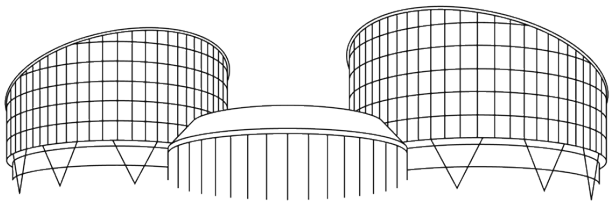

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF TAZIYEVA AND OTHERS v. RUSSIA

(Application no. 50757/06)

JUDGMENT

STRASBOURG

18 July 2013

FINAL

20/01/2014

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

In the case of Taziyeva and Others v. Russia,

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

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
André Potocki,
Paul Lemmens,
Helena Jäderblom,
Dmitry Dedov, *judges,*
and Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 18 June 2013,

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

PROCEDURE

1. The case originated in an application (no. 50757/06) 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 nine Russian nationals on 20 December 2006.

2. The applicants were represented by Ms K. Moskalenko, Mr M. Rachkovskiy, Ms Y. Krutikova and Mr M. Mutsolgov, lawyers practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged, in particular, that State agents had conducted an unlawful search of their home in violation of Article 8 of the Convention.

4. On 12 February 2009 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants, Ms Lidiya Musayevna Taziyeva ("the first applicant"), Mr Askhab Musayevich Taziyev ("the second applicant"), Ms Pyatimat Musayevna Malsagova ("the third applicant"), Ms Zareta Musayevna Taziyeva ("the fourth applicant"), Mr Aslan Musayevich Taziyev ("the fifth applicant"), Ms Makka Umarovna Taziyeva ("the sixth applicant"), Ms Milana Aslanovna Taziyeva ("the seventh applicant"),

Ms Ayshat Aslanovna Taziyeva ("the eighth applicant") and Ms Rabiya Aslanovna Taziyeva ("the ninth applicant"), are Russian nationals who were born in 1940, 1966, 1971, 1976, 1979, 1982, 2000, 2001 and 2004 respectively and live in the village of Nasyr-Kort, Ingushetia, Russia.

A. Events of 27 December 2005

6. The applicants (a mother, her two daughters, two sons, a daughter-in-law and three grandchildren) lived together in a house in Nasyr-Kort.

7. On 27 December 2005 officers of the Federal Security Service of Russia ("the FSB") and of the Ministry of the Interior of Ingushetia went to the applicants' home in a search for Mr Ali Taziyev, another son of the first applicant, whom they suspected of terrorist offences. The force consisted of about 100 armed men in black masks and military uniforms, an armoured personnel carrier, six or seven minibuses and two cars without state identification numbers. Mr Ali Taziyev had been declared dead by a court judgment of 6 July 2001. According to the applicants at the time of their submissions, they have not seen him since 1998.

1. The applicants' version of the events

8. At 6.40 a.m. the armoured personnel carrier broke down the gates of the applicants' house and entered the courtyard, damaging the fence roof, walls, the vineyard and a parked car. The soldiers ordered the applicants, who mostly did not have daytime clothes on (except for the second applicant, who was at work) to come out of the house. They tied up the fifth applicant and made him move around inside the house and its courtyard, threatening him with a gun and demanding to know the whereabouts of his brother, Mr Ali Taziyev.

9. The women and children of the applicants' family were made to stay outside in sub-zero temperatures, and were then allowed to go to a neighbour's house, but only several hours later. Some more hours later the fifth applicant heard the armed men saying on their radio that the information that a fighter was present in the applicants' house was false. At around 12.30 p.m. the servicemen left, without finding any trace of Mr Ali Taziyev.

10. After the soldiers had left, the applicants (joined by the second applicant) found that furniture, carpets and other items inside the house had been damaged, and that money, jewellery and documents belonging to the third and fourth applicants had disappeared.

11. The applicants took photographs and a video of their house and yard, showing the damage caused.

2. The Government's version of the events

12. The Government disputed the applicants' version of the events. In their view, when the security forces had approached the applicants' house they had explained the purpose of their visit, but the applicants had refused to open the gate. They were therefore obliged to ram it with the armoured vehicle. The applicants had refused to cooperate and had insulted the officers. None of the applicants had been forced to stay outside for a long period without appropriate clothes. The time the women and children had spent outside was no longer than two hours. During the search none of the applicants' belongings were damaged or stolen.

B. Official Investigation

13. Immediately after the incident the first applicant contacted the local police complaining about this incident, in which State agents had been involved, and requesting an inspection of the house. In a written criminal complaint sent the same day, she complained that property both inside and outside the house had been destroyed, and that money, jewellery and documents had been taken. Throughout the subsequent months the first applicant continued to send letters containing these complaints to numerous other authorities.

14. A person from the Nazran District Prosecutor's Office came to carry out an inspection the day after the applicant had complained. Photographs were taken recording the condition of the gate to the courtyard, which had been destroyed, the damage to furniture inside the house, and the general disorder in the house.

15. On 28 December 2005 the third, fourth, fifth and sixth applicants were questioned. They described the events, detailing the destruction and loss of their property.

16. On 3 January 2005 local police officers were questioned, and testified that on 27 December 2005 a special security operation had been carried out at the applicants' house. When one of the police officers had approached the group of heavily armed men in masks, about 100 metres from the applicants' house, he had been told that they were servicemen conducting a special operation to apprehend terrorists. The police officer had not been given any further information on the nature of the operation and the police had not been allowed to go any nearer to the applicants' house.

17. On 4 January 2006 a NGO, MASHR, sent a letter to the Ministry of the Interior of Ingushetia, requesting an investigation of the events of 27 December 2005. The letter also stated that the applicants had been held outside the house in freezing weather for several hours. The letter was added to the investigation file of the Nazran District Prosecutor's Office. A

letter with almost identical content was sent to the same addressee on 10 January 2006 by another NGO. This letter is also part of the investigation file.

18. On 7 January 2006 the Nazran District Prosecutor's Office closed the case, holding that there was no evidence substantiating the applicants' submissions.

19. On 30 January 2006 the Nazran deputy prosecutor set aside that decision and forwarded the case to the military prosecutor's office of the United Group Alignment ("the UGA") for further investigation, on the ground that members of the Federal Security Service of Russia had also taken part in the operation, and only the military prosecutor was empowered to investigate allegations against officers of the FSB. The military prosecutor received the file on 25 February 2006.

20. On 28 February 2006 the military prosecutor closed the investigation, stating that no evidence had been found suggesting that FSB officers had committed any crime. The decision stated that it had not been possible to question the FSB officers, as they had been redeployed back to their regular places of service. It does not seem from the decision that the military prosecutor took any investigative steps.

21. On 6 June 2006 the military prosecutor's office quashed the decision, considering it premature, and sent the case back for further investigation. It noted that the servicemen had not been questioned, the investigation had failed to ascertain what other agencies had taken part in the operation, and the need or otherwise for the destruction of the property had not been assessed.

22. On 9 June 2006 the military prosecutor again closed the investigation. In addition to his previous decision of 28 February 2006 he noted that the gate to the courtyard had been destroyed because the applicants had refused to open it.

23. On 4 December 2006 the first applicant complained to the prosecutor of Ingushetia that she had not been declared a victim in the investigation concerning the events of 27 December 2005 in which property had been stolen from her house. She also mentioned that she had lodged the present application with the Court, and attached copies of the applicants' statements sent to the Court. In those documents the complaint was made that they had been forced to stand outside in freezing weather without appropriate clothing, and that the fifth applicant had been threatened at gunpoint.

24. In his reply of 15 January 2007 the military prosecutor, to whom the letter had been forwarded, merely referred to the previous decisions taken in the case.

25. On 27 April 2009 the first deputy military prosecutor of the UGA quashed the decision of 9 June 2006 as premature and remitted the case file for additional investigation. He held that the servicemen who had taken part

in the operation had not been identified or questioned, and that the substance of the complaints had been neither refuted nor confirmed.

26. The Court has received no information about this further investigation.

27. On 13 June 2006 the first applicant lodged a court action under Article 125 of the Code of Criminal Procedure, complaining of lack of investigation of her complaints of theft and that she had not been formally declared a victim in the proceedings conducted by the Nazran District Prosecutor's Office. She requested that the Prosecutor's Office's inaction be declared unlawful and that it be ordered to conduct an effective investigation and prosecute those responsible for the theft of their property during the house search. She also mentioned that during the search of the house they had been made to stand outside in freezing weather without appropriate clothing for several hours.

28. On 16 August and 4 December 2006 the first applicant complained that no court hearings had been scheduled in her case.

29. On 27 December 2006 the Nazran District Court dismissed her action, noting that the investigation file had been forwarded to the competent military prosecutor.

30. On 28 December 2006 the first applicant appealed to the Supreme Court of Ingushetia, arguing that the search had been conducted by the security forces of both the Federal and the Republic Ministries of the Interior, which had no connection with the military prosecutors.

31. There is no further information about those court proceedings. On 30 July 2009 the applicants informed the Court that they had not yet received any decision on their appeal.

II. RELEVANT DOMESTIC LAW

Suppression of Terrorism Act

32. Sections 13 and 21 of the Federal Law on Suppression of Terrorism of 25 July 1998 (Федеральный закон от 25 июля 1998 г. № 130-ФЗ «О борьбе с терроризмом» – "the Suppression of Terrorism Act 1998"), valid at the relevant time, provided as follows:

Section 13. Legal regime in the zone of an anti-terrorist operation

"1. In the zone of an anti-terrorist operation, the persons conducting the operation shall be entitled ...

(4) to enter private residential or other premises ... and means of transport while suppressing a terrorist act or pursuing persons suspected of committing such an act, when a delay may jeopardise human life or health;

(5) to search persons, their belongings and vehicles entering or exiting the zone of an anti-terrorist operation, including with the use of technical means ...”

Section 21. Exemption from liability for damage

“On the basis of the legislation and within the limits established by it, damage may be caused to the life, health and property of terrorists, as well as to other legally protected interests, in the course of a counter-terrorism operation. However, servicemen, experts and other persons engaged in the suppression of terrorism shall be exempted from liability for such damage, in accordance with the legislation of the Russian Federation.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

33. The applicants complained that during the search of their house they had been subjected to inhuman and degrading treatment contrary to Article 3 of the Convention, which reads as follows:

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

34. The applicants maintained that the search had been conducted by 100 armed men in black masks; the fifth applicant had been tied up and threatened with a gun; the women and children of the applicant family had been kept outside, half-dressed, for several hours, and their property had been damaged. They further complained that there had been no effective investigation of these events.

35. The Government denied that the applicants had been subjected to any treatment contrary to Article 3 of the Convention. They maintained that the claim that the applicants had been kept outside for a long period without being allowed to get properly dressed was not true. Moreover, they pointed out that in their initial submissions to the authorities the applicants had not mentioned this, or the claim that the fifth applicant had been threatened with a gun.

36. The Court has first to examine whether the situation at hand falls within the scope of Article 3 of the Convention. It reiterates that in order for ill-treatment to fall within the scope of Article 3 it must attain a minimum level of severity. The assessment of this minimum depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim. Further factors include the purpose for which the treatment was inflicted, together with the intention or motivation behind it, as well as its

context, such as an atmosphere of heightened tension and emotions. The Court has considered treatment to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch, and caused either actual bodily injury or intense physical and mental suffering. Treatment has been held to be "degrading" when it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or psychological resistance, or when it was such as to drive the victim to act against his will or conscience (see *Gäfgen v. Germany* [GC], no. 22978/05, §§ 88-89, ECHR 2010).

37. Turning to the present case, the Court does not consider that the circumstances of the search as such, including the damage to the property, reached the minimum threshold for applicability of Article 3 of the Convention. These are issues to be examined rather under Article 8 of the Convention and Article 1 of Protocol No. 1 (see also *Esmukhambetov and Others v. Russia*, no. 23445/03, § 188, 29 March 2011, where even total destruction of homes and property had not been found to be in violation of Article 3 of the Convention).

38. On the other hand, the fifth applicant's complaint, that during the search he had been tied up and threatened with a gun, and the other applicants' complaint, that they, including young children, were made to remain outside, half-dressed, in freezing weather, for several hours, might reach the threshold of severity for applicability of Article 3. The Court, does not however need to decide on this point, as these complaints have not been substantiated.

39. Regarding the issue of the fifth applicant's being threatened with a gun, the Court observes that this complaint was made for the first time in the application to the Court. Even though a copy of the application was also sent to the Ingushetia prosecutor, the subject matter of the submission itself concerned only a house search, described as illegal, during which their property had been damaged and stolen (see paragraph 23 above). Similarly, all the numerous previous submissions of the applicants to various authorities contained only the issue of damage and loss of their property. The fifth applicant did not mention the behaviour of the servicemen towards him, even when he was questioned the day after the events, on 28 December 2005.

40. Regarding the question of being forced to stay outside in freezing weather, the Court notes that this complaint has also never been submitted to the prosecuting authorities. The NGOs' letters (see paragraph 17 above) mentioned only in passing that some of the applicants had had to stand outside in cold weather for several hours. No details were added however about what the applicants were wearing or what effect this treatment would have had on them.

41. The first applicant mentioned this complaint for the first time, but again only in passing, in her court action on 13 June 2006. Her action itself

sought an effective investigation of the loss of the property. The applicant did not complain that the prosecutor had refused to investigate the alleged inhuman treatment.

42. The question thus arises whether these complaints had been properly brought to the attention of the domestic authorities. In any case, the Court finds it difficult to believe that if the applicants had been subjected to this kind of treatment, which in their view reached the level of inhuman and degrading treatment, they would not have pointed it out to the prosecuting authorities at all, and would have restricted themselves to complaining only about damage to their property. Therefore, their failure to inform the appropriate authorities also has a bearing on the well-foundedness of the complaints (see *Dibirova v. Russia* (dec.), no. 18545/04, 31 May 2011).

43. As a result, the applicants failed to make an arguable complaint in this respect before the domestic authorities, which would have triggered the procedural obligation of effective investigation.

44. Accordingly, the Court considers that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

45. The applicants complained that the search carried out by the servicemen on 27 December 2005 violated their right to respect for private and family life and home. They relied on Article 8 of the Convention, which reads:

> "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. Admissibility

46. The Government, without providing any details or further arguments, stated that the applicants cannot be considered victims in terms of Article 34 of the Convention.

47. The applicants disagreed.

48. The Court reiterates that the reference to "victim" in Article 34 means a person directly affected by the act or omission complained of, that is to say, a person who has a personal, direct and valid interest in seeing the act proscribed or the omission repaired (see *Marckx v. Belgium*, 13 June

1979, § 27, Series A no. 31, and *Gayuduk and Others v. Ukraine* (dec.), no. 45526/99, 2 July 2002).

49. The Court notes, and it has not been disputed between the parties, that all the applicants were living in the house on 27 December 2005 when the State agents forcibly entered the premises and conducted the search. This fact alone suffices to demonstrate that the applicants' personal interests were at stake and that they were accordingly "directly and personally affected" by the conduct of the State authorities. The applicants may, therefore, claim to be "victims" of the alleged violations of Article 8 of the Convention, and the Government's objection must be dismissed in this respect.

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

B. Merits

51. The applicants maintained that the search of their home had not been lawful, as it had not complied with the domestic law and international standards. In particular, there had been no search warrant issued by the competent authorities, and the search had been carried out without witnesses, without informing the applicants of their rights, and without drawing up an official report on the search. According to the applicants the search, during which their property had been damaged, had had no legitimate purpose.

52. The Government maintained that the special operation carried out under the Suppression of Terrorism Act was legal and met all the requirements of Article 8 of the Convention. They stated that in general, according to section 12 of the Suppression of Terrorism Act, a decision to conduct a counter-terrorist operation was delivered by the head of the federal executive body responsible for security. The search of the applicants' home had been carried out as part of such a counter-terrorist operation, aimed at apprehending Mr Ali Taziyev. Under the Act, persons performing counter-terrorist operations had a right to enter houses and plots of land and were exempt from liability for any damage caused.

53. The Court first considers that the search of the applicants' home on 27 December 2005 constituted an interference with their right to respect for their home as guaranteed by Article 8 of the Convention.

54. Accordingly, it has to be determined whether the interference was justified under paragraph 2 of Article 8, in other words whether it was "in accordance with the law", pursued one or more of the legitimate aims set out in that paragraph, and was "necessary in a democratic society" to achieve the aim or aims in question.

55. The Court has already found in several cases against Russia that interference with those rights, when carried out under the Suppression of Terrorism Act, was not "lawful". It has noted that the Act, while vesting wide powers in State agents in counter-terrorist operations, did not define with sufficient clarity the scope of those powers and the manner of their exercise, so as to afford an individual adequate protection against arbitrariness. Reference to this Act cannot replace specific authorisation of an interference with an individual's rights under Article 8 of the Convention, delimiting the object and scope of that interference and drawn up in accordance with the relevant legal provisions (see, for example, *Esmukhambetov and Others v. Russia*, no. 23445/03, § 176, 29 March 2011; and *Imakayeva v. Russia*, no. 7615/02, §§ 188-189, ECHR 2006-XIII (extracts)).

56. The Court considers that these conclusions are also applicable to the present case and there is no reason to depart from them. The Suppression of Terrorism Act, which was formulated in vague and general terms, cannot serve as a sufficient legal basis for the interference in the present case. It did not offer adequate and effective safeguards against abuse (see, for example, *Smirnov v. Russia*, no. 71362/01, §§ 44-45, 7 June 2007).

57. It also notes in this respect that the Government did not submit any document specifically authorising the servicemen to conduct the search. It appears that no such warrant was drawn up, the servicemen having acted directly within their broad powers under the Suppression of Terrorism Act.

58. The Court thus concludes, in view of the above considerations and in the absence of an individualised decision which would clearly indicate the purpose and scope of the search, and which could have been appealed against in a court, that the interference with the applicants' rights was not "lawful". It is thus not necessary to examine whether the interference pursued a legitimate aim and was proportionate.

59. Accordingly, there has been a violation of Article 8 of the Convention on account of the search of the applicants' home on 27 December 2005.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

60. The applicants complained under Article 1 of Protocol No. 1 that during the search the servicemen had damaged the gate, outhouse, vineyards and furniture, as well as items inside the house, and that they had stolen cash, valuables and certain personal documents.

61. Apart from the damage to the gate, which they considered necessary, the Government disputed these allegations. They also pointed out that neither at the domestic level nor before the Court did the applicants submit any documents proving their ownership of the property in question. They

argued therefore that the applicants cannot be considered victims in terms of Article 34 of the Convention.

62. The Government also raised an objection of non-exhaustion of domestic remedies. They submitted that the applicants had failed to institute civil proceedings for damages. In addition, the applicants had failed to challenge the decision of the Nazran District Court of 27 December 2006.

63. The applicants disagreed. They maintained that civil remedies were ineffective in their case because the Suppression of Terrorism Act exempted state agents from any liability during anti-terrorist operations.

64. The Court considers that it does not need to decide on the issue of exhaustion of domestic remedies, this complaint being in any event inadmissible for the following reasons.

65. The Court reiterates that the reference to "victim" in Article 34 means a person directly affected by the act or omission complained of, that is to say, a person who has a personal, direct and valid interest in seeing the act proscribed or the omission repaired (see *Marckx v. Belgium*, 13 June 1979, § 27, Series A no. 31, and *Gayuduk and Others v. Ukraine* (dec.), no. 45526/99, 2 July 2002).

66. The Court further reiterates that unlike Article 8 of the Convention, which protects home irrespective of actual ownership of the place (see, for example, *Menteş and Others v. Turkey*, 28 November 1997, § 73, *Reports* 1997-VIII), Article 1 of Protocol No. 1 protects rights of owners to the property in question (see *Khamidov v. Russia*, no. 72118/01, § 121, 15 November 2007). Therefore, it must first of all be established that the applicants were the owners of the property in relation to which they claimed damage or loss. Only in that event can they be considered to be "directly and personally affected" by the alleged interference and thus be victims within the meaning of Article 34 of the Convention.

67. The Court has established in its case-law a number of principles when it is faced with a task of establishing the facts of matters on which the parties disagree. As regards the matters that are in dispute, the Court notes its jurisprudence confirming the standard of proof "beyond reasonable doubt" in its assessment of evidence. Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (see *Imakayeva,* cited above*,* § 112).

68. When the facts of the case are unclear, as in the present case, it is not only the Government which should assist the Court in establishing the facts (see, for example, *Imakayeva,* cited above, § 111). The applicants themselves must support their allegations, especially when the relevant information is not within the exclusive access of the Government. In other words it is for the applicant to make a prima facie case and to adduce

appropriate evidence (see *Aslakhanova and Others v. Russia*, nos. 2944/06, 8300/07, 50184/07, 332/08 and 42509/10, § 97, 18 December 2012).

69. The present applicants failed, however, to inform the Court which of them was the actual owner of the real property that was allegedly damaged, or if they were all joint owners, including the small children. No documents were submitted to the Court about the ownership (see, conversely, for example, *Miltayev and Meltayeva v. Russia*, no. 8455/06, § 40, 15 January 2013). The same applies to the moveable property inside the house. Given that nine applicants lived in the house at the relevant time, the Court is unable, without any assistance from the applicants, to reach a conclusion as to who was the owner of which item of property and thus who could be considered a victim of the alleged violations under Article 1 of Protocol No. 1. Indeed, in the absence of any evidence the Court is unable to conclude that any of the applicants were owners of the property in question and thus could have been "directly and personally affected" by the alleged interference with that property.

70. The only exception is the allegedly stolen documents that were stated to belong to the third and fourth applicants. However, on the basis of the information in the case file, and given that these allegations of theft are not corroborated by any other piece of evidence, the Court is unable to conclude that the servicemen stole the documents during the search.

71. In view of the above considerations, the applicants' complaints under Article 1 of Protocol No. 1 are partly inadmissible as they lack victim status within the meaning of Article 34 of the Convention and partly, in respect of the allegedly stolen documents, manifestly ill-founded.

72. It follows that the complaints under Article 1 of Protocol No. 1 must be rejected pursuant to Article 34 and Article 35 §§ 3 (a) and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

73. The applicants complained that they had not had effective remedies in respect of their complaints under Article 8 of the Convention and Article 1 of Protocol No. 1. They relied on Article 13 of the Convention, which reads:

> "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. Admissibility

74. The Court notes that it has declared the applicants' complaint under Article 1 of Protocol No. 1 inadmissible. It therefore considers that the

applicants did not have an arguable claim of a violation of that Convention provision. Accordingly, their complaint under Article 13 of the Convention that they had no effective remedies in relation to the complaint under Article 1 of Protocol No.1 must be rejected as manifestly ill-founded within the meaning of Article 35 §§ 3 (a) and 4 of the Convention (see *Isayev and Others v. Russia*, no. 43368/04, § 184, 21 June 2011).

75. As regards the applicants' complaint under Article 13 in conjunction with Article 8 of the Convention, the Court considers that this part of the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

76. The Court reiterates that it has found a violation of Article 8, which was also based on the lack of procedural safeguards (see paragraph 58 above). In the light of this it considers that no separate issue arises in respect of Article 13 in connection with Article 8 of the Convention (see also *Imakayeva,* cited above, § 197).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. 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

78. The applicants claimed in total 1,500 United States dollars (USD) and 237,800 Russian roubles (RUB) in respect of pecuniary damage and 5,000 euros (EUR) each in respect of non-pecuniary damage.

79. The Government considered the claims unsubstantiated and overstated. They maintained that there was no causal link between the damage claimed and alleged violations of the Convention, and that a finding of a violation would constitute sufficient just satisfaction for any non-pecuniary damage the applicants might have sustained.

80. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

81. On the other hand, the Court considers that the applicants' suffering and frustration on the account of the violations of the Convention found cannot be compensated for by a mere finding of a violation. Having regard

to the nature of the violations found, and making an assessment on an equitable basis, the Court awards each of the applicants EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

82. The applicants did not claim any costs and expenses; the Court therefore makes no award under this head.

C. Default interest

83. 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. *Declares,* unanimously, the complaints concerning Article 8 of the Convention and Article 13 of the Convention in conjunction with Article 8 of the Convention admissible;

2. *Declares,* by a majority, the remainder of the application inadmissible;

3. *Holds,* unanimously, that there has been a violation of Article 8 of the Convention;

4. *Holds,* unanimously, that no separate issue arises under Article 13 of the Convention in connection with Article 8;

5. *Holds,* unanimously,
   (a) that the respondent State is to pay each applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement.
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 18 July 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Mark Villiger
Deputy Registrar	President

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

M.V.
J.S.P.

CONCURRING OPINION OF JUDGES LEMMENS AND DEDOV

We voted with our colleagues in finding that there has been a violation of Article 8 of the Convention.

We would, however, prefer a slightly different approach to the issue of the justification for the search of the applicants' house.

The majority finds that the search was not "lawful". It considers that the Suppression of Terrorism Act 1998 (hereafter the "Act") did not define with sufficient clarity the scope of the powers of State agents engaged in counter-terrorist operations, and therefore did not offer adequate and effective safeguards against abuse. Moreover, there was no specific warrant authorising the search and clearly indicating its purpose and scope.

We are not convinced that this analysis is sufficient to conclude that Article 8 of the Convention has been violated.

Under Article 8 § 2 of the Convention, an interference with the right to respect for a person's home must be "in accordance with the law". The latter phrase not only requires compliance with domestic law but also relates to the quality of that law, requiring it to be compatible with the rule of law. In certain cases, especially in the context of secret measures by public authorities, this implies that the law itself must provide protection against arbitrary interference with an individual's right under Article 8 (see *Bykov v. Russia* [GC], no. 4378/02, § 76, 10 March 2009; see also *Malone v. the United Kingdom*, 2 August 1984, Series A no. 82, § 67; *Amann v. Switzerland* [GC], no. 27798/95, § 56, ECHR 2000-II; and *Rotaru v. Romania* [GC], no. 28341/95, § 55, ECHR 2000-V).

In the present case, the counter-terrorist operation was based on the Act and carried out within the framework of a criminal investigation. Under section 13, part 1, point 3 of the Act, agents involved in a counter-terrorist operation were entitled to arrest persons who had violated the law. Under section 13, part 1, point 4 of the Act, these agents also had the right to enter private residential or other premises while pursuing persons suspected of committing terrorist acts, where any delay might jeopardise human life or health (see paragraph 32 of the judgment). At first sight, the latter provision provides the legal basis for the search in question.

Having regard to the circumstances of the present case, we wonder whether it is possible to state that the Act does not define with sufficient clarity the scope of the powers of agents involved in a counter-terrorist operation and the manner of their exercise. In this respect, we note that the operation in question did not concern a search for undefined items (as in the *Imakayeva* and *Smirnov* cases, cited in paragraphs 55 and 56 of the judgment). Nor did it concern an operation as drastic as the destruction of houses during an aerial attack (as in the *Esmukhambetov* case, cited in paragraph 55). The operation under review was set up to arrest a named

individual, Mr Ali Taziyev, who was suspected of terrorist acts. While considerable means were deployed, the object of the operation was limited in scope.

We do not call into question the Court's case-law to the effect that the Act was formulated in vague and general terms and did not afford an individual adequate protection against arbitrariness (see *Khamidov v. Russia*, no. 72118/01, § 143, 15 November 2007). However, we are not convinced that the general deficiencies in the Act are sufficient, in this particular case, to conclude that the interference was not lawful. In any event, we would prefer to concentrate on the issue of whether the operation of 27 December 2005 complied with domestic law, in particular the Act.

In this respect, we agree with the majority that the fact that no individual decision authorising the operation has been produced is problematic. We are not persuaded that a written order is always needed in the context of a counter-terrorist operation. However, where no such order is produced, the Government should at least submit other documents relating to the operation which make sufficiently clear the reasons for which the operation was ordered at that precise moment and how the operational limits were defined. Without an order or other documents, the Court is unable to conclude, for instance, that recourse to the extraordinary powers under the Act was justified by ascertainable facts, or that the incursion into the applicants' house was justified by the existence of an imminent danger to human life or health.

We therefore conclude, like the majority, that the interference was not "in accordance with the law", but we do so on a somewhat narrower basis.