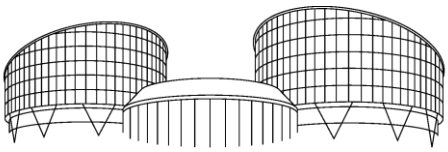

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ABDULAYEVA v. RUSSIA

(Application no. 38552/05)

JUDGMENT

STRASBOURG

16 January 2014

FINAL

16/04/2014

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

In the case of Abdulayeva 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 17 December 2013,

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

PROCEDURE

1. The case originated in an application (no. 38552/05) 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 a Russian national, Ms Tamara Abdulayeva ("the applicant"), on 26 October 2005.

2. The applicant was represented by Mr R. Lemaître, Mrs A. Maltseva, Mrs E. Yezhova, Mr A. Nikolayev, Mr D. Itslayev and Mr A. Sakalov, lawyers from Stichting Russian Justice Initiative, Moscow, and Mrs L. Dorogova, a lawyer practising in the town of Nalchik. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that the decision not to return her son's body had been unlawful and disproportionate, in breach of Articles 3, 8 and 9, taken alone and in conjunction with Articles 13 and 14 of the Convention.

4. On 15 May 2009 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1951 and lives in the village of Goyty of the Urus-Martan District of the Chechen Republic. She was the mother of Sultan Shotovich Vagapov.

A. The applicant's account

6. The applicant alleges that from 14 to 16 January 2005 the Russian authorities "mopped up" the village of Zumsoy of the Itum-Kalinskiy District of Chechnya, by first bombarding and then "cleaning it up" by entering houses and abducting some of the residents.

7. In January 2005 the applicant was invited for an interview in the Territorial Department of the Ministry of the Interior of the Goyty village in the Urus-Martan District of the Chechen Republic. She alleges that she was shown a copy of her son's identity card and a photograph of a dead person, presumably her son Sultan Shotovich Vagapov. She was also informed that he had been killed during the mopping-up operation in the village of Zumsoy in early 2005. According to the authorities, the applicant's son was a rebel whose body would be kept at the military base near the village of Khankala.

8. The applicant was unable to identify her son solely on the basis of the photograph and asked to see the body, without success.

9. The applicant's requests to have the body of her son returned to her remained essentially unanswered until 26 April 2005, when the Military Prosecutor, relying on section 16.1 of the Suppression of Terrorism Act and section 14.1 of the Interment and Burial Act, responded that "the bodies of terrorists are not handed over for burial and the place of their burial remains undisclosed".

10. The Prosecutor's Office indicated that her son had offered armed resistance during the operation of 14 January 2005 and was killed. He was found to have been in possession of an automatic rifle, an ammunition belt and a backpack with his personal belongings.

B. The Government's submissions

11. The Government confirmed that a special operation had taken place in the vicinity of the village of Zumsoy between 14 and 16 January 2005, which had resulted in detection of a boot camp belonging to the insurgents. An airstrike and subsequent search of the area lead to the discovery of the

corpse of the applicant's son, Sultan Shotovich Vagapov, along with an automatic rifle and ammunition presumably belonging to him. The body carried an ID card, which enabled swift identification.

12. The Government submitted that an official inquiry into, among other things, the finding of the corpse of the applicant's son resulted in a decision of 15 April 2005. It described the collected pieces of evidence, including the oral evidence given by the soldiers who had searched the area after the airstrike and the circumstances of the death of the applicant's son, and concluded that his death had resulted from a justified use of lethal force in respect of an armed terrorist.

13. It appears that the applicant challenged the prosecutor's letter of 26 April 2005 in court. On 19 December 2005 the Urus-Martan District Court upheld the decision not to return the body of the applicant's son for burial without reviewing its merits. The first-instance judgment was upheld on appeal by the Supreme Court of the Republic of Chechnya on 30 May 2006.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. For a summary of the relevant domestic law, see *Sabanchiyeva and Others v. Russia*, no. 38450/05, §§ 33-37 and 65-90, ECHR 2013 (extracts) and *Maskhadova and Others v. Russia*, no. 18071/05, §§ 114-146, 6 June 2013.

III. OTHER RELEVANT SOURCES

15. For a summary of other relevant sources referred to by the applicants, see *Sabanchiyeva and Others*, cited above, §§ 91-96 and also *Maskhadova and Others*, cited above, §§ 147-150.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

16. Relying on Article 8 of the Convention, the applicant complained about the refusal of the authorities to return the body of her son. This provision reads as follows:

Article 8 of the Convention

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

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

A. The submissions by the parties

17. The Government maintained that the decision not to return the body of the applicant's son had been taken pursuant to the Suppression of Terrorism Act, the Interment and Burial Act and the decree on combating terrorism and were justified in view of the reasons provided by the Constitutional Court in its ruling of 28 June 2007 (see *Maskhadova and Others*, cited above, § 125).

18. The applicant stated that the authorities' refusal to return the body had been unlawful and disproportionate. She submitted that the law contained vague notions such as "terrorist action", "terrorist activity" and "terrorist act" and was unclear as regards the possibility of bringing appeal proceedings, the policy concerning the disclosure of the date of the burial, and the need to observe rituals during the burials. She submitted that the measure was disproportionate in that no other European country had similar legislation; that while the Israeli authorities had had a similar administrative policy, this had since been condemned by the Israeli courts; that international humanitarian law prohibited such treatment and that other, less restrictive, measures were available to the authorities to address terrorism-related concerns.

B. The Court's assessment

1. Admissibility

19. On the basis of the material submitted, the Court observes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that this part of the case is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) Whether Article 8 was applicable in the present case

20. The Court reiterates that under its Article 8 case-law the concepts of "private life" and "family life" are broad terms not susceptible to exhaustive definition (see, for example, *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III). In the cases of *Pannullo and Forte v. France*

(no. 37794/97, §§ 35-36, ECHR 2001-X) and *Girard v. France* (no. 22590/04, § 107, 30 June 2011) the Court recognised that an excessive delay in the restitution of the body after an autopsy or of bodily samples on completion of the relevant criminal proceedings may constitute an interference with both the "private life" and the "family life" of the surviving family members. In the case of *Elli Poluhas Dödsbo v. Sweden* (no. 61564/00, § 24, ECHR 2006-I) the Court found that the refusal to transfer an urn containing the ashes of the applicant's husband could also be seen as falling within the ambit of Article 8. Lastly, in the case of *Hadri-Vionnet v. Switzerland* (no. 55525/00, § 52, 14 February 2008) the Court decided that the possibility for the applicant to be present at the funeral of her stillborn child, along with the related transfer and ceremonial arrangements, was also capable of falling within the ambit of both "private" and "family life" within the meaning of Article 8.

21. The Court further observes that on 26 April 2005 the prosecutor decided not to return the body of Sultan Shotovich Vagapov to the applicant (see paragraph 9 above). This decision was taken in accordance with Article 3 of Decree no. 164 of 20 March 2003 and section 14 (1) of the Interment and Burial Act, which precluded the competent authorities from returning the bodies of terrorists who died as a result of the interception of a terrorist act.

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

23. Against this background, the Court finds that the authorities' refusal to return the body of the applicant's son with reference to section 14 (1) of the Interment and Burial Act and Article 3 of Decree no. 164 of 20 March 2003 constituted an exception from that general rule and deprived the applicant of an opportunity to organise and take part in the burial of her son's body and also to know the location of the gravesite and to visit it subsequently.

24. Regard being had to its case-law and the above-mentioned circumstances of the case, the Court finds that the measure in question constituted an interference with the applicant's "private" and "family life" within the meaning of Article 8 of the Convention (see *Sabanchiyeva and Others*, cited above, § 123 and *Maskhadova and Others*, cited above,

§ 212). It remains to be seen whether this interference was justified under the second paragraph of that provision.

(b) Whether the interference was justified

(i) "In accordance with the law"

25. Under the Court's case-law, the expression "in accordance with the law" in Article 8 § 2 requires, among other things, that the measure or measures in question should have some basis in domestic law (see, for example, *Aleksandra Dmitriyeva v. Russia*, no. 9390/05, §§ 104-07, 3 November 2011), but also refers to the quality of the law in question, requiring that it should be accessible to the person concerned and foreseeable as to its effects (see *Rotaru v. Romania* [GC], no. 28341/95, § 52, ECHR 2000-V). In order for the law to meet the criterion of foreseeability, it must set forth with sufficient precision the conditions in which a measure may be applied, to enable the persons concerned – if need be, with appropriate advice – to regulate their conduct.

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

27. The Court finds that the decision of 26 April 2005 and the materials submitted by the Government demonstrated the involvement of the applicant's son in an armed insurgency. Thus, the Court is satisfied that the refusal of the authorities to return the body of the applicant's son for burial had a legal basis in Russian law.

28. In the Court's view, the remaining questions related to the measure's lawfulness, such as the foreseeability and clarity of the legal acts and, in particular, the automatic nature of the rule and the alleged vagueness of certain of its notions, are closely linked to the issue of proportionality and fall to be examined as an aspect thereof, under paragraph 2 of Article 8 (see *Sabanchiyeva and Others*, cited above, § 127 and *Maskhadova and Others*, cited above, § 216).

(ii) Legitimate aim

29. The Court notes that the Government justified the measure with reference to ruling no. 8-P of 28 June 2007 of the Constitutional Court, which mentioned in relation to the section 14(1) of the Interment and Burial Act and Decree no. 164 of 20 March 2003 that the adoption of the rule was justified by "the interest in fighting terrorism and in preventing terrorism in general and specific terms and providing redress for the effects of terrorist acts, coupled with the risk of mass disorder, clashes between different

ethnic groups and aggression by the next of kin of those involved in terrorist activity against the population at large and law-enforcement officials, as well as the threat to human life and limb", and lastly the need to "minimise the informational and psychological impact of the terrorist act on the population, including the weakening of its propaganda effect". The Constitutional Court also noted that "the burial of persons who took part in a terrorist act, in close proximity to the graves of the victims of those acts, and the observance of rites of burial and remembrance with the paying of respects, as to a symbol or an object of worship, serve as a means of propaganda for terrorist ideas and also cause offence to relatives of the victims of the acts in question, creating the preconditions for heightened inter-ethnic and religious tension" (see *Sabanchiyeva and Others*, cited above, § 33 and *Maskhadova and Others*, cited above, § 125).

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

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

(iii) Necessary in a democratic society

(α) General principles

32. An interference will be considered "necessary in a democratic society" for a legitimate aim if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it are "relevant and sufficient" (see, for example, *Coster v. the United Kingdom* [GC], no. 24876/94, § 104, 18 January 2001 and *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 101, ECHR 2008).

33. The object and purpose of the Convention, being a human rights treaty protecting individuals on an objective basis (see *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 145, ECHR 2010), call for its provisions to be interpreted and applied in a manner that renders its guarantees practical and effective (see, among other authorities, *Artico v. Italy*, 13 May 1980, § 33, Series A no. 37). Thus, in order to ensure "respect" for private and family life within the meaning of Article 8, the realities of each case must be taken into account in order to avoid the mechanical application of domestic law to a particular situation (see, as a recent authority, *Nada v. Switzerland* [GC], no. 10593/08, §§ 181-186, 12 September 2012).

34. The Court has previously found that, for a measure to be regarded as proportionate and as necessary in a democratic society, the possibility of recourse to an alternative measure that would cause less damage to the

fundamental right at issue whilst fulfilling the same aim must be ruled out (see *Nada*, cited above, § 183).

35. In any event, the final evaluation of whether the interference is necessary remains subject to review by the Court in order to ascertain conformity with the requirements of the Convention. A margin of appreciation must be left to the competent national authorities in this connection. The breadth of this margin varies and depends on a number of factors, including the nature of the Convention right in issue, its importance for the individual, the nature of the interference and the object pursued by the interference (see *S. and Marper*, cited above, § 102). The Court has on many occasions stressed that it was aware that States faced particular challenges posed by terrorism and terrorist violence (see, *mutatis mutandis*, *Brogan and Others v. the United Kingdom*, 29 November 1988, § 61, Series A no. 145-B; *Öcalan v. Turkey* [GC], no. 46221/99, §§ 104, 192-196, ECHR 2005-IV; *Ramirez Sanchez v. France* [GC], no. 59450/00, §§ 115-116, ECHR 2006-IX; and *Finogenov and Others v. Russia*, nos. 18299/03 and 27311/03, § 212, ECHR 2011 (extracts)). The margin will tend to be narrower where the right at stake is crucial to the individual's effective enjoyment of intimate or key rights (see *Connors v. the United Kingdom*, no. 66746/01, § 82, 27 May 2004, with further references). Where a particularly important facet of an individual's existence or identity is at stake, the margin allowed to the State will be restricted (see *Evans v. the United Kingdom* [GC], no. 6339/05, § 77, ECHR 2007-I).

(β) Application of these principles

36. In order to address the question whether the measures taken in respect of the applicant in relation to the body of her deceased son were proportionate to the legitimate aims that they were supposed to pursue, and whether the reasons given by the national authorities were "relevant and sufficient", the Court must examine whether the Russian authorities took sufficient account of the particular nature of the case and whether the adopted measure, in the context of their margin of appreciation, was justified in view of the relevant circumstances of the case.

37. In doing so, the Court is prepared to take account of the general context of the events preceding the decision of 26 April 2005. However, the use of the measure in question must be explained and justified convincingly in each individual case (see, *mutatis mutandis*, *Nada*, cited above, § 186).

38. The Court would note at the outset as regards the applicant's criticism of the allegedly excessive breadth of some of the notions and other alleged defects in the applicable pieces of the legislation that in cases arising from individual petitions its task is usually not to review the relevant legislation or a particular practice in the abstract. Instead, it must confine itself as far as possible, without losing sight of the general context, to

examining the issues raised by the case before it. Here, therefore, the Court's task is not to review, *in abstracto*, the compatibility with the Convention of the above rule, but to determine, *in concreto*, the effect of the interference on the applicant's right to private and family life (see, as a recent authority, *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, §§ 68-70, 20 October 2011).

39. Turning to the circumstances of the present case, the Court notes that as a result of the decision of 26 April 2005 the applicant was deprived of an opportunity, otherwise guaranteed to the close relatives of any deceased person in Russia, to organise and take part in the burial of the body of her son and also to ascertain the location of the gravesite and to visit it subsequently (see *Sabanchiyeva and Others*, cited above, § 65 about the relevant provisions of the Interment and Burial Act). The Court finds that the interference with the applicant's Article 8 rights resulting from the said measure was particularly severe in that it did not result from her own action, inaction or fault of any kind, completely precluded her from any participation in the relevant funeral ceremonies and involved a complete ban on the disclosure of the location of the grave, thus permanently cutting the links between the applicant and the location of the remains of the deceased. In this connection the Court would also refer to the practice of various international institutions which in cases involving the application of similar measures considered such interference with the applicant's rights as particularly severe (see *Sabanchiyeva and Others*, cited above, §§ 92-96).

40. The Court further observes that the investigation established that the deceased Sultan Shotovich Vagapov participated in the armed insurgency (see paragraphs 6, 9-10 and 11-13 above). Having examined the materials in the case file, the Court is prepared to use these factual findings in its further analysis.

41. Having regard to the nature of the activities of the deceased, the circumstances of his death and the extremely sensitive ethnic and religious context in this region of Russia, the Court cannot exclude that some measure limiting the applicant's rights in respect of the funeral arrangements of the deceased could be found to be justified under Article 8 of the Convention in pursuance of aims mentioned by the Government (see *Sabanchiyeva and Others*, cited above, § 140; and *Maskhadova and Others*, cited above, § 230).

42. The Court can, in principle, accept that depending on the exact location at which the ceremonies and the burial were to take place, in view of the character and consequences of the deceased person's activities and other relevant contextual factors, the authorities could be reasonably expected to intervene with a view to avoiding possible disturbances or unlawful actions by people supporting or opposing the causes or activities of the deceased during or after the relevant ceremonies.

43. The Court is also able to accept that in organising the relevant intervention the authorities were entitled to act with a view to minimising the informational and psychological impact of a terrorist act on the population and protecting the feelings of relatives of the victims of the terrorist acts. Such intervention could certainly limit the applicant's ability to choose the time, place and manner in which the relevant funeral ceremony and burial were to take place or even directly regulate such proceedings.

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

45. The Court finds that the authorities failed to carry out any assessment of the relevant factors in the present case. The relevant official included no analysis which would take into account the individual circumstances of the deceased and the applicant (see paragraph 9 above). That was so because the applicable law treated all these questions as irrelevant, the decision of 26 April 2005 being a purely automatic measure. In view of what was at stake for the applicant, the Court considers that this "automatic" character ran contrary to the authorities' duty under Article 8 to take appropriate care that any interference with the right to respect for private and family life should be justified and proportionate in the individual circumstances of the case (see *Sabanchiyeva and Others*, cited above, § 144 and *Maskhadova and Others v. Russia*, cited above, § 235).

46. The Court reiterates that in order to act in compliance with the proportionality requirements of Article 8, the authorities should first rule out the possibility of having recourse to an alternative measure that would cause less damage to the fundamental right at issue whilst fulfilling the same aim. In the absence of such an individualised approach, the adopted measure regrettably appears to have a purely punitive and arbitrary effect on the applicant, by switching the burden of unfavourable consequences in respect of the deceased person's activities from him onto the applicant (see *Sabanchiyeva and Others*, cited above, § 145 and *Maskhadova and Others*, cited above, § 236).

47. In sum, having regard to the automatic nature of the measure, the authorities' failure to give due consideration to the principle of proportionality, the Court finds that the measure in question did not strike a fair balance between the applicant's right to the protection of private and family life, on the one hand, and the legitimate aims of public safety, prevention of disorder and the protection of the rights and freedoms of others on the other, and that the respondent State has overstepped any acceptable margin of appreciation in this regard.

48. It follows that there has been a violation of the applicant's right to respect for her private and family life, as guaranteed by Article 8 of the Convention, as a result of the decision of 26 April 2005.

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

49. Relying on Article 13 read in conjunction with Article 8 of the Convention, the applicant also complained about the lack of an effective remedy in respect of the authorities' refusal to return the body of her son.

Article 13 of the Convention

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

50. The Government stated that the applicant had received official notification and replies from the authorities and that no restrictions on access to a court had been imposed in connection with the decisions in question.

A. Admissibility

51. On the basis of the material submitted, the Court observes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that this part of the case is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Applicable principles

52. The Court observes that Article 13 guarantees the availability at national level of a remedy by which to complain about a breach of the Convention rights and freedoms. Therefore, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision, there must be a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention, but the remedy must in any event be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the State (see *Büyükdağ v. Turkey*, no. 28340/95, § 64,

21 December 2000, with the cases cited therein, especially *Aksoy*, cited above, § 95). Under certain conditions, the aggregate of remedies provided for under domestic law may satisfy the requirements of Article 13 (see, in particular, *Leander v. Sweden*, 26 March 1987, § 77, Series A no. 116).

53. However, Article 13 requires that a remedy be available in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention (see, for example, *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 54, Series A no. 131). It does not go so far as to guarantee a remedy allowing a Contracting State's laws to be challenged before a national authority on the ground of being contrary to the Convention (see *Costello-Roberts v. the United Kingdom*, 25 March 1993, § 40, Series A no. 247-C), but seeks only to ensure that anyone who makes an arguable complaint about a violation of a Convention right will have an effective remedy in the domestic legal order (ibid., § 39).

2. Application of those principles to the present case

54. The Court is of the opinion that in view of its finding that the grievance under Article 8 was admissible (see paragraph 19), the complaint is arguable. It therefore remains to be ascertained whether the applicant had, under Russian law, an effective remedy by which to complain of the breaches of her Convention rights.

55. The Court notes that the domestic courts in the present case could not review the need for application of the measures set out in section 14 (1) of the Interment and Burial Act and Decree no. 164 of 20 March 2003 (see paragraph 13 above). It further recalls its recent findings made in respect of the same pieces of legislation in the *Sabanchiyeva and Others* (cited above, §§ 153-156) and *Maskhadova and Others* case (cited above, §§ 244-246) to the effect that it "did not provide the applicants with sufficient procedural safeguards against arbitrariness" both before and after the adoption by the Constitutional Court of its Rulings no. 8-P of 28 June 2007 and no. 16-P of 14 July 2011. This conclusion was made, in particular, on account of the courts' limited competence to review the merits of such decisions.

56. In such circumstances, the Court finds that the Government was unable to demonstrate that the domestic legal system provided for an effective judicial supervision in respect of the decision of 26 April 2005 and that the applicant did not have any effective remedy in respect of the Convention violations alleged by her.

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

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

58. The applicant also complained in addition to her submissions under Article 8 of the Convention that the refusal of the authorities to return the body of her son had been contrary to Articles 3 and 9 of the Convention.

59. On the basis of the material submitted, the Court observes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that this part of the case is not inadmissible on any other grounds. It must therefore be declared admissible.

60. Regard being had to the particular circumstances of the present case and to the reasoning which led it to find a violation of Article 8 and Article 13, taken together with Article 8, the Court finds that there is no cause for a separate examination of the same facts from the standpoint of Articles 3 and 9 (see also *Sabanchiyeva and Others*, cited above, §§ 157 and 158; and *Maskhadova and Others*, cited above, §§ 248-249).

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

61. Lastly, the applicant was of the view that the refusal of the authorities to return the body of her son had been discriminatory, because the legislation in question was aimed exclusively at followers of the Islamic faith. She relied on Article 14 of the Convention, which provides as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

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

63. Having considered the materials submitted by the parties, the Court finds no indication which would enable it to conclude that the legislation in question was directed exclusively against followers of the Islamic faith or that the applicant was treated differently from the people in a relevantly similar situation solely on the basis of her religious affiliation or ethnicity (see *Sabanchiyeva and Others*, cited above, § 162 and *Maskhadova and Others*, cited above, § 253).

64. Thus, the Court finds that this part of the application is manifestly ill-founded and should be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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

66. The applicant claimed that she had sustained very serious non-pecuniary damage and asked for compensation in the amount of 150,000 euros (EUR). She also requested that the Court order the respondent Government to hand over the remains of her son or to disclose information regarding the circumstances of his burial, including the whereabouts of his grave, and to repeal the domestic legislation in question.

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

68. The Court considers that, in the circumstances of the present case, the finding of a violation of Article 8 of the Convention, taken alone and in conjunction with Article 13, constitutes sufficient just satisfaction for the applicant.

B. Costs and expenses

69. The applicant also claimed EUR 6,289 for the legal and other costs incurred in the Strasbourg proceedings.

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

71. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Having regard to the material in its possession, the Court considers it reasonable to award the applicant the sum requested plus any tax that may be chargeable to her. The amount awarded shall, as requested by the applicant, be payable to Stichting Russian Justice Initiative directly.

C. Default interest

72. 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 UNANIMOUSLY

1. *Declares* the applicant's complaints under Articles 3 and 9 of the Convention as well as her complaints under Article 8, taken alone and in conjunction with Article 13 of the Convention, about the refusal to return her son's body admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 8 of the Convention on account of the decision of 26 April 2005;

3. *Holds* that there has been a violation of Article 13, taken together with Article 8, on account of the lack of an effective remedy in respect of the decision of 26 April 2005;

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

5. *Holds*
   (a) that the respondent State is to pay the applicant EUR 6,289 (six thousand two hundred and eighty-nine euros), in respect of costs and expenses, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, plus any tax that may be chargeable to the applicants on the above amount, to be paid in euros into the bank account in the Netherlands indicated by the applicants' representative organisation;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 January 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President

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

I.B.L.
S.N.

DECLARATION OF JUDGE DEDOV

In contrast to the circumstances described in the *Sabanchiyeva and Others v. Russia* and *Maskhadova and Others v. Russia* judgments, there is no evidence of large-scale disorder and violence owing to terrorist action in this case. Therefore, I find applicable the Court's approach regarding the requirement for the interference to be justified and proportionate in the individual circumstances of the case.