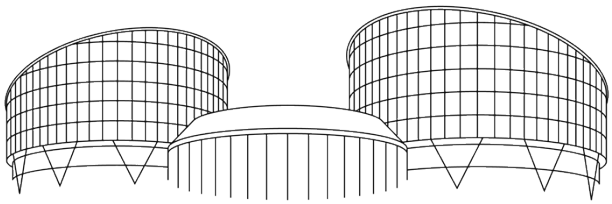

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SABANCHIYEVA AND OTHERS v. RUSSIA

(Application no. 38450/05)

JUDGMENT

STRASBOURG

6 June 2013

FINAL

06/09/2013

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

In the case of Sabanchiyeva 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. 38450/05) 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 fifty Russian nationals (listed in the attached annex) on 26 October and 15 November 2005.

2. The applicants were represented before the Court by Mrs D. I. Straisteanu, Mrs N. Maltseva, Mrs E. Yezhova and Mr A. Nikolayev, lawyers from Stichting Russian Justice Initiative, Moscow, and Mrs L. Dorogova, a lawyer practising in the town of Nalchik. 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. The applicants alleged, in particular, that the circumstances of identification of their deceased family members had been inhuman and degrading and that the decision not to return the bodies of these persons to their families had been unlawful and disproportionate, in breach of Articles 3, 8 and 9, taken alone and in conjunction with Articles 13 and 14 of the Convention.

4. By a decision of 6 November 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

A. The attack of 13 October 2005

6. Early in the morning of 13 October 2005 law-enforcement agencies in the town of Nalchik, in the Republic of Kabardino-Balkariya, were attacked by a number of heavily armed persons, who appear to have been local insurgents. The agencies included the Republican Department of the Ministry of the Interior, Centre T. of the Main Department of the Ministry of the Interior, various district departments of the Ministry of the Interior, the Special Purpose Police Unit of the Republican Ministry of the Interior, various checkpoints of the Traffic Police, the Republican Department of the Federal Security Service, the Republican Department of the Federal Service for the Execution of Penalties, the office of the Border Guard Service of the Federal Security Service and a few privately owned weapons shops. According to the Government, there were over two hundred and fifty participants in the attack.

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

B. The family links of the applicants and the deceased

8. The applicants submitted that they were relatives of participants in the attack who died on 13 and 14 October 2005 or shortly afterwards (see the annex listing the applicants' family connections to the deceased persons).

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

10. According to the nineteenth applicant's initial statement, the deceased Mr Ruslan Borisovich Tamazov was her husband. She later changed this submission, stating that they were not officially married but had lived together since February 2005. At the time of the events in October 2005 she was eight months pregnant. The nineteenth applicant has submitted a copy of a birth certificate issued on 9 July 2008 in the name of

S.T., born on 8 December 2005. The certificate names Mr Ruslan Borisovich Tamazov as the girl's father and the nineteenth applicant as her mother.

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

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

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

14. In their observations on the admissibility of the case, the Government stated that the authorities had killed a total of ninety-five insurgents in the anti-terrorist operations mounted in response to the attack of 13 October 2005.

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

C. Criminal case no. 25-78-05

1. Decision to initiate proceedings of 13 October 2005

16. It appears that on 13 October 2005 the authorities instituted criminal proceedings no. 25-78-05 in connection with the attack in Nalchik.

17. In the course of the investigation it was established that between 1999 and February 2005 a group of individuals, including A. Maskhadov, Sh. Basayev, I. Gorchkhanov, A. Astemirov, Abu-Valid Khattab and Abu-Dzeit, had formed a terrorist group. It was this group that organised the attack. Thirty-five law-enforcement officers and fifteen civilians were killed, whilst one hundred and thirty-one law-enforcement officers and ninety-two civilians were injured. Massive damage was done to property.

18. The applicants did not have any procedural status in the criminal proceedings in case no. 25-78-05.

2. The applicants' letters to the authorities in the initial stages of the investigation

19. Immediately following the attack, on 13, 20, 21 and 25 October 2005 an unspecified number of persons (including some of the applicants) signed

collective petitions requesting various officials, including the prosecutors, to return the bodies for burial.

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

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

3. Decisions not to prosecute insurgents killed in the attack, dated 13-14 April 2006

22. On 13-14 April 2006 the investigation authority terminated the criminal proceedings in respect of the ninety-five deceased insurgents on account of their deaths. An individual decision had been taken in respect of each of them, describing the degree and character of their individual involvement and concluding that these persons had taken part in the attack and died as a result of the ensuing fight. It appears that the deceased referred to by the applicants were among those concerned by this decision.

23. The Prosecutor General's Office notified the applicants of the above decisions on 14 April 2006, but no copies of the decisions in question were attached to the notifications.

24. Some of the applicants applied to the domestic courts in connection with the authorities' failure to provide them with copies of the decisions of 13-14 April 2006. As a result of the proceedings, most of these applicants were furnished with a copy of the relevant decision. However, they were refused standing to take part in the criminal proceedings against the deceased as their official representatives or to have the deceased's personal belongings returned to them.

25. In the Strasbourg proceedings the Government submitted copies of the decisions of 13-14 April 2006 in respect of each of the applicants' relatives.

4. Decision not to return the bodies of the deceased to their families, dated 15 May 2006

26. According to the Government, ninety-five corpses of the presumed terrorists were cremated on 22 June 2006. According to the applicants' submissions, it appears that they first learned of the cremations from the Government's observations in the present case.

27. According to the Government, the cremations took place pursuant to a decision not to return the bodies of the deceased to their families, dated 15 May 2006. In contrast to the individual decisions of 13-14 April 2006,

the decision of 15 May 2006 referred to the deceased persons collectively. The decision stated, in particular:

> "... the head of investigation group ... [official S.], having examined the materials in case file no. 25-78-05, established: ... [that] in the course of the counter-terrorist special operation aimed at tackling the attack, 95 terrorists were eliminated, namely:
>
> [The decision names among the deceased all of the persons referred to by the applicants, see the list in the annex.]
>
> At present all forensic expert examinations, including molecular genetic examinations, involving ... the corpses of the deceased terrorists, have been finalised and their identities have been established by way of proper procedure.
>
> By decisions of 13-14 April 2006 the criminal proceedings in respect of these 95 persons, who had committed ... the attack on various sites and law-enforcement agents of the town of Nalchik ... were discontinued on account of their deaths, under Article 27 part 1 subpart 2 and Article 24 part 1 subpart 2 of the Code of Criminal Procedure.
>
> Pursuant to section 14(1) of the Federal Interment and Burial Act (Law no. 8-FZ): "persons against whom a criminal investigation concerning their terrorist activities has been closed on account of their death following interception of the said terrorist act shall be interred 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 disclosed."
>
> Pursuant to part 3 of Decree no. 164, "On interment of persons whose death was caused by the interception of terrorist acts carried out by them", approved by the Government of the Russian Federation on 20 March 2003, "the interment of [these] persons shall take place in the locality where 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 ..."
>
> [In view of the above, official S. decided to:]
>
> 1. bury the bodies of the 95 terrorists ...;
>
> 2. forward the decision to the President of the Republic of Kabardino-Balkariya for execution;
>
> 3. inform [his superiors] of this decision".

28. The Government alleged that the authorities had notified the applicants of the decision of 15 May 2006, but acknowledged that no copy of that decision had been provided to them.

29. It appears that on several occasions the Prosecutor General's Office informed the applicants, in substance, of the refusal to return the bodies. It does not appear that the applicants were furnished with a copy of the decision of 15 May 2006.

30. The applicants submitted that they had first obtained a copy of the decision of 15 May 2006 in May 2007, along with the Government's observations on the admissibility of the case. They also indicated that they had learned about the cremation of the corpses of their deceased relatives in September 2007 (see paragraph 26 above).

5. The applicants' attempts to bring court proceedings in respect of these two decisions

31. The applicants' initial attempts to obtain judicial review of the decisions of 13-14 April and 15 May 2006 were unsuccessful, as the courts refused to examine their arguments.

(a) Proceedings before the Constitutional Court

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

33. On 28 June 2007 the Constitutional Court delivered a judgment (no. 8-P) in which, in essence, it rejected their complaints alleging that section 14(1) of the Interment and Burial Act and Decree no. 164 of the Government of the Russian Federation of 20 March 2003 were unconstitutional. 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, in preventing terrorism in general and specific terms and in 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 on account of their death following 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 certain 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. ...”

34. The ruling further noted that the application of the measures prescribed in the legislation could be regarded as justified if proper procedural safeguards, such as effective judicial review, were in place to protect individuals from arbitrariness. The court noted that Articles 123-127 of the Code of Criminal Procedure provided for such review (see paragraph 87 below).

35. In sum, the Constitutional Court upheld the impugned provisions as being in conformity with the Constitution but at the same time interpreted them as requiring that the authorities refrain from burying bodies unless a court had 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 ... and of the time, location and cause of death...”

36. 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 are entitled 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 multi-ethnic society, transmitted from generation to generation. ..."

37. 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. ..."

(b) Subsequent proceedings

38. After the Constitutional Court's judgment of 28 June 2007 the domestic courts apparently changed their approach and agreed to review the formal lawfulness of the decisions of 13-14 April and 15 May 2006.

39. Three applicants (nos. 12, 21 and 33) were able to obtain a copy of the decisions of 13-14 April 2006 concerning their deceased relatives, but

did not pursue any proceedings in this connection or in connection with the decision of 15 May 2006.

40. Fifteen applicants (nos. 1, 2, 4, 8, 18, 25, 26, 32, 34, 35, 37, 39, 42, 43 and 44) did not claim or receive a copy of the decisions of 13-14 April 2006 and did not institute proceedings in connection with any of the decisions in this case.

41. The remaining applicants, with the exception of three (nos. 39, 42 and 43) obtained a copy of the decisions of 13-14 April 2006 concerning their relatives and brought court proceedings to contest them.

42. Seven applicants (nos. 3, 15, 17, 30, 38, 41 and 49; see table 1 in the annex), after a few sets of proceedings, obtained a favourable judgment, issued at final instance by the Supreme Court of the Republic of Kabardino-Balkariya, which quashed both the decisions of 13-14 April 2006 and the decision of 15 May 2006 as unlawful. In respect of the decisions of 13-14 April 2006, the court noted that these decisions had failed to take account of the recent amendments to Article 205 of the Criminal Code (see paragraph 76 below) and remitted the case to the investigating authority for fresh examination. The decision of 15 May 2006 was quashed in so far as it relied on the decisions of 13-14 April 2006 and also because it had not been taken by a competent official. According to the applicants, these judgments remained without enforcement.

43. It appears that the domestic courts subsequently changed their position in connection with the requirement to take account of the amendments to Article 205 of the Criminal Code and began quashing the decisions by way of supervisory review (see paragraph 45 below).

44. Nineteen applicants (nos. 5, 6, 9, 10, 11, 13, 14, 16, 19, 20, 22, 24, 27, 28, 31, 40, 45, 46, 50; see table 2 in the annex), after several sets of proceedings, obtained a favourable judgment, issued at final instance by the Supreme Court of the Republic of Kabardino-Balkariya. These judgments concerned only the decisions of 13-14 April 2006, and quashed them as unlawful. The court noted that the decisions failed to take account of the recent amendments to Article 205 of the Criminal Code and remitted the case to the investigating authority for fresh examination. These applicants did not apparently bring separate proceedings in respect of the decision of 15 May 2006. According to the applicants, the judgments remained without enforcement.

45. According to the information submitted by the Government in connection with the proceedings brought by the thirteenth applicant, a fresh examination of the case in the lower courts resulted in a final decision of 3 November 2007 upholding the decision of 13-14 April 2006 in full.

46. In the domestic proceedings three applicants (nos. 7, 23 and 47; see table 3 in the annex) were expressly denied a copy of the decisions of 13-14 April 2006 concerning their deceased relatives and, as a result, the competent courts were unable to review the lawfulness of the decisions of

13-14 April and 15 May 2006. The Supreme Court of the Republic of Kabardino-Balkariya specifically stated in their respective judgments that the investigating authority had unlawfully refused to furnish the applicants and the courts with a copy of the decisions of 13-14 April 2006 and to provide access to the relevant case-file materials in respect of these applicants' deceased family members. In their submissions the respondent Government explained that the evidence collected by the investigation in respect of the deceased family members of the applicants in question had also been used in the criminal proceedings against the surviving participants in the attack, and that the refusal in question had been motivated by the need to preserve the integrity of these criminal proceedings.

47. Two applicants (nos. 29 and 36; see table 4 in the annex) obtained a copy of the decisions of 13-14 April 2006 in respect of their deceased relatives and unsuccessfully contested them in court. The Supreme Court of the Republic of Kabardino-Balkariya rejected their appeals and upheld the decisions as lawful. These applicants were subsequently successful in obtaining a favourable judgment from the same court, declaring the decision of 15 May 2006 unlawful because it had not been taken by a competent official.

48. The forty-eighth applicant, Mrs Oksana Nikolayevna Daova obtained a copy of the decisions of 13-14 April 2006 in respect of her brother Mr Valeriy Nikolayevich Tleuzhev and her husband Mr Zurab Nazranovich Daov and unsuccessfully contested them in court. By final judgments of 6 February 2007 and 8 July 2008 the Supreme Court of the Republic of Kabardino-Balkariya rejected her appeals in respect of her brother and husband respectively. It does not appear that she brought any court proceedings in respect of the decision of 15 May 2006.

49. The Government argued that the applicants could have obtained copies of the decisions of 13-14 April 2006 and relevant case-file documents whenever they wished.

50. The forty-eighth applicant indicated that only some of the applicants had been provided with such access.

D. The conditions of storage and identification of the bodies of the deceased following the attack of 13 October 2005

1. The applicants' initial account

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

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

53. The applicants produced a video recording in support of their submissions, apparently filmed inside refrigerator wagons and confirming that the bodies were naked and that some of them were piled on top of one another.

2. The Government's response of 6 December 2005

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

3. The Prosecutor General's letter of 14 April 2006

55. In response to a letter from the applicants requesting an explanation for the appalling storage conditions, the Prosecutor General's Office stated in a letter of 14 April 2006 that until a procedural decision in respect of the corpses had been taken they had been kept in specially equipped rooms, in refrigerated chambers set to the appropriate temperature. The authorities did not disclose the locality where the bodies were stored.

4. The Government's observations on the storage of the bodies

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

5. The applicants' observations on the identification of the bodies

57. There is no information in the applicants' submissions which could confirm the participation of four applicants, nos. 2, 8, 26 and 32, in the relevant identification procedure.

58. Thirteen applicants (nos. 4, 5, 6, 11, 14, 16, 30, 33, 36, 41, 44, 46 and 50) did not participate in the identification procedure in person because the relevant corpses were identified by someone else.

59. The remaining thirty-three applicants (nos. 1, 3, 7, 9, 10, 12, 13, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 31, 34, 35, 37, 38, 39, 40, 42, 43, 45, 47, 48 and 49) submitted hand-written statements confirming their personal participation in the identification procedure (see table 5 in the annex).

60. According to the applicants, they had access to the bodies both in the Nalchik town morgue and in two refrigerator wagons parked on a plot of land belonging to the Ministry of the Interior. Provision of access to the bodies was random, as not everyone who wanted to take part in the identification process was admitted. In some cases the provision of access was not properly documented.

61. Since the provision of access was limited, the relevant facilities were usually surrounded by crowds of relatives of the deceased.

6. The Government' further observations on the identification of the bodies

62. The Government partly disputed the applicants' submissions. They referred to the protocols of identification, confirming that all four applicants listed in paragraph 57 and the forty-forth applicant, Mrs Lyubov Mikhaylovna Gonibova, had taken part in the identification. They contested the personal participation in the identification procedure of the ninth (Mrs Anzhelika Yuryevna Arkhestova), the seventeenth to the twentieth applicants (Mr Betal Muradinovich Kerefov, Mr Magomed Khassimovich Attoyev, Mrs Zhanna Fyodorovna Ifraimova and Mrs Aysha Ismailovna Chagiran) and the thirty-ninth applicant (Mr Karalbi Masadovich Amshokov). They confirmed the participation of the remaining applicants listed in paragraph 59 above.

63. In the Government's submissions all corpses had been initially held in the Nalchik morgue. Between 14 and 18 October 2005 the applicants examined the corpses and the clothing. From 19 October 2005 the bodies were placed in two refrigerator wagons. On 1 November 2005 the wagons were moved to the town of Rostov-on-Don for molecular genetic examinations and on 22 June 2006 all of the bodies were cremated. Between 13 and 22 October 2005 the person in charge of the identification procedure was the head of the investigation group, investigator P. From 22 October 2005 he was replaced by investigator S.

64. According to the Government's most recent submissions, the overall number of human casualties as a result of the events of 13 October 2005 was twelve civilians, thirty-five police and law-enforcement officers and eighty-seven participants in the attack.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant provisions of the Interment and Burial Act

65. 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 person's body (or its remains) 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 containing the 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 the storage of urns containing the deceased's ashes..., 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 deceased) 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/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 the 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 enjoy the following guarantees:

(1) the issuance of documents necessary for interment of a deceased within one day of the cause of death being 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

66. 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."

67. 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."

68. 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 to cause 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."

69. 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

70. 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)).

71. Shortly after the attack, on 11 December 2002, Russia enacted 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."

72. On the same date Russia also enacted changes (FZ - no. 170) to the Interment and Burial Act by adding section 14(1), which states:

> "Persons against whom a criminal investigation concerning their terrorist activities has been closed on account of their death following interception of the said terrorist act shall be interred 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 disclosed."

73. Decree no. 164 of the Government of the Russian Federation of 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 conducted by them:

> "... 3. Interment of [these] persons shall take place in the locality where 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 the 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 conducting 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 conducting 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. 16-P of the Constitutional Court dated 14 July 2011

74. On 14 July 2011 the Constitutional Court of the Russian Federation examined a complaint lodged by two individuals challenging the constitutionality of Article 24 part 1 sub-part 4 (Grounds for a decision refusing to institute or to discontinue criminal proceedings) and Article 254 part 1 (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 the 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:

"... 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 [who were not pronounced guilty of an offence] cannot be viewed as guilty – 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 person) [the authority] also stops the process of proving his or her guilt, but in so doing the accusation or suspicion is not 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 a 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 did not provide that [the relatives of the deceased person in respect of whom the criminal case was discontinued] had any rights which would allow them to protect the rights of their deceased relative who was formerly accused. Since the interested persons, and primarily the close relatives of the deceased, are not permitted 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 [securing] his or her rehabilitation should take place through 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 ..."

E. Relevant provisions of the Criminal Code

75. Article 105 ("Murder") of the Criminal Code, as in force at the relevant time, provides:

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

76. Article 205 ("Terrorism") of the Criminal Code, as in force before the entry into force on 1 January 2007 of Federal Law no. 153-FZ of 27 July 2006, provides:

"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 ..."

77. The same Federal Law of 27 July 2006 renamed and amended Article 205 of the Criminal Code, which is now entitled "Terrorist act" and provides:

> "1. The commission of an explosion, arson or other action, creating public fear and a danger for people's lives, causing considerable pecuniary damage or other grievous consequences, with the aim of exerting pressure on decision-making by the authorities or international organisations, 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."

F. Relevant provisions of the Code of Criminal Procedure

78. 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.

79. Part 1 of Article 11 of the Code provides:

> "... 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."

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

81. Article 22 of the Code describes the status of a 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 ..."

82. 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. ..."

83. Article 27 of the Code also states:

"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] ..."

84. 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 criminal prosecution. There is no need to obtain anyone's consent in the event of that person's death.

85. 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 be entitled:

(4) to submit evidence;

(5) to make challenges and motions;

...

(8) to have 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 of 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:

"In criminal cases concerning crimes 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 or her close relatives."

86. Article 45 of the Code states:

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

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

87. 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 particularly in Articles 123-127 thereof:

Article 123: Right of appeal

"The actions (or inactions) 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 be entitled 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 verify 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]."

88. 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 in respect of 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. A decision not to institute criminal proceedings following verification of information concerning a crime that has been publicised in 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."

G. Relevant Resolutions of the Plenary Supreme Court of Russia

89. By Resolution no. 16 of 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 an individual as the victim does not depend on his age, physical or psychological condition. ...

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

90. By Resolution no. 17 of 29 June 2010 "On the practice of application by the courts of the norms governing the participation of a victim in criminal proceedings", which replaced in full 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

91. The applicants submitted that no other European country had a law on its statute book similar to section 14(1) of the Interment and Burial Act.

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

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

"6.7 The Committee has taken note of the author's claim that the authorities did not inform her about [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".

94. The applicants also relied on the judgment of the Inter-American Court of Human Rights of 15 June 2005 in the case of *Moiwana Village v. Suriname* (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."

95. 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 ...".

96. 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. THE GOVERNMENT'S PRELIMINARY OBJECTION

97. The Government submitted that the nineteenth applicant, Mrs Zhanna Fyodorovna Ifraimova, had no standing to complain about the events in this case with reference to the deceased Mr Ruslan Borisovich Tamazov. In support of their contention, they referred to a statement she had allegedly made in an interview with the authorities to the effect that she had lived with Mr Tamazov for just one month after February 2005. In the Government's view, this was insufficient to enable her to be considered to be related to Mr Tamazov. They insisted that the applicant and Mr Tamazov should have been officially married.

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

99. The Court notes firstly that, even despite the lack of an officially registered marriage between Mrs Ifraimova and Mr Tamazov, the domestic courts did not have any doubts regarding her standing in the proceedings with regard to the decisions of 13-14 April 2006 (see paragraph 44 above). Moreover, the applicant has produced a copy of the birth certificate, which essentially confirms her earlier allegations that she was indeed eight months pregnant during the events of October 2005 and that her daughter's father was the deceased Mr Tamazov (see paragraph 10 above). In such circumstances, the Court is satisfied that there existed a sufficient link between them for the purposes of Article 35 of the Convention and it has no reason to doubt her standing to bring this case before it.

100. In the light of the foregoing, the Court dismisses the preliminary objection. At the same time, the Court finds it necessary to take account of the arguments made by the Government concerning the character of the relations between the nineteenth applicant and Mr Tamazov in its assessment of the applicability of Article 8 of the Convention in the context of the decision of 15 May 2006 (see paragraph 119 below).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

101. The applicants complained about the conditions in which the bodies of their deceased relatives had been stored during the identification process. They were also dissatisfied with the circumstances of their personal participation in the identification process. According to the applicants, this treatment by the authorities caused them such mental suffering that it amounted to a breach of Article 3 of the Convention, which provides:

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

A. The submissions by the parties

102. The applicants maintained their complaints. They argued that the Government's list of the participants in the identification procedure was incomplete.

103. The Government disagreed. They submitted that following the events the corpses had first been sent to the Nalchik morgue, where they had been stripped and the clothes had been sent for forensic examination. Thereafter all the corpses had been placed in two refrigerated wagons equipped with all necessary storage facilities. Some time later the corpses were sent to the town of Rostov-on-Don for genetic examination. The Government acknowledged that immediately after the attack no facilities had been available to store the bodies and that it was this that had probably been referred to in the video-recording submitted by the applicants. The Government also mentioned that participation in the identification procedure had been voluntary.

B. The Court's assessment

1. General principles

104. The Court has observed on many occasions that Article 3 enshrines one of the fundamental values of democratic society. Even in the most difficult of circumstances, such as the fight against terrorism or organised crime, the Convention prohibits in absolute terms torture or inhuman or

degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of its Protocols, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 even in the event of a public emergency threatening the life of the nation (see, among other authorities, *Aksoy v. Turkey*, 18 December 1996, § 62, *Reports of Judgments and Decisions* 1996-VI). Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).

105. As regards complaints about moral suffering brought under Article 3 of the Convention by relatives of alleged victims of security operations carried out by the authorities, the Court has adopted a restrictive approach, stating that while a family member of a "disappeared person" can claim to be a victim of treatment contrary to Article 3 (see *Kurt v. Turkey*, 25 May 1998, §§ 130-34, *Reports* 1998-III), the same principle would not usually apply to situations where the person taken into custody has later been found dead (see, for example, *Tanlı v. Turkey*, no. 26129/95, § 159, ECHR 2001-III; *Yasin Ateş v. Turkey*, no. 30949/96, § 135, 31 May 2005; and *Bitiyeva and Others v. Russia*, no. 36156/04, § 106, 23 April 2009). In such cases the Court has normally limited its findings to Article 2. On the other hand, the Court has found a violation of Article 3 on account of mental suffering endured by applicants as a result of the acts of security forces who had burnt down their homes and possessions before their eyes (see *Selçuk and Asker v. Turkey*, 24 April 1998, §§ 77-80, *Reports* 1998-II; *Yöyler v. Turkey*, no. 26973/95, §§ 74-76, 24 July 2003; and *Ayder and Others v. Turkey*, no. 23656/94, §§ 109-11, 8 January 2004).

106. Finally, the Court reiterates its established case-law according to which allegations of ill-treatment must be supported by appropriate evidence (see, *mutatis mutandis*, *Klaas v. Germany*, 22 September 1993, § 30, Series A no. 269). To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, cited above, § 161).

2. The application of these principles

107. The parties agreed that between 14 and 18 October 2005 the bodies of those who died as a result of the events of 13-14 October 2005 were stored in the Nalchik town morgue and that from 19 to 31 October 2005 they were placed in two refrigerator wagons on the outskirts of Nalchik (see paragraphs 51-53 and 63 above). It is also undisputed that the overall

number of casualties resulting from the attack greatly exceeded the storage capacity of the relevant local facilities and that for the first four days some of the bodies had to be stored outside.

108. The Court has little doubt that in view of the conditions of storage of the bodies the applicants, as relatives of the deceased, may have endured mental suffering in this connection. This was even more so if they volunteered to participate in the identification procedure in person. According to the information available to the Court, at least thirty-eight applicants, nos. 1, 2, 3, 7, 8, 9, 10, 12, 13, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 34, 35, 37, 38, 39, 40, 42, 43, 44, 45, 47, 48 and 49, took part in the identification procedure in personal (see paragraphs 57-59 and 62).

109. The Court's task is to ascertain whether in view of the specific circumstances of the case that suffering had a dimension capable of bringing it within the scope of Article 3.

110. The Court would note, firstly, that the present case is different from the cases brought before the Court by family members of the victims of "disappearances" or extra-judicial killings committed by the security forces (see, for example, *Luluyev and Others v. Russia*, no. 69480/01, §§ 116-118, ECHR 2006-XIII (extracts)). The deaths of the relatives of the applicants in the present case did not result from actions by the authorities in contravention of Article 2 of the Convention (see the circumstances which resulted in death of the applicants' relatives, paragraphs 6 and 7 above, and compare to, for instance, *Esmukhambetov and Others v. Russia*, no. 23445/03, §§ 138-151 and 190, 29 March 2011). The applicants cannot be said to have been suffering from any prolonged uncertainty regarding the fate of their relatives, as the purpose of their voluntary participation in the identification process which took place shortly after the attack was precisely to locate the bodies of their relatives (see paragraph 63 above and compare to *Luluyev and Others*, cited above, §§ 116-118).

111. The Court further notes that the present case is also distinguishable from the Turkish cases concerning the deliberate destruction of property that the applicants were made to witness. In particular, in the case of *Selçuk and Asker* the Court had regard to the manner in which the applicants' homes had been destroyed, and namely to the fact that the exercise had been premeditated and carried out contemptuously and without respect for the feelings of the applicants, whose protests had been ignored (see *Selçuk and Asker*, cited above, § 77), and, with this in mind, found that the acts of the security forces had amounted to "inhuman treatment" within the meaning of Article 3 of the Convention. A similar line of reasoning appears to be implicit in the cases of *Yöyler* and *Ayder and Others* (both cited above). In the above-mentioned cases the security forces burnt the applicants' homes and possessions with a view to causing them mental suffering, which enabled the Court to find a violation of Article 3 on that account.

112. In the present case, however, the Court has no evidence allowing it to reach the same conclusion. It is true that, as admitted by the Government, the relevant local facilities for refrigerated storage of corpses during the first four days may have been insufficient to contain all of the bodies (see paragraph 56 above) and that even thereafter the bodies had to be piled on top of one another for storage in the refrigerator wagons (see paragraph 53 above). However, these lapses resulted from objective logistical difficulties arising from the nature of the events of 13-14 October 2005 and the number of casualties, and can hardly be said to have had as their purpose to subject the applicants to inhuman treatment, and in particular, to cause them psychological suffering.

113. To sum up, the Court does not find that the circumstances could give the suffering of the applicants listed in paragraph 108 above or the other applicants who were simply aware of the difficult conditions of storage of the dead bodies of their relatives a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to any family member of a deceased person in a comparable situation. The Court is therefore unable to find a violation of Article 3 of the Convention in the circumstances of the present case.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

114. Relying on Article 8 of the Convention, the applicants also complained about the authorities' refusal to return the bodies of their deceased relatives. This Convention provision reads as follows:

Article 8 of the Convention

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

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

A. The submissions by the parties

1. The applicants

115. The applicants stated that the authorities' refusal of 15 May 2006 to return the bodies had been unlawful and disproportionate. First, they argued that the refusal had been unlawful in that the Constitutional Court's judgment imposed on the authorities an obligation to await the outcome of

the investigation before deciding whether to return the bodies and that the authorities had clearly failed to comply with that obligation. Secondly, the law contained vague notions such as "terrorist action", "terrorist activity" and "terrorist act", and was unclear as regards the cremation policy (the applicants were aggrieved that their relatives had been cremated rather than buried); the specific official with authority to take the decision; the possibility of bringing appeal proceedings; the policy concerning disclosure of the date of the burials; and the need to observe rituals during the burials. Thirdly, they submitted that the measure was disproportionate in that no other European country had similar legislation; although the Israeli authorities had had a similar administrative policy, this had since been condemned by the Israeli courts; that international humanitarian law prohibited such treatment, and that other, less restrictive, measures were available to the authorities to address terrorism-related concerns.

2. The Government

116. The Government maintained that the decision not to return the bodies of the applicants' relatives had been taken pursuant to the Suppression of Terrorism Act, the Interment and Burial Act and the decree on combating terrorism, and were justified in view of the reasons set out by the Constitutional Court in its ruling of 28 June 2007 (see paragraphs 33-35). All applicants had received official notification and replies from the authorities and no restrictions on access to a court had been imposed in connection with the decisions in question.

B. The Court's assessment

1. Whether Article 8 is applicable in the present case

117. 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 the body after an autopsy or of bodily samples on completion of the 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 Court found that 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 stillborn child, along with the related transfer and ceremonial arrangements, was also capable of falling within the ambit of both "private" and "family life" within the meaning of Article 8.

118. The Court firstly notes that with the exception of the nineteenth applicant, Mrs Zhanna Fyodorovna Ifraimova (see paragraphs 97-100 above), the Government did not dispute that the decision of 15 May 2006 not to return the bodies constituted an interference with the applicants' rights to private and family life as protected by Article 8 of the Convention.

119. As regards the nineteenth applicant, the Court finds on the basis of the documents in its possession that, although the relations between Mrs Ifraimova and Mr Tamazov, mainly consisting of a mere month of cohabitation and occasional meetings in secret over the next eight months (see paragraphs 10 and 98 above), may not be sufficiently lasting and stable as to fall within the scope of a "family life" within the meaning of Article 8 of the Convention, there is little doubt that there existed a "private life" between them within the meaning of this Convention provision.

120. The Court further observes that on 15 May 2006, having finalised the investigative actions in respect of the bodies of the deceased persons, the investigator decided not to return the bodies to the applicants and ordered their burial in an unspecified location (see paragraph 27 above). This decision was taken in accordance with Article 3 of Decree no. 164, dated 20 March 2003, and section 14(1) of the Interment and Burial Act, which precluded the competent authorities from returning the bodies of terrorists who had died as a result of the interception of a terrorist act.

121. Having examined the applicable domestic legislation, the Court notes that in Russia the relatives of a deceased person who are willing to organise that person's interment generally enjoy a statutory guarantee of having the person's body returned promptly to them for burial after the establishment of the cause of death. They also benefit from a legal regime which makes them either the executors of the deceased's statement of wishes as regards the burial proceedings or permits them to decide how the burial will take place, with both options being subject only to general safety and sanitary rules (see sections 3 to 8 of the Interment and Burial Act in paragraph 65).

122. Against this background, the Court notes that the authorities' refusal to return the bodies of the applicants' relatives with reference to section 14(1) of the Interment and Burial Act and Article 3 of Decree no. 164 of 20 March 2003 constituted an exception from that general rule and clearly deprived the applicants of an opportunity to organise and take part in the burial of their relatives' bodies and also to know the location of the gravesite and to visit it subsequently.

123. Regard being had to its case-law and the above-mentioned circumstances of the case, the Court finds that with the exception of the

nineteenth applicant the measure in question constituted an interference with the applicants' "private life" and "family life" within the meaning of Article 8 of the Convention. With regard to the nineteenth applicant, the decision of 15 May 2006 constituted an interference with her "private life" within the meaning of that provision. It remains to be seen whether this interference was justified under the second paragraph of that provision.

2. Whether the interference was justified

(a) "In accordance with the law"

124. 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.

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

126. The Court finds, and it is undisputed by the applicants, that the decisions of 13-14 April 2006 clearly demonstrated the involvement of the applicants' deceased relatives in the attack of 13 October 2005. On the basis of the material before it (see paragraphs 22, 25 and 26), the Court is satisfied that the authorities' refusal to return the bodies of the applicants' relatives for burial had a legal basis in Russian law.

127. 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, the automatic nature of the rule, the alleged vagueness of certain of its concepts and the lack of judicial review, 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).

(b) Legitimate aim

128. The Court notes that the Government justified the measure with reference to ruling no. 8-P, dated 28 June 2007, of the Constitutional Court, which stated in relation to section 14(1) of the Interment and Burial Act and Decree no. 164 of 20 March 2003 that the adoption of the rule was justified by "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".

129. Regard being had to the above explanations, the Court is satisfied that the measure in question could be considered as having been taken in the interests of public safety, for the prevention of disorder and for the protection of the rights and freedoms of others.

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

(c) Necessary in a democratic society

i. General principles

131. 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, *Coster v. the United Kingdom* [GC], no. 24876/94, § 104, 18 January 2001, and *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 101, ECHR 2008).

132. 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).

133. 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).

134. The final evaluation of whether the interference is necessary remains subject to review by the Court in order to ascertain 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*, nos. 18299/03 and 27311/03, § 212, ECHR 2011 (extracts)). 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).

ii. Application of these principles

135. In order to address the question whether the measures taken in respect of the applicants in relation to the bodies of their deceased relatives were 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 adopted measure, in the context of their margin of appreciation, was justified in view of the relevant circumstances of the case.

136. In doing so, the Court is prepared to take account of the events preceding the decision of 15 May 2006 and the fact that the threat of further

attacks or clashes between various ethnic and religious groups residing in Nalchik was quite serious. However, the use of the measure in question must be explained and justified convincingly in each individual case (see, *mutatis mutandis*, *Nada*, cited above, § 186).

137. 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 pieces of legislation, that in cases arising from individual petitions 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, §§ 68-70, 20 October 2011).

138. Turning to the circumstances of the present case, the Court notes that as a result of the decision of 15 May 2006 the applicants were deprived of an opportunity, otherwise guaranteed to the 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 gravesite and to visit it subsequently (see paragraph 65 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 ban on the disclosure of the location of the grave, thus permanently cutting the links between the applicants and the location of the deceased'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 91-96).

139. The Court further observes that the investigation established that the deceased persons referred to by the applicants participated in the armed insurgency and carried out a terrorist attack in the town of Nalchik on 13 October 2005 (see paragraph 22 above). Having examined the case-file materials, the Court is prepared to use these factual findings in its further analysis.

140. Having regard to the nature of the activities of the deceased, the circumstances of their death and the extremely sensitive ethnic and religious context in this region of Russia, the Court cannot exclude that measures limiting the applicants' rights in respect of the funeral arrangements of the deceased persons could be found to be justified under Article 8 of the Convention in pursuance of aims mentioned by the Government.

141. The Court can, in principle, accept that 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 persons' 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 or activities of the deceased during or after the relevant ceremonies as well as addressing other issues mentioned by the Government which may arise in this connection.

142. 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 burials were to take place or even directly regulate such proceedings.

143. At the same time, the Court finds it difficult to agree that any of the stated goals were capable of validating all of the aspects of the measure in question. More specifically, it does not discern in these goals a viable justification for denying the applicants any participation in the relevant funeral ceremonies or at least some kind of opportunity for paying their last respects to the deceased person.

144. The Court finds that the authorities failed to carry out any such assessment in the present case. In fact, the relevant official did not take the decision using a case-by-case approach and included no analysis which would take into account the individual circumstances of each of the deceased and those of their family members (see paragraph 27). That was so because the applicable law treated all these questions as irrelevant, the decision of 15 May 2006 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).

145. 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 the deceased persons' activities from those persons onto their relatives or family members.

146. In sum, having regard to the automatic nature of the measure, the authorities' failure to give due consideration to the principle of proportionality, 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 public safety, prevention of disorder and the protection of the rights and freedoms of others on the other, and that the respondent State has overstepped any acceptable margin of appreciation in this regard.

147. It follows that, apart from the nineteenth applicant, there has been a violation of the applicants' right to respect for their private and family life, as guaranteed by Article 8 of the Convention, as a result of the decision of 15 May 2006. The Court reaches the same conclusion in respect of the nineteenth applicant in respect of her right to private life.

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

148. 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 bodies of their deceased relatives.

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

149. The applicants maintained their grievances.

150. The Government stated that all of 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

151. 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).

152. 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

153. The Court is of the opinion that, in view of its finding that the grievance under Article 8 was admissible (see *Sabanchiyeva and Others v. Russia* (dec.), no. 38450/05, 6 November 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.

154. Having regard to the circumstances of the case, the Court notes the absence of effective judicial supervision in respect of the decision of 15 May 2006. Admittedly, the applicants' 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. Nonetheless, throughout the domestic proceedings the applicants were denied a copy of the decision of 15 May 2006 and even after the above-mentioned changes the courts remained competent to review only the formal lawfulness of the measure and not the need for the measure as such (see paragraphs 33-35 and 38-50 above). 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).

155. In these circumstances, the Court concludes that the applicants did not enjoy an effective possibility of appealing the decision of 15 May 2006 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.

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

V. ALLEGED VIOLATION OF ARTICLES 3 AND 9 OF THE CONVENTION

157. The applicants also complained in addition to their submissions under Article 8 of the Convention that the refusal of the authorities to return the bodies of their relatives had been contrary to Articles 3 and 9 of the Convention.

158. 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 Articles 3 and 9.

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

159. The applicants were of the view that the refusal of the authorities to return the bodies of their relatives had been discriminatory, because the legislation in question was aimed exclusively at followers of the Islamic faith. 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."

160. The applicants maintained their complaints.

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

162. 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 or

that the applicants were treated differently from the 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).

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

VII. COMPLIANCE WITH ARTICLE 38 § 1 (a) OF THE CONVENTION

164. In their observations on the merits of the case, the applicants argued that the State had breached its obligations under Article 38 § 1 of the Convention, as it had allegedly withheld some of the relevant case-file materials. This Article, in its relevant part, provides:

> "1. If the Court declares the application admissible, it shall
>
> (a) pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities."

165. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 70, ECHR 1999-IV). This obligation requires the Contracting States to furnish all necessary facilities to the Court, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of applications. Failure on a Government's part to submit such information which is in their hands, without a satisfactory explanation, may not only give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a) of the Convention (see *Timurtaş v. Turkey*, no. 23531/94, § 66, ECHR 2000-VI).

166. The Court observes that following its decision on admissibility it invited the Government to submit copies of documents relevant to those of the applicants' complaints that had been declared admissible. In reply, the Government submitted several hundred domestic decisions of various bodies concerning the domestic proceedings brought by the applicants, including a copy of the decision of 15 May 2006 and detailed information concerning the conditions of storage of the bodies and the exact list of the applicants who had taken part in their identification. The submission of the documents in question considerably facilitated the examination of the present case. The applicants' allegations are therefore without foundation.

167. The Court thus finds that there has been no failure on the part of the respondent Government to comply with Article 38 § 1 (a) of the Convention.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

168. 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

169. The applicants claimed that they had sustained very serious non-pecuniary damage and each asked for compensation in the amount of 20,000 euros (EUR). They also requested that the Court order the respondent Government to hand over the remains of their relatives to their family members or to disclose information regarding the circumstances of their burial, including the whereabouts of their graves, and to repeal the domestic legislation in question.

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

171. 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

172. The applicants also claimed EUR 24,371 for the legal and other costs incurred in the Strasbourg proceedings and EUR 4,862 for the legal expenses incurred in the domestic proceedings.

173. The Government submitted that the amounts claimed were excessive and unjustified.

174. 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. Having regard to the material in its possession, the Court grants the applicants' claim only in part relating to the legal and other costs incurred by them in the Strasbourg proceedings and considers it reasonable to award them EUR 15,000 plus any tax that may be chargeable. The

amount awarded shall be payable to Stichting Russian Justice Initiative directly, as requested by the applicants.

C. Default interest

175. 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. *Dismisses* unanimously the Government's preliminary objections;

2. *Holds* unanimously that there has been no violation of Article 3 of the Convention on account of the conditions in which the bodies of the deceased were stored and displayed for identification;

3. *Holds* by five votes to two that there has been a violation of Article 8 of the Convention in respect of all fifty applicants on account of the decision of 15 May 2006;

4. *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 respect of the decision of 15 May 2006;

5. *Holds* unanimously that in view of its previous conclusions under Articles 8 and 13 of the Convention the case requires no separate examination under Articles 3 and 9 of the Convention;

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

7. *Holds* unanimously that there has been no failure on the part of the respondent Government to comply with Article 38 § 1 (a) of the Convention;

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

9. *Holds* unanimously

(a) that the respondent State is to pay the applicants jointly EUR 15,000 (fifteen 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, plus any tax that may be chargeable to the applicants on the above amount, to be paid in euros into the bank account in the Netherlands indicated by the applicants' representative organisation;

(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;

10. *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 33 of the judgment) and also confirmed by the Court as a basis for the legitimate aim (see paragraphs 128-129), 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.

ANNEX.

LIST OF THE APPLICANTS AND THEIR DECEASED RELATIVES

The applicants are fifty Russian nationals who live in the Republic of Kabardino-Balkaria and, unless stated otherwise, are residents of the town of Nalchik. They are:
(1) Mrs Kelimat Akhmatovna Sabanchiyeva, who was born in 1961, and whose complaint concerns the death of her son Mr Khadjimurat Kurbanovich Kurbanov, who was born on 25 October 1984 (1982[1]);
(2) Mr Khusen Leonidovich Shibzukhov, born in 1949, concerning the death of his son Mr Anzor Khuseynovich Shibzukhov, born on 23 June 1984;
(3) Mr Anatoliy Narychevich Bitokov, born in 1947, concerning the death of his son Mr Murat Anatolyevich Bitokov, born on 22 September 1980;
(4) Mrs Raya Bilyalevna Chechenova, born in 1952, concerning the death of her son Mr Stanislav Borisovich Chechenov, born on 1 December 1973;
(5) Mrs Larisa Saradinovna Alakayeva, born in 1957, concerning the death of her son Mr Saradin Khautiyevich Alakayev, born on 13 September 1980;
(6) Mr Barasbi Khudovich Boziyev, who was born in 1947 and lives in the village of Ardugan, concerning the death of his son Mr Sosruko Barasbiyevich Boziyev, born on 17 February 1977;
(7) Mr Yuriy Natribovich Khagov, who was born in 1937 and lives in the village of Terek, concerning the death of his son Mr Zalim Yuryevich Khagov, born on 11 August (September) 1968;
(8) Mrs Raisa Albiyanovna Mamresheva, who was born in 1951 and lives in the village of Terek, concerning the death of her son Mr Vyacheslav Borisovich Shoghemov (Shogemov), born on 20 September 1975;
(9) Mrs Anzhelika Yuryevna Arkhestova, born in 1970, concerning the death of her brother Mr Anzor Yuryevich Kertbiyev, born on 13 April 1974;
(10) Mrs Fatimat Khazritovna Tkhagalegova, who was born in 1963 and lives in the village of Nartan, concerning the death of her brother Anzor Khazritovich Bichoyev, born on 18 August 1972;
(11) Mrs Rita Ramazanovna Dzantuyeva, born in 1959, concerning the death of her son Mr Aleksandr Lenovich Bashloyev, born on 29 December 1980 (1975);
(12) Mrs Fatima Amerkhanovna Mamayeva, born in 1973, concerning the death of her husband Mr Timur Makhtyevich Mamayev, born on 22 September 1972;

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[1] If the case file contains conflicting data on the exact spelling of names and birthdates of the deceased, the alternative data is given in brackets.

(13) Mrs Yelena Khabidovna Karmova, born in 1952, concerning the death of her son Mr Martyn Nikolayevich Karmov, born on 19 February 1972 (1978);
(14) Mrs Alesya Khazritovna Shidakova, who was born in 1955 and lives in the village of Inarkoy, concerning the death of her son Mr Dzhambulat Khamishevich Shidakov, born on 6 November 1978;
(15) Mr Timofey Alesovich Nabitov, born in 1942, concerning the death of his sons, Mr Azamat Timofeyevich Nabitov, born on 20 (29) December 1979, and Mr Djambulat Timofeyevich Nabitov, born on 9 January 1982;
(16) Mrs Raisa Shamgunovna Keresheva, born in 1956, concerning the death of her sons, Mr Rustam Ruslanovich Kereshev, born on 4 December 1979, and Mr Anzor Ruslanovich Kereshev, born on 16 March 1984;
(17) Mr Betal Muradinovich Kerefov, born in 1946, concerning the death of his son Mr Kazbulat Betalovich Kerefov, born on 15 May 1980; this applicant died on 4 December 2009 and his widow, Ms Fatimat Mukhabovna Kerefova, born on 3 November 1949, decided to pursue the application;
(18) Mr Magomed Khasymovich Attoyev, born in 1941, concerning the death of his son Mr Murat Magomedovich Attoyev, born on 27 April (24 July) 1978;
(19) Mrs Zhanna Fyodorovna Ifraimova, born in 1968, concerning the death of Mr Ruslan Borisovich Tamazov, born on 31 March (May) 1980;
(20) Mrs Aysha Ismailovna Chagiran, born in 1952, concerning the death of her son Mr Djambulat Mukhamedovich Bittirov, born on 1 April 1985;
(21) Mr Aserbi Lanovich Makoyev, born in 1956, concerning the death of his son Mr Murat Aserbiyevich (Askerbiyevich) Makoyev, born on 1 June (July) 1981;
(22) Mr Sait Mukhamedovich Bashora, born in 1949, concerning the death of his son Mr Ruslan Saitovich Tishkov, born on 1 August 1980;
(23) Mrs Taya Alekseyevna Khavzhokova, who was born in 1958 and lives in the village of Nartan, concerning the death of her son Mr Alim Khataliyevich Khavzhokov, born on 8 September 1979;
(24) Mr Kunak Ismailovich Guziyev, born in 1944, concerning the death of his son Mr Ramazan Konakovich Guziyev, born on 26 September 1975;
(25) Mr Amerbi Yakhiyaevich Afov, born in 1937, concerning the death of his son Mr Zaur Amerbiyevich Afov, born on 3 April 1975 (1976);
(26) Mrs Yulia Anurdinovna Khagabanova, born in 1982, concerning the death of her brother Mr Edik Rasimovich Abidokov, born on 23 (20) March 1973;
(27) Mrs Lidiya Zhambulatovna Zhelikhazheva, born in 1942, concerning the death of her son Mr Alim Sultanovich Zhelikhazhev, born on 23 March 1976;

(28) Mr Tengiz Valeryevich Mokayev, born in 1987, concerning the death of his brother Mr Aleksandr Valeriyevich Mokayev, born on 17 (19) July 1978;
(29) Mrs Emma Auzinovna Sherdiyeva, born in 1963, concerning the death of her son Mr Rustam Ruslanovich Nafedzov, born on 13 January 1981; this applicant died on 26 August 2006 and the deceased's widow, Mrs Zhanneta Khamidbiyevna Khazhbiyeva, born on 3 December 1982, decided to pursue the application;
(30) Mrs Zhanetta Martinovna Kushkhova, born in 1944, concerning the death of her son Mr Zaurbek Huseynovich Kushkhov, born on 25 November 1977;
(31) Mr Khazret-Ali Islamovich Khalilov, born in 1950, concerning the death of his son Mr Murat Khazret-Aliyevich Khalilov, born on 9 January 1981; this applicant died on 25 December 2006 and the deceased's widow, Ms Zyuzanna Khazretovna Khalilova, born on 29 April 1983, decided to pursue the application;
(32) Mr Ladin Khazhisetovich Gendukov, who was born in 1955 and lives in the village of Altud, concerning the death of his son Mr Roman Ladinovich Gendukov (Gendugov), born on 3 October 1981;
(33) Mr Vladimir Khazeshevich Vorokov, born in 1946, concerning the death of his son Mr Azamat Vladimirovich Vorokov, born on 22 April 1978;
(34) Mr Murat Yuryevich Pshikhachev, born in 1974, concerning the death of his brother Mr Muslim Yuryevich Pshikhachev, born on 16 February 1976;
(35) Mr Fyodor Aliyevich Abidov, born in 1957, concerning the death of his son Mr Zaurbek Fyodorovich Abidov, born on 9 June 1983;
(36) Mr Liuan Mukhazhirovich Kardanov, who was born in 1952 and lives in the village of Urvani, concerning the death of his son Mr Mukharbi Liuyanovich Kardanov, born on 11 December 1979;
(37) Mr Atabi Sakhatgeriyevich Kardanov, born in 1948, concerning the death of his son Mr Oleg Atabiyevich Kardanov, born on 16 November 1981;
(38) Mrs Rita Aslamurzovna Anzorova, who was born in 1960 and lives in the town of Nartkala, concerning the death of her son Mr Artur Khasanovich Ezdekov, born on 14 September 1979;
(39) Mr Karalbi Masadovich Amshokov, born in 1933, concerning the death of his son Mr Akhmed Karalbiyevich Amshokov, born on 13 May 1977;
(40) Mr Boris Betalovich Kuchmenov, born in 1942, concerning the death of his son Mr Anzor Borisovich Kuchmenov, born on 19 November 1973;
(41) Mrs Aminat Umarovna Psanukova, born in 1949, concerning the death of her son Mr Zaur Isufovich Psanukov, born on 10 September 1977;

(42) Mrs Fatima Nakhupshovna Arkhagova, born in 1951, concerning the death of her son Mr Aslan Karalbiyevich Arkhagov, born on 30 (31) January 1979;
(43) Mr Khuseyn Hazhmuratovich Atalikov, born in 1952, concerning the death of his son Mr Islam Khuseynovich Atalikov, born on 15 (13) October 1982;
(44) Mrs Lyubov Mikhaylovna Gonibova, born in 1952, concerning the death of her son Mr Akhmed Khasanbiyevich Gonibov, born on 3 September 1985;
(45) Mrs Zoya Ibragimovna Afaunova, born in 1955, concerning the death of her son Mr Gisa Musovich Afaunov, born on 1 January 1975;
(46) Mrs Fatimat Abubachirovna Erzhibova, born in 1956, concerning the death of her son Mr Beslan Leonidovich Erzhibov, born on 17 July 1983;
(47) Mrs Fatima Khursanovna Gudova, born in 1959, concerning the death of her son Mr Ruslan Aslanbiyevich Gudov, born on 7 January 1980;
(48) Mr Oksana Nikolayevna Daova, born in 1977, concerning the death of her brother Mr Valeriy Nikolayevich Tleuzhev, born on 22 (21) July 1975, and her husband Mr Zurab Nazranovich (Narzanovich) Daov, born on 18 March 1972;
(49) Mr Zaur Mukhamedovich Terkulov, born in 1981, concerning the death of his brother Mr Eldar Mukhamedovich Terkulov, born on 1 May 1983;
(50) Mr Boris Zaudinovich Bagov, born on an unspecified date and concerning the death of his nephews Mr Anzor Yuriyevich Bagov, Mr Zaur Yuriyevich Bagov and Mr Aslan Yuriyevich Bagov, born on 12 September 1977 and 8 June 1979 and on 23 July 1987 respectively.

TABLE 1 (see paragraph 42)

No.	The applicants	Date of a final judgment
3	Mr Anatoliy Narychevich Bitokov	28 November 2008
15	Mr Timofey Alesovich Nabitov, in respect of his sons Mr Azamat Timofeyevich Nabitov and Mr Djambulat Timofeyevich Nabitov	17 June 2008
17	Mr Betal Muradinovich Kerefov	28 November 2008
30	Mrs Zhanetta Martinovna Kushkhova	22 July 2008
38	Mrs Rita Aslamurzovna Anzorova	28 November 2008
41	Mrs Aminat Umarovna Psanukova	28 November 2008
49	Mr Zaur Mukhamedovich Terkulov	5 September 2008

TABLE 2 (see paragraph 44)

No.	The applicants	Date of a final judgment
5	Mrs Larisa Saradinovna Alakayeva	9 November 2007
6	Mr Barasbi Khudovich Boziyev; due to his state of health, court proceedings conducted by his wife Ksenya Aripsheva	20 November 2007
9	Mrs Anzhelika Yuryevna Arkhestova	23 May 2008
10	Mrs Fatimat Khazritovna Tkhagalegova	14 December 2007
11	Mrs Rita Ramazanovna Dzantuyeva	14 March 2008
13	Mrs Yelena Khabidovna Karmova	3 November 2007; this judgment was apparently quashed by the Supreme Court of Russia by way of supervisory review on 14 January 2009
14	Mrs Alesya Khazritovna Shidakova	22 August 2008
16	Mrs Raisa Shamgunovna Keresheva, in respect of her son Rustam	14 March 2008
16	Mrs Raisa Shamgunovna Keresheva, in respect of her son Anzor	9 November 2007
19	Mrs Zhanna Fyodorovna Ifraimova	25 November 2008
20	Mrs Aysha Ismailovna Chagiran	11 April 2008

22	Mr Sait Mukhamedovich Bashora	25 April 2008
24	Mr Kunak Ismailovich Guziyev	09 November 2007
27	Mrs Lidiya Zhambulatovna Zhelikhazheva	04 July 2008
28	Mr Tengiz Valeryevich Mokayev	22 August 2008
31	Mr Khazret-Ali Islamovich Khalilov	09 November 2007
40	Mr Boris Betalovich Kuchmenov	14 March 2008
45	Mrs Zoya Ibragimovna Afaunova	22 August 2008
46	Mrs Fatimat Abubachirovna Erzhibova	14 March 2008
50	Mr Boris Zaudinovich Bagov, in respect of his nephews Mr Anzor Yuriyevich Bagov, Zaur Yuriyevich Bagov and Aslan Yuriyevich Bagov; court proceedings were conducted by the father of the three deceased, Mr Yuri Zaudinovich Bagov	22 July 2008

TABLE 3 (see paragraph 46)

No.	The applicants	Date of a final judgment
7	Mr Yuriy Natribovich Khagov	6 May 2008
23	Mrs Taya Alekseyevna Khavzhokova	26 August 2008
47	Mrs Fatima Khursanovna Gudova	26 August 2008

TABLE 4 (see paragraph 47)

No.	The applicants	Date of a final judgment
29	Mrs Emma Auzinovna Sherdiyeva	4 June 2008
36	Mr Liuan Mukhazhirovich Kardanov	6 February 2007

TABLE 5 (see paragraph 59)

No.	The applicants	Participation in identification
1	Mrs Kelimat Akhmatovna Sabanchiyeva	on 20-25 October 2005
3	Mr Anatoliy Narychevich Bitokov	on 17, 20 or 21 October 2005
7	Mr Yuriy Natribovich Khagov	on 18 October 2005

9	Mrs Anzhelika Yuryevna Arkhestova	on an unspecified date in October 2005
10	Mrs Fatimat Khazritovna Tkhagalegova	on 19 October 2005
12	Mrs Fatima Amerkhanovna Mamayeva	on an unspecified date in October 2005
13	Mrs Yelena Khabidovna Karmova	on 16 October 2005
15	Mr Timofey Alesovich Nabitov	on 18 October 2005
17	Mr Betal Muradinovich Kerefov	on 21 October 2005
18	Mr Magomed Khasymovich Attoyev	on 13 October 2005
19	Mrs Zhanna Fyodorovna Ifraimova	on 19 and 20 October 2005
20	Mrs Aysha Ismailovna Chagiran	on 16-18 October 2005
21	Mr Aserbi Lanovich Makoyev	on 19 October 2005
22	Mr Sait Mukhamedovich Bashora	on 18-20 October 2005
23	Mrs Taya Alekseyevna Khavzhokova	on 16, 17 and 18 October 2005
24	Mr Kunak Ismailovich Guziyev	on 16 October 2005
25	Mr Amerbi Yakhiyaevich Afov	on 20 October 2005
27	Mrs Lidiya Zhambulatovna Zhelikhazheva	on 20 October 2005
28	Mr Tengiz Valeryevich Mokayev	on 19 October 2005
29	Mrs Emma Auzinovna Sherdiyeva	on 19 October 2005
31	Mr Khazret-Ali Islamovich Khalilov	on 19 October 2005
34	Mr Murat Yuryevich Pshikhachev	on an unspecified date in October 2005
35	Mr Fyodor Aliyevich Abidov	on an unspecified date in October 2005
37	Mr Atabi Sakhatgeriyevich Kardanov	on 20 October 2005
38	Mrs Rita Aslamurzovna Anzorova	on 24 October 2005
39	Mr Karalbi Masadovich Amshokov	on 26 October 2005
40	Mr Boris Betalovich Kuchmenov	on 21 October 2005
42	Mrs Fatima Nakhupshovna Arkhagova	on 21 or 22 October 2005
43	Mr Khuseyn Hazhmuratovich Atalikov	on an unspecified date in October 2005
45	Mrs Zoya Ibragimovna Afaunova	on 21 October 2005
47	Mrs Fatima Khursanovna Gudova	on 27 and 28 October 2005
48	Mr Oksana Nikolayevna Daova	on 21 October 2005
49	Mr Zaur Mukhamedovich Terkulov	on 17 October 2005