



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

FIRST SECTION

CASE OF SULEYMANOVA v. RUSSIA

(Application no. 9191/06)

JUDGMENT

STRASBOURG

12 May 2010

FINAL

04/10/2010

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

In the case of Suleymanova v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 22 April 2010,

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

PROCEDURE

1. The case originated in an application (no. 9191/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Ms Zura Suleymanova (“the applicant”), on 6 March 2006.

2. The applicant was represented by lawyers of the Stichting Russian Justice Initiative (“SRJI”), an NGO based in the Netherlands with a representative office in Russia. 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 complained of the killing of four of her relatives by military servicemen in May 2000 in Chechnya and of the absence of an adequate investigation into the events. She invoked Articles 2, 13 and 14 of the Convention.

4. On 20 May 2008 the Court decided to apply Rule 41 of the Rules of Court, to grant priority treatment to the application and to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1944 and lives in Gekhi, Chechnya. She is the mother of Ramzan Suleymanov, who was born in 1965 and the mother-in-law of Petimat Aydamirova, who was born in 1972. The applicant also is the grandmother of Ibragim Suleymanov, who was born in 1991 and a relative of Aslanbek Aydamirov, who was born in 1970.

7. The facts of the case, as submitted by the parties, may be summarised as follows.

A. The events of 16-19 May 2000

1. Information submitted by the applicant

a. Killing of the applicant's relatives

8. At the material time the applicant's son Ramzan Suleymanov lived in the village of Gekhi in the Urus-Martan district of Chechnya with his wife Petimat Aydamirova, who was pregnant, and their son Ibragim Suleymanov. Ramzan Suleymanov worked as a driver of a KAMAZ lorry, transporting goods in the area. The vehicle belonged to his neighbour, Mr R. Dz. At the time Gekhi and the surrounding area were under curfew.

9. On 16 May 2000 Petimat Aydamirova's brother, Aslanbek Aydamirov, came to Gekhi to visit his sister. He told her that their mother, who lived in the village of Roshni-Chu, in the Urus-Martan district, was ill. The family decided to visit her on the same day. Ramzan Suleymanov obtained the permission of Mr R. Dz. to use the KAMAZ lorry to get to Roshni-Chu. At about 7 p.m. he, Petimat Aydamirova, Ibragim Suleymanov and Aslanbek Aydamirov left Gekhi and drove in the lorry in the direction of Roshni-Chu.

10. At about 2 a.m. on the night between 16 and 17 May 2000 a resident of Gekhi Mr R. S. came to the house of Mr R. Dz. and told him that his KAMAZ lorry was burning about 500 metres away from the outskirts of Gekhi. Mr R. Dz. immediately got in the car and drove to the outskirts of the village. There he left his car next to the house of the head of the Gekhi village administration, Mr S.-S. A., and continued on foot towards Roshni-Chu.

11. When Mr R. Dz. approached the burning lorry he saw the naked body of Petimat Aydamirova next to the right side of the vehicle. Mr R. Dz. immediately returned to the village and woke up Mr S.-S. A. The latter was

already aware of the events as he had heard Petimat Aydamirova screaming. According to him, in the evening of 16 May 2000 the KAMAZ lorry had been driving from Gekhi in the direction of Roshni-Chu. When the vehicle had been about 500 metres away from the outskirts of the village, Russian military servicemen in an APC (armoured personnel carrier) had approached it through the wheat field and opened gunfire. After the shooting a woman had started screaming; her screams had been heard by residents of Gekhi, including Mr S.-S. A. Then the residents had heard gunfire and the screaming had stopped. About half an hour later the servicemen had shot at the lorry from a grenade launcher, setting it on fire, before driving away.

12. Mr S.-S.A. told Mr R. Dz. that due to the curfew they had to leave immediately and return in the morning. Upon returning home Mr R. Dz. informed the applicant's nephew, whose house was nearby, about the events. The men agreed to return to the lorry in the morning on 17 May 2000. The applicant's nephew informed the applicant about the events on the same night.

b. Information provided by local residents about the events of the night between 16 and 17 May 2000

13. Early in the morning of 17 May 2000 the applicant went to the KAMAZ lorry with her relatives, Mr R. Dz., the head of the administration and a number of local residents.

14. According to the witnesses, next to the vehicle they saw numerous bullet holes in the ground whose positioning indicated that four people had been put down on the ground and shot in the head. The applicant's other son, Mr A., found a piece of human brain; Ibragim Suleymanov's cap was also discovered at the scene. There were many bullet casings around the lorry; the cab was covered with bullet holes, especially on the driver's side. The passenger's side, where Petimat Aydamirova had been sitting, remained intact.

15. In the wheat fields around the lorry the residents discovered numerous APC tyre tracks, which were clearly visible on the ground. The bodies of the applicant's relatives were gone, including the body of Petimat Aydamirova. It appeared that the servicemen had returned to the scene at some point after the shooting and had taken the corpses away.

16. On the same date, 17 May 2000, two unidentified residents of Gekhi told the applicant that the day before, in the evening of 16 May 2000, Russian military servicemen in two APCs and a military Ural lorry had been driving around the village in the wheat fields. At some point they had opened fire on the lorry with the applicant's relatives in it. The two men had heard Petimat Aydamirova and her son screaming, then the sounds of gunshots and the screaming had stopped. About thirty minutes later the servicemen had fired at the lorry from their grenade launcher and it had

caught fire. After that they had left the scene. However, late at night the servicemen had briefly returned to the lorry.

17. On 18 May 2000 one of Mr R. Dz.'s acquaintances told him that he had heard in the news broadcasted by the "Chechnya svobodnaya" ("Чечня свободная") radio station that close to Gekhi the Russian military forces had "eliminated" a KAMAZ lorry carrying members of illegal armed groups. No other KAMAZ lorries, other than the one the applicant's relatives had been driving in, had been "eliminated" by military servicemen in the area around that time.

c. Discovery of the bodies of the applicant's relatives

18. On 19 May 2000 the corpses of the applicant's relatives were discovered by a shepherd in the vicinity of Roshni-Chu. According to him, about 1.5 km. away from the base of a Russian military unit he had found a pile of empty ammunition boxes. He noticed that the cows had been afraid to approach it and behaved "strangely"; he had concluded that human corpses must have been underneath it.

19. On 20 May 2000 a number of residents of Gekhi and representatives of the local administration and the press went to the scene. However, instead of the pile of boxes they found a shell hole, measuring approximately 2 x 3 metres, and human remains within a radius of about a hundred metres around it. Then the group discovered the body of Ramzan Suleymanov with numerous firearm and shell wounds, and next to it the body of Aslanbek Aydamirov. About 50 metres away they found the body of Ibragim Suleymanov with the head and two limbs missing. The missing limbs were found about 20 metres away from the body. As to Petimat Aydamirova, only some parts of her body were found, namely, her two legs and her head. Her earlobes had been torn and her earrings were missing.

20. The deaths of Ramzan Suleymanov, Ibragim Suleymanov and Petimat Aydamirova were certified by a document issued by the Urus-Martan district prosecutor's office on an unspecified date. In addition, the death of Petimat Aydamirova was also confirmed by an official medical statement issued by the Gekhi district hospital on 6 June 2000. The document stated that her death had occurred on 19 May 2000 and had been caused by numerous shell wounds to the head and chest. The death of Ramzan Suleymanov was also confirmed by a death certificate issued by the Urus-Martan district civil registry office ("ЗАГС") on 19 June 2000, stating that his death had occurred on 19 May 2000 and by an official medical statement issued by the Gekhi district hospital on 6 June 2000, stating that his death had occurred on 19 May 2000 and that it had been caused by numerous shell wounds to the head and chest.

21. In support of her statements, the applicant submitted an account by Mr R. Dz. dated 15 March 2006, an article "Nelyud" ("Нелюдь") published in the "Marsho" ("Маршо") newspaper on 3 June 2000, the medical

statements, dated 6 June 2000 and the death certificates, undated and dated 19 June 2000.

2. Information submitted by the Government

22. The Government challenged some of the facts as presented by the applicant and submitted their version of the events. Referring to the findings of the domestic investigation, they submitted the following.

a. The killing of the applicant's relatives

23. At the material time, in May 2000, a counter-terrorist operation was taking place in Chechnya. The Russian military forces participated in the operation in order to eliminate illegal armed groups and to prevent them carrying out further criminal activities.

24. At some point prior to the events, the military forces had obtained information that illegal armed groups were using a road between Gekhi and Roshni-Chu as a supply route. A military intelligence unit was charged with to discovering it and eliminating the members of the illegal armed groups.

25. At about 7.30 p.m. on 16 May 2000 a group of servicemen of the military intelligence group was executing that task in the area of Gekhi in the Urus-Martan district in the framework of a special operation ordered by the commander of the Army Group "West".

26. According to the Government, the local residents had been informed about the curfew and their obligation, if they happened to be in the area of a special operation, to obey the orders of the military, stop moving, step out of the vehicle if they were driving and wait for the arrival of an inspection group.

27. At about 7.30 p.m. on 16 May 2000 the applicant's relatives Ramzan Suleymanov, his wife Petimat Aydamirova, their minor son Ibragim Suleymanov and their relative Aslanbek Aydamirov were driving from Gekhi to Roshni-Chu in a KAMAZ lorry with registration number A 619 AA 20 RUS.

28. The lorry was moving with its lights off and during the curfew. The intelligence group launched a warning flare and shot a number of warning gunshots. When the lorry then sped up, the chief of the group decided to open gunfire on the vehicle.

29. As a result of the gunfire, the vehicle caught fire and the people inside died. The group inspected the vehicle. Inside they found two partially burnt male corpses and an AKM-74 (submachine gun) no. 282972. After the inspection the group left the area and returned to the place where it was temporarily stationed.

b. Discovery of the bodies of the applicant's relatives

30. At about 9 a.m. on 19 May 2000 on the outskirts of Roshni-Chu a local resident found the bodies of Ramzan Suleymanov and Aslanbek Aydamirov and parts of the bodies of Petimat Aydamirova and Ibragim Suleymanov. All bodies had traces of injuries received as a result of an explosion and were scattered around a shell hole.

31. On the same date, 19 May 2000, the applicant's relatives were buried.

32. The Government did not submit any documents to support their version of the events.

B. The investigation into the killing

33. On 17 May 2000 the applicant's relatives, Mr R. Dz. and the head of the administration, Mr S.-S.A., complained about the killing to the Urus-Martan district military commander's office ("the district military commander's office"). They were assured by the authorities that the culprits would be identified as soon as possible and the corpses of the applicant's four relatives would be returned on the following day.

34. On 17 May 2000 several employees of the district military commander's office, including the military commander, went to the crime scene. They towed the burnt lorry to the premises of a military unit stationed in the area.

35. On 19 May 2000 (in the documents submitted the date was also referred to as 8 August 2000) the district prosecutor's office instituted an investigation into the killing of the applicant's relatives under Article 105 of the Criminal Code (murder). The case file was given the number 24019.

36. According to the Government, on 21 May 2000 the applicant was granted victim status in the criminal case. According to the applicant, she was granted it on 21 May 2004.

37. On an unspecified date prior to July 2000 the investigators examined the crime scene. As a result, they found 59 cartridges of 7.62 mm calibre, 10 cartridges of 5.45 mm calibre, a green military waterproof cape, a yellow metal woman's earring and numerous reddish black spots resembling blood. The left side of the KAMAZ lorry had numerous bullet holes in it.

38. The crime scene examination also established that the corpses and remains of the applicants' relatives had been found on the north-eastern outskirts of Roshni-Chu, about 500 metres from the village, around a shell hole with a diameter of four metres. Pieces of metal were found in the hole and submitted for an expert examination. On 4 July 2000 that examination established that they were splinters of an industrially produced ammunition containing trotyl.

39. On 22 May 2000 the investigators questioned Mr S.-S.A., who stated that at about 7.30 p.m. on 16 May 2000 he had seen a light-coloured

KAMAZ lorry which had been driving from Gekhi to Roshni-Chu. He had not seen the driver or the passengers. At about 10 p.m. on the same date he had seen the lorry burning about 500 metres from Gekhi. Several teenagers had told him that at about 10 p.m. they had heard a woman screaming for help, and that a bit later they had heard gunshots. On the following day, 17 May 2000, the witness had gone to the scene with police officers, where next to the burnt lorry they had found a child's cap, a woman's hairpin and fragments of brain tissue. The left side of the vehicle had had numerous bullet holes in it. A few days later a resident of Roshni-Chu had discovered the corpses of the applicants' relatives, which were buried on the same day.

40. On 29 May 2000 the investigators questioned a resident of Roshni-Chu Mr S.I. who stated that in the morning of 19 May 2000 he had been searching for his cow on the north-eastern outskirts of Roshni-Chu. About 500 metres from the village he had found a human hand and informed his fellow villagers about it.

41. On an unspecified date the investigators questioned Mr R. Dz. who stated that on the night between 16 and 17 May 2000 he had been woken up at about 2 a.m. by Mr R.S. who had told him that on the outskirts of Gekhi military servicemen had opened fire on his KAMAZ lorry with Ramzan Suleymanov in it. The witness had arrived at the scene at about 2.30 a.m. and found the partially burnt lorry with its engine running. On the right side of the vehicle he had seen the body of Petimat Aydamirova; two other human bodies were on the ground not far away from hers. The witness had been afraid and had not looked closely at the other bodies. When he had returned to the scene on the following morning, the bodies had not been there and the lorry had completely burnt out.

42. On an unspecified date the investigators questioned Mr R.S. whose statement about the events was similar to the one given by Mr R.Dz.

43. On unspecified dates the investigators questioned three military servicemen, Mr G., Mr U. and Mr O. all of whom provided similar statements concerning the events. According to Mr G., who had been the head of the military intelligence group, on 16 May 2000 his group had been taking search measures in the area next to Gekhi. In the evening, at about 10 or 11 p.m., a KAMAZ lorry with its lights off had appeared on the road. The vehicle had been moving at high speed, the driver had not reacted to the warning shots and automatic gunfire had been opened from the vehicle. The servicemen had thought that members of illegal armed groups were travelling in it; therefore, they had opened fire on the lorry. In the vehicle the intelligence group had found two male corpses and an AKM-74 submachine gun. After that the group had left the scene of the incident.

44. On 18 August 2000 (in the submitted documents the date was also referred to as 8 August 2000), in connection with the possible involvement of military servicemen in the killing of the applicants' relatives, the investigation in the criminal case was transferred from the district

prosecutor's office to the military prosecutor's office of the UGA (the United Group Alignment), where the case file was given the number 14/33/0332-01. The applicant was informed about it on 18 November 2004 (see paragraph 52 below).

45. On 17 September, 1 October 2001 and 22 April 2004 the applicant wrote to the military prosecutor's office of military unit no. 20102. She stated that her relatives had been killed by Russian military servicemen in May 2000 and inquired about the progress of the investigation. She asked to be granted victim status in the criminal case.

46. On 17 March and 27 September 2004 the applicant wrote to the district prosecutor's office requesting information concerning the number of the investigation file and the progress of the investigation. She also requested to be granted victim status in the criminal case.

47. On 18 March 2004 the district prosecutor's office informed the applicant that criminal case no. 24019 had been transferred to a military prosecutor's office on 8 August 2000. On 27 September 2004 the district prosecutor's office informed her that on an unspecified date the criminal case had been transferred to the military prosecutor's office of the North Caucasus Military Circuit.

48. On 2 June 2004 the military prosecutor's office of military unit no. 20102 informed the applicant that on 26 July 2001 they had transferred the investigation of criminal case no. 14/33/0332-01 to the military prosecutor's office of the North Caucasus Military Circuit in Rostov-on-Don.

49. On 29 June 2004 the applicant wrote to the military prosecutor's office of the North Caucasus Military Circuit and requested to be granted victim status in the criminal case. She also asked why there had been delays in the investigation and what steps had been taken by the investigators.

50. On 29 July 2004 the military prosecutor's office of the North Caucasus Military Circuit replied to the applicant stating that on 21 May 2004 the district prosecutor's office had granted her victim status in the criminal case. The letter also mentioned that the investigation had not yet been completed for failure to identify the perpetrators.

51. On 7 October 2004 the applicant wrote to the military prosecutor's office of the North Caucasus Military Circuit. She stated, *inter alia*, that according to information she had obtained from unspecified sources, prior to the transfer of the investigation from the district prosecutor's office to the military prosecutor's office the authorities had identified and arrested two servicemen of the Russian military forces on suspicion of her relatives' killing. She also complained about the lack of information concerning the investigation and its excessive length. In particular, she stated that the authorities had completely ignored her requests for information on the progress of the proceedings, her procedural status and the basic steps taken by the investigators. The applicant requested to be provided with copies of

the basic procedural decisions taken and access to the investigation file. Finally, she asked that the investigation be resumed and transferred to the military prosecutor's office of military unit no. 20102 in Khankala, Chechnya.

52. On 18 November 2004 the military prosecutor's office of the North Caucasus Military Circuit replied to the applicant, stating that in October 2002 the investigation of her relatives' killing had been transferred to the military prosecutor's office of the UGA.

53. On 23 December 2004 the applicant requested the military prosecutor's office of the UGA to provide her with copies of the basic decisions taken by the investigators. She also asked for access to the investigation file, resumption of the investigation and requested to be informed about the measures taken by the authorities in respect of the two persons who had been arrested on suspicion of her relatives' killing.

54. On 10 March 2005 the applicant complained about the ineffectiveness of the investigation to the Russian Prosecutor General. She drew attention to the lack of information concerning the investigation and the failure of the military prosecutor's office of the UGA to grant her victim status in the criminal case. She asked for copies of the basic procedural decisions, permission to access the investigation file and resumption of the investigation.

55. On 25 March and 8 April 2005 the Chief Military Prosecutor's office forwarded the applicant's complaints about her relatives' killing to the military prosecutor's office of the UGA and the military prosecutor's office of the North Caucasus Military Circuit.

56. On 7 April 2005 the military prosecutor's office of the UGA forwarded the applicant's complaint to the military prosecutor's office of military unit no. 20102 for examination.

57. On 17 May 2005 the military prosecutor's office of the North Caucasus Military Circuit replied to the applicant stating that the investigation into her relatives' killing had been transferred to the military prosecutor's office of the UGA.

58. On 26 May 2005 the military prosecutor's office of military unit no. 20102 informed the applicant that criminal case no. 14/33/0332-01 had not been transferred to their office from the military prosecutor's office of the UGA.

59. On 4 July 2005 the military prosecutor's office of the UGA informed the applicant that the criminal case had been forwarded to their office from the military prosecutor's office of the North Caucasus Military Circuit. The case file was on the way and they were waiting for its arrival to have her complaints examined.

60. On 8 June 2005 the applicant wrote to the military prosecutor's office of military unit no. 20102. She requested to be informed about the progress of the investigation, to be provided with access to the case file and

asked for information about the measures taken in respect of the two servicemen who had been suspected of her relatives' killing. She received no reply.

61. On an unspecified date the district prosecutor's office issued a document certifying the death of Ramzan Suleymanov, Petimat Aydamirova and Ibragim Suleymanov.

62. According to the applicant, the authorities failed to provide her with information about the progress of the investigation into her relatives' killing.

63. According to the Government, the investigation of the killing has not been completed to date, but all measures envisaged by national law were being taken to have the crime resolved. In spite of the Court's request, they refused to furnish the Court with copies of any documents from the investigation file on the ground that the investigation in the criminal case was ongoing.

II. RELEVANT DOMESTIC LAW

64. For a summary of the relevant domestic law see *Khatsiyeva and Others v. Russia* (no. 5108/02, §§ 105-107, 17 January 2008).

THE LAW

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

A. The parties' submissions

65. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the killing of the applicant's relatives had not yet been completed. They further argued that it had been open to the applicant to challenge in court any acts or omissions of the investigating authorities, but that she had not availed herself of that remedy. They also argued that it had been open to her to pursue civil complaints but that she had failed to do so.

66. The applicant contested that objection. She stated that the only effective remedy in her case – the criminal investigation - had proved to be ineffective. With reference to the Court's practice, she further argued that she was not obliged to apply to civil courts in order to exhaust domestic remedies.

B. The Court's assessment

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

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

69. As regards a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005, and *Estamirov and Others*, cited above, § 77). In the light of the above, the Court confirms that the applicant was not obliged to pursue civil remedies. The Government's objection in this regard is thus dismissed.

70. As regards criminal law remedies, the Court observes that the applicant complained to the law enforcement authorities immediately after her relatives' killing and that an investigation has been pending since 19 May 2000. The applicant and the Government dispute the effectiveness of the investigation of the incident.

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

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

72. The applicant complained under Article 2 of the Convention that her relatives had been deprived of their lives by Russian servicemen and that the domestic authorities had failed to carry out an effective investigation of the matter. Article 2 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. Alleged failure to protect the right to life

1. Submissions by the parties

73. The Government conceded that the applicant's relatives had been deprived of their lives by State agents. They argued, however, that the applicant's relatives had been killed in the course of a counter-terrorist operation carried out by the federal forces in the Chechen Republic in order to eliminate illegal armed groups. They further stated that the local residents had been informed about the curfew and the obligation to obey the orders of the military when in the area of a special operation. Taking into account that the applicant's relatives had been driving in the dark during the curfew and had disobeyed the order to stop the lorry, the servicemen had taken them for members of illegal armed groups and opened destruction fire. The Government thus contended that the use of lethal force in the present case had been no more than absolutely necessary for the purposes of paragraph 2 (a) and (b) Article 2 of the Convention, and that the deaths of Ramzan Suleymanov, Petimat Aydamirova, Ibragim Suleymanov and Aslanbek Aydamirov had been the result of their failure to comply with the necessary rules concerning personal safety in an area where State agents were conducting a special operation and to obey the servicemen's legitimate orders.

74. The applicant insisted that her deceased relatives had been civilians, who had posed no danger to servicemen. She further submitted that her relatives had been driving from Gekhi to Roshni-Chu early in the evening, when it had still been light out; that the left side of the lorry cab had contained numerous bullet holes, which demonstrated that the gunfire had been intense and that it had been opened to kill the driver and the passengers; that after the shooting Petimat Aydamirova and her minor son Ibragim Suleymanov had been alive and screamed for help but had been killed by the servicemen; that the holes in the ground and the remains of the brain tissue had clearly indicated that a final shot had been fired into the applicant's relatives' heads; that the servicemen had attempted to eliminate the evidence and get rid of the corpses; and that the fact that the domestic authorities had opened a criminal investigation into the events demonstrated the unlawfulness of the actions of the military. She contended therefore that the use of force by State agents which had led to the loss of her relatives' lives had been clearly disproportionate in the circumstances of the case and could not be regarded as justified under Article 2 § 2 of the Convention. The

applicant stressed that the Government had not submitted any convincing arguments or documentary evidence to the contrary.

2. *The Court's assessment*

a. Admissibility

75. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government's objection concerning the alleged non-exhaustion of criminal domestic remedies should be joined to the merits of the complaint (see paragraph 71 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

b. Merits

76. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances where deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, to which in peacetime no derogation is permitted under Article 15. 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 paragraphs 2 of Articles 8 to 11 of the Convention. Consequently, the force used must be strictly proportionate to the achievement of the permitted aims. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, particularly where deliberate lethal force is used, taking into consideration not only the actions of State agents who actually administer the force but also all the surrounding circumstances including such matters as the planning and control of the actions under examination (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-50, Series A no. 324.; *Andronicou and Constantinou v. Cyprus*, 9 October 1997, pp. 2097-98, § 171, *Reports of Judgments and Decisions* 1997-VI; and *Oğur v. Turkey* [GC], no. 21594/93, § 78, ECHR 1999-III).

77. 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).

78. In the present case, it has been acknowledged by the Government that Ramzan Suleymanov, Petimat Aydamirova, Ibragim Suleymanov and Aslanbek Aydamirov were killed by State agents as a result of the intentional use of lethal force against them. The State's responsibility is therefore engaged, and it is for the State to account for the deaths of the applicant's relatives. It is notably for the State to demonstrate that the force used against them by the federal servicemen could be said to have been absolutely necessary and therefore strictly proportionate to the achievement of one of the aims set out in paragraph 2 of Article 2.

79. The Court notes that it is faced with conflicting accounts of the incident. The Government claimed that the applicant's relatives had been driving in the dark during curfew hours and had disobeyed orders to stop. The applicant submitted that her relatives had been driving in daylight and that the military had been able to see that the lorry's passengers had been civilians.

80. The Court does not consider it necessary to resolve the controversies in the parties' submissions on the facts, as even assuming that the Government's version as presented by them is accurate, the Court is not convinced that the Government have properly accounted for the use of lethal force against the applicant's relatives.

81. In this connection, the Court notes firstly that it is aware of the difficult situation in the Chechen Republic at the material time, which called for exceptional measures on the part of the State to suppress the illegal armed insurgency (see *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, § 178, 24 February 2005, or *Khatsiyeva and Others*, cited above, § 134). It also bears in mind the fact that an armed conflict, such as that in Chechnya, may entail developments to which State agents are called upon to react without prior preparation. Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the obligation to protect the right to life must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities (see, *mutatis mutandis*, *Makaratzis*, cited above, § 69, and *Mahmut Kaya v. Turkey*, no. 22535/93, § 86, ECHR 2000-III).

82. Turning to the present case, the Court notes, however, that the Government failed to demonstrate that the circumstances of the incident of 16-19 May 2000 rendered the use of lethal force against the applicant's

relatives inevitable. Even assuming that the applicant's relatives had indeed disobeyed the order to stop the lorry and had tried to drive away from the military, as alleged by the Government, the following crucial elements remain unclear.

83. First of all, the Court notes as a matter of grave concern that, whilst claiming that the federal servicemen involved in the incident of 16-19 May 2000 had acted in full compliance with national legislation and regulations for securing the safety of the civilian population, as well as those relating to the use of lethal force, the respondent Government failed to provide the Court with any such legal act or regulations. This prevented the Court from assessing whether an appropriate legal framework on the use of force and firearms by military personnel was in place and, if so, whether it contained clear safeguards to prevent arbitrary deprivation of life and to satisfy the requirement of protection “by law” of the right to life secured by Article 2 of the Convention.

84. The Court further observes that, despite its specific request, the Government refused, with reference to the ongoing criminal investigation, to provide a copy of the investigation file opened in connection with the killing of the applicant's relatives.

85. As regards the actions of the servicemen involved in the incident of 16-19 May 2000, the Court observes that the Government gave no explanations as to whether the federal servicemen had been, or could have been regarded as being, at risk from the applicant's relatives owing to the latter's conduct. Further, the Government provided no explanation either for the applicant's contention that Petimat Aydamirova and Ibragim Suleymanov had survived the shooting but had been killed after the attack or for her contention that the servicemen had tried to get rid of the corpses by blowing them up. In addition, it is unclear whether the military servicemen reported the incident to their command and if so, what measures were taken by the latter. Lastly, if according to the Government's submission the investigation had established who had opened the fire on the applicant's relatives (see paragraph 43 above), it is unclear why the authorities did not finish the investigation and why the proceedings have been pending for almost ten years. In such circumstances, the Court cannot conclude that the use of lethal force against the applicant's relatives was based on an honest belief which was perceived, for good reasons, to be valid at the time (see, by contrast, *McCann and Others*, cited above, § 200).

86. The Court finds that in the absence of information on the crucial elements mentioned in the above paragraph, the use of lethal force has not been accounted for in the circumstances of the present case. It is therefore not persuaded that the killing of Ramzan Suleymanov, Petimat Aydamirova, Ibragim Suleymanov and Aslanbek Aydamirov constituted a use of force which was no more than absolutely necessary in pursuit of the aims provided for in paragraph 2 of Article 2 of the Convention.

87. There has accordingly been a violation of Article 2 of the Convention in this respect.

B. Alleged inadequacy of the investigation

1. Submissions by the parties

88. The applicant also insisted that the investigation into the death of her relatives had clearly been inadequate and had fallen short of the Convention standards. It had been pending for almost ten years, having been repeatedly suspended and resumed, and had produced no tangible results. She also alleged that the authorities had failed to provide her with information concerning the basic steps taken by the investigators.

89. The Government claimed that the investigation had met the Convention requirement of effectiveness, given that the authorities had taken a number of investigative steps. The applicant had been granted victim status in the criminal case and had been informed about the investigators' decisions.

2. The Court's assessment

90. 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", 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, in particular by agents of the State. The investigation must be 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 (see *Kaya v. Turkey*, 19 February 1998, p. 324, § 87, *Reports* 1998-I,) and to the identification and punishment of those responsible (see *Oğur*, cited above, § 88).

91. In particular, the authorities must take the reasonable steps available to them to secure the evidence concerning the incident, including *inter alia* eye witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death (see concerning autopsies, for example, *Salman v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000-VII; concerning witnesses, for example, *Tanrıkuş v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 109; and concerning forensic evidence, for example, *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to

establish the cause of death or the person responsible may risk falling foul of this standard.

92. Also, there must be an implicit requirement of promptness and reasonable expedition (see *Yaşa*, cited above, §§ 102-04, and *Mahmut Kaya*, cited above, §§ 106-07). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating the use of lethal force may generally be regarded as essential in maintaining public confidence in the maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.

93. For the same reasons, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *Shanaghan v. the United Kingdom*, no. 37715/97, §§ 91-92, 4 May 2001).

94. In the instant case, the Court observes that some degree of investigation was carried out into the killing of the applicants' relatives. It must assess whether that investigation met the requirements of Article 2 of the Convention. The Court notes in this connection that its knowledge of the criminal proceedings at issue is very limited in view of the respondent Government's refusal to submit the investigation file (see paragraph 63 above). Drawing inferences from the respondent Government's conduct when evidence was being obtained (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161), the Court will assess the merits of this complaint on the basis of the available information in the light of these inferences.

95. The Court notes that from the report on the investigative actions submitted by the Government it appears that the civilian authorities made attempts to investigate the events of 16-19 May 2000 and to secure evidence concerning the incident. In particular, the investigation was commenced on the date of the discovery of the remains of the applicant's relatives and a number of important investigative actions, such as the inspection of the scene of the incident, the seizure of fragments of cartridges and other evidence at the crime scene, and the questioning of the local residents, were taken within the first months of the investigation (see paragraphs 35, 37-40 above). However, it appears that after the civilian authorities had established that military servicemen had been implicated in the events and consequently transferred the investigation file to the military prosecutor's office (see paragraph 44 above) no investigative steps were taken by the latter.

96. The Court further observes that it is unclear when the applicant was granted victim status in the criminal case (see paragraph 36 above), which would have afforded her minimum guarantees in the criminal proceedings.

However, it is nonetheless clear from the materials in the Court's possession that the applicant was informed of the developments in the investigation only fragmentarily and occasionally, and that she was not given a realistic opportunity to have access to the case file despite her numerous requests. The Court considers that the applicant was, in fact, excluded from the criminal proceedings and was unable to have her legitimate interests upheld.

97. Against this background, and having regard to the Government's argument concerning the applicant's alleged failure to appeal to a court against the actions or omissions of the investigators, the Court notes that in a situation where the investigation was repeatedly suspended and reopened, where the applicant was unable to consult the case file at any stage and was in fact excluded from the criminal proceedings, and where she was only informed of the conduct of the investigation occasionally, it is highly doubtful that the remedy invoked by the Government would have had any prospect of success. Moreover, the Government have not demonstrated that this remedy would have been capable of providing redress in the applicant's situation – in other words, that it would have rectified the shortcomings in the investigation and would have led to the identification and punishment of those responsible for the deaths of her relatives. The Court thus considers that in the circumstances of the case it has not been established with sufficient certainty that the remedy advanced by the Government would have been effective within the meaning of the Convention. It finds that the applicant was not obliged to pursue that remedy, and that this limb of the Government's preliminary objection should therefore be dismissed.

98. In the light of the foregoing, and drawing inferences from the Government's refusal to submit the criminal investigation file, the Court further concludes that the authorities failed to carry out a thorough and effective investigation into the circumstances surrounding the deaths of Ramzan Suleymanov, Petimat Aydamirova, Ibragim Suleymanov and Aslanbek Aydamirov.

99. The Court accordingly holds that there has been a violation of Article 2 of the Convention under its procedural head.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

100. The applicant complained that she had been deprived of effective remedies in respect of the aforementioned violations, 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. Submissions by the parties

101. The Government contended that the applicant had had effective remedies at her disposal as required by Article 13 of the Convention and that the authorities had not prevented her from using them. The applicant had had an opportunity to challenge the acts or omissions of the investigating authorities in court. They added that participants in criminal proceedings could also claim damages in civil proceedings and referred to cases where victims in criminal proceedings had been awarded damages from state bodies, including the prosecutor's office. In sum, the Government submitted that there had been no violation of Article 13.

102. The applicant maintained the complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

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

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

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

106. The applicant complained under Article 14 that the aforementioned violation of her rights occurred because of her Chechen ethnic origin and residence in Chechnya. The respective Article reads as follows:

“The enjoyment of the right 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.”

107. The Court observes that no evidence has been submitted that the applicant was treated differently from persons in an analogous situation without objective and reasonable justification, or that she has ever raised

this complaint before the domestic authorities. It thus finds that this complaint has not been substantiated (see, for example, *Musikhanova and Others v. Russia* (dec.), no. 27243/03, 10 July 2007).

108. It follows that this part of the application is manifestly ill-founded and should be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

109. 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

110. The applicant claimed damages in respect of loss of earnings by her son Ramzan Suleymanov after his killing, claiming a total of 118,918 Russian roubles (RUB) under this heading (2,900 euros (EUR)).

111. She claimed that her son had been employed as a lorry driver at the time of the incident, but that she was unable to obtain salary statements for him. Therefore, she based her calculations on the basis of the subsistence level established by national law and calculated her son's earnings for the period, taking into account an average inflation rate of 13.67%. Her calculations were also based on the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department in 2007 (“the Ogden tables”).

112. The Government disputed the applicant's claims under this head as unsubstantiated.

113. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention (see, among other authorities, *Çakıcı v. Turkey* [GC], no. 23657/94, § 127, ECHR 1999-IV). The Court finds that there is indeed a direct causal link between the violation of Article 2 in respect of the applicant's son Ramzan Suleymanov and the loss by the applicant of the financial support which he could have provided for her. Having regard to the applicant's submissions, the Court does not consider that the amount sought by her is excessive. It therefore awards EUR 2,900 to the applicant as claimed under this head, plus any tax that may be chargeable on this amount.

B. Non-pecuniary damage

114. As regards non-pecuniary damage, the applicant claimed that she had suffered severe emotional distress, anxiety and trauma as a result of the killing of her four close relatives and on account of the indifference demonstrated by the Russian authorities during the investigation into these events. The applicant sought the amount of EUR 150,000

115. The Government found the amount claimed excessive.

116. The Court has found a violation of Articles 2 and 13 of the Convention on account of the killing of the applicant's relatives. The Court thus accepts that she has suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards to the applicant EUR 150,000 as claimed, plus any tax that may be chargeable thereon.

C. Costs and expenses

117. The applicant was represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews in Ingushetia and Moscow, 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 and experts. The aggregate claim in respect of costs and expenses related to the applicant's legal representation amounted to EUR 6,516.

118. The Government did not dispute the reasonableness of and justification for the amounts claimed under this head.

119. The Court has to establish first whether the costs and expenses indicated by the applicant's representatives were actually incurred and, second, whether they were necessary (see *McCann and Others*, cited above, § 220).

120. Having regard to the details of the information and legal representation contract submitted by the applicant, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicant's representatives.

121. As to whether the costs and expenses were necessary, the Court notes that this case was rather complex and required a certain amount of research and preparation. It notes at the same time that the case involved little documentary evidence, in view of the Government's refusal to submit the case file. The Court thus doubts that research was necessary to the extent claimed by the representatives.

122. Having regard to the details of the claims submitted by the applicant, the Court awards her the amount of EUR 5,500 together with any value-added tax that may be chargeable to her, the net award to be paid into

the representatives' bank account in the Netherlands, as identified by the applicant.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;
2. *Declares* the complaints under Articles 2 and 13 of the Convention admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Ramzan Suleymanov, Petimat Aydamirova, Ibragim Suleymanov and Aslanbek Aydamirov;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which the applicant's relatives had been killed;
5. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
6. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the date of settlement, save in the case of the payment in respect of costs and expenses:
 - (i) EUR 2,900 (two thousand nine hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage to the applicant;
 - (ii) EUR 150,000 (one hundred and fifty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicant;
 - (iii) EUR 5,500 (five thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and

expenses, to be paid into the representatives' bank account in the Netherlands;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 12 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President