



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

FIRST SECTION

CASE OF AKHMADOVA v. RUSSIA

(Application no. 25548/07)

JUDGMENT

STRASBOURG

3 April 2012

FINAL

24/09/2012

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

In the case of Akhmadova v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Elisabeth Steiner,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 13 March 2012,

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

PROCEDURE

1. The case originated in an application (no. 25548/07) 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 a Russian national, Ms Yakha Akhmadova (“the applicant”), on 28 May 2007.

2. The applicant was represented by Mr D.A. Boyev, a lawyer practising in Talnakh. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. Relying on Articles 2 and 13 of the Convention, the applicant alleged, in particular, that her son had been killed by State servicemen, and that the authorities had failed to carry out an effective investigation into the matter.

4. On 27 August 2009 the Court decided to apply Rule 41 of the Rules of Court, and to grant priority treatment to the application and to give notice of the application to the Government. Under the provisions of the former Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. The Government objected to the joint examination of the admissibility and merits of the application. Having considered the Government’s objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1953. She lives in Grozny, Chechnya. She is the mother of Khozh-Akhmed Akhmadov.

A. Killing of Khozh-Akhmed Akhmadov

1. The applicant's account

(a) Killing of Khozh-Akhmed Akhmadov

7. At the material time Khozh-Akhmed Akhmadov was a police officer in the PPMS battalion (the police patrolling unit) of the Chechnya Ministry of the Interior (the Chechnya MVD).

8. At about 11.30 p.m. on 19 November 2004 sergeant Khozh-Akhmed Akhmadov and his colleague, private M.K., were driving in their car in the Leninskiy district of Grozny. Next to "Musa Motors" car service station they were stopped by a group of thirty armed men in camouflage uniforms, who drove around in ten to fifteen silver cars without registration numbers.

9. The men introduced themselves as police officers of the OMON (special task unit) of the Chechnya MVD and explained that they were conducting a special operation to arrest a criminal. It is unclear what subsequently happened during the encounter. The armed men opened gunfire, took away the service guns of the two PPMS officers and the service identity card of Khozh-Akhmed Akhmadov. The applicant's son received several gunshot wounds in the torso and perforating wounds on both feet and the upper part of his left leg. He was taken to Grozny town hospital no. 9.

10. On 21 November 2004 Khozh-Akhmed Akhmadov died in the hospital.

(b) Subsequent events

11. On 22 November 2004 the chief of the headquarters of the PPMS battalion at the Chechnya MVD, officer S.R., the deputy head of the battalion, Mr L.-A.B., and the head of the battalion's human resources department, Mr S.D., attended Khozh-Akhmed Akhmadov's funeral.

12. According to the applicant, they told her that the persons who had killed her son had been identified; and that the perpetrators of the killing had spoken to the heads of the battalion and returned the service guns and the service identity card which they had taken away during the incident. The

perpetrators had explained that they were from the local ‘Oil battalion’ (*нефте-полк*), under the command of Mr A.M., and that they had killed Khozh-Akhmed Akhmadov by mistake.

13. According to the applicant, officers S.R., L.-A.B. and S.D. assured her that the perpetrators of her son’s killing would be duly prosecuted.

14. In support of her statements the applicant submitted copies of the documents she had received from the authorities.

2. *Information submitted by the Government*

15. The Government did not challenge the facts as presented by the applicant. However, they stated that the perpetrators of the applicant’s son’s killing had not belonged to any military or law-enforcement agency, and that he had been a victim of unidentified criminals.

B. The official investigation into the killing

1. *The applicant’s account*

16. On 26 November 2004 the Leninskiy District Prosecutor’s Office of Grozny instituted an investigation into the killing of Khozh-Akhmed Akhmadov under Article 105 § 1 of the Criminal Code (murder). The case file was given the number 30139. The decision stated, *inter alia*, the following:

“...At about 10.30 p.m. on 19 November 2004 two officers of Regiment PPSM-1, Mr M.K. and Mr Khozh-Akhmed Akhmadov were driving in their VAZ-21099 car in Zhukovskogo Street, in the Leninskiy district of Grozny. Next to the service station “Musa Motors” they were stopped by unidentified masked men in camouflage uniforms, who asked the officers about their identities...[the masked men] shot Kh.-A. Akhmadov with automatic firearms ...

... [a group] of police officers who were patrolling the area at the time, stated during their questioning [by the investigators], that the unidentified men who had shot Kh.-A. Akhmadov had introduced themselves [to them] as servicemen from the OMON of the Chechnya MVD and had explained [to them] that they were conducting a special operation in order to arrest a criminal... these men ...had driven around in ten to fifteen VAZ-2121 (*Niva*) and VAZ-21099 cars...”

17. On 21 December 2004 an inspecting officer from the criminal investigation division of the Chechnya MVD issued a summary of the official internal inquiry into the circumstances of Khozh-Akhmed Akhmadov’s death. The document stated, *inter alia*, the following:

“... at about 10.50 p.m. on 19 November 2004 in Zhukovskogo Street in Grozny, next to “Musa Motors” service station a group of thirty unidentified persons in camouflage uniforms who were armed with automatic firearms and drove around in ten to fifteen silver “Niva” and VAZ-21099 cars without registration numbers, stopped a silver VAZ-21099 car... with police sergeant Khozh-Akhmed Akhmadov

and private M.K. inside. These men introduced themselves as officers from the OMON of the Chechnya MVD, and took from Mr M.K. his service gun PM no. 4012, and from Kh.-A. Akhmadov his service gun PM no. 4101. Kh.-A. Akhmadov tried to run away, but the men opened gunfire. As a result Kh.-A. Akhmadov was wounded; he died from his gunshot wounds on 21 November 2004 in Grozny town hospital no. 9.

...in the course of this inquiry private M.K. stated that ... he and Kh.-A. Akhmadov... had been stopped by a group of thirty unidentified men in camouflage uniforms armed with automatic firearms. M.K. had come out of his car and introduced himself as an officer from the PPSM regiment of the Chechnya MVD. These men had attacked him and started beating him... had managed to take away his service gun....gunshots had been fired ...he had run up to Kh.-A. Akhmadov, who had received gunshot wounds and was on the ground. These persons had taken away Kh.-A. Akhmadov's service gun and had quickly driven away. M.K. had taken wounded Kh.-A. Akhmadov to Grozny town hospital no. 9. Sometime later he had reported the events to the duty station of the PPSM regiment of the Chechnya MVD...

... as a result of operational measures taken by the heads of the PPSM battalion of the Chechnya MVD, service guns PM VO 4101 03 and PM 4012 03, which had been taken away [during the incident] were returned to the battalion. ”

18. On 26 February 2005 the District Prosecutor's Office decided to suspend the criminal investigation for failure to establish the identities of the perpetrators.

19. On 2 February 2006 the District Prosecutor's Office decided to resume the investigation and informed the applicant accordingly.

20. On 16 March 2006 the Chechnya MVD informed the applicant that they had examined her complaint about her son's murder.

21. On 29 June 2006 the Chechnya Prosecutor's Office informed the applicant, *inter alia*, that on 15 June 2006 they had overruled the decision to suspend the investigation, and that the investigators had been instructed to take certain investigating steps.

22. On 22 July 2006 the District Prosecutor's Office decided to suspend the criminal investigation for failure to establish the identities of the perpetrators and informed the applicant accordingly.

23. At the beginning of 2007 the applicant complained to the Russian Prosecutor General about the alleged ineffectiveness of the investigation into her son's murder. On 30 March 2007 the Prosecutor General's Office informed her that they were examining her complaint. It is unclear whether the applicant received any further response from the authorities.

2. Information submitted by the Government

24. On 19 November 2004 an operational search officer questioned Mr M.S. (also referred to as B.S. in the document submitted), an officer from the PPSM unit, who stated that earlier on that day he had been patrolling the streets in the vicinity of 'Musa Motors' service station when

he had heard automatic gunfire. He had run to the place and there found a group of about thirty armed men in camouflage uniforms, who were driving around in more than ten cars and introduced themselves as OMON officers conducting a special operation.

25. On 20 November 2004 an operational search officer from the Leninskiy district department of the interior of Grozny (the ROVD), lieutenant colonel B. questioned Mr S.M., an employee of 'Musa Motors' service station. His statement concerning the events was similar to the one given by officer M.S. on 19 November 2004.

26. On 19 or 20 November 2004 an operational search officer questioned private M.K., the colleague of Kh.-A. Akhmadov, who stated that in the evening of 19 November 2004, next to 'Musa Motors' service station they had been stopped by a group of thirty armed men in camouflage uniforms, some of whom had been masked. The men had beaten him up and taken away his service gun. They had shot Kh.-A. Akhmadov; M.K. had taken him to town hospital no. 9 in Grozny.

27. On 20 November 2004 lieutenant colonel B. filed an official report concerning the circumstances of the wounding of patrolling officer Kh.-A. Akhmadov. According to the document, the applicant's son had been shot by a group of about thirty men in camouflage uniforms, who had introduced themselves as police officers from the OMON of the Chechnya MVD who were carrying out a special operation. The OMON officers, who were driving around in ten to fifteen cars of VAZ-2121 ('Niva') and VAZ-21099 ('Zhiguli') models, had taken away the service guns of Kh.-A. Akhmadov and his colleague M.K.

28. On 20 November 2004 the investigators examined the crime scene, and collected forty-seven bullet casings left by the perpetrators of Kh.-A. Akhmadov's killing.

29. On 26 November 2004 the Leninskiy District Prosecutor's Office opened criminal case no. 30139 in connection with the killing of the applicant's son.

30. On 15 December 2004 the Expert Evaluations Bureau (the Bureau) of the Chechnya MVD informed the investigators that traces on three of the bullet casings collected from the crime scene in case no. 30112 matched the traces on three of the bullet casings collected from the crime scene in criminal case no. 30139, which meant that these bullets must have been fired from the same gun. On the basis of this finding the investigations concerning the two criminal cases were joined and the criminal case was given the joint number 30112 (see paragraph 44 below).

31. On 23 December 2004 the investigators questioned Mr M.S., who reiterated his statement of 19 November 2004 (see paragraph 24 above) and added that the perpetrators' vehicles had been white and silver, and had had blackened windows.

32. On 27 December 2004 the investigators again questioned officer M.S., who stated that on 19 November 2004 he and his five colleagues had been patrolling the area next to 'Musa Motors' service station when they had heard gunfire. In about ten minutes they had arrived at the place of the shooting. There they had found a group of about thirty armed men in camouflaged uniforms who had informed them that they were from the OMON, and in the process of carrying out a special operation. These men, who had beaten up private M.K. and had killed patrolling officer Kh.-A. Akhmadov, had been driving around in nine or ten VAZ 'Niva' and 'Zhiguli' model silver and white cars.

33. On 17 January 2005 the investigators again questioned Mr S.M., an employee of 'Musa Motors' service station, who stated that on 19 November 2004 he had been at work when a group of twenty to thirty VAZ-2109 ('Zhiguli') and VAZ-2121 ('Niva') vehicles had arrived at the station. The armed men, who had been riding in the cars, had been in camouflage uniforms and masks; they had ordered Mr S.M. to stay inside and he had obeyed. About half an hour later he had heard gunfire and had heard men screaming in Chechen that someone had to be put in a car. Later on Mr S.M. had learnt that the armed men had wounded a patrolling police officer.

34. On 18 January 2005 the investigators again questioned private M.K., who stated that in the evening of 19 November 2004 he had been driving with his colleague Mr Kh.-A. Akhmadov, when their car had been stopped next to the 'Musa Motors' service station by a group of about thirty armed men in camouflage uniforms and masks. The men had checked his service identity card and had taken away his service gun; then they had shot the applicant's son and had also taken away his service identity card and gun.

35. On 19 January 2005 the applicant was granted victim status in the criminal case and questioned. She stated, among other things, that the head of the PPMS battalion had told her at her son's funeral that the latter had been killed by mistake by members of law-enforcement agencies.

36. On 31 January 2005 the Chechnya Department of the Federal Security Service (the FSB) informed the investigators that they had not conducted any special operations in Grozny on 19 November 2004.

37. On 4 February 2005 the investigators requested that the head of the PPMS battalion provide them with the two service guns which had been taken away from the applicant's son and his colleague on 19 November 2004 and which 'had been recovered as a result of operational search measures taken by the heads of the PPMS battalion'. According to the request, the guns were needed in order to 'take investigative steps'.

38. On the same date, 4 February 2005, the head of the PPMS battalion provided the investigators with the guns as requested.

39. On 22 February 2005 the investigators questioned the deputy head of the PPMS battalion, officer L.B., who stated that at some point the two

service guns which had been taken away by the perpetrators of Kh.-A. Akhmadov's killing had been planted by someone at night in the battalion's premises. According to officer L.B., the perpetrators of the killing must have been working for law-enforcement agencies, as regular criminals or members of illegal armed groups would have kept the guns for themselves. The officer who had found the planted guns had died at some point later as a result of a bomb explosion.

40. On 25 February 2005 the investigators ordered a ballistic expert evaluation of the two service guns which had been taken away and then returned by the perpetrators of Kh.-A. Akhmadov's killing.

41. On 26 February 2005 the investigation in the criminal case was suspended for failure to identify the perpetrators.

42. On 5 March 2005 the experts reported their findings, according to which both guns were in working condition.

43. On 2 February 2006 the supervising prosecutor overruled the decision to suspend the investigation as premature and unsubstantiated, and ordered that the investigators take a number of steps. In particular, the investigators were to question again the key witnesses and to clarify the circumstances of the discovery of the guns which had been taken by the perpetrators of the applicant's son's killing.

44. On 2 February 2006 the investigators joined the investigation of criminal case no. 30112, which had been opened in September 2004 by the Leninskiy District Prosecutor's Office in connection with an attack against a group of five policemen perpetrated by unidentified culprits who had opened gunfire on the police car, and of criminal case no. 30139 opened in connection with the applicant's son's killing. The decision was taken on the basis of the match between traces on the bullet cartridges recovered from both crime scenes, which signified that the same firearm had been used during the commission of both crimes.

45. On 3 February 2006 the investigators again questioned the applicant, who reiterated her previous statement (see paragraph 35 above) and stated, among other things, that according to her son's colleagues, his murder had been perpetrated by members of law-enforcement agencies, who had committed it by mistake; and that on 22 November 2004 three of her son's supervisors had visited her house, and had brought her her son's service gun and his service identity card.

46. On 16 February 2006 the investigators again questioned private M.K. A copy of his statement was not furnished to the Court.

47. On 27 February 2006 the investigators questioned an officer from the PPSM, Mr A.K. A copy of his statement was not furnished to the Court.

48. On 2 March 2006 the investigation of the criminal case was suspended for failure to identify the perpetrators.

49. On 14 June 2006 the supervising prosecutor overruled the decision to suspend the investigation as premature and unsubstantiated, and ordered

that the investigators take a number of steps, such as the questioning of witnesses, the ordering of expert evaluations, and the clarification of the circumstances of the discovery of the guns which had been taken by the perpetrators of the applicant's son's killing.

50. On 21 July 2006 the investigators questioned the deputy head of the PPSM battalion, Mr S.D. He stated that he had learnt from an unidentified source that the applicant's son had been killed by servicemen from the 'Oil Battalion', who had subsequently brought his service gun and service identity documents to the head of the PPSM battalion and had explained to the latter that they had killed Kh.-A. Akhmadov by mistake, having taken him for a member of an illegal armed group.

51. On 22 July 2006 the investigation of the criminal case was again suspended for failure to identify the perpetrators.

52. On 2 November 2009 the supervising prosecutor overruled the decision to suspend the investigation as premature and unsubstantiated, and ordered that the investigators take a number of steps, including the following: identifying and questioning the persons who had told the applicant that her son had been killed by mistake; questioning additional eye-witnesses to the events of 19 November 2004 at the service station, namely Mr Kh.Kh., Mr L-A.B., Mr I and Mr Z.; establishing the owners of the vehicles used by the perpetrators of Kh.-A. Akhmadov's killing; and questioning the head of the PPSM battalion, officer S.R., who had told the applicant that her son had been killed by servicemen under the command of officer A.M. From the materials submitted to the Court, it appears that these orders have not been complied with.

53. On 11 November 2009 the investigation in the criminal case was resumed following the Prosecutor's orders.

54. On various dates between 26 November 2004 and 17 November 2009 the investigators forwarded requests for information to various law-enforcement agencies, asking them to provide information and assistance in establishing the witnesses to the events.

55. On 11 March 2010 the investigation in the criminal case was again suspended for failure to identify the perpetrators.

56. The investigation failed to establish the perpetrators of Khozh-Akhmed Akhmadov's killing, but the proceedings were still in progress at the time the application was lodged.

57. Upon specific request by the Court, the Government disclosed the 'the full contents of criminal case file no. 30112' which was 423 pages long.

II. RELEVANT DOMESTIC LAW

58. For a summary of the relevant domestic law see the Court's judgment in the case of *Akhmadova and Sadulayeva v. Russia* (no. 40464/02, §§ 67-69, 10 May 2007).

THE LAW

I. ISSUE CONCERNING THE EXHAUSTION OF DOMESTIC REMEDIES

A. The parties' submissions

59. The Government submitted that the investigation into the killing of Khozh-Akhmed Akhmadov had not yet been completed. They further argued, in relation to the complaint under Article 13 of the Convention, that it had been open to the applicant to lodge court complaints about any acts or omissions on the part of the investigating authorities. Moreover, she could have applied for civil compensation.

60. The applicant contested the Government's submission. She stated that the only available remedy, the criminal investigation, had proved to be ineffective. In particular, she pointed out that the authorities had failed to provide her with information concerning the progress of the investigation, which precluded her from appealing against the investigation's decisions and that she had not been obliged to claim civil compensation in the domestic courts.

B. The Court's assessment

61. The Court will examine the arguments of the parties in the light of the provisions of the Convention and its relevant practice (for a relevant summary, see *Estamirov and Others v. Russia*, no. 60272/00, §§ 73 and 74, 12 October 2006).

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

63. As regards a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-21, 24 February 2005, and *Estamirov and Others*, cited above, § 77). In the light of the above, the Court confirms that the applicant was not obliged to pursue civil remedies. The Government's objection in this regard is thus dismissed.

64. As regards criminal-law remedies, the Court observes that the applicant complained to the law-enforcement authorities after the killing of

Khoz-Akhmed Akhmadov, and that an investigation has been pending since 26 November 2004. The applicant and the Government dispute the effectiveness of the criminal investigation.

65. The Court considers that the Government's objection raises issues concerning the effectiveness of the investigation which are closely linked to the merits of the applicant's complaints. Thus, it decides to join this objection to the merits of the case and considers that the issue falls to be examined below.

II. COURT'S ASSESSMENT OF THE EVIDENCE AND THE ESTABLISHMENT OF THE FACTS

A. The parties' arguments

66. The applicant maintained that it was beyond reasonable doubt that the men who had killed her son, Khozh-Akhmed Akhmadov, had been State agents. In support of her complaint, she referred to the statements given by the PPSM battalion officers L.-A.B. and S.D. to the investigators, according to which Khozh-Akhmed Akhmadov's service gun and his identity documents had been returned to the officers by servicemen from the 'Oil Battalion'. In addition, a number of other witnesses had stated that the perpetrators had introduced themselves as servicemen of that particular regiment. Furthermore, the authorities had not disputed the circumstances of the incident, and had failed to provide a plausible explanation as to the perpetrators' identities. The applicant further contended that the authorities had failed to promptly investigate the matter and that the investigation had been plagued by inexplicable omissions and delays.

67. The Government submitted that Khozh-Akhmed Akhmadov had been killed by unidentified men. They further contended that the investigation into the incident was still pending, that there was no evidence that the perpetrators had been State agents, and that therefore there were no grounds for holding the State responsible for the alleged violations of the applicant's rights.

B. The Court's assessment of the facts

68. The Court notes that it is undisputed by the parties that Khozh-Akhmed Akhmadov was shot on 19 November 2004 and subsequently died in hospital. The applicant alleged that his murder had been committed by State agents. The Government denied any involvement of State agents in the crime. However, they did not provide any specific material to rebut the applicant's allegations to the contrary. In such a situation the Court has stressed that the evaluation of the evidence and the

establishment of the facts is a matter for the Court, and it is incumbent on it to decide on the evidentiary value of the documents submitted to it (see *Çelikbilek v. Turkey*, no. 27693/95, § 71, 31 May 2005).

69. The Court notes that the applicant's allegations that servicemen were responsible for her son's killing are supported by a number of witness statements, including those of the policemen M.S. and M.K., who had witnessed the events (see paragraphs 24, 26 and 32 above) and the superior officers from the applicant's son's police patrolling unit, L.B. and S.D. (see paragraphs 39 and 50 above). The Court also observes that at the material time the area in question was under the full control of the authorities. Therefore, it is highly improbable that a large group of armed men in uniforms and masks in at least ten vehicles, which had been able to introduce themselves as a police unit conducting a special operation and to subsequently freely open gunfire, could have driven around unbeknown to the authorities.

70. The Court reiterates that the evidentiary standard required for the purposes of the Convention is proof "beyond reasonable doubt", and that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the applicant makes out a prima facie case, it is for the Government to provide a satisfactory and convincing explanation as to how the events in question occurred. The burden of proof is thus shifted to the Government and if they fail in their arguments, issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II).

71. Taking into account the above elements, the Court is satisfied that the applicant has made out a prima facie case that Khozh-Akhmed Akhmadov was killed by State agents. The Government's statement that the investigation did not find any evidence to support the involvement of servicemen in the crime is insufficient to discharge them from the above-mentioned burden of proof.

72. Accordingly, the Court finds that the evidence available permits it to establish to the requisite standard of proof that the death of the applicant's son can be attributed to the State.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

73. The applicant complained under Article 2 of the Convention that her son had been deprived of his life by State servicemen, and that the domestic authorities had failed to carry out an effective investigation into the matter. Article 2 reads as follows:

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

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

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

A. The parties’ submissions

74. The Government contended that the application should be rejected as manifestly ill-founded, as the domestic investigation had not found any evidence of State servicemen’s involvement in the killing of Khozh-Akhmed Akhmadov. The Government further stated that the investigation into the matter had met the Convention requirement of effectiveness, as all possible measures available under national law had been taken in an attempt to identify the culprits.

75. The applicant argued that Khozh-Akhmed Akhmadov had been killed by State servicemen, and that the investigation into the matter had not met the effectiveness and adequacy requirements laid down in the Court’s case-law.

B. The Court’s assessment

1. Admissibility

76. The Court considers, in the light of the parties’ submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Furthermore, the Court has already found that the issue of the effectiveness of the investigation should be joined to the merits of the complaint (see paragraph 65 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) The alleged violation of the right to life of Khozh-Akhmed Akhmadov

77. The Court has already found that the death of the applicant’s son can be attributed to the State. In the absence of any justification put forward by the Government, the Court finds that there has been a violation of Article 2 of the Convention in respect of Khozh-Akhmed Akhmadov.

(b) The alleged inadequacy of the investigation into the killing

78. The Court has on many occasions stated that the obligation to protect the right to life under Article 2 of the Convention also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. It has developed a number of guiding principles to be followed for an investigation to comply with the Convention's requirements (for a summary of these principles see *Bazorkina v. Russia*, no. 69481/01, §§ 117-19, 27 July 2006)

79. In the present case, the killing of Khozh-Akhmed Akhmadov was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

80. The Court notes that the authorities were immediately made aware of the incident (see paragraph 24 above) and that the criminal investigation into the killing was instituted on 26 November 2004 (see paragraph 29 above). From the documents submitted it appears that from the very beginning of the proceedings, as early as 20 November 2004, the investigators were officially informed about the alleged involvement of law-enforcement officers in the killing of the applicant's son (see paragraph 27 above). However, it does not appear that the investigators took any steps to examine this allegation or to elucidate the circumstances of the shooting. Furthermore, as it appears from the official witness statements, the applicant informed the investigators about her son's killing by law-enforcement officers 'by mistake' in January 2005, but the investigators failed to follow up on this information and to verify the circumstances of the recovery of the service guns and of Khozh-Akhmed Akhmadov's service identity documents, despite the supervising prosecutors' orders to this end (see paragraphs 35, 43, 45, 49 and 52 above). It is also noteworthy that the investigators, despite having obtained witness statements from Khozh-Akhmed Akhmadov's superiors concerning the possible involvement of law-enforcement officers in the incident (see paragraphs 39 and 50 above), failed to verify this information. Moreover, the Court notes that, as can be seen from the orders of the supervising Prosecutor's Office, the investigators also failed to take such basic steps as questioning key witnesses or establishing the owners of the vehicles used by the perpetrators (see paragraph 52 above). It is obvious that these investigative measures, if they were to produce any meaningful results, should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation commenced. Such delays, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Öneriyıldız v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII).

81. The Court also notes that even though the applicant was granted victim status in the criminal proceedings, she was only informed of the suspension and resumption of the proceedings, and not of any other significant developments. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next-of-kin in the proceedings.

82. Finally, the Court notes that the investigation was suspended and resumed on numerous occasions and that there were lengthy periods of inactivity on the part of the investigators in which no proceedings were pending. The supervising authorities criticised the deficiencies in the proceedings and ordered remedial measures. It appears that their instructions were not complied with.

83. The Government argued that the applicant could have sought judicial review of the decisions of the investigating authorities in the context of the exhaustion of domestic remedies. The Court observes that the applicant, having no access to the case file and not being properly informed of the progress of the investigation, could not have effectively challenged the acts or omissions of the investigating authorities before a court. Furthermore, the Court emphasises in this respect that while the suspension or reopening of proceedings is not in itself a sign that the proceedings are ineffective, in the present case the decisions to suspend were made without the necessary investigative steps having been taken, which led to numerous periods of inactivity and thus unnecessary protraction. Moreover, owing to the time that had elapsed since the events complained of, certain investigative measures that ought to have been carried out much earlier could no longer usefully be conducted. Therefore, it is highly doubtful that the remedy relied on would have had any prospects of success. Accordingly, the Court finds that this remedy was ineffective in the circumstances and dismisses the preliminary objection as regards the applicant's failure to exhaust domestic remedies within the context of the criminal investigation.

84. In the light of the foregoing, the Court holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the death of Khozh-Akhmed Akhmadov, in breach of Article 2 of the Convention in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

85. The applicant complained that she had been deprived of an effective remedy in respect of the above-mentioned violation, contrary to Article 13 of the Convention, which provides as follows:

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

A. The parties' submissions

86. The Government contended that the applicant had had effective remedies at her disposal, as required by Article 13 of the Convention, and that the authorities had not prevented her from using them.

87. The applicant reiterated her complaint in this regard.

B. The Court's assessment

1. Admissibility

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

2. Merits

89. The Court reiterates that in circumstances where, as in the present case, a criminal investigation into a murder has been ineffective and the effectiveness of any other remedy that might have existed has consequently been undermined, the State has failed in its obligations under Article 13 of the Convention (see *Khashiyev and Akayeva*, cited above, § 183).

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

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

91. 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

92. In general terms and without substantiating the claim, the applicant claimed damages in respect of the loss of her son's earnings after his death.

93. The Government submitted that the applicant's claim should be rejected as unsubstantiated.

94. Under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing, together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”.

95. In the absence of any documents substantiating the claim, the Court makes no award under this head.

B. Non-pecuniary damage

96. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage for the suffering she had endured as a result of the loss of her son and the authorities' failure to effectively investigate his murder.

97. The Government submitted that the amount of the award should be calculated on an equitable basis.

98. The Court has found a violation of Articles 2 and 13 of the Convention on account of the killing of the applicant's son and the authorities' failure to effectively investigate the matter. The Court thus accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards to the applicant EUR 60,000, plus any tax that may be chargeable thereon.

C. Costs and expenses

99. The applicant submitted a claim for the costs and expenses incurred in connection with her application, leaving the determination of its amount to the Court. She did not enclose any documents to substantiate the claim.

100. The Government contested the claim as unsubstantiated.

101. In the absence of any documents substantiating the claim, the Court makes no award under this head.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection issue as to the non-exhaustion of criminal domestic remedies and rejects it;
2. *Declares* the application admissible;

3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Khozh-Akhmed Akhmadov;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances surrounding the killing of Khozh-Akhmed Akhmadov;
5. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
6. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the amount of EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicant. The amount is to be converted into Russian roubles at the date of settlement;
 - (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;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President