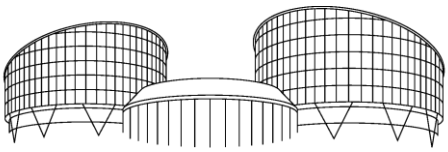

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ARAPKHANOVY v. RUSSIA

(Application no. 2215/05)

JUDGMENT

STRASBOURG

3 October 2013

FINAL

17/02/2014

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

In the case of Arapkhanovy v. Russia,

The European Court of Human Rights (First Section), 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 Søren Nielsen, *Section Registrar*,

Having deliberated in private on 10 September 2013,

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

PROCEDURE

1. The case originated in an application (no. 2215/05) 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 ten Russian nationals listed below ("the applicants") on 30 December 2004.

2. The applicants were represented by lawyers of the Stichting Russian Justice Initiative ("the SRJI"), an NGO based in the Netherlands with a representative office in Russia. The Russian Government ("the Government") were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 28 September 2007 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

4. On 29 September 2007 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants are:

(1) Ms Rimma Arapkhanova, born in 1967;
(2) Mr Zelimkhan Arapkhanov, born in 1982;
(3) Ms Ayshat Arapkhanova, born in 1933;
(4) Ms Malika Arapkhanova, born in 1993;
(5) Ms Romana Arapkhanova, born in 2000;
(6) Mr Amirkhan Arapkhanov, born in 1992;
(7) Mr Aslan Arapkhanov, born in 1997;
(8) Mr Mukharbek Arapkhanov, born in 1999;
(9) Ms Diana Arapkhanova, born in 1994; and
(10) Mr Adam Arapkhanov, born in 1996.

They live in the village of Galashki, Sunzhenskiy District, in the Republic of Ingushetia.

7. The first applicant was married to Mr Beslan Arapkhanov, born in 1966. They are the parents of the fourth to tenth applicants. The third applicant is the mother of Beslan Arapkhanov; the second applicant is his cousin.

8. At the material time Beslan Arapkhanov lived with his wife and children, the first and fourth to tenth applicants, at 1 Partizanskaya Street in the village of Galashki. The second applicant lived in a neighbouring house at 2 Partizanskaya Street. The third applicant lived at 18 Shosseynaya Street in Galashki.

A. Events of 20 July 2004

1. The applicants' account

(a) Killing of Beslan Arapkhanov

9. On the night of 19 July 2004 Beslan Arapkhanov, his wife and their children were at their family home.

10. At about 4 a.m. on 20 July 2004 around ten men wearing camouflage uniforms and armed with machine guns burst into Beslan Arapkhanov's house. Although the men did not identify themselves, the applicants believed that they were Russian servicemen.

11. The servicemen grabbed Beslan Arapkhanov, handcuffed him, forced him onto the floor and hit him with a machine gun butt. Beslan Arapkhanov started bleeding. In the meantime a serviceman examined his identity papers.

12. The servicemen searched the house without producing a warrant. Eventually they found an assault rifle hidden in a couch. According to the applicants, Beslan Arapkhanov kept the weapon to take revenge on Chechen rebel fighters for the death of his brother.

13. The servicemen locked the first applicant and her children in one of the rooms and dragged Beslan Arapkhanov to the courtyard. Some three minutes later the first applicant heard a burst of machine gun fire.

14. Fifteen or twenty minutes later a man wearing civilian clothes entered the house and unlocked the room in which the first applicant and her children were locked. He introduced himself as Mr K., an investigator from the Department of the Federal Security Service of the Republic of Ingushetia ("the Ingushetia FSB"). Mr K. was accompanied by two unmasked soldiers; he said that they were attesting witnesses and that he was going to search the house. The first applicant told him that the servicemen had already seized the assault rifle and that there was nothing else to search for.

15. Mr K. showed the first applicant a warrant authorising a search of the house owned by a certain Mr Kh. at 7 Partizanskaya Street in Galashki. The first applicant told him that their address was 1 Partizanskaya Street and that her husband's last name was Arapkhanov, not Kh. The servicemen shouted abuse at her. Mr K. made some notes, which the first applicant assumed were for a search report.

16. The servicemen took the first applicant to the courtyard where she saw her husband lying still and bloodied on the ground. The servicemen did not allow her to approach Beslan Arapkhanov and ordered her to dig up any hidden weapons. She said that there were no weapons but obeyed and began digging. After a while the servicemen started digging as well. Having found nothing, they took the first applicant back inside.

17. Mr K. asked the first applicant to sign the search report, which she did. Then some of the servicemen presented a black plastic bag containing a grenade which they said they had found in the courtyard.

18. The servicemen locked the first applicant and her children in one of the rooms and left. At about 9 a.m. local police officers arrived and released them.

19. Beslan Arapkhanov was buried later that day.

(b) The second applicant's account of the events

20. On the night of 19 July 2004 the second applicant was asleep in his house at 2 Partizanskaya Street.

21. At about 4.30 a.m. on 20 July 2004 the second applicant was woken up by the sound of gunshots. He went outside and saw several vehicles parked at the corner of the street and a group of armed and masked men standing in front of Beslan Arapkhanov's house. He also glimpsed a man lying on the ground in Beslan Arapkhanov's courtyard.

22. The armed men beckoned the second applicant and asked for his identity papers, which he produced. They then asked him who lived at 1 Partizanskaya Street; he replied that it was his cousin. The men reported his words to someone via a portable radio transmitter. Then they beat and

kicked the second applicant, demanding that he disclose the whereabouts of rebel fighters.

23. The armed men then took the second applicant to a Gazel vehicle parked nearby, where a man in civilian clothes told him that he was in charge of the other men and asked him how Beslan Arapkhanov had obtained the rifle. The second applicant replied that he knew nothing about that. The man continued to question him about his cousin and rebel fighters; some forty or fifty minutes later he sent the second applicant home.

24. On returning home, the second applicant found two men wearing masks and armed with machine guns in his courtyard. One of them hit him in the face with a machine gun butt so that the second applicant lost consciousness. When he regained his senses, he found himself lying on the ground in a pool of blood.

25. Later the same day the second applicant was admitted to hospital and diagnosed with cerebral bruising and numerous abrasions on his face and neck. He was discharged from hospital on 10 August 2004.

(c) The search report

26. According to the search report drawn up on 20 July 2004 and submitted by the applicants, the search at 1 Partizanskaya Street, Galashki, had been authorised by a warrant dated 20 July 2004. No further details concerning the warrant were given.

27. The search was carried out by the investigator of the Ingushetia FSB, Lieutenant K., between 5.45 and 6.55 a.m. on 20 July 2004 in the presence of the first applicant and two attesting witnesses, Mr G. and Mr E., servicemen of military unit no. 3810 of Zheleznovodsk.

28. The report states that the aim of the search was to discover hidden weapons and ammunition and that an assault rifle magazine without cartridges, a holster and an F-1 grenade were eventually found.

2. Information submitted by the Government

29. On 19 July 2004 investigators in charge of a criminal case concerning a number of rebel attacks committed on the territory of Ingushetia obtained intelligence information that insurgents were probably hiding at 1 Partizanskaya Street in Galashki and were storing armaments there.

30. On 20 July 2004 the North Caucasus Department of the Prosecutor General's Office instituted criminal proceedings in case no. 04560060 in relation to unlawful insurgent activities and ordered an urgent search of Beslan Arapkhanov's house in order to find members of illegal armed groups. Mr K., an investigator of the Ingushetia FSB, was assigned to carry out the search.

31. At about 4 a.m. on 20 July 2004 Mr K., accompanied by servicemen of a special unit of the Federal Security Service of Russia ("the Russian FSB"), arrived in Galashki.

32. Facing a serious risk of armed resistance, the Russian FSB servicemen surrounded Beslan Arapkhanov's house.

33. Some of the Russian FSB servicemen entered the house, arrested Beslan Arapkhanov and handcuffed him. Later they took the handcuffs off as they needed the arrestee to unlock all the doors in the house.

34. While the servicemen were searching the storage room, Beslan Arapkhanov suddenly took a loaded Kalashnikov rifle from its hiding place, kicked out a piece of plywood covering a window and jumped out of the window. He fired a shot at the servicemen in the backyard. Since there was a risk that he might continue firing, some of the servicemen returned fire and killed him.

35. The second applicant stepped out of a neighbouring house and started walking towards the scene of the incident. The servicemen ordered him not to move and to show that he was not carrying any arms, but he disobeyed. Some of them hit the second applicant several times with machine gun butts to preclude him from acting unlawfully. As a result the second applicant sustained cerebral concussion and a wound to the forehead that qualified as minor bodily injuries.

36. In the course of the search of Beslan Arapkhanov's house the servicemen seized a Kalashnikov rifle inscribed with the number 6682, a pouch containing five cartridges, sixty-nine 7.62 mm calibre bullets and F-1 and RGD-5 grenades.

37. During the search the first applicant explained to the FSB servicemen that her husband had kept the rifle at home in order to take revenge on rebels who had killed his brother.

38. On 21 July 2004 the Nazran District Court of the Republic of Ingushetia declared the search of 20 July 2004 lawful.

B. Investigation into the killing of Beslan Arapkhanov

1. The applicants' account

39. Shortly after the killing of Beslan Arapkhanov the applicants began to complain about it to various State agencies and officials, such as the Russian State Duma, the Russian President, the Head of the Russian FSB, the President of the Republic of Ingushetia and prosecutors' offices at different levels.

40. On 21 July 2004 employees of the Office of the President and of the Government of the Republic of Ingushetia visited the first applicant. They told her that her husband had been killed by mistake and gave her 100,000 Russian roubles (RUB), apparently as an allowance for the loss of

the breadwinner. A few days later several employees of the Ingushetian Government again visited the first applicant, examined her household and promised her financial support; it is unclear whether the first applicant received it.

41. On 24 July 2004 the prosecutor's office of the Republic of Ingushetia forwarded the first applicant's complaint to the prosecutor's office of the Sunzhenskiy District ("the district prosecutor's office").

42. On 28 July 2004 the district prosecutor's office opened an investigation into Beslan Arapkhanov's killing under Article 105 § 1 of the Russian Criminal Code ("murder"). The prosecutor's decision stated that, while carrying out operational and search measures, servicemen of the Ingushetian FSB had used firearms against Beslan Arapkhanov, who had died of his wounds on the spot. On the same date the prosecutor's office informed the first applicant that an investigation had been opened into the killing of her husband.

43. At the end of July and beginning of August 2004 the investigators questioned several inhabitants of the village of Galashki as witnesses in the case concerning Beslan Arapkhanov's death.

44. On 29 July 2004 the district prosecutor's office ordered that Beslan Arapkhanov's corpse be exhumed and an autopsy carried out.

45. Between 29 July and 27 August 2004 an expert from the Forensics Bureau of the Republic of Ingushetia conducted the autopsy and drew up a post-mortem report. According to the report, Beslan Arapkhanov's death was caused by numerous gunshot wounds to the head, body and extremities. The expert also found bruises on the corpse's wrists, possibly caused by handcuffs.

46. On 30 July 2004 the district prosecutor's office granted the first applicant victim status in case no. 04600044 in connection with her husband's death.

47. On the same date the first applicant was questioned. She described the events of 20 July 2004. She stated, in particular, that Mr K. had shown her a search warrant in the name of Mr Kh., their neighbour, and his address at 7 Partizanskaya Street, Galashki. The first applicant had objected, stating that the warrant had not been drawn up in their family name or their address but the servicemen had shouted abuse at her.

48. On an unspecified date the second applicant was granted victim status in case no. 04600044.

49. On 10 August 2004 the Forensics Bureau of the Republic of Ingushetia issued a medical death certificate in respect of Beslan Arapkhanov, according to which the death had been caused by fractures to the skull combined with brain injuries and a perforating gunshot wound to the head.

50. On 25 August 2004 the first and second applicants asked the district prosecutor's office to provide them with copies of documents from the case

file, but their request does not appear to have been granted. On 20 September 2004 the first applicant sent a similar request to the prosecutor's office of the Republic of Ingushetia.

51. On 23 September 2004 case no. 04600044 was transferred to the military prosecutor's office of the North Caucasus Military Circuit ("the circuit prosecutor's office"). On the same date the prosecutor's office of the Republic of Ingushetia notified the first applicant accordingly.

52. On 24 September 2004 the prosecutor's office of the Republic of Ingushetia provided the applicant with copies of certain documents from the case file but refused to give her copies of the entire file.

53. On 29 October 2004 the circuit prosecutor's office informed the first applicant that case no. 04600044 had been transferred to the military prosecutor's office of the United Group Alignment ("the UGA prosecutor's office").

54. On 16 November 2004 the SRJI, acting on behalf of the first applicant, asked the district prosecutor's office to update them on progress in the investigation.

55. On 17 December 2004 an FSB officer informed the first applicant that her complaint to the head of the Russian FSB had been forwarded to the circuit prosecutor's office.

56. On 26 December 2004 the UGA prosecutor's office forwarded the first applicant's complaint to the military prosecutor's office of military unit no. 04062 ("the unit prosecutor's office").

57. On 22 January 2005 the unit prosecutor's office took up the investigation in case no. 04600040 (it appears that there was a clerical error in the case file number, which should read "04600044") and notified the first applicant accordingly. It appears that at some point they changed the case number.

58. On 25 January 2005 the unit prosecutor's office informed the first applicant that they had received the complaint that she had addressed to the Russian President and that the investigation into her husband's death was pending.

59. On 1 February 2005 the unit prosecutor's office informed the first and second applicants that the preliminary investigation time-limit in case no. 34/01/0010-05 had been extended until 28 March 2005.

60. On 2 and 7 February 2005 the UGA prosecutor's office forwarded the first applicant's complaints to the unit prosecutor's office.

61. On 22 February 2005 the unit prosecutor's office notified the first applicant that the investigation was under way.

62. On 23 May 2005 the unit prosecutor's office transferred the investigation file in case no. 34/01/0010-05 to the military prosecutor's office of military unit no. 20102 and notified the first and second applicants accordingly.

63. On 22 June 2005 the SRJI asked the unit prosecutor's office to update them on progress in the investigation in case no. 34/01/0010-05. On 26 August 2005 the unit prosecutor's office replied that they had transferred the case to the military prosecutor's office of military unit no. 20102.

64. On 24 October 2005 the Ministry of the Interior of Ingushetia notified the first applicant that on 23 October 2004 criminal case no. 04600044 had been transferred to the North-Caucasus Military Circuit.

65. On 3 December 2005 the unit prosecutor's office informed the first applicant that the case had been transferred to the military prosecutor's office of military unit no. 20102.

66. On 7 July 2006 the Prosecutor General's Office of Russia informed a member of parliament of Ingushetia, *inter alia*, that the criminal investigation into the killing of Beslan Arapkhanov had been terminated on 30 May 2005.

67. On 12 April 2007 the UGA prosecutor's office informed the first applicant that the criminal proceedings against the two servicemen of the Ingushetia FSB, Mr P. and Mr V., had been terminated by the unit prosecutor's office on 7 December 2006 for lack of *corpus delicti* and that there were no grounds for quashing that decision.

68. On 10 May 2007 the SRJI asked the unit prosecutor's office to provide the first applicant with a copy of the decision of 7 December 2006 and to allow her to study the case file.

69. On an unspecified date the first applicant challenged the decision of the unit prosecutor's office of 7 December 2006 before the Sunzhenskiy District Court of the Republic of Ingushetia.

70. On 16 July 2007 the Sunzhenskiy District Court decided to transfer the case to a military court, pursuant to the rules on the jurisdiction of the relevant subject matter.

71. On 9 January 2008 the unit prosecutor's office informed the SRJI that the first applicant could study the case file in the premises of the military prosecutor's office of military unit no. 29483.

2. The Government's account

72. On 28 July 2004 the district prosecutor's office instituted an investigation into Beslan Arapkhanov's killing under Article 105 § 1 of the Russian Criminal Code.

73. On 22 January of an unspecified year the investigation was transferred to the unit prosecutor's office.

74. A number of witnesses were questioned in the course of the investigation. Some of them were servicemen of the Russian FSB, who took part in the arrest of Beslan Arapkhanov. For their own protection and that of their families, their real names were not disclosed by the Government.

75. On an unspecified date Mr I. (it is unclear whether the Government provided his real name or an alias) was questioned and stated that on

20 July 2004 he had been in command of a special unit of the Russian FSB that had ensured the security of investigators searching Beslan Arapkhanov's house. As it was thought likely that insurgents would be hiding in the house, the special unit servicemen entered the house first and arrested Beslan Arapkhanov. While in the storage room, Beslan Arapkhanov suddenly took a loaded Kalashnikov rifle from its hiding place, kicked out a piece of plywood covering a window and jumped out of the window. He fired a shot at two servicemen who were standing in the backyard. They fired back and killed Beslan Arapkhanov.

76. The two servicemen who used firearms against Beslan Arapkhanov belonged to a special unit of the Russian FSB (military unit no. 35690). Their code names were "Ruby" and "Uran". The investigation could not question them because they had died in the course of a special anti-terrorist operation on 3 September 2004.

77. All the other servicemen of the special unit of the Russian FSB who were present during the search of 20 July 2004 were questioned on unspecified dates. They confirmed that Beslan Arapkhanov had showed armed resistance during his arrest and that the firearms had been used against him lawfully.

78. On an unspecified date the corpse of Beslan Arapkhanov was exhumed. A post-mortem examination established that the death had been caused by gunshot wounds. There were also bruises on each of Beslan Arapkhanov's wrists, as well as a wound measuring five centimetres by two centimetres on his left wrist, probably caused by handcuffs.

79. On an unspecified date the investigators questioned a deputy head of the Government of Ingushetia, who submitted that on 21 July 2004 he and two other officials had visited the first applicant and given her a funeral subsidy from the Government of Ingushetia in the amount of RUB 100,000.

80. On 7 December 2006 the unit prosecutor's office terminated the criminal investigation for lack of evidence of a crime, as the servicemen had lawfully used firearms during the arrest to prevent Beslan Arapkhanov from injuring their fellow servicemen.

81. On 3 December 2007 the deputy of the Main Military Prosecutor of Russia quashed the decision of 7 December 2006.

82. On an unspecified date Mr K., former investigator of the Ingushetia FSB, was questioned and stated that there had been no breaches of statutory procedure in the course of the search of 20 July 2004.

83. The investigation into Beslan Arapkhanov's killing was reopened.

84. A complaint lodged by the first applicant about the unlawful termination of the criminal proceedings was examined on an unspecified date by the Nalchik Garrison Military Court and dismissed as unsubstantiated.

85. Despite specific requests by the Court, the Government did not disclose any materials from the case file concerning the killing of Beslan

Arapkhanov. Relying on information obtained from the Prosecutor General's Office, the Government stated that the investigation was in progress and that disclosure of the documents would breach Article 161 of the Code of Criminal Procedure, since the file contained information of a military nature and personal data concerning the witnesses and other participants in the criminal proceedings.

C. Investigation into the injuries sustained by the second applicant

1. The applicants' account

86. On 22 July 2004 the second applicant complained to the district prosecutor's office that he had been severely beaten by a group of servicemen armed with machine guns. He requested that those responsible be punished.

87. On 19 August 2004 the district prosecutor's office asked Sunzhenskiy District Hospital to produce the second applicant's medical record, which contained information on the injuries he had sustained on 20 July 2004. They commented that the request was "in connection with the investigation in criminal case no. 04600044 concerning B[eslan] Arapkhanov's death and the infliction of bodily injuries on Z[elimkhan] Arapkhanov".

2. The Government's account

88. On 23 July 2004 the second applicant complained to the district prosecutor's office that federal servicemen had inflicted bodily injuries on him.

89. The second applicant was granted victim status and questioned.

90. In order to determine the degree of severity of the bodily injuries, the investigators ordered a forensic expert examination of the second applicant. The experts established that upon admission to hospital the second applicant had been diagnosed with cerebral bruising and numerous abrasions on the face and abdomen. The cerebral bruising had not been confirmed by objective clinical neurological data and therefore could not be subjected to forensic assessment. A scar on the right side of the forehead was assessed as a minor bodily injury.

91. It is not clear whether a separate set of criminal proceedings was instituted in respect of the injuries sustained by the second applicant or whether the investigation into the incident formed part of the investigation in case no. 04600044. Nor is it clear whether any progress was made in the investigation of the beating of the second applicant.

92. Despite specific requests by the Court, the Government did not disclose any materials from the case file concerning the bodily injuries sustained by the second applicant.

II. RELEVANT DOMESTIC LAW

93. For a summary of relevant domestic law, see *Khatsiyeva and Others v. Russia* (no. 5108/02, §§ 105-07, 17 January 2008).

THE LAW

I. THE GOVERNMENT'S OBJECTION REGARDING *LOCUS STANDI*

94. The Government pointed out that the application to the Court had been signed by three lawyers of the SRJI named in the powers of attorney issued by the applicants and two other persons who had not been officially authorised to represent the applicants. Referring to the Court's decision in *Vasila and Petre Constantin in the name of Mihai Ciobanu v. Romania* (no. 52414/99, 16 December 2003), the Government concluded that there was a lack of *locus standi* in the present case.

95. The Court notes that the applicants gave the SRJI and three of its lawyers the authority to act on their behalf. The application form was signed by five lawyers in total. The names of three of them appeared in the powers of attorney, while the other two were working with the SRJI. In such circumstances the Court considers that the SRJI lawyers were duly authorised to submit an application on the applicants' behalf. Accordingly, the Government's objection must be dismissed.

II. THE GOVERNMENT'S OBJECTION REGARDING NON-EXHAUSTION OF CIVIL DOMESTIC REMEDIES

A. The parties' submissions

96. The Government contended that the applicants had not brought any civil claims for non-pecuniary damages caused by acts or omissions of the investigating authorities and thus had failed to exhaust available domestic remedies.

97. The applicants contested that objection and stated that the remedies referred to by the Government were ineffective.

B. The Court's assessment

98. The Court reiterates that the rule of exhaustion of domestic remedies under Article 35 § 1 of the Convention obliges applicants to use first the remedies which are available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain both in theory and in practice, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used. However, there is no obligation to have recourse to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI, and *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, no. 41964/98, § 64, 27 June 2006).

99. It is incumbent on the respondent Government claiming non-exhaustion to indicate to the Court with sufficient clarity the remedies to which the applicants have not had recourse and to satisfy the Court that the remedies were effective and available in theory and in practice at the relevant time, that is to say that they were accessible, were capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Cennet Ayhan and Mehmet Salih Ayhan*, cited above, § 65).

100. The Court has already found in a number of similar cases that a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention. A civil court is unable to pursue any independent investigation and is incapable, without the benefit of the conclusions of a criminal investigation, of making any meaningful findings regarding the identity of the perpetrators of fatal assaults or disappearances, still less of establishing their responsibility (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-21, 24 February 2005, and *Estamirov and Others v. Russia*, no. 60272/00, § 77, 12 October 2006). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies. The Government's objection must therefore be rejected.

III. ALLEGED VIOLATIONS OF ARTICLE 2 OF THE CONVENTION

101. The applicants complained of Beslan Arapkhanov's killing and of the domestic authorities' failure to carry out an effective investigation in this connection. They relied on Article 2 of the Convention, which reads:

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

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

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

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

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

A. The parties' submissions

1. The Government

102. The Government conceded that Beslan Arapkhanov had been deprived of his life by State agents. They argued, however, that the use of lethal force against him had been proportionate and justified. Beslan Arapkhanov kept an assault rifle at home, as well as a considerable number of cartridges and several grenades. None of the applicants were eye-witnesses to the actual shooting. Beslan Arapkhanov opened fire at the servicemen attempting to arrest him. The FSB servicemen acted in a rapidly changing situation to stop the unlawful actions of Beslan Arapkhanov armed with a gun and to protect their own lives. In so doing, they acted in accordance with domestic law. The domestic authorities were carrying out an investigation to establish whether the use of force was necessary and proportionate.

103. The investigation into the killing opened on the first applicant's request was ongoing. The investigators had questioned certain witnesses, including the FSB servicemen who took part in Beslan Araphanov's arrest. The two servicemen who shot the applicants' relative could not be questioned because they had died in September 2004. The first and second applicants were questioned as victims. The forensic expert examination of Beslan Araphanov's exhumed body established that he had died of firearm wounds. The copies of interview records provided by the applicants could not be considered as evidence in the context of the criminal investigation as they did not meet the requirements of official documents.

104. The first and second applicants were informed of their right to study the non-classified case materials. The first applicant made use of her right to appeal against the decision of the prosecutor's office to terminate the investigation. The investigation was terminated twice but then reopened

and was currently under way. In sum, the Government claimed that the investigation was effective.

2. The applicants

105. The applicants maintained their complaints. They submitted that the arrest operation carried out by the FSB servicemen had not been properly planned. Referring to the case of *Karagiannopoulos v. Greece* (no. 27850/03, § 61, 21 June 2007), they emphasised that the very fact that Beslan Arapkhanov's handcuffs had been removed demonstrated the failure to organise the operation in a manner compatible with the requirements of Article 2 of the Convention.

106. They further insisted that the authorities had failed to investigate the killing of their relative, in breach of their procedural obligation under Article 2 of the Convention, as the proceedings had been unreasonably long without any plausible explanation. They also submitted that they had been denied access to the case materials and that the investigative measures taken by the authorities had been scarce.

B. The Court's assessment

1. Admissibility

107. The Court considers, in the light of the parties' submissions, that this complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The complaint must therefore be declared admissible.

2. Merits

(a) General principles

108. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. The situations where deprivation of life may be justified are exhaustive and must be narrowly interpreted. The use of force which may result in the deprivation of life must be no more than "absolutely necessary" for the achievement of one of the purposes set out in Article 2 § 2 (a), (b) and (c). This term indicates that a stricter and more compelling test of necessity must be employed than that normally applicable when determining whether State action is "necessary in a democratic society" under the second paragraphs of Articles 8 to 11 of the Convention. Consequently, the force used must be strictly proportionate to the achievement of the permitted aims (see *McCann and Others v. the*

United Kingdom, 27 September 1995, §§ 146-50, Series A no. 324; *Andronicou and Constantinou v. Cyprus*, § 171, 9 October 1997, *Reports of Judgments and Decisions* 1997-VI; *Oğur v. Turkey* [GC], no. 21594/93, § 78, ECHR 1999-III; *Bazorkina v. Russia*, no. 69481/01, § 103, 27 July 2006).

109. In determining whether the force used is compatible with Article 2, it may therefore be relevant whether a law enforcement operation has been planned and controlled so as to minimise to the greatest extent possible recourse to lethal force or incidental loss of life (see *McCann and Others*, cited above, § 194, and *Ergı v. Turkey,* 28 July 1998, § 79, *Reports* 1998-IV).

110. In addition to setting out the circumstances when deprivation of life may be justified, Article 2 implies a primary duty on the State to secure the right to life by putting in place an appropriate legal and administrative framework defining the limited circumstances in which law enforcement officials may use force and firearms, in the light of the relevant international standards (see *Makaratzis v. Greece* [GC], no. 50385/99, §§ 57-59, ECHR 2004-XI, and *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 96, ECHR 2005-VII). Furthermore, the national law regulating policing operations must secure a system of adequate and effective safeguards against arbitrariness and abuse of force, and even against avoidable accident (see *Makaratzis*, cited above, § 58, and *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 209, ECHR 2011 (extracts)). In particular, law enforcement agents must be trained to assess whether or not there is an absolute necessity to use firearms, not only on the basis of the letter of the relevant regulations, but also with due regard to the pre-eminence of respect for human life as a fundamental value (see *Nachova and Others*, cited above, § 97).

(b) Application of the above principles to the present case

(i) Killing of Beslan Arapkhanov

111. The Court notes at the outset that it is not disputed between the parties that Beslan Arapkhanov was killed by State servicemen on 20 July 2004.

112. The Court's core task, therefore, is to assess whether the deprivation of life was justified in the particular circumstances of the case. However, in the absence of any documents relating to the official investigation into the events of 20 July 2004, it is difficult for the Court to verify whether the FSB operation was compatible with the standards of Article 2 of the Convention.

113. The Court has been deprived of an opportunity to study the factual findings of the official investigation of the events at issue undertaken at domestic level owing to the Government's refusal to produce the case

materials, on the grounds that they were precluded from providing them by Article 161 of the Code of Criminal Procedure. In previous cases the Court has found this explanation insufficient to justify the withholding of key information which it has requested (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-... (extracts)). Therefore the Court considers that it can draw inferences from the Government's conduct in this respect.

114. The Court reiterates that where the applicants make out a prima facie case and the Court is prevented from reaching factual conclusions owing to a lack of documents, it is for the Government to show conclusively why the documents in question cannot serve to corroborate the allegations made by the applicants, or to provide a satisfactory and convincing explanation as to how the events in question occurred. The burden of proof is thus shifted to the Government and if they fail in their arguments, issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II).

115. In the present case the applicants could not provide a detailed account of the circumstances of Beslan Arapkhanov's death as they did not witness it (see paragraphs 13, 16 and 21 above).

116. The Government in their turn alleged that Beslan Arapkhanov, suspected of storing armaments, had opened fire at the servicemen attempting to search his house and had been shot to prevent him from harming the servicemen (see paragraph 34 above). Given that the applicants were not direct eye-witness to the actual shooting in the courtyard of their house (see, *mutatis mutandis*, *Tepe v. Turkey*, no. 27244/95, § 186, 9 May 2003), the Court is ready to accept, for the sake of argument, that the FSB servicemen opened fire only after Beslan Arapkhanov had taken the weapon, thus pursuing a legitimate aim of protecting the life of others.

117. Nevertheless, the Court reiterates that, in the light of the importance of the protection afforded by Article 2, it must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see *McCann and Others*, cited above, § 147). In the Court's view the very fact that the FSB servicemen went to the applicants' house in order to search for insurgents and concealed lethal weapons (see paragraph 29 above) suggests that they were on a security operation and thus were bound to have had a clear plan of actions allowing for various likely scenarios.

118. The Court reiterates that in carrying out its assessment of the planning and control phase of the operation from the standpoint of Article 2 of the Convention, it must have particular regard to the context in which the incident occurred as well as to the way in which the situation developed (see *Andronicou and Constantinou v. Cyprus*, cited above, § 182). Regrettably, the Government's blatant refusal to provide the Court with any materials

from the domestic investigation precludes it from adequately assessing the planning and control phase of the security operation.

119. Nevertheless, the Court will proceed to determine whether the way in which the FSB security operation was conducted showed that the FSB servicemen took appropriate care to ensure that any risk to the life of the applicants' relative was kept to a minimum (see *Leonidis v. Greece*, no. 43326/05, § 60, 8 January 2009).

120. It follows from the Government's own submissions that once at the Arapkhanovs' house, the FSB servicemen handcuffed Beslan Arapkhanov (see paragraph 33 above), thus ensuring that he posed no danger to them. Assuming that the servicemen intended to effect his lawful arrest, this legitimate aim could only justify putting human life at risk in circumstances of absolute necessity. The Court considers that in principle there can be no such necessity where it is known that the person to be arrested poses no threat to life or limb and is not suspected of having committed a violent offence, even if refraining from using lethal force may result in the opportunity to arrest the fugitive being lost (see *Makaratzis*, cited above, §§ 64-66).

121. In this respect the Court notes that there are certain basic precautions which State officers should be expected to take in all cases in order to minimise any potential risk (see *Mižigárová v. Slovakia*, no. 74832/01, § 89, 14 December 2010). However, in the present case the Court cannot see any reasonable explanation as to why the FSB servicemen took the handcuffs off a potentially dangerous person while searching for concealed weapons. It is clear that they were able to open the doors in the household themselves once they had taken the keys from Beslan Arapkhanov. Uncuffing the latter appears to be tangible proof that the servicemen in charge of the operation failed to foresee a number of highly probable occurrences, such as an attempt to flee or violent resistance, and thus did not comply with their duty to plan the security operation.

122. Given that the Government failed to submit to the Court any materials concerning the operation of 20 July 2004, the Court does not deem it necessary to examine whether there was an appropriate legal framework defining the circumstances in which use of lethal force was permissible.

123. In the light of the above, the Court considers that, the respondent State had not, at the relevant time, done all that could be reasonably expected of it to avoid real and immediate risk to life which they knew was liable to arise in police operations (see, *mutatis mutandis*, *Makaratzis*, cited above, § 71, and *Leonidis*, cited above, § 66).

124. Accordingly, the Court finds that there has been a violation of Article 2 of the Convention in respect of the killing of Beslan Arapkhanov.

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

125. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see *Kaya v. Turkey*, 19 February 1998, § 86, *Reports* 1998-I). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. This investigation should be independent, accessible to the victim's family, carried out with reasonable promptness and expedition, effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances or otherwise unlawful, and afford a sufficient element of public scrutiny of the investigation or its results (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-09, ECHR 2001-III (extracts), and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

126. In the present case, the killing of Beslan Arapkhanov was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

127. The Court notes once again that the documents from the investigation remain undisclosed by the Government. It therefore has to assess the effectiveness of the investigation on the basis of the few documents submitted by the applicants and the sparse information on its progress presented by the Government.

128. First, the Court observes that, although it is clear that the public officials of Ingushetia were already aware of the incident on 21 July 2004 (see paragraph 40 above) and that the prosecutor's office of Ingushetia were informed of Beslan Araphkanov's killing on 24 July 2004 at the latest (see paragraph 41 above), the investigation into the killing commenced only on 28 July 2004 (see paragraph 42 above), that is, eight days after the event. The Government put forward no explanation for that substantial delay, which would have had an inevitable adverse effect on the investigation into the use of lethal force by the State agents.

129. The Government were vague when referring to the very few investigative steps that had been taken to solve the killing of Beslan Arapkhanov. For instance, they stated that the investigators had questioned a number of witnesses (see paragraphs 74, 75 and 77 above) and that a forensic examination of the corpse had been carried out after it had been exhumed (see paragraph 78 above). Hence, in the absence of the case file

materials it remains unclear whether the measures in question could have contributed in any manner to the overall effectiveness of the investigation.

130. Moreover, while accepting that the two identified servicemen who opened fire at Beslan Arapkhanov died on 3 September 2004 (see paragraph 76 above) and thus could not be questioned after that date, the Court considers that the investigators' failure to question them at the very beginning of the investigative proceedings shows that the investigation into this grave incident was not conducted speedily and efficiently.

131. Furthermore, a number of important investigative steps were never taken. For instance, it does not appear that the inspection of the crime scene was ever carried out. Nor have the Government mentioned any ballistic expert examinations of the weapon from which Beslan Arapkhanov allegedly fired at the servicemen. It appears that no fingerprints were taken from the gun in question either.

132. Accordingly, the Court considers that the domestic investigative authorities demonstrably failed to act of their own motion and breached their obligation to exercise exemplary diligence and promptness in dealing with such a serious incident (see *Öneryÿldÿz v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII).

133. The Court also notes that the applicants were not promptly informed of significant developments in the investigation. It therefore considers that the investigators failed to ensure that the investigation received the required level of public scrutiny, and to safeguard the interests of the next of kin in the proceedings (see *Oğur v. Turkey* [GC], no. 21594/93, § 92, ECHR 1999-III).

134. Lastly, the Court notes that the investigation into the death of Beslan Arapkhanov was suspended and then resumed (see paragraphs 80 and 81 above) and that there were lengthy periods of inactivity on the part of the investigators for which no explanation was provided by the Government. Such handling of the investigation could not but have had a negative impact on the prospects of establishing the exact circumstances of Beslan Arapkhanov's death.

135. In the light of the foregoing considerations, the Court finds that the domestic authorities failed to carry out an effective criminal investigation into the killing of Beslan Araphkanov, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

136. The second applicant complained that on 20 July 2004 he had been ill-treated by State agents and that the investigation of the incident had not been effective.

137. The applicants further complained that as a result of the killing of their relative and the State's failure to investigate it properly, they had

endured profound mental suffering. They relied on Article 3 of the Convention, which reads:

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

A. The parties' submissions

1. The Government

138. The Government contested the second applicant's allegations. An investigation into his alleged ill-treatment had been opened on his request on 23 July 2004 as part of the criminal investigation (presumably in the case concerning his cousin's death). The second applicant was granted victim status and questioned in detail about the events in question. He also underwent a forensic medical examination. He made no complaints in relation to the investigation. The investigation into the injuries that he had sustained was ongoing and effective.

139. The Government denied that the applicants had been subjected to treatment proscribed by Article 3 of the Convention in the course of the investigation into Beslan Arapkhanov's killing.

2. The applicants

140. The second applicant maintained his complaints and stated that he had had no information on the course of the investigation into his ill-treatment.

141. The applicants further stated that as a result of the authorities' clear indifference to the distress caused to them by the killing of their close relative, they had endured profound mental suffering.

B. The Court's assessment

1. Admissibility

142. The Court notes that the complaints under Article 3 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds and must therefore be declared admissible.

2. Merits

(a) The complaint concerning the second applicant's ill-treatment

(i) Compliance with Article 3

143. The Court reiterates that 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 many other authorities, *Tekin v. Turkey*, 9 June 1998, § 52, *Reports* 1998-IV, and *Zabiyeva and Others v. Russia*, no. 35052/04, § 124, 17 September 2009).

144. The Court observes that it was not disputed between the parties that the second applicant had been beaten by State agents and had sustained the injuries, namely, cerebral bruising and numerous abrasions on the face and abdomen (see paragraphs 25, 35 and 90 above). The Court considers that this treatment reached the threshold of "inhuman and degrading".

145. Therefore, there has been a violation of Article 3 of the Convention in its substantive aspect in respect of the second applicant on account of his ill-treatment by the servicemen.

(ii) Effective investigation

146. The Court notes that the second applicant raised the complaint concerning ill-treatment by State servicemen before the investigating authorities when describing the events of 20 July 2004. According to the Government, an investigation into the incident was opened. However, it remains unknown whether that investigation formed part of the investigation of the case concerning his cousin's death or whether it formed part of a separate set of proceedings.

147. The Court notes at the outset that it remains unknown on what date and by which body the investigation was opened, or whether it produced any tangible results, as none of the documents from the investigation were disclosed by the Government. Moreover, the Government did not communicate to the Court the number assigned to the investigation.

148. Owing to the lack of information at its disposal, the Court is not in a position to establish whether any progress has been achieved in the investigation into the injuries sustained by the first applicant. Nonetheless, it is clear that the perpetrators have not yet been identified. Drawing inferences from the Government's refusal to provide any material from the case file or to submit at the very least a summary outline of the investigation, the Court finds that the domestic investigating authorities have failed to take the requisite measures to solve the crime.

149. In the absence of any information regarding the investigation into the second applicant's ill-treatment, bearing in mind its findings regarding the ineffectiveness of the investigation into the killing of the second applicant's cousin, the Court is bound to conclude that the Government have failed to conduct an effective investigation into the ill-treatment of the second applicant.

150. Accordingly, there has been a violation of Article 3 in its procedural aspect in respect of the second applicant.

(b) Complaint concerning the applicants' mental suffering

151. The Court notes 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 *Tanlı v. Turkey*, no. 26129/95, § 159, ECHR 2001-III (extracts)).

152. The Court observes that in the present case there was no distinct long-lasting period during which the applicants sustained uncertainty, anguish and distress characteristic to the specific phenomenon of disappearances (see, by contrast, *Kukayev v. Russia*, no. 29361/02, § 107, 15 November 2007). Accordingly, the Court considers that the mental suffering endured by the applicants has not reached a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human-rights violation (see, by contrast, *Khadzhialiyev and Others v. Russia*, no. 3013/04, § 121, 6 November 2008).

153. In view of the above, the Court finds that there has been no breach of Article 3 of the Convention in respect of the applicants on account of their mental suffering.

V. ALLEGED VIOLATIONS OF ARTICLE 8 OF THE CONVENTION

154. The applicants complained that the search of their house carried out by Russian servicemen on 20 July 2004 breached their right to respect for their home. The fifth, seventh, eighth and tenth applicants complained that the killing of their father breached their right to respect for family life. They relied on Article 8 of the Convention, which reads, in so far as relevant, as follows:

> "1. Everyone has the right to respect for his ... family life, his home ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the

country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The parties' submissions

1. The Government

155. The Government claimed that the applicants' right to respect for their home had not been breached because they had lived under the same roof as a person suspected of involvement in an illegal armed group. The search was lawful as it had been ordered under exceptional circumstances and retroactively authorised by the Nazran District Court on 21 July 2004, in accordance with Article 165 § 2 of the Criminal Procedure Code. The first applicant signed the search report.

156. Furthermore, the applicants did not appeal against the search warrant issued by the investigator and thus failed to exhaust available domestic remedies.

2. The applicants

157. The applicants maintained their complaints. They claimed that they had not received copies of the prosecutor's decision to carry out an urgent search of their house or the Nazran court's judgment to authorise it retroactively. They also submitted that the grenades that had allegedly been found in their courtyard had not been fingerprinted.

158. In their observations on the admissibility and merits of 7 April 2008, the applicants stated that they no longer wished to maintain their complaints under Article 8 of the Convention regarding the alleged violation of their right to respect for family life.

B. The Court's assessment

1. Admissibility

(a) The applicants' right to respect for family life

159. The Court, having regard to Article 37 of the Convention, notes that the applicants do not intend to pursue the part of the application concerning the alleged violation of their right to family life, within the meaning of Article 37 § 1 (a). It finds no reasons of a general character affecting respect for human rights as defined in the Convention which require the further examination of the present complaint by virtue of Article 37 § 1 of the Convention *in fine* (see, among other authorities,

Stamatios Karagiannis v. Greece, no. 27806/02, § 28, 10 February 2005, and *Gekhayeva and Others v. Russia*, no. 1755/04, § 146, 29 May 2008).

160. It follows that this part of the application must be struck out in accordance with Article 37 § 1 (a) of the Convention.

(b) The applicants' right to respect for their home

161. The Court considers that the Government's objection as to non-exhaustion of domestic remedies (see paragraph 156 above) is closely linked to the merits of the applicants' complaint. Thus it considers that the matter falls to be examined below.

162. The Court further points out that the search in question concerned the house at 1 Partizanskaya Street, Galashki, in which only the first and fourth to tenth applicants lived (see paragraph 8 above). It finds therefore that the second and third applicants cannot claim to be victims of the alleged violation and declares their complaint concerning the right to their home inadmissible *ratione personae*, pursuant to Article 35 § 3 (a) of the Convention.

163. The Court further considers that the complaint concerning the search of the first and fourth to tenth applicants' home is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

164. The Court notes at the outset that the Government insisted that the search of the Arapkhanovs' house had been duly authorised. However, the first applicant submitted that the warrant presented to her by Mr K., the officer in charge of the search, had been written with regard to another house at a different address owned by a third person (see paragraph 15 above). Most notably, she presented the same account of the events when questioned by the investigators at the outset of the investigation into her husband's killing (see paragraph 47 above).

165. The Court reiterates that the Government's failure to submit any documents from the investigation file enables it to draw inferences from their conduct (see paragraph 113 above).

166. In the absence of copies of the search warrant issued by the North Caucasus Department of the Prosecutor General's Office to which the Government referred (see paragraph 30 above) and of the decision by the Nazran District Court of 21 July 2004 upholding it (see paragraph 155 above), the Court cannot accept the Government's position that the search of the applicants' home was duly authorised in accordance with the domestic law.

167. As regards the Government's objection of non-exhaustion of domestic remedies, joined to the merits inasmuch as it concerns the

applicants' failure to appeal against the search warrant, the Court points out that nothing in the Government's submissions suggests that the first applicant and her children were served with copies of either the search warrant or the court's decision of 21 July 2004. In such circumstances it remains unclear whether the wife and children of Beslan Arapkhanov had a realistic opportunity to appeal against the said decisions to a higher court. Moreover, the first applicant informed the authorities that the search had not been duly authorised at an early stage of the investigation of her husband's killing. Accordingly, the Court considers that the first and fourth to tenth applicants cannot be said to have omitted to exhaust effective domestic remedies available to them with regard to the search of their home. The Court thus finds that the remedy relied on by the Government was ineffective in the circumstances of the case and rejects their preliminary objection.

168. In such circumstances the Court finds that the search of the first and fourth to tenth applicants' home was carried out without any proper authorisation or safeguards.

169. Accordingly, there was an interference with the first and fourth to tenth applicants' right to respect for their home. In the absence of any reference on behalf of the Government to the lawfulness and proportionality of that measure, the Court finds that there has been a violation of the applicants' right to respect for their home guaranteed by Article 8 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

170. The applicants complained that they had been deprived of effective remedies in respect of the alleged violations of Articles 2, 3 and 8, contrary to Article 13 of the Convention, which provides:

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

A. The parties' submissions

171. The Government contended that the applicants had had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using them.

172. The applicants reiterated the complaint, asserting that in the absence of an effective investigation into the events of 20 July 2004, they had no effective domestic remedies as required by Article 13 of the Convention.

B. The Court's assessment

1. Admissibility

173. 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.

2. Merits

174. The Court reiterates that in circumstances where a criminal investigation of a killing and infliction of bodily injuries has been ineffective and the effectiveness of any other remedy that might have existed has consequently been undermined, the State will be found to have failed in its obligation under Article 13 of the Convention (see Khashiyev and Akayeva v. Russia, nos. 57942/00 and 57945/00, § 183, 24 February 2005).

175. Consequently, there has been a violation of Article 13 in conjunction with Article 2 of the Convention in respect of the killing of Beslan Arapkhanov and with Article 3 of the Convention in respect of the second applicant.

176. Turning to the alleged lack of effective domestic remedies in relation to the search of the first and fourth to tenth applicants' home, the Court reiterates its findings concerning the ineffectiveness of the remedy referred to by the Government in the circumstances of the case (see paragraph 167 above). The Government did not point to any other avenue of redress which the first and fourth to tenth applicants could have used to vindicate their right to respect for their home. They have thus failed to show that any remedies existed in respect of the unlawful search at issue (see *Betayev and Betayeva v. Russia*, no. 37315/03, § 123, 29 May 2008).

177. There has therefore been a violation of Article 13 in conjunction with Article 8 of the Convention.

178. As regards the applicants' reference to Article 3 on account of their mental suffering, the Court considers that, in the circumstances, no separate issue arises in respect of Article 13, read in conjunction with Article 3 of the Convention (see *Kukayev v. Russia*, no. 29361/02, § 119, 15 November 2007, and *Aziyevy v. Russia*, no. 77626/01, § 118, 20 March 2008).

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

179. 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. Pecuniary damage

180. The first and fourth to tenth applicants claimed damages in respect of the lost wages of their husband/father, who would have supported them financially. They submitted a certificate issued by the State Unitary Enterprise "Galashki" confirming that it had employed Beslan Arapkhanov between 1 October 1999 and 20 July 2004; his salary was not indicated. The applicants asserted that Beslan Arapkhanov could not have earned less than the minimum wage. They claimed the following amounts in respect of pecuniary damage: 206,027.76 Russian roubles (RUB ─ 5,572 euros (EUR)) for the first applicant; RUB 29,979.63 (EUR 810) for the fourth applicant; RUB 65,240.95 (EUR 1,760) for the fifth applicant; RUB 24,217.66 (EUR 655) for the sixth applicant; RUB 50,466.65 (EUR 1,365) for the seventh applicant; RUB 58,691 (EUR 1,590) for the eighth applicant; RUB 37,760.76 (EUR 1,020) for the ninth applicant; and RUB 44,753.92 (EUR 1,210) for the tenth applicant.

181. The Government noted that the applicants could have claimed a pension for the loss of a breadwinner at national level.

182. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention, and that pecuniary damage may be awarded in respect of loss of earnings. It considers that there is a direct causal link between the violation of Article 2 in respect of Beslan Arapkhanov and the loss by his wife and children of the financial support which he could have provided. Noting that the applicants did not provide any documents indicating Beslan Arapkhanov's income, it finds appropriate to award in respect of pecuniary damage EUR 5,000 to the first and fourth to tenth applicants jointly, plus any tax that may be chargeable thereon.

B. Non-pecuniary damage

183. The applicants claimed non-pecuniary damage for the suffering they had endured as a result of their relative's death in the following amounts: EUR 50,000 for the first applicant; EUR 5,000 for the second applicant; EUR 40,000 for the third applicant; and EUR 30,000 each for the fourth to tenth applicants.

184. The Government found the amounts claimed exaggerated.

185. The Court has found violations of Articles 2 and 13 of the Convention in respect of the applicants' late relative, as well as a violation of Article 3 in respect of the second applicant and a violation of Article 8 in respect of the first and fourth to tenth applicants on account of the search of their home. The Court thus accepts that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It finds it appropriate to award in respect of non-pecuniary damage EUR 60,000 to the first and third to tenth applicants jointly and EUR 3,000 to the second applicant, plus any tax that may be chargeable thereon.

C. Costs and expenses

186. The applicants were represented by the SRJI, which submitted an itemised invoice of costs and expenses, including research at a rate of EUR 50 per hour and the drafting of legal documents submitted to the Court and the domestic authorities at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff. They also claimed translation and courier fees, confirmed by invoices, and administrative expenses that were not supported by any evidence. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 9,677.26. They requested that the payment under this head be transferred to their bank account in the Netherlands.

187. The Government submitted that the applicants' claims for just satisfaction had been signed by five lawyers, two of whom had not been mentioned in the powers of attorney issued by the applicants. They also doubted the reasonableness of the postal costs.

188. The Court points out that the applicants gave the SRJI and three of its lawyers the authority to act on their behalf. The applicants' claims for just satisfaction were signed by five persons in total. The names of three of them appeared in the powers of attorney, while two other lawyers worked with the SRJI. In such circumstances the Court sees no reasons to doubt that the five lawyers mentioned in the applicants' claims for costs and expenses took part in the preparation of the applicants' observations. It also sees no reason to conclude that the applicants were not entitled to send their submissions to the Court via a courier service.

189. The Court now has to establish whether the costs and expenses indicated by the applicants' representatives were actually incurred and, secondly, whether they were necessary (see *McCann and Others*, cited above, § 220).

190. Having regard to the details of the information, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representatives.

191. As to the necessity of the expenses, the Court notes that this case was complex and required a certain amount of research and preparation. It notes at the same time that, owing to the application of Article 29 § 1 in the present case, the applicants' representatives submitted their observations on admissibility and merits in one set of documents. Furthermore, the case involved little documentary evidence, in view of the Government's refusal to submit the case file. The Court therefore doubts that legal drafting was necessarily time-consuming to the extent claimed by the representatives.

192. Having regard to the details of the claims submitted by the applicants, the Court finds it appropriate to award them EUR 5,000, together with any value-added tax that may be chargeable to the applicants, the award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (a) of the Convention in so far as it concerns the applicants' complaint under Article 8 of the Convention concerning the alleged violation of their right to family life;

2. *Decides* to join to the merits the Government's objection concerning non-exhaustion of domestic remedies as regards the complaint concerning the applicants' right to respect for home and rejects it;

3. *Declares* the complaints under Article 2 of the Convention in respect of the killing of Beslan Arapkhanov, the complaint under Article 8 of the Convention in respect of the first and fourth to tenth applicants concerning the search of their home, as well as the complaints under Articles 3 and 13 of the Convention admissible and the remainder of the application inadmissible;

4. *Holds* that there has been a violation of Article 2 of the Convention in respect of the killing of Beslan Arapkhanov;

5. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances of the killing of Beslan Arapkhanov;

6. *Holds* that there has been a violation of Article 3 of the Convention in respect of the second applicant on account of his ill-treatment by State servicemen;

7. *Holds* that there has been a violation of Article 3 of the Convention in respect of the failure to conduct an effective investigation into the ill-treatment of the second applicant;

8. *Holds* that there has been no violation of Article 3 of the Convention in respect of the applicants on account of their mental suffering;

9. *Holds* that there has been a violation of Article 8 of the Convention in respect of the first and fourth to tenth applicants on account of the search of their home;

10. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with the alleged violations of Article 2 of the Convention in respect of the killing of Beslan Arapkhanov, Article 3 of the Convention on account of the ill-treatment of the second applicant and Article 8 on account of the search of the first and fourth to tenth applicants' home;

11. *Holds* that no separate issue arises under Article 13 in respect of the alleged violation of Article 3 of the Convention on account of the applicants' mental suffering;

12. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 5,000 (five thousand euros) to the first, fourth, fifth, sixth, seventh, eighth, ninth and tenth applicants jointly, in respect of pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on this amount;

(ii) EUR 60,000 (sixty thousand euros) to the first and third to tenth applicants jointly and EUR 3,000 (three thousand euros) to the second applicant, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on these amounts;

(iii) EUR 5,000 (five thousand euros), in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands, plus any tax that may be chargeable to the applicants;

(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;

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

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

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President