that the killing of the Musayev brothers had been committed by the representatives of the federal power structures, that the Musayev brothers had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention, or that they had been detained in breach of

guarantees of Article 5 of the Convention. The Government further claimed that the investigation into the death of the applicants' relatives met the Convention requirement of the effectiveness, as all measures envisaged in national law were being taken to identify the perpetrators. The Government also argued that the applicants had effective remedies at their disposal enshrined in Article 13 of the Convention and the authorities did not prevent them from using those remedies. In particular, the first applicant was declared a victim and a civil claimant in the criminal case opened in connection with the killing of her sons and she received reasoned replies to all her complaints. Besides, the applicants had an opportunity to appeal against the actions or omissions of the investigating authorities in court.

(b) The applicants

The applicants contested the Government's arguments. As regards the substantive aspect of Article 2 of the Convention, the applicants first pointed out that it was undisputed that on 8 August 2000 Ali and Umar Musayev had been taken away from their home by federal servicemen under command of Major Silantyev and delivered to the Urus-Martan Temporary Office of the Interior. The further referred to Major Silantyev's statement to the effect that "on the instructions of the superiors, the detained persons and the cars had been left at the command centre" and to the fact that they had purchased from a federal officer a scheme of a burial site where the bodies of Ali and Umar Musayev had been found, and that Ali Musayev's body had been shown on NTV as that of a killed rebel fighter. The applicants argued that, in such circumstances, there was no doubt that federal servicemen had intentionally killed the Musayev brothers. They also pointed out that no evidence had been submitted that the deprivation of their relatives of lives had been justified under Article 2 § 2 of the Convention.

As regards the procedural aspect of Article 2 of the Convention, the applicants claimed that the authorities had defaulted in their obligations to carry out an effective investigation into the circumstances of the death of Ali and Umar Musayev. They argued that the investigation had fallen short of the Convention standards. In particular, it does not appear that the authorities adequately investigated possible involvement of the military personnel into the killing of Ali and Umar Musayev. Furthermore, the identities of the generals in charge of the "sweeping" operation that had been conducted in the village of Gekhi on 8 August 2000 were never established. Moreover, the investigating authorities had never attempted to eliminate substantial discrepancies between the accounts of the events of 8 August 2000 made by the first applicant and Major Silantyev by confronting them.

The applicants next contended that their relatives had been ill-treated after having been detained, which constituted a violation of Article 3 of the Convention. They referred to medical death certificate no. 51 issued on

8 October 2001 in respect of Umar Musayev, confirming that there had been multiple stab-wounds and bruises on the latter's head and chest. The applicants did not enclose a copy of the said document. They further submitted that the authorities had failed to conduct an effective investigation in this respect, in violation of their procedural obligations under Article 3 of the Convention.

The applicants also stated that there had been no grounds for their relatives' arrest or detention, and in particular, no reason to believe that they had committed any criminal offence. At the moment of their apprehension, the Musayev brothers had been at home with other family members, had identity papers, had no firearms, and had not attempted to assist A., the man who had run into their house, or to resist to the federal servicemen. They were ready voluntary to report to the VOVD for interrogation. Furthermore, the officers who had taken away the Musayev brothers had not given any reason for the latter's detention. The applicants thus argued that their relatives had been detained in breach of the guarantees of Article 5 of the Convention.

Finally, the applicants maintained that the investigation commenced in connection with the murder of Ali and Umar Musayev had been pending with no tangible results for five years, and that their attempt to obtain compensation of non-pecuniary damage for unlawful detention of their relatives proved unsuccessful, and therefore they had no effective remedies against the aforementioned violations, contrary to Article 13 of the Convention.

(c) The Court's assessment

The Court considers, in the light of the parties' submissions, that the aforementioned complaints raise complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits of the application. Consequently, the Court concludes that the complaints under Article 2, 3, 5 and 13 of the Convention cannot be declared manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

2. The applicants complained that on 8 August 2000 the federal servicemen had entered their house without authorisation and then attacked and severely damaged it. In the applicants' view those actions had violated their right to respect for their home under Article 8 of the Convention and the applicants' right to the peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the Convention. These Articles in their relevant parts read, as follows:

Article 8

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

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

Article 1 of Protocol No. 1

"1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

2. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

(a) Submissions by the parties

The Government argued that these complaints should be declared inadmissible for non-exhaustion of domestic remedies but did not advance any specific arguments in this respect. As to the merits of the applicants' complaints, the Government stated that the servicemen had conducted a counter terrorist operation following the attack against the federal armed forces earlier that day and pursued an armed member of illegal armed formations on suspicion of his involvement in that attack. In the Governments' view, the alleged interference with the applicants' rights secured by Article 8 and Article 1 of Protocol No. 1 had been justified, as the servicemen's actions had been in compliance with relevant domestic legislation and necessary in the interests of national security and public safety, for the prevention of disorder and crime and for the protection of the rights and freedoms of others.

The applicants disagreed with the Government and maintained their complaints. They claimed that the federal soldiers' actions had been unlawful and disproportionate to the aim sought to be achieved.

(b) The Court's assessment

The Court does not find it necessary to examine the entirety of the arguments advanced by the parties since this part of application is in any event inadmissible for the following reasons.

The Court reiterates that while in accordance with Article 35 § 1 of the Convention those seeking to bring their case against the State before the Court are required to use first the remedies provided by the national legal system, there is no obligation under the said provision to have recourse to remedies which are inadequate or ineffective. If no remedies are available or

if they are judged to be ineffective, the six-month time-limit in principle runs from the date of the act complained of (see *Hazar and others v. Turkey* (dec.), no. 62566/000 *et seq*., 10 January 2002). The Court further recalls that special considerations could apply in exceptional cases where an applicant first avails himself of a domestic remedy and only at a later stage becomes aware, or should have become aware, of the circumstances which make that remedy ineffective. In such a situation, the six-month period might be calculated from the time when the applicant becomes aware, or should have become aware, of these circumstances (see *Bulut and Yavuz v. Turkey*, (dec.) no. 73065/01, 28 May 2002).

As regards the applicants' complaints about the alleged violation of their rights to respect for their home, private and family life by the seizure of their car and their inability to get it back for several months, and by the soldiers' intrusion in their house, the Court observes that the applicants have not furnished it with any documentary evidence confirming that they brought these complaints before the domestic authorities. The Court does not consider it necessary to determine whether the applicants had effective remedies to appeal against the alleged violation of their rights under Article 8, as even assuming that in the circumstances of the present case no such remedies were available to the applicants, the events complained of took place on 8 August 2000, while the respective complaints were lodged on 20 September 2001 and 4 March 2005 respectively, i.e. more than six months later.

As regards the applicants' complaint under Article 1 of Protocol No. 1 about the damage inflicted to their house by the federal servicemen, the Court notes that on 30 January 2001 the first applicant requested the head of Urus-Martan local council to assist her in obtaining compensation for her damaged house. It is not persuaded, however, that the first applicant was not aware from the outset that such an application could not constitute an effective remedy, and notably capable of affording redress, given that the authority in question had no jurisdiction to institute criminal proceedings upon the first applicant's complaint, to award her compensation, or to give any other binding ruling or individual relief on her application. The Court considers, therefore, that given that the applicant had recourse to a remedy that was clearly ineffective, and even assuming there were no effective remedies to exhaust, the six month period should run from 8 August 2000, the date on which the alleged damage was inflicted on the applicants' house. The Court notes that the applicants lodged their respective complaint on 20 September 2001, i.e. more than six months later.

Finally, the Court observes that to the extent the applicants complained about the damage inflicted to their car, their only application to the law-enforcing bodies in this connection took place on 6 October 2000, while they lodged their complaint with the Court on 4 March 2005. Even assuming that the applicants pursued a remedy that could be, in principle,

regarded as effective, and only later became aware of the circumstances that rendered it ineffective, the Court cannot accept that it took them more than four years to become aware of those circumstances and to raise this complaint before the Court.

It follows that this part of the application was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

3. Lastly, the applicants complained that the damage inflicted to their house by the Russian military on 8 August 2000 also violated their rights secured by Article 2 of Protocol No. 4 of the Convention without further explanation. This Article reads, as follows:

Article 2 of Protocol No. 4

"1. Everyone lawfully within the territory of the State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions hall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

Leaving aside the question of the applicants' compliance with the requirements set out in Article 35 § 1 of the Convention, the Court finds that this complaint does not disclose any appearance of a violation of Article 2 of Protocol No. 4.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Joins to the merits the Government's objection concerning non-exhaustion of domestic remedies in respect of the complaints submitted under Articles 2, 3, 5 and 13 of the Convention;

Declares admissible, without prejudging the merits, the applicants' complaints under Articles 2, 3, 5 and 13 of the Convention;

Declares inadmissible the remainder of the application.

Søren NIELSEN
Registrar

Christos ROZAKIS
President