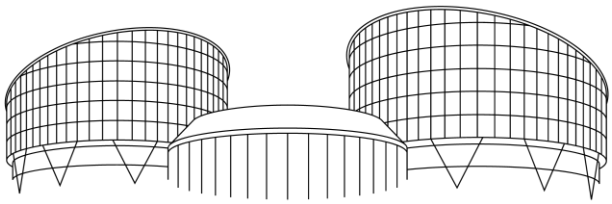

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ESMUKHAMBETOV AND OTHERS v. RUSSIA

(Application no. 23445/03)

JUDGMENT

STRASBOURG

29 March 2011

FINAL

15/09/2011

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

In the case of Esmukhambetov and Others v. Russia,

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

Nina Vajić, *President,*
Anatoly Kovler,
Christos Rozakis,
Peer Lorenzen,
Khanlar Hajiyev,
George Nicolaou,
Julia Laffranque, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 8 March 2011,

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

PROCEDURE

1. The case originated in an application (no. 23445/03) 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 twenty-seven Russian nationals listed in Annex I ("the applicants") on 21 July 2003. On 7 February 2004 the tenth applicant died, and his son, Mr Murat Daudovich Tenizbayev, expressed the wish to pursue the application on his behalf. On 18 August 2004 the twenty-second applicant died, and her daughter, Ms Svetlana Sarsanbiyevna Adilova, expressed the wish to pursue the application on her behalf. As of 1 March 2005 the second applicant, whose surname at the time of introduction of the application was Abdurakhmanova, has changed it to Mankayeva. On 11 July 2009 the seventeenth applicant died, and his wife, Ms Kadyrbike Bayniyazovna Amanakayeva, expressed the wish to pursue the application on his behalf. The Court accepted that Mr Murat Daudovich Tenizbayev, Ms Svetlana Sarsanbiyevna Adilova and Ms Kadyrbike Bayniyazovna Amanakayeva had standing to continue the present proceedings on behalf of the tenth, twenty-second and seventeenth applicants respectively.

2. The applicants, who had been granted legal aid, were represented by lawyers of the Memorial Human Rights Centre (Moscow) and the European Human Rights Advocacy Centre (London). The Russian Government ("the Government") were represented by Ms V. Milinchuk, the former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants complained, in particular, that an aerial strike on the village in which they had been living resulted in the deaths of the family

members of the first, second, third, thirteenth and twenty-second applicants and in the destruction of all applicants' houses and property. They also complained of the moral suffering they had endured in connection with those events, the lack of an investigation into the matter and the lack of effective remedies in respect of the alleged violations. The applicants relied on Articles 2, 3, 8 and 13 of the Convention and Article 1 of Protocol No. 1.

4. On 29 August 2004 the President of the First Section decided to grant priority to the application under Rule 41 of the Rules of Court.

5. On 21 May 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

6. 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.

7. On 8 March 2011 the Court decided that a hearing in the case was unnecessary (Rule 59 § 3 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicants are residents of various villages in the Republic of Dagestan.

A. The facts

1. Background to the case

9. At the material time the applicants were residents of the village of Kogi in the Shelkovskiy District of the Chechen Republic. The village of Kogi, also known as farm no. 2 of the "Shelkovskiy" State farm or Runnoye, is situated on the steppe close to the administrative border of the Republic of Dagestan. The village is nine kilometres away from the village of Kumli in Dagestan. Prior to the events described below Kogi was inhabited by people belonging to the Nogay ethnic group and consisted of thirty houses comprising twenty-six to thirty families. Its residents made their living from agriculture, mostly raising sheep and cows.

10. According to the applicants, Kogi was a peaceful village; no rebel fighters ever lived there. In 1999 it was regularly patrolled by federal servicemen from a checkpoint situated near Kumli. In the night of 11 to

12 September 1999 an armoured personnel carrier arrived from the checkpoint on the outskirts of Kogi and fired a "lightning bomb" (*осветительная бомба*) into the air. According to the third applicant, there was a flare hanging from a parachute for about five minutes which lit the village very brightly. The next day the seventeenth applicant found duralumin casing which was 1 metre long and 10 centimetres in diameter near the electricity transformer. It was black inside. A white parachute was hanging on the wires above the transformer.

2. Attack of 12 September 1999

(a) The applicants' version

11. In the late afternoon of 12 September 1999 most of the adult villagers were working in the field and most of the children were at school. The weather was bright and sunny.

12. At about 5.15 p.m. two military planes flying at a low altitude appeared from the direction of Kumli. The planes flew away but several minutes later reappeared. They were narrow at the front, had wide wings and resembled Russian military SU-25 planes.

13. The planes circled over Kogi for about five minutes and then one of them swooped down and opened fire with machine guns and bombed the western end of the village. The first bomb exploded in the courtyard of the first applicant's house. His two sons – Elmurat, aged eight, and Eldar, aged two – were playing there at that moment. The children were instantly killed.

14. The first applicant, his wife – Ms Borambike Dormalayevna Esmukhambetova, born in 1969 – and the thirteenth applicant were inside the house when the bombing began. The first applicant and his wife rushed towards the boys, whilst the thirteenth applicant, who was wounded in her leg by shrapnel, ran to her house. In the courtyard the first applicant saw his sons lying near a bomb crater of approximately one metre in diameter. He grabbed the boys, clasped them to his chest and realised they were dead. At that moment the second bomb hit the first applicant's house. The first applicant shouted to his wife not to approach him and the children and to lie down. Instead, Borambike ran screaming towards them. The first applicant noticed that she was wounded in the hip. The third bomb exploded near the Esmukhambetovs immediately after the second one. The first applicant's wife was fatally wounded with shrapnel in the abdomen and died in his arms. In the first applicant's submission, he is unable to recall the further sequence of events from that point until several hours later. According to eyewitness statements, the first applicant was in a state of deep shock, screaming that all his family members had been killed and cursing the planes.

15. The second plane fired from large-calibre machine guns and bombed the northern end of the village. There was a large amount of smoke and dust

in the air. Houses, sheds, other constructions, cattle, poultry and haystacks were destroyed and burnt down. The villagers, some barefoot and some half-naked, ran in panic in the direction of Kumli.

16. The planes indiscriminately fired shots and bombs at a distance from one another. They carried out four sweeps and then left.

17. Immediately after the attack the eighteenth and nineteenth applicants started their tractors. The former drove off to Kumli, together with a number of his neighbours, picking up other villagers along the way. The latter, along with the twenty-third applicant, arrived at the first applicant's house to collect the corpses of the Esmukhambetov family members. At a distance of approximately 150 metres they also found the body of Melikhan (Lida) Saliyevna Abdurakhmanova, born in 1948 – the second applicant's mother, the thirteenth applicant's sister and the twenty-second applicant's daughter. The woman had been killed by shrapnel. According to numerous eyewitness statements, the corpses of the deceased were severely mutilated and heavily bleeding, and numerous pieces of shrapnel fell from the wounds when the bodies were moved. The bodies having been collected, the tractor drove to Kumli, picking up survivors along the way.

18. Meanwhile, the third applicant was looking for his mother, Bota Arslanbekovna Kartakayeva, born in 1936, and his seventeen-month-old son. They had gone for a walk earlier that day. Some of the villagers told him that, during the attack, they had seen her running with the boy in her arms in the direction of Kumli. The third applicant went to Kumli and was told that his family members had not been seen there. He then returned to Kogi in the nineteenth applicant's tractor with several other villagers. After some searching, Bota Kartakayeva's body was found in the field near the village. There was a shrapnel wound to the back of her head. The third applicant's son was crying nearby, unhurt.

19. The bodies of all the deceased were delivered to the village of Kumli late on 12 September 1999, and were washed and buried the next day. According to the applicants, approximately seventy bombs were dropped on their village during the attack of 12 September 1999, resulting in the deaths of two children and three women and the destruction of, or severe damage to, about thirty houses.

20. On 13 September 1999 the Kogi administration issued certificates in respect of each of the victims, stating that they had been killed during the bombing in Kogi the day before. On 24 December 1999 medical death certificates were issued in respect of the victims. The documents stated that the first applicant's wife, Borambike Esmukhambetova, born in 1969, and his son, Eldar Esmukhambetov, born in 1997, had died from multiple shrapnel wounds and that his son Elmurat Esmukhambetov, born in 1991, had died from trauma to the head. They also stated that the second applicant's mother, Melikhan Abdurakhmanova, born in 1948, had died as a result of multiple shrapnel wounds and that the third applicant's mother,

Bota Kartakayeva, born in 1936, had died from a shrapnel wound to the back of her head. The place and the date of the death of all the victims were recorded as the village of Kogi, 12 September 1999. On 24 and 27 December 1999 and 14 February 2003 respectively the registry office of the Shelkovskiy District of the Chechen Republic certified the death of the third applicant's mother, the second applicant's mother and the first applicant's relatives.

(b) The Government's version

21. According to the Government, in early September 1999 a military body in command of counter-terrorist activities within the territory of the Chechen Republic received information to the effect that a concentration of members of illegal armed groups and a base for training of terrorists had been detected in farm no. 2 of the Shelkovskiy State farm near the village of Runnoye, and that a number of large-scale terrorist attacks in the Chechen Republic and in the territory of the Republic of Dagestan adjacent to the Shelkovskiy District of the Chechen Republic, including hostage taking in Kizlyar, were being prepared. In the Government's submission, in order to prevent terrorist attacks and suppress the criminal activities of illegal armed groups and in view of the impossibility of using ground troops in the area of the village of Runnoye, military officials in command of counter-terrorist activities took a decision to launch a pinpoint missile strike by air forces on the location of illegal armed groups near the village in question.

22. On 12 September 1999 at about 5 p.m. two military SU-25 planes performed a strike with light missiles using a precision guidance system on the base of illegal armed groups located at farm no. 2 of the Shelkovskiy State farm. As a result of "the preventive use of air forces" in the village of Runnoye, houses and outhouses belonging to the Shelkovskiy State farm were destroyed. Also, the bodies of Ms B.D. Esmukhambetova, Elmurat Esmukhambetov, Eldar Esmukhambetov, M.S. Abdurakhmanova and B.A. Kartakayeva were found on the site.

3. Return to Kogi

23. On 14 September 1999 the seventeenth applicant arranged for the villagers to return to Kogi to collect their belongings. A column of eight tractors was accompanied by an infantry battle vehicle (*боевая машины пехоты*) from the federal checkpoint near Kumli.

24. There were numerous federal servicemen in Kogi armed with automatic rifles. They were collecting shrapnel and unexploded bombs. The soldiers warned the villagers that they should hurry up, since there might be a military strike to destroy the village to prevent rebel fighters from using it. The villagers were forced to leave the village before 3 p.m. that day.

25. On 15 September 1999 some of the villagers, including the second and seventeenth applicants, again went to Kogi to take belongings which

they had not managed to collect the day before. They saw the servicemen destroying one of the houses in order to organise a checkpoint there. The soldiers were under the command of an officer in green camouflage uniform without shoulder straps who had a field cap with a peak. The seventeenth applicant told the officer that if it was necessary for the servicemen to destroy any building, they could destroy a village shop. The soldiers then proceeded to demolish the shop.

26. Several days later more villagers, including several of the applicants, went to Kogi on two occasions. They saw the servicemen, some of them from the checkpoint near Kumli, demolishing houses and other buildings in the village and loading building materials into their vehicles. The servicemen were also collecting shrapnel and unexploded bombs.

27. Having picked up their belongings, most of the applicants left Kogi and never came back. They spent the winter of 1999 to 2000 in a refugee camp in the Republic of Dagestan.

28. In the spring of 2000 the twenty-fourth applicant and her family members returned to the village and rebuilt her house. The twenty-fourth applicant collected fragments of bombs. According to her, in June 2000 police officers also took away another unexploded bomb.

29. The applicants submitted numerous witness statements confirming their account of events and photographs depicting the devastated village and fragments of bombs, as well as a number of newspaper articles reporting on the incident of 12 September 1999.

30. On 24 December 2007 the head of the administration of the Shelkovskiy District issued each of the applicants with a certificate confirming that his or her family had owned a house and annexes, title to which had been transferred to them by the Shelkovskiy State farm at the beginning of the 1990s, and that those houses and annexes, as well as the applicants' belongings inside them, had been destroyed and burnt during an aerial attack on Kogi (Runnoye) in September 1999.

4. Official investigation

(a) The applicants' complaints to public bodies and information received by them

31. According to the applicants, following the attack of 12 September 1999 they repeatedly applied to various State bodies, including prosecutors at different levels, the district and regional departments of the interior, several federal ministries, the State Duma and others. In their letters to the authorities the applicants described in detail the events of 12 September 1999 and asked for assistance and details of the investigation. These enquiries remained largely unanswered, or only formal responses were given, stating that the applicants' requests had been forwarded to various prosecutors' offices.

32. Shortly after the bombing of Kogi the second applicant addressed a letter to a military prosecutor's office in Makhachkala, in the Republic of Dagestan, seeking the punishment of those responsible and compensation. A month later an investigator from the military prosecutor's office, Mr A., visited the second applicant and questioned her about the events of 12 September 1999. On the same date the second applicant, her cousin, sister and Mr A. went to Kogi, where they spent an hour. The investigator inspected and photographed the ruins and the places where the victims had been killed during the attack. The second applicant gave Mr A. pieces of shrapnel, including some which had numbers on them. She requested him to draw up an official note on the matter, but the investigator replied that it was unnecessary. Then the second applicant signed a transcript of her interview (*протокол допроса*) and Mr A. left.

33. During the winter of 1999 to 2000 investigator A. on four occasions visited a village in Dagestan in which the former inhabitants of Kogi were living and questioned them.

34. Some time later the second and thirteenth applicants found out that the case had been taken from Mr A. and transferred to another investigator. At some point the thirteenth applicant was informed that the case file had been sent to the federal military base in Khankala in the Chechen Republic for investigation.

35. In a letter of 2 February 2001 the Russian Ministry of the Interior forwarded the second applicant's complaint to the Chechen Department of the Interior. The latter sent the second applicant's complaint on to the prosecutor's office of the Chechen Republic ("the republican prosecutor's office") on 13 February 2001.

36. On 8 February 2001 the Prosecutor General's Office transmitted the second applicant's complaint to the republican prosecutor's office for examination.

37. On 19 February 2001 the republican prosecutor's office forwarded the second applicant's complaint concerning "her mother's death in a bombing attack of 12 September 1999" to the military prosecutor's office of military unit no. 20102 and notified the second applicant of that step in a letter of 28 February 2001.

38. On 22 March 2001 the military prosecutor's office of military unit no. 20102 transmitted the second applicant's complaint concerning "her mother's death" to the military prosecutor's office of military unit no. 20111 for investigation. The latter sent the complaint on to the military prosecutor of the Makhachkala Garrison (*военный прокурор махачкалинского гарнизона* – "the garrison prosecutor") on 11 April 2001.

39. In a letter of 3 May 2001, with a copy for the second applicant, the garrison prosecutor informed the military prosecutor of military unit no. 20111 that in December 1999 the investigator A. had carried out an inquiry (*проверка*) into the attack of 12 September 1999 and had sent the materials

from that inquiry to the relevant military prosecutors' offices, including that of military unit no. 20102, and that the garrison prosecutor's office had never received those materials back.

40. On 11 September 2001 the Chief Military Prosecutor's Office (*Главная военная прокуратура*) forwarded the applicants' request concerning compensation for damage inflicted on their property to the Russian Ministry of Defence.

41. In letters of 21 September 2001 the Chief Military Prosecutor's Office transmitted the applicants' complaints concerning the death of their relatives and destruction of their property as a result of an aerial attack to the military prosecutor's office of the North Caucasus Military Circuit (*военная прокуратура Северо-Кавказского военного округа*). The latter transmitted the complaints to the military prosecutor's office of military unit no. 20111 for examination on 19 October 2001.

42. On 27 September 2001 the Russian Ministry of Federation Affairs and National and Migration Policies (*Министерство по делам федерации, национальной и миграционной политики РФ*) informed the thirteenth applicant that her request for compensation for destroyed property had been examined and that the Ministry was working on the adoption of legal provisions aiming to support the residents of the Chechen Republic who had incurred losses in 1999 and 2000.

43. On 10 October 2001 the Russian Ministry of Defence stated in a letter to the thirteenth applicant that it was not competent to pay compensation for damage inflicted on property during the operation in Chechnya.

44. On 26 October 2001 the Russian Ministry of the Interior notified the thirteenth applicant that her letter had been forwarded to the Department of the Interior in the Southern Federal Circuit.

45. In a letter of 13 November 2001 the Russian Ministry of Defence stated in reply to the thirteenth applicant's request that it had no funds allocated for compensation for damage caused by military actions in the Chechen Republic, and that the thirteenth applicant should apply to the Chechen Government.

46. On 7 December 2001 the military prosecutor's office of military unit no. 20111 forwarded the applicants' complaint to the prosecutor's office of the Shelkovskiy District ("the district prosecutor's office"), stating that the military prosecutor's office was only competent to investigate offences committed by servicemen or those committed within the territory of their military unit, whereas in the present case no specific servicemen had been identified and the identification numbers and the type of plane were not known. The letter further stated that the circumstances of the deaths of the residents of Kogi and the destruction of their property required examination and that it had been explained to the applicants that they could seek compensation in court.

47. On 8 December 2001 the republican prosecutor's office transmitted the applicants' complaint regarding the attack of 12 September 1999 to the district prosecutor's office for investigation.

48. In a letter of 15 January 2002 the district prosecutor's office informed the republican prosecutor's office and the military prosecutor's office of military unit no. 20111 that there was no village named Kogi in the Shelkovskiy District and that the district prosecutor's office was currently investigating the circumstances of an aerial attack on the village of Runnoye.

49. According to the second applicant, in the spring of 2002 she was summoned to the Shelkovskiy District Office of the Interior. An investigator, S., informed her that a criminal investigation would be opened into the events of 12 September 1999 in accordance with the instructions of the superior military prosecutors. The investigator interviewed the second applicant and then assured her that he would contact the former investigator A. and obtain the fragments of shells that she had given to him. In the second applicant's submission, a year later there was still no progress in the investigation.

50. On 18 and 25 March 2003 the Chief Military Prosecutor's Office sent the applicants' complaints to the military prosecutor of the United Group Alignment (*военный прокурор Объединенной группировки войск*).

51. On 28 March 2003 the Russian Ministry for Emergency Situations informed the applicants in reply to their request for compensation that they should apply to the Chechen Government.

52. On 4 April 2003 the garrison prosecutor's office transmitted the applicants' complaint concerning the attack on their village on 12 September 1999 to the military prosecutor's office of military unit no. 20111 for investigation.

53. On 10 April 2003 the Chief Military Prosecutor's Office forwarded the applicants' complaint to the military prosecutor of the United Group Alignment.

54. In a letter of 25 April 2003 the military prosecutor's office of the North Caucasus Military Circuit informed the applicants that their complaint about the killing of five residents of Kogi and the destruction of property had been transmitted to the military prosecutor of the United Group Alignment and invited them to address their further queries to that prosecutor.

55. On 30 April 2003 the district prosecutor's office notified the applicants that a criminal investigation into the attack of 12 September 1999 on the village of Runnoye had been commenced on 21 January 2002, and that the case file had been assigned no. 69003. The letter further stated that the district prosecutor's office had requested the military prosecutor's office of military unit no. 20111 to submit the materials from the inquiry that had previously been conducted, but so far they had not been received by the

district prosecutor's office. According to the letter, the investigation was under way and measures aimed at identifying the planes which had attacked Kogi on 12 September 1999 were being taken.

56. On 11 May 2003 the military prosecutor's office of the United Group Alignment informed the applicants that on 21 January 2002 a criminal case under Article 167 § 2 (aggravated deliberate destruction of property) of the Russian Criminal Code had been opened, and that on 8 May 2003 the military prosecutor's office of the United Group Alignment had requested the republican prosecutor's office to transmit the case file to them for examination. The letter assured the applicants that they would be kept updated.

57. On 19 May 2003 the military prosecutor's office of military unit no. 20111 forwarded the applicants' complaint to the district prosecutor's office.

58. In a letter of 27 May 2003 the Chechen Government invited the applicants to address their request for compensation for their destroyed property to the administration of the Shelkovskiy District.

59. On 2 June 2003 the military prosecutor's office of the United Group Alignment notified the applicants that their complaints had been studied and transmitted to the military prosecutor's office of military unit no. 20111 for "examination on the merits".

60. On 30 June 2003 the district prosecutor's office forwarded the applicants' complaint to the military prosecutor's office of military unit no. 20111.

61. In a letter of 6 October 2004 the military prosecutor's office of the United Group Alignment stated in reply to the applicants' query that the decision of 19 January 2004 to discontinue criminal proceedings in case no. 34/00/0030-04 opened in connection with the aerial attack on the village of Runnoye on 12 September 1999 had been set aside and that on 5 October 2004 the military prosecutor's office of the United Group Alignment had taken up the case. The letter assured the applicants that all their allegations would be verified and that they would be informed of the eventual results.

(b) Information submitted by the Government

62. According to the Government, on 21 January 2002 the district prosecutor's office instituted criminal proceedings under Article 167 § 2 of the Russian Criminal Code (aggravated deliberate destruction of or damage to property) upon the second applicant's complaint of 29 August 2001 sent to the Office of the Russian President and received by the district prosecutor's office on 21 January 2002. The case file was assigned no. 69003 and then transferred to a military prosecutor's office, where it was assigned no. 34/00/0030-04. In the absence at that time of information concerning the deaths of the five residents of Kogi (Runnoye), no proceedings had been brought in that connection.

63. The Government further submitted that the investigation had subsequently established that five residents of Kogi (Runnoye) had been killed as a result of a strike by the federal air forces on 12 September 1999. According to them, it had been impossible to carry out a medical forensic examination of the corpses as the relatives had refused to allow exhumation on account of national traditions, which had obstructed the investigation and had had a negative impact on its effectiveness.

64. A number of documents appear to have been drawn up, including transcripts of witness interviews, expert reports and reports on examinations. The Government did not elaborate any further on the procedural documents they mentioned.

65. According to the Government, on 23 September 2005 the criminal proceedings were discontinued owing to the absence of constituent elements of a crime punishable under Article 109 of the Russian Criminal Code (inflicting death by negligence) in the servicemen's actions. The relevant decision stated that the pilots of SU-25 planes had bombed the village pursuant to their superiors' binding order, and that therefore their actions had not constituted a crime. The actions of military officials who had ordered the pilots to perform the missile strike had been justified by the absolute necessity to prevent large-scale terrorist attacks that had been planned by members of illegal armed formations, who were showing active armed resistance to the federal forces, and to eliminate the danger to the public interest, the interests of the State and the lives of servicemen and local residents. That danger could not have been eliminated by any other means and the actions of the military officials in command of that operation had been appropriate in view of the resistance shown by the illegal fighters. In the Government's submission, the investigating authorities thus concluded that the actions of the representatives of the federal forces had been no more than absolutely necessary, and therefore had not constituted a crime.

66. According to the Government, the "interested parties", including the first, second, third, fourth, eleventh, thirteenth, fourteenth, sixteenth, eighteenth, nineteenth and twenty-sixth applicants, were apprised of the decision of 23 September 2005 and their rights to challenge it before a higher prosecutor or in court were explained to them. The Government also stated that copies of the relevant decision had been sent to those declared victims in the case.

5. Proceedings for compensation

67. At some point the first three applicants filed a court claim against the Russian Ministry of Finance and the Federal Treasury, seeking compensation in connection with the deaths of their relatives.

68. By a default judgment of 18 March 2004 the Nogayskiy District Court of the Republic of Dagestan ("the District Court") granted the first

three applicants' claims in full and awarded the first applicant 60,000 Russian roubles (RUB; approximately 1,500 EUR) and the second and third applicants RUB 20,000 (approximately EUR 500) each. The judgment was not appealed against and became final some time later.

69. On 9 September 2004 the Presidium of the Supreme Court of the Republic of Dagestan quashed the above-mentioned judgment in supervisory review proceedings and remitted the case to the District Court for a fresh examination.

70. In a default judgment of 18 March 2005 the District Court again granted the applicants' claims and awarded them the same amounts as those awarded in the judgment of 18 March 2004. The court noted that by virtue of Presidential Decree no. 898 of 5 September 1995, relatives of those who had died as a result of the hostilities in the Chechen Republic were entitled to a lump sum of RUB 20,000 in compensation, and that the payment of that compensation did not depend on the establishment of a causal link between the damage caused and the actions of the State.

71. On 13 July 2005 the Supreme Court of the Republic of Dagestan upheld the judgment of 18 March 2005 on appeal. The amounts awarded were paid to the first three applicants in full.

72. It does not appear that any of the applicants applied to the domestic courts with a view to obtaining compensation for their destroyed or damaged property.

B. The Court's requests for the investigation file

73. In May 2007, when the application was communicated to them, the Government were invited to produce a copy of the investigation file in the criminal case opened in connection with the aerial attack of 12 September 1999 on the village of Kogi (Runnoye). In reply, the Government refused to produce any documents from the file, stating it would be inappropriate to do so, given that under Article 161 of the Russian Code of Criminal Procedure, disclosure of the documents was contrary to the interests of the investigation and could entail a breach of the rights of the participants in the criminal proceedings. Besides, in the Government's submission the file on the criminal investigation in the present case was classified as it contained information which could not be disclosed to the public.

74. The Government also submitted that they had taken into account the possibility of requesting confidentiality under Rule 33 of the Rules of Court, but noted that the Court provided no guarantees that once in receipt of the investigation file the applicants or their representatives, some of whom were not Russian nationals and resided outside Russia's territory, would not disclose the material in question to the public. According to the Government, in the absence of any possible sanctions for the applicants in the event of their disclosure of confidential information and materials, there

were no guarantees as to their compliance with the Convention and the Rules of Court. At the same time, the Government suggested that a Court delegation could be given access to the file in Russia, with the exception of those documents containing military and State secrets, and without the right to make copies of the case file.

75. In October 2007 the Court reiterated its request. In reply, the Government again refused to produce any documents from the file for the aforementioned reasons.

II. RELEVANT INTERNATIONA AND DOMESTIC LAW AND PRACTICE

A. International humanitarian law

76. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts adopted on 8 June 1977 provides in its part IV relating to civilian population as follows:

Article 13.-Protection of the civilian population

"1. The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.

2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

3. Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities."

Article 14.-Protection of objects indispensable to the survival of the civilian population

"Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works.

..."

Article 17.-Prohibition of forced movement of civilians

"1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict."

B. Domestic law

1. Code of Criminal Procedure

77. Until 1 July 2002 criminal-law matters were governed by the 1960 Code of Criminal Procedure of the RSFSR. On 1 July 2002 the old Code was replaced by the Russian Code of Criminal Procedure ("the CCP").

78. Article 124 of the CCP states that a prosecutor can examine a complaint concerning actions or omissions of various officials in charge of a criminal investigation. Once a complaint is examined, the complainant should be informed of its outcome and of possible avenues of appeal against the prosecutor's decision.

79. Article 125 of the CCP provides that the decision of an investigator or prosecutor to dispense with or terminate criminal proceedings, and other decisions and acts or omissions which are liable to infringe the constitutional rights and freedoms of the parties to criminal proceedings or to impede citizens' access to justice, may be appealed against to a district court, which is empowered to examine the lawfulness and grounds of the impugned decisions.

80. Article 161 of the CCP enshrines the rule that information from the preliminary investigation may not be disclosed. Paragraph 3 of the same Article provides that information from the investigation file may be divulged with the permission of a prosecutor or investigator and only in so far as it does not infringe the rights and lawful interests of the participants in the criminal proceedings and does not prejudice the investigation. It is prohibited to divulge information about the private lives of participants in criminal proceedings without their permission.

81. Article 162 of the CCP provides that a preliminary investigation in a criminal case must be completed within two months. This term may be extended up to three months by the head of the relevant investigative body. In a criminal case where the preliminary investigation is particularly complex, the term may be extended up to twelve months. Any further extension of the term may be made only in exceptional cases.

2. Civil Code

82. By virtue of Article 151 of the Russian Civil Code, if certain actions impairing an individual's personal non-property rights or encroaching on other incorporeal assets have caused him or her non-pecuniary damage (physical or mental suffering), the court may require the perpetrator to pay pecuniary compensation for that damage.

83. Article 1067 provides that damage inflicted in a situation of absolute necessity, notably for the elimination of a danger threatening the tortfeasor or third parties if the danger, in the circumstances, could not be eliminated by any other means, is to be compensated for by the tortfeasor. Having regard to the circumstances in which the damage was caused, a court may impose an obligation to compensate for such damage on a third party in whose interests the tortfeasor acted, or may release from such an obligation, partly or in full, both the third party and the tortfeasor.

84. Article 1069 provides that a State agency or a State official will be liable towards a citizen for damage caused by their unlawful actions or failure to act. Compensation for such damage will be awarded at the expense of the federal or regional treasury.

3. Suppression of Terrorism Act

85. The Federal Law on Suppression of Terrorism of 25 July 1998 (*Федеральный закон от 25 июля 1998 г. № 130-ФЗ «О борьбе с терроризмом»* – "the Suppression of Terrorism Act"), as in force at the relevant time, provided as follows:

Section 3. Basic Concepts

"For the purposes of the present Federal Law the following basic concepts shall be applied:

... 'suppression of terrorism' shall refer to activities aimed at the prevention, detection, suppression and minimisation of consequences of terrorist activities;

'counter-terrorist operation' shall refer to special activities aimed at the prevention of terrorist acts, ensuring the security of individuals, neutralising terrorists and minimising the consequences of terrorist acts;

'zone of a counter-terrorist operation' shall refer to an individual terrain or water surface, means of transport, building, structure or premises with adjacent territory where a counter-terrorist operation is conducted; ... "

Section 21. Exemption from liability for damage

"On the basis of the legislation and within the limits established by it, damage may be caused to the life, health and property of terrorists, as well as to other legally protected interests, in the course of a counter-terrorist operation. However,

servicemen, experts and other persons engaged in the suppression of terrorism shall be exempted from liability for such damage, in accordance with the legislation of the Russian Federation."

4. Presidential and governmental decrees

86. Presidential Decree no. 898 of 5 September 1995 provided, *inter alia*, for a lump-sum payment of 20,000 Russian roubles (RUB) to the families of individuals who had died as a result of the hostilities in the Chechen Republic. The Decree also stated that individuals who had incurred pecuniary losses, including those who had lost their home, should be paid compensation, and entrusted the Russian Government with the task of making the relevant payments to those concerned.

87. In Decree no. 510 of 30 April 1997 the Russian Government established that residents of the Chechen Republic who had lost their housing and/or other possessions during the hostilities in the republic and who, no later than before 12 December 1994, had left permanently for another region were entitled to compensation.

88. Governmental Decree no. 404 of 4 July 2003 established the right of all permanent residents of the Chechen Republic who had lost their housing and any possessions in it after 12 December 1994 to receive compensation in the amount of RUB 300,000 for the housing and RUB 50,000 for the other possessions.

C. Practice of the Russian courts

89. On 14 December 2000 the Basmanny District Court of Moscow delivered a judgment in civil proceedings brought by a Mr Dunayev, who claimed that the block of flats in which he had lived had collapsed during heavy shelling of Grozny by the federal armed forces in January 1995 and sought compensation for pecuniary and non-pecuniary damage in that connection. While acknowledging the fact that Mr Dunayev's property, including his apartment in the block of flats, had been destroyed as a result of an attack in 1995, the court noted, *inter alia*, that under Articles 1069-1071 and 1100 of the Russian Civil Code, the State was only liable for damages for its agents' actions that were unlawful. It further held that the military operation in the Chechen Republic had been launched by virtue of relevant presidential and governmental decrees which had been found to be constitutional by the Russian Constitutional Court and were still in force. Accordingly, the court concluded that the actions of the federal armed forces in the Chechen Republic had been lawful and dismissed Mr Dunayev's claim for compensation (see *Dunayev v. Russia*, no. 70142/01, § 8, 24 May 2007).

90. On 4 July 2001 the Basmanny District Court of Moscow dismissed a claim against the Ministry of Finance brought by a Mr Umarov, who stated

that his house and other property had been destroyed during massive air strikes and artillery shelling of Grozny by the federal armed forces in October and November 1999 and sought compensation for pecuniary and non-pecuniary damage in that connection. The court acknowledged the fact that Mr Umarov's private house and other belongings had been destroyed as a result of the hostilities in 1999 to 2000. It held, however, that under Article 1069 of the Russian Civil Code, the State was only liable for damages for its agents' actions which were unlawful. It noted that the military operation in Chechnya had been launched by virtue of relevant presidential and governmental decrees which had been found to be constitutional by the Russian Constitutional Court, except for two provisions of the relevant governmental decree. In that connection the court noted that the two provisions had never been applied to Mr Umarov, and therefore no unlawful actions on the part of State bodies had ever taken place to warrant compensation for damage inflicted on his property. On 12 April 2002 the Moscow City Court upheld that judgment on appeal (see *Umarov v. Russia* (dec.), no. 30788/02, 18 May 2006).

91. By a default judgment of 3 December 2001 the Leninskiy District Court of Stavropol dismissed a claim brought by a Ms Trapeznikova against a number of federal ministries in so far as she alleged that the block of flats in which she had lived had been destroyed by a missile during an attack by the federal armed forces on Grozny in January 2000 and sought compensation for the destroyed flat and belongings that had been in it. She also sought compensation for non-pecuniary damage. The court noted, *inter alia*, that under Article 1069 of the Russian Civil Code, the State was liable only for damage caused by its agents' actions which were unlawful. It further found that the actions of the Russian federal troops in Chechnya had been lawful, as the military operation in Chechnya had been launched under relevant presidential and governmental decrees which had been found to be constitutional by the Russian Constitutional Court. The court concluded that there were no grounds to grant Ms Trapeznikova's claim for pecuniary damage and that her claim for compensation for non-pecuniary damage could not be granted either, in the absence of any fault or unlawful actions on the part of the defendants. The judgment was upheld on appeal by the Stavropol Regional Court on 30 January 2002 (*Trapeznikova v. Russia*, no. 21539/02, § 30, 11 December 2008).

THE LAW

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

A. Submissions by the parties

1. The Government

92. The Government argued that the applicants had failed to exhaust the effective remedies available to them at domestic level. In particular, none of the procedural decisions taken in case no. 34/00/0030-04 had ever been appealed against to a higher prosecutor, in accordance with Article 124 of the Russian Code of Criminal Procedure, or to a court, in accordance with Article 125 of the same Code.

93. The Government further argued that, in so far as the applicants had complained of moral suffering in breach of Article 3 of the Convention, they could have sought compensation for non-pecuniary damage in court under Article 151 of the Russian Civil Code, but at no time had they lodged such a claim.

94. As regards the applicants' complaints under Article 8 of the Convention and Article 1 of Protocol No. 1, the Government submitted that, after the criminal proceedings had been discontinued, the "interested persons" – the first, second, third, fourth, eleventh, thirteenth, fourteenth, sixteenth, eighteenth, nineteenth and twenty-sixth applicants being among their number – had been informed of their right to seek compensation for their lost property in civil proceedings. In that connection the Government referred to the provisions of domestic civil law which established the rules on compensation for damage inflicted on property in a situation of absolute necessity (Article 1067 of the Russian Civil Code) and those concerning compensation for damage caused by State bodies and their officials (Article 1069 of the Russian Civil Code). The Government further argued that the applicants were also entitled to compensation in accordance with Governmental Decree no. 510 of 30 April 1997 and Governmental Decree no. 404 of 4 July 2003. However, to date the applicants had not availed themselves of any of those remedies, and therefore, in the Government's view, they had failed to exhaust the domestic remedies in respect of their complaints on that subject.

2. The applicants

95. The applicant insisted that they had done everything that could have reasonably been expected from them to bring the incident of 12 September 1999 to the attention of the authorities; however, the latter's response had been utterly inadequate. In particular, it did not appear that any meaningful investigation had been carried out into the circumstances of the incident. The applicants further stated that in the absence of any meaningful findings in the context of the investigation, all their attempts to bring civil proceedings for compensation in respect of pecuniary and non-pecuniary damage would have been doomed to failure.

96. Overall, the applicants insisted that the domestic remedies usually available had been illusory and ineffective in their situation.

B. The Court's assessment

97. The Court reiterates that the rule of exhaustion of domestic remedies under Article 35 § 1 of the Convention obliges applicants to use first the remedies which are available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain both in theory and in practice, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used. However, there is no obligation to have recourse to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI; *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-67, *Reports* 1996-IV; and, more recently, *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, no. 41964/98, § 64, 27 June 2006).

98. The Court has emphasised that the application of the rule of exhaustion of domestic remedies must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting States have agreed to set up. Accordingly, it has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State

concerned but also of the general context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see *Akdivar and Others*, cited above, § 69; *Aksoy*, cited above, §§ 53-54; and *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 82, ECHR 1999-IV).

99. In the present case, in so far as the Government pointed to the applicants' alleged failure to challenge before higher prosecutors procedural decisions taken in the context of the criminal proceedings concerning the events of 12 September 1999, the Court reiterates that the powers conferred on the superior prosecutors constitute extraordinary remedies, the use of which depends upon the prosecutors' discretion. The Court does not accept that the applicants were required to use this remedy in order to comply with the requirements of Article 35 § 1 of the Convention (see *Trubnikov v. Russia* (dec.), no. 9790/99, 14 October 2003).

100. As regards the applicants' alleged failure to appeal against the same procedural decisions to a court under Article 125 of the Russian Code of Criminal Procedure, the Court observes that the legal instrument referred to by the Government became operational on 1 July 2002 and that the applicants were clearly unable to have recourse to this remedy prior to that date. As regards the period thereafter, the Court considers that this limb of the Government's objection raises issues which are closely linked to the question of the effectiveness of the investigation, and it would therefore be appropriate to join this matter to the merits and to address it in the examination of the substance of the applicants' complaints under Article 2 of the Convention.

101. Lastly, in so far as the Government alleged that the applicants had failed to have recourse to civil-law remedies or to obtain compensation under governmental decrees in respect of their complaints under Articles 3 and 8 of the Convention and Article 1 of Protocol No. 1, the Court considers that this limb of the Government's objection raises issues which are closely linked to the question of the availability at national level of effective remedies in respect of the relevant complaints, and it would therefore be appropriate also to join this matter to the merits and to address it in the examination of the substance of the applicants' complaint under Article 13, in conjunction with Articles 3 and 8 of the Convention and Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

102. The first, second, third, thirteenth and twenty-second applicants ("the relevant applicants") complained about the deaths of their family members during the attack of 12 September 1999. The first applicant complained about the deaths of his wife, Borambike Esmukhambetova, and

his two sons, Elmurat and Eldar Esmukhambetov; the second, thirteenth and twenty-second applicants complained about the death of Melikhan Abdurakhmanova, the mother of the second applicant, sister of the thirteenth applicant and daughter of the twenty-second applicant, and the third applicant complained about the death of his mother, Bota Kartakayeva. The relevant applicants alleged that there had not been an effective investigation into the matter. They also complained that the State had failed to comply with its positive obligations to protect their relatives' lives. The relevant applicants referred to Article 2 of the Convention, which reads as follows:

> "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. Admissibility

103. The Government stated that, taking into account the applicants' submissions and witness statements on the circumstances surrounding the incident of 12 September 1999, "it should be acknowledged" that the use of lethal force resulting in the death of five residents of Kogi (Runnoye) – Borambike Esmukhambetova, Elmurat Esmukhambetov, Eldar Esmukhambetov, Melikhan Abdurakhmanova and Bota Kartakayeva – had constituted an infringement of Article 2 of the Convention in so far as that Article secured the right to life of the relevant applicants' deceased relatives. They further submitted that, having acknowledged that infringement, the national authorities had paid compensation in that respect to the first three applicants in the amount of 60,000 Russian roubles (RUB, approximately EUR 1,500) to the first applicant and RUB 20,000 (approximately EUR 500) to each of the second and third applicants.

104. The relevant applicants referred to the Court's well-established case-law, asserting that the payment of compensation was insufficient to remedy the alleged violation of Article 2 of the Convention and that an effective criminal investigation into the circumstances of their family members' deaths was required.

105. Having regard to the parties' submissions, the Court observes that the question arises whether, in accordance with Article 34 of the Convention, the relevant applicants can still claim to be "victims" of the alleged violation of Article 2 of the Convention. In this connection, the Court reiterates that an applicant is deprived of his or her status as a victim if the national authorities have acknowledged, either expressly or in substance, and then afforded appropriate and sufficient redress for, a breach of the Convention (see, for example, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-93, ECHR 2006-V).

106. In the present case, the Government may be said to have acknowledged the alleged violation of Article 2 of the Convention as far as the deaths of the relevant applicants' relatives were concerned (see paragraph 103 above). It remains to be ascertained whether the relevant applicants were afforded appropriate and sufficient redress in that respect.

107. The Court observes that the first, second and third applicants obtained compensation in the amounts of RUB 60,000, RUB 20,000 and RUB 20,000 respectively for the deaths of their family members in the attack of 12 September 1999. The Court reiterates that, in the case of a breach of Articles 2 or 3 of the Convention, compensation for the pecuniary and non-pecuniary damage flowing from the breach should in principle be available as part of the range of redress (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 109, ECHR 2001-V). However, the alleged violation of Article 2 of the Convention in cases of fatal assault by State agents cannot be remedied only by awarding damages to the relatives of the victims (see, among other authorities, *Kaya v. Turkey*, 19 February 1998, § 105, *Reports* 1998-I, and *Yaşa v. Turkey*, 2 September 1998, § 74, *Reports* 1998-VI). This is so because, if the authorities could confine their reaction to such incidents to the mere payment of compensation, while not doing enough to prosecute and punish those responsible, this might result in wrongful use of lethal force by State agents who would be placed in a position of virtual impunity, and the protection of the right to life under Article 2 of the Convention, despite its fundamental importance, would be rendered ineffective in practice. Accordingly, an effective investigation is required, in addition to adequate compensation, to provide sufficient redress to an applicant complaining of a violation of Article 2 of the Convention (see, *mutatis mutandis*, *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, §§ 55 and 56, 20 December 2007).

108. The Court therefore notes that the question of the relevant applicants' status as "victims", in accordance with Article 34 of the Convention, is closely linked to the question of the effectiveness of the investigation in the present case, and it would therefore be appropriate to join this question to the merits and to address it in the examination of the substance of the relevant complaint under Article 2 of the Convention.

109. The Court further finds that this part of the application 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.

B. Merits

110. In the light of its observation in paragraph 108 above, the Court finds it appropriate to begin by examining the relevant applicants' submissions in so far as they raise an issue under the procedural limb of Article 2 of the Convention and then to turn to the examination of the substantive issue under this Convention provision.

1. Alleged inadequacy of the investigation

(a) Submissions by the parties

111. The relevant applicants contended that the Government had failed to carry out an adequate, effective and timely investigation into the circumstances of the incident of 12 September 1999. They pointed out that apart from indicating the dates on which the investigation had been commenced and discontinued the Government had failed to explain in any detail what steps had been taken in the course of the investigation, and to disclose any documents relating to it. The relevant applicants further invited the Court to draw inferences as to the well-foundedness of their allegations from the Government's failure to submit any documents from the criminal investigation file.

112. The Government argued that the circumstances of the attack of 12 September 1999 had been duly investigated by the domestic authorities, which, having carried out the investigation, had decided to discontinue the criminal proceedings "in the absence of any lawful grounds for holding anyone criminally liable". The Government submitted that the fact that the investigation had been discontinued did not prevent any of the applicants from seeking compensation in civil proceedings for the damage caused, this right having been explained to the individuals who had been declared victims in the present case. The Government further pointed out that the first three applicants had availed themselves of that right and had obtained compensation in connection with their relatives' deaths. The Government thus insisted that in such circumstances the investigation in the present case had met the standard of effectiveness established in relation to Article 2 of the Convention.

113. The Government refused to submit any documents from the file on the criminal investigation with reference to their classified nature, stating that their disclosure would be contrary to the interests of the investigation

and could entail a breach of the rights of the participants in the criminal proceedings. They also insisted that they had "in due manner" indicated the procedural steps taken during the investigation and, in particular, had indicated the authority in charge, the numbers assigned to the case file and the dates of the major procedural steps.

(b) The Court's assessment

114. The Court firstly notes that the Government acknowledged the fact that the relevant applicants' relatives had been deprived of their lives as a result of the federal aerial attack of 12 September 1999. Accordingly, it finds that the relevant applicants have an arguable claim under the substantive limb of Article 2 of the Convention.

115. The Court further 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*, cited above, § 87) and to the identification and punishment of those responsible (see *Oğur v. Turkey* [GC], no. 21594/93, § 88, ECHR 1999-III).

116. In particular, the authorities must take the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness 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, *Tanrıkulu*, cited above, § 109; and concerning forensic evidence, for example, *Gül v. Turkey*, no. 22676/93, § 89). 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.

117. Also, there must be an implicit requirement of promptness and reasonable expedition (see *Yaşa*, cited above, §§ 102-04, and *Mahmut Kaya v. Turkey*, no. 22535/93, §§ 106-07, ECHR 2000-III). 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.

118. 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).

119. In the present case, the Court notes that despite its repeated requests for a copy of the file on the investigation concerning the attack of 12 September 1999, the Government refused to disclose any document from that file, referring to Article 161 of the Russian Code of Criminal Procedure. Moreover, they also failed to give an outline, let alone a detailed account, of the investigative steps, if any, taken by the authorities. The Government only indicated the dates on which the criminal proceedings had been instituted and discontinued, referred to the investigating authorities' conclusion as to the absence of the constituent elements of a crime in the federal servicemen's actions and mentioned certain transcripts of witness interviews, expert reports and reports on examinations, without providing any further details (see paragraphs (b) Information submitted by the Government

62-65 above). The Court finds such a manifest lack of cooperation in the present case on the part of the Government to be unacceptable.

120. Drawing inferences from the respondent Government's conduct when evidence was being obtained (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25), the Court, in the light of these inferences, will have to assess the merits of this complaint on the basis of the scarce information submitted by the Government on the progress of the investigation and the few documents produced by the applicants.

121. To that end, the Court notes firstly that criminal proceedings in connection with the aerial attack of 12 September 1999 resulting in the deaths of the relevant applicants' relatives were not instituted until more than two years later, on 21 January 2002. The Government did not advance any justification for such a delay, merely alleging that the competent prosecutor's office had initiated the proceedings on the same date when it had received the second applicant's complaint of 29 August 2001 from the Russian President's Office.

122. In so far as the Government may be understood to be arguing that, prior to that date, the authorities were unaware of the incident of 12 September 1999, the Court finds such an argument implausible and contradictory to the facts of the present case. In the Court's opinion, the results of a large-scale attack involving federal aircraft should normally become known to the authorities immediately after such an attack. It falls to the State to ensure that State agents who participated in the attack duly report on it, and that the competent authorities, including those in charge of

it, check its results without delay. The Court further notes the applicants' submissions to the effect that they met numerous federal servicemen in Kogi (Runnoye) when they returned to the village two days after the incident (see paragraphs 24-26 above) and that they started complaining to various State bodies shortly after the attack (see paragraph (a) The applicants' complaints to public bodies and information received by them

31 above). It is furthermore evident from the authorities' replies to the applicants' complaints that, in any event, the authorities were aware of the incident in Kogi (Runnoye) no later than in December 1999, when an investigator of the garrison prosecutor's office carried out a certain "inquiry" into the events in question (see paragraph 39 above). The Court finds it striking that for more than two years the Russian authorities demonstrated such indifference towards an incident involving multiple deaths of civilians – minor children and women – and the devastation of a whole village as a result of the actions of the federal forces. It also notes that such a considerable delay between the incident and the beginning of the investigation into it cannot but significantly undermine the effectiveness of the investigation.

123. It is furthermore highly doubtful that, even after the investigation into the attack of 12 September 1999 was opened, the deaths of the relevant applicants' family members were duly investigated. In particular, the Government pointed out that criminal proceedings had been brought only in connection with the destruction of property during the attack, as, allegedly, the authorities were unaware of the deaths at the time when they commenced the investigation. The Court is sceptical about that argument, given that the documents submitted by the applicants reveal that, prior to the date on which the criminal proceedings were instituted, the second applicant complained about her mother's death on several occasions and the authorities received those complaints (see paragraphs 37-38 above).

124. The Court further observes that the Government alleged that it had been established in the course of the investigation that the relevant applicants' relatives had died as a result of the missile strike by the federal forces; however, no medical forensic examination of the bodies had been carried out as the relevant applicants had allegedly refused to allow exhumation. The Court cannot accept this explanation for the authorities' failure to take one of the most essential steps in investigating incidents such as the one in the present case. Even assuming that, as alleged by the Government, the relevant applicants obstructed the investigating authorities in this respect by refusing to give their consent to the exhumation of their relatives' remains, the Court does not consider that this alleged refusal could have absolved the authorities from their obligations to obtain detailed information about the cause of the deaths of five persons in suspicious circumstances. Indeed, it does not appear, and it was not convincingly demonstrated by the Government, that the investigating authorities ever

attempted to obtain a court order for the exhumation, or tried otherwise to pursue the matter (see *Mezhidov v. Russia*, no. 67326/01, § 70, 25 September 2008).

125. Moreover, in the absence of any reliable information and documents, it is not unlikely that a number of other essential investigative measures were either delayed or were not taken at all.

126. The Court further observes that the investigation remained pending between 21 January 2002 and 23 September 2005, that is, for three years and eight months. Having regard to the relevant legal provision clearly establishing the time-limits for a preliminary investigation (see paragraph 81 above), the Court finds it reasonable to assume that during the indicated period the investigation was stayed and reopened on several occasions.

127. It is also clear from the material in the Court's possession that the applicants received almost no information on the investigation. It appears that it was only on 30 April 2003 that the applicants were informed for the first time of the institution on 21 January 2002, that is more than a year previously, of criminal proceedings concerning the events of 12 September 1999 (see paragraph 55 above). They subsequently appear to have been notified once again of the beginning of the investigation (see paragraph 56 above) and then of its suspension and reopening (see paragraph 61 above). It does not appear that any further pertinent information on the investigation was ever provided to them. In particular, the Court is not convinced that, as asserted by the Government, the "interested persons" – some of the applicants being among their number – were duly notified of the decision of 23 September 2005, by which the criminal proceedings concerning the events of 12 September 1999 were terminated, and that "those declared victims" were furnished with a copy of that decision, as the Government failed to corroborate their assertion to that effect with any documentary evidence. Moreover, they failed to indicate clearly whether the applicants had been granted victim status in the present case, and, if so, which of them and on what date(s). The Court thus considers that the applicants were, in fact, excluded from the criminal proceedings and were unable to have their legitimate interests upheld.

128. Against this background, and having regard to the Government's argument concerning the applicants' alleged failure to appeal to a court, under Article 125 of the Russian Code of Criminal Procedure, against procedural decisions taken in the context of the investigation into the attack of 12 September 1999, the Court notes that the Government failed to indicate which particular decisions, apart from that of 23 September 2005, the applicants should have challenged. As regards this latter decision, the Court reiterates that, in principle, an appeal against a decision to discontinue criminal proceedings may offer a substantial safeguard against the arbitrary exercise of power by the investigating authority, given a court's power to

annul such a decision and indicate the defects to be addressed (see, *mutatis mutandis*, *Trubnikov* (dec.), cited above). Therefore, in the ordinary course of events such an appeal might be regarded as a possible remedy where the prosecution has decided not to investigate the claims. The Court, however, has strong doubts that this remedy would have been effective in the present case. It reiterates its above finding that it is reasonable to assume that the investigation was stayed and reopened on several occasions (see paragraph 126 above). In such circumstances, the Court is not convinced that an appeal to a court, which could only have had the same effect, would have offered the applicants any redress. It considers, therefore, that such an appeal in the particular circumstances of the present case would be devoid of any purpose. The Court finds that the applicants were not obliged to pursue that remedy and that this limb of the Government's objection should therefore be dismissed (see *Khatsiyeva and Others v. Russia*, no. 5108/02, § 151, 17 January 2008).

129. In the light of the foregoing, and drawing inferences from the Government's refusal to submit the criminal investigation file, the Court concludes that the authorities failed to carry out a thorough and effective investigation into the circumstances surrounding the deaths of the relevant applicants' five relatives. In view of this finding, the Court does not consider it necessary to examine the question as to whether the compensation awarded to the first three applicants in connection with the deaths of their family members was "adequate", as, in the absence of an effective investigation into those deaths, the relevant applicants were not afforded sufficient redress in respect of the alleged violations of Article 2 of the Convention and may still claim to be "victims" thereof, in accordance with Article 34 of the Convention.

130. The Court therefore dismisses the Government's objection in this respect and finds that there has been a violation of Article 2 of the Convention under its procedural head.

2. Alleged failure to protect the right to life

(a) Submissions by the parties

(i) The relevant applicants

131. The relevant applicants pointed out that the Government had admitted that the attack by the federal air forces on, or in the vicinity of, the village of Kogi (Runnoye) on 12 September 1999 had resulted, in particular, in the deaths of Borambike Esmukhambetova, Elmurat Esmukhambetov and Eldar Esmukhambetov – the first applicant's wife and sons; Melikhan Abdurakhmanova – the mother of the second applicant, sister of the thirteenth applicant and daughter of the twenty-second applicant; and Bota

Kartakayeva – the third applicant's mother. The relevant applicants further argued that the Government had clearly failed to account for those deaths. In particular, they had not submitted any information or documents indicating the identity of the military personnel involved in the planning and conduct of the particular attack, the extent to which those personnel had been trained, the legal basis for the operation and the manner in which it had been planned and controlled, the measures taken in order to minimise the risk to the lives of civilians during that operation, and the specific instructions given to the pilots of the SU-25 planes who had bombed the village.

132. The relevant applicants maintained that the way in which the operation of 12 September 1999 had been planned, controlled and conducted had constituted a clear violation of the right to life of their family members. They insisted that the authorities had known, or should have known, of the presence of civilians in Kogi (Runnoye) at the relevant time. Moreover, the choice of means by the authorities had clearly fallen foul of the Convention "strict proportionality" test – the lethal force used had clearly been disproportionate to the aim pursued by the federal military forces, as the village had in fact been subjected to indiscriminate bombing.

133. The relevant applicants further disputed as wholly unreliable the Government's argument to the effect that the aerial attack had been necessary in order to suppress the criminal activity of illegal armed groups and prevent terrorist attacks allegedly planned by them. They pointed out that the Government had not produced any documentary evidence confirming the presence of any illegal armed groups in Kogi (Runnoye) before the strike or that any illegal fighters had been killed or captured or any fighters' property destroyed as a result of that strike.

134. The relevant applicants also pointed out that the Government had not indicated whether the villagers had been warned in advance about the attack, or whether the authorities had duly assessed the need for the use of indiscriminate weapons within a populated area.

135. Lastly, the relevant applicants alleged that the legal framework concerning the use of force and firearms by military personnel in Russia, being vague and inadequate, did not provide for sufficient safeguards to prevent the 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.

(ii) The Government

136. The Government argued that the deprivation of the lives of the relevant applicants' relatives as a result of the use of lethal force had been justified for the purposes of Article 2 § 2 (a) and (b) of the Convention. In particular, the Government stated that on 12 September 1999 the federal air forces had performed a pinpoint missile strike on farm no. 2 of the

Shelkovskiy State farm in the village of Kogi (Runnoye), where, according to their information, illegal fighters had been located. The Government referred to the findings of the domestic investigation to the effect that the actions of the military officials who had ordered a strike on the illegal fighters' base had been justified in the circumstances, given that illegal armed groups had been showing violent armed resistance to the authorities, thus posing a danger to local residents and other persons and to the public interest. In the Government's submission, that danger could not have been eliminated by any other means, and, in particular, it was impossible to use ground troops in the vicinity of Kogi (Runnoye). The pilots, for their part, had acted in strict compliance with their superiors' order, which had been binding on them. The Government insisted that the federal servicemen, both commanding officers and their subordinates, 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.

137. The Government further submitted that the investigating authorities had examined matters relating to the planning and control of the operation in question and had not found any breaches in that regard. In particular, it had been established that when planning the aerial attack in the vicinity of the village of Kogi (Runnoye) the commanding officers had had "reliable and sufficient information" on the location of the terrorist base and on the concentration of illegal fighters at that base and the preparation by them of large-scale terrorist attacks. The Government alleged that it had been clear in the circumstances of the case which military targets had been situated near Kogi (Runnoye), their designation and the degree of danger they had posed for, *inter alia*, residents of the nearby Republic of Dagestan, and, as a result, the need for their destruction had been obvious.

(b) The Court's assessment

138. 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, from 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, § 171, *Reports* 1997-VI; and *Oğur*, cited above, § 78).

139. 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). In particular, law-enforcement agents must be trained to assess whether or not there is an absolute necessity to use firearms, not only on the basis of the letter of the relevant regulations, but also with due regard to the pre-eminence of respect for human life as a fundamental value (see *Nachova and Others*, cited above, § 97).

140. In the present case, it has been acknowledged by the Government that five residents of Gekhi – Borambike Esmukhambetova, Elmurat Esmukhambetov, Eldar Esmukhambetov, Melikhan Abdurakhmanova and Bota Kartakayeva – were killed as a result of a missile attack on 12 September 1999 by two SU-25 military planes belonging to the federal air forces. The State's responsibility is therefore engaged, and it is for the State to account for the deaths of the aforementioned five persons. It is notably for the State to demonstrate that the force used 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.

141. The Government argued that the use of lethal force in the present case had been justified under Article 2 § 2 (a) and (b) of the Convention. In the absence of any reliable evidence that any unlawful violence was threatened or likely, or that the lethal force was used in an attempt to effect a lawful arrest of any person, the Court has certain doubts that the above-mentioned provisions can be said to be applicable. In any event, even assuming that the use of lethal force in the present case can be said to have pursued any of the aforementioned aims, the Court does not consider that the Government properly accounted for the use of that force resulting in the deaths of the five residents of Kogi (Runnoye).

142. In this connection, the Court notes first of all that its ability to assess the circumstances surrounding the deaths of the relevant applicants' relatives, including the legal or regulatory framework in place, the planning and control of the operation in question and the actions of the federal servicemen who actually administered the force, is severely hampered by the manifest unwillingness of the respondent Government to cooperate with the Court in the present case and their failure to submit any documents or information regarding the events under consideration.

143. In particular, the Court notes that, whilst claiming that the federal servicemen involved in the incident of 12 September 1999 – both the commanding officers in charge of the operation and the pilots of the SU-25 planes who took part in the attack – 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 a copy of any such legal act or regulations, or even to indicate more specifically the legal instruments to which they referred. This has prevented the Court from assessing whether an appropriate legal framework concerning the use of lethal force 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.

144. The Court further finds unacceptable the Government's failure to provide any meaningful information and documentary evidence as to the planning and execution of the aerial attack of 12 September 1999 and the actions of the pilots who participated in that attack. They did no more than refer to the domestic investigating authorities' conclusions in a decision of 23 September 2005 to discontinue the criminal proceedings concerning the incident of 12 September 1999. In particular, according to the Government, the actions of the commanding officers who had ordered an aerial strike on Kogi (Runnoye) had been justified, as they had "reliable and sufficient" information on the location in the vicinity of that village of numerous illegal fighters who had allegedly been preparing large-scale terrorist attacks and therefore had posed a danger which could not have been eliminated by any other means, in particular by using ground troops. The actions of the pilots had also been justified, in the Government's view, as they had acted pursuant to their superiors' binding order.

145. The Court regards the explanations advanced by the Government as inadequate and unconvincing. First of all, the Court is sceptical about the Government's argument concerning the presence of illegal fighters in the vicinity of Kogi (Runnoye) at the relevant time as, apart from blankly stating that the information to that effect had been "reliable and sufficient", the Government produced no evidence to corroborate that assertion.

146. Moreover, even assuming that the competent domestic authorities had information at their disposal as to the location of a terrorist base in the vicinity of Kogi (Runnoye), the Government failed to demonstrate that the necessary degree of care had been exercised in evaluating that information and in preparing the operation of 12 September 1999 in such a way as to avoid or minimise, to the greatest extent possible, risks of loss of lives, both of persons at whom the measures were directed and of civilians, and to minimise the recourse to lethal force (see *McCann*, cited above, §§ 194 and 201). In particular, in so far as the Government relied on Article 2 § 2 (b) of the Convention, the Court considers the deployment of military aviation equipped with heavy weapons to be, in itself, grossly disproportionate to the purpose of effecting the lawful arrest of a person. The applicants' argument to the effect that the Government had produced no evidence that any fighter had been captured as a result of the attack in question is of direct relevance.

147. In so far as the Government invoked Article 2 § 2 (a) of the Convention, claiming that the lethal force had been used in defence of persons from unlawful violence, the Court notes first of all the applicants' argument, which remained undisputed by the Government, that the authorities were most probably aware, or, in any event, should have been aware, of the presence of a civilian population in Kogi (Runnoye). With this in mind, the Court is struck by the Russian authorities' choice of means in the present case for the achievement of the purpose indicated by the Government.

148. It does not find satisfactory the Government's argument that they could not have attained the aim in question by any other means and, in particular, by using ground troops, as the Government failed to explain this allegation in any detail, let alone to submit any documentary evidence in support of it. The Court further rejects as unconvincing the Government's assertions to the effect that the strike performed by the federal air forces in the vicinity of Kogi (Runnoye) was of a "pinpoint" nature and that it was directed against military targets, their designation and the degree of danger having been "obvious", in the Government's submission. The Government failed to name any of those targets. Moreover, their statements are not corroborated by any evidence and contradict the detailed description of the incident given by the applicants and the officially recorded results of the attack attesting the deaths of five civilians – three women and two minor children – and the destruction of about thirty houses, that is, almost the entire village (see paragraphs 19, 20 and 30 above). Against this background, the Court cannot but agree with the applicants that their home village did in fact come under indiscriminate bombing by the federal air forces.

149. It furthermore does not appear that the authorities had considered at all comprehensively the limits and constraints on the use of indiscriminate

weapons within a populated area (see *Isayeva v. Russia*, no. 57950/00, § 189, 24 February 2005). There is also no evidence that at any stage of the operation any measures were taken in order to avoid, or at least to minimise, the risk to the lives of the residents of Kogi (Runnoye). In particular, it does not appear that the authorities took any steps with a view to informing the villagers of the attack beforehand and to securing their evacuation. In these circumstances, the Court cannot but conclude that the authorities failed to exercise appropriate care in the organisation and control of the operation of 12 September 1999.

150. In sum, the Court considers that the indiscriminate bombing of a village inhabited by civilians – women and children being among their number – was manifestly disproportionate to the achievement of the purpose under Article 2 § 2 (a) invoked by the Government. It therefore finds that the respondent State failed in its obligation to protect the right to life of Borambike Esmukhambetova, Elmurat Esmukhambetov and Eldar Esmukhambetov – the first applicant's wife and sons; Melikhan Abdurakhmanova – the mother of the second applicant, sister of the thirteenth applicant and daughter of the twenty-second applicant; and Bota Kartakayeva – the third applicant's mother.

151. There has accordingly been a violation of Article 2 of the Convention on that account.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

152. The first, second, third, thirteenth and twenty-second applicants complained that there had been no effective domestic remedies in respect of the alleged violation of Article 2 of the Convention in so far as the deaths of their relatives were concerned. All the applicants also complained that they had had no effective domestic remedies as regards the alleged violation of the rights under Articles 3 and 8 of the Convention and Article 1 of Protocol No. 1. They relied on Article 13 of the Convention, which reads as follows:

> "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."

153. The applicants referred to other cases concerning events in the Chechen Republic during the same period in which a violation of Article 13 had been found and invited the Court to make a similar finding in the present case.

154. The Government argued that the applicants had had effective domestic remedies in respect of their complaints and that the authorities had not prevented them from using those remedies. In particular, criminal proceedings had been instituted and an investigation into the circumstances of the incident of 12 September 1999 had been conducted following the

applicants' complaint to the competent bodies. The Government further pointed out that the first three applicants had obtained compensation in connection with the deaths of their family members, which, in their view, proved that effective domestic remedies were available at national level. In support of their argument the Government also referred to decisions taken by domestic courts in two unrelated sets of court proceedings in which the claimants had been awarded compensation in respect of the unlawful actions of State officials. The Government did not submit copies of the court decisions to which they referred.

A. Admissibility

155. The Court reiterates that, according to its case-law, Article 13 applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention right. Notwithstanding the terms of Article 13 read literally, the existence of an actual breach of another provision of the Convention (a substantive provision) is not a prerequisite for the application of the Article (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131).

156. In the present case, the Court observes that, as already noted in paragraph (b) The Court's assessment

114 above, the Government acknowledged that the federal aerial attack of 12 September 1999 had resulted in the deaths of five residents of Kogi (Runnoye). Moreover, they also acknowledged that a number of residential and non-residential buildings had been destroyed as a result of that attack (see paragraph 22 above). Against this background, the Court is satisfied that the applicants have an arguable claim under Articles 2, 3 and 8 of the Convention and Article 1 of Protocol No. 1 for the purpose of Article 13.

157. The Court therefore notes that the applicants' complaints under Article 13 in conjunction with Articles 2, 3 and 8 of the Convention and Article 1 of Protocol No. 1 are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. General principles

158. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to

require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by acts or omissions of the authorities of the respondent State (see *Aksoy*, cited above, § 95).

159. The Court further reiterates that, when an individual formulates an arguable claim in respect of killing, torture or destruction of property involving the responsibility of the State, the notion of an "effective remedy", in the sense of Article 13 of the Convention, entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access by the complainant to the investigative procedure (see *Kaya*, cited above, § 107; *Aksoy*, cited above, § 98; *Menteş and Others v. Turkey*, 28 November 1997, § 89, *Reports* 1997-VIII; and *Çaçan v. Turkey* (dec.), no. 33646/96, 28 March 2000).

2. Application in the present case

160. In the present case, the Government insisted that a variety of effective remedies had been available to the applicants at domestic level. In particular, they pointed to the fact that, in accordance with Presidential Decree no. 898 of 5 September 1995, the first three applicants had received compensation in court proceedings for their relatives' deaths. They also argued that the applicants had been free to lodge a civil action, under Articles 1067 and 1069 of the Russian Civil Code, for compensation for the damage inflicted on their homes and property, and/or to obtain extra-judicial compensation on that account as provided for in Governmental Decrees nos. 510 and 404 dated 30 April 1997 and 4 July 2003 respectively.

(a) Article 13 taken in conjunction with Article 2

161. The Court does not find the Government's arguments convincing. In particular, in so far as the Government relied on the judgment of the Nogayskiy District Court of 18 March 2005, as upheld by the Supreme Court of the Republic of Dagestan on 13 July 2005, by which the first three applicants were awarded compensation for the deaths of their family members (see paragraphs 70-71 above), it does not consider that this remedy can be regarded as effective for the purpose of Article 13 taken in conjunction with Article 2 of the Convention, despite its positive outcome for the first three applicants in the form of a financial award. That award was based on Presidential Decree no. 898 of 5 September 1995, which

provided for a lump-sum payment of a fixed amount to relatives of each individual killed as a result of the hostilities in the Chechen Republic, without distinguishing between deaths inflicted by private individuals and those caused by State agents (see paragraph 86 above). When awarding compensation, the District Court clearly stated that its payment was not dependent on the establishment of a causal link between the damage caused and the State's actions. It is therefore clear that the proceedings in question were incapable of making any meaningful findings as to the perpetrators of the fatal assault, and still less to establish their responsibility (see, in a similar context, *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 121, 24 February 2005).

162. The Court further notes that, as it has held on many occasions, in circumstances where, as in the present case, the criminal investigation into the deaths was ineffective and the effectiveness of any other remedy that may have existed was consequently undermined, the State has failed in its obligation under Article 13 of the Convention. Consequently, there has been a violation of Article 13 of the Convention in respect of the aforementioned violations of Article 2 of the Convention concerning the deaths of the first, second, third, thirteenth and twenty-second applicants' family members.

(b) Article 13 taken in conjunction with Article 8 and Article 1 of Protocol No. 1

163. As regards all applicants' complaint under Article 13 in connection with Article 8 of the Convention and Article 1 of Protocol No. 1, the Court considers, in the light of the principles restated in paragraph 159 above, that the only potentially effective domestic remedy in the circumstances would be an adequate criminal investigation. In this connection it refers to its above finding regarding the ineffectiveness of the investigation into the deaths of the five residents of Kogi (Runnoye). The Court finds that this is also true as regards the investigation into the destruction of the applicants' homes and property, given that all those offences were investigated within the same set of criminal proceedings.

164. It further considers that, similarly to its finding made in paragraph 162 above as regards the existence of effective domestic remedies in respect of the applicants' complaints under Article 2 of the Convention, in the absence of any meaningful results of the investigation into the destruction of their housing and property, their civil claim for damages on that account would hardly have had any prospects of success. Indeed, Article 1069 of the Russian Civil Code, which establishes the rules on compensation for damage inflicted by representatives of the State and which would have been applicable if the applicants had brought civil proceedings as suggested by the Government, provides that State agents are only liable for damage caused by their unlawful actions or failure to act (see paragraph 84 above). In the circumstances of the present case, where, as

mentioned by the Government, the investigation into the attack ended with a decision of 23 September 2005 stating that the federal servicemen's actions had been justified, the applicants' civil claim for damages would have been doomed to failure. In support of this finding, the Court also refers to the practice of the Russian courts, which have consistently refused to award any compensation for damage caused by the federal forces during the conflict in the Chechen Republic, stating, in particular, that the latter's actions had been lawful as the counter-terrorist operation in the region had been launched under relevant presidential and governmental decrees which had not been found to be unconstitutional (see paragraphs 89-91 above). With this in mind, the Court rejects the Government's argument that it was open to the applicants to file a civil claim for compensation in respect of their lost housing and property, as the right in question was illusory and devoid of substance. In sum, the Court finds the remedy under examination inadequate and ineffective, given that it was clearly incapable of leading to the identification and punishment of those responsible, or even to any financial award in the circumstances of the present case.

165. As regards the Government's argument that the applicants could have received extra-judicial compensation for their lost property, the Court notes firstly that Governmental Decree no. 510 of 30 April 1997, referred to by the Government, concerns the payment of compensation in respect of property that had been destroyed before 12 December 1994 (see paragraph 87 above), and is therefore clearly irrelevant in the present case. It is also doubtful that Governmental Decree no. 404 of 4 July 2003, which afforded the right to compensation to permanent residents of the Chechen Republic (see paragraph 88 above), can be applied in the applicants' situation, given that after the attack most of them permanently left the region (see paragraph 27 above). In any event, even assuming that the applicants are entitled to extra-judicial compensation under this latter decree as suggested by the Government, it is clear from the relevant legal instrument that the compensation in question is paid without regard to the particular circumstances in which the property was lost, that is to say, irrespective of whether State agents were responsible for the destruction. Moreover, the value of the lost property is not taken into account either, since the overall amount paid for lost housing and other possessions cannot exceed RUB 350,000 (approximately EUR 9,000). In such circumstances, the Court is not persuaded that the compensation referred to by the Government can be regarded as an effective remedy for the violation alleged.

166. In the light of the foregoing considerations, the Court dismisses the Government's objection in so far as it concerns the applicants' alleged failure to exhaust the available domestic remedies in respect of their complaints under Article 8 of the Convention and Article 1 of Protocol No. 1 and finds that the applicants had no effective domestic remedies in

respect of the alleged violation of their rights secured by the aforementioned Convention provisions. Accordingly, there has been a violation of Article 13 of the Convention on that account.

(c) Article 13 taken in conjunction with Article 3

167. Lastly, having regard to its conclusions in paragraphs 162 and 166 above, the Court finds that the applicants had no effective remedies as regards their complaint under Article 3 of the Convention, and therefore the Government's objection on that account should be dismissed. It considers, however, that the applicants' complaint under Article 13 taken in conjunction with Article 3 of the Convention does not raise a separate issue in the circumstances of the present case, and therefore there is no need to examine it.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

168. All applicants complained under Article 8 of the Convention and Article 1 of Protocol No. 1 that their homes and property had been destroyed by the federal armed forces, with the result that they had been forced to leave their home village and had become refugees. Those provisions, in so far as relevant, read as follows:

Article 8

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

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."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

169. The applicants referred to certificates of 24 December 2007 (see paragraph 30 above) to corroborate their assertion that they had been

owners of the houses and outbuildings that had been destroyed, stating that all other documents confirming their title to the property in question had been lost during the bombing.

170. The Government acknowledged that the attack of 12 September 1999 had resulted in the destruction of a number of residential and non-residential buildings in the village of Kogi (Runnoye). At the same time they alleged that the domestic investigation into the attack had established that those buildings had belonged to the State and that the applicants had held them on the terms of a lease, and therefore they could only complain under Article 1 of Protocol No. 1 about the damage inflicted on their personal belongings.

171. The Government further argued that the alleged interference with the applicants' rights secured by Article 8 of the Convention and Article 1 of Protocol No. 1 had been lawful, as the counter-terrorist operations in the territory of the Chechen Republic, in the context of which the strike of 12 September 1999 had been performed, had been carried out on the basis of the Suppression of Terrorism Act of 25 July 1998 and "relevant regulations of State bodies". They further insisted that the strike resulting in the damage to or destruction of the applicants' homes and property had been necessary in order to suppress the criminal activity of members of illegal armed groups and to prevent terrorist attacks they had been preparing. Lastly, the Government submitted that the applicants could have obtained compensation for the alleged damage in civil proceedings.

A. Admissibility

172. The Court finds that this part of the application 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.

B. Merits

173. The Court observes at the outset that the Government disputed the applicants' property rights to the houses and outbuildings, which had come under the federal aerial attack on 12 September 1999, stating that the property in question had belonged to the State. The Court observes that the Government produced no documentary evidence in support of their argument, whereas the applicants, for their part, submitted certificates issued by the district administration confirming their title to the destroyed buildings (see paragraph 30 above). The Court considers that the applicants can hardly be required to adduce any other documents proving their title to the property in question, as it is very likely that, as asserted by the applicants, any such documents were destroyed together with their property

during the attack. In such circumstances, the Court finds it established that the applicants were the rightful owners of the houses and outbuildings in the village of Kogi (Runnoye) at the relevant time.

174. The Court further notes that the Government acknowledged that the federal aerial attack on 12 September 1999 had resulted in the destruction of a number of residential and non-residential buildings in the village of Kogi (Runnoye). It is therefore clear that there was an interference with the applicants' rights secured by Article 8 of the Convention and Article 1 of Protocol No. 1. The Court has now to satisfy itself that this interference met the requirement of lawfulness, pursued a legitimate aim and was proportionate to the aim pursued.

175. As regards the lawfulness of the interference in question, the Government referred to the Suppression of Terrorism Act and unnamed "relevant regulations of State bodies" as a legal basis for the alleged interference.

176. The Court reiterates, as it has already noted in cases concerning the conflict in the Chechen Republic, that the Suppression of Terrorism Act and, in particular, section 21, which releases State agents participating in a counter-terrorist operation from any liability for damage caused to, *inter alia*, "other legally protected interests", while vesting wide powers in State agents within the zone of the counter-terrorist operation, does not define with sufficient clarity the scope of those powers and the manner of their exercise so as to afford an individual adequate protection against arbitrariness (see *Khamidov v. Russia*, no. 72118/01, § 143, ECHR 2007-XII (extracts). The Government's reference to this Act cannot replace specific authorisation of an interference with an individual's rights under Article 8 of the Convention and Article 1 of Protocol No. 1, delimiting the object and scope of that interference and drawn up in accordance with the relevant legal provisions. The provisions of the above-mentioned Act are not to be construed so as to create an exemption for any kind of limitations of personal rights for an indefinite period of time and without setting clear boundaries for the security forces' actions (see, *mutatis mutandis*, *Imakayeva v. Russia*, no. 7615/02, § 188, ECHR 2006-XIII (extracts).

177. Similarly, in the present case the Court considers that the legal instrument in question, formulated in vague and general terms, cannot serve as a sufficient legal basis for such a drastic interference as the destruction of an individual's housing and property. It further observes that the Government did not submit any document, such as an order, instruction or regulation, specifically authorising the federal servicemen to inflict damage on the applicants' property, including their homes, nor did they provide any details regarding such a document, if there was one.

178. The Court thus concludes, in view of the above considerations and in the absence of an individualised decision or order which clearly indicated the grounds and conditions for inflicting damage to the applicants' property,

including their housing, and which could have been appealed against in a court, that the interference with the applicants' rights was not "lawful", within the meaning of Article 8 of the Convention and Article 1 of Protocol No. 1. In view of this finding the Court does not consider it necessary to examine whether the interference in question pursued a legitimate aim and was proportionate to that aim.

179. It thus finds that there has been a violation of Article 8 of the Convention and Article 1 of Protocol No. 1 on account of the destruction of the applicants' property, including their housing, in the federal aerial attack of 12 September 1999.

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

180. All applicants complained that they had suffered severe mental distress and anguish in connection with the attack on their village, the deaths of their close relatives and the destruction of their houses and other property. They relied on Article 3 of the Convention, which reads as follows:

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

181. The applicants referred to the cases of *Selçuk and Asker v. Turkey* (24 April 1998, *Reports* 1998-II), *Yöyler v. Turkey* (no. 26973/95, 24 July 2003) and *Ayder and Others v. Turkey* (no. 23656/94, 8 January 2004), in which the Court had found a violation of Article 3 on account of the destruction of the applicants' homes before their eyes. The applicants argued that their moral suffering had been even more profound than that in the Turkish cases, given that they had witnessed the destruction of their homes during a bombing attack. They also contended that they had repeatedly complained about the attack of 12 September 1999 to various State bodies, which, however, had failed to deal adequately with their complaints. It remained unclear to them whether the authorities had taken any steps in connection with those complaints apart from sending an investigator who had interviewed the villagers and had taken photographs of the destroyed village.

182. The Government argued that the investigation had not established that the applicants had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention and that the applicants had at no time submitted any such complaints to the domestic authorities.

A. Admissibility

183. The Court finds that this part of the application 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.

B. Merits

184. The Court has observed on many occasions that Article 3 enshrines one of the fundamental values of democratic society. Even in the most difficult of circumstances, such as the fight against terrorism or organised crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 even in the event of a public emergency threatening the life of the nation (see, among other authorities, *Aksoy*, cited above, § 62). Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, cited above, § 162).

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

186. In the present case, the Court has established above that the applicants came under an indiscriminate bombing attack during which their homes and possessions were destroyed and the relatives of the first, second, third, thirteenth and twenty-second applicants were killed (see paragraphs 148, 150 and 179 above). The Court has no doubt that the applicants endured profound mental suffering on account of all these events. Its task is to ascertain whether that suffering has a dimension capable of bringing it within the scope of Article 3.

187. In this connection, the Court notes firstly that, as far as the destruction of the applicants' possessions including their housing was concerned, the present case is distinguishable from the Turkish cases referred to by the applicants (see paragraph 185 above). In particular, in the case of *Selçuk and Asker* the Court had regard to the manner in which the applicants' homes had been destroyed, and namely to the fact that the exercise had been premeditated and carried out contemptuously and without respect for the feelings of the applicants, whose protests had been ignored (see *Selçuk and Asker*, cited above, § 77), and, with this in mind, found that the acts of the security forces had amounted to "inhuman treatment" within the meaning of Article 3 of the Convention. A similar line of reasoning appears to be implicit in the cases of *Yöyler* and *Ayder and Others*. It may therefore be reasonably assumed that in the quoted cases the security forces burnt the applicants' homes and possessions with a view to causing them mental suffering, which has enabled the Court to find a violation of Article 3 on that account.

188. In the present case, however, the Court has no evidence to be able to reach the same conclusion. It is true that, as has been found above, the attack of 12 September 1999 was not adequately planned and controlled (see paragraph 149 above) but this attack can hardly be said to have had as its purpose subjecting the applicants to inhuman treatment, and in particular, causing them moral suffering. The Court accepts that the applicants may have suffered considerable distress as a result of the destruction of their homes and property in the attack of 12 September 1999. However, in the light of the foregoing, and also bearing in mind that it has already found a violation of Article 8 of the Convention and Article 1 of Protocol No. 1 on that account, the Court is unable to find a violation of Article 3 of the Convention in the circumstances of the present case, in so far as the applicants' complaint about the destruction of their homes and possessions is concerned.

189. As regards the moral suffering endured by the second, third, thirteenth and twenty-second applicants because of the deaths of their next of kin, the Court observes that, as can be ascertained from the facts, these applicants did not witness the killing of their relatives but found out about the latter's deaths after the attack, when the bodies were found. In the Court's opinion, this situation is somewhat similar to that of applicants whose relatives have been found dead after having been taken into custody by State agents, where the Court has concluded that a finding of a violation of Article 2 of the Convention would suffice. Therefore, while having no doubt as to the profound suffering caused to the second, third, thirteenth and twenty-second applicants by the deaths of their relatives, the Court finds no violation of Article 3 on that account, given that it has already found a violation of Article 2 of the Convention in its substantive and procedural aspects.

190. On the other hand, the Court cannot reach the same conclusion as regards the first applicant, who witnessed the killing of his whole family. The Court has regard to the first applicant's submission to the effect that he is unable to recall the events after the deaths of his family members until several hours later, and to eyewitness statements to the effect that the first applicant appeared to have been in a state of deep shock after his relatives had been killed (see paragraph 14 above). The Court does not find it implausible that, having been an eyewitness to the instantaneous deaths of his two young sons and his wife, the first applicant experienced a shock of such intensity that he suffered from a temporary loss of memory. The Court further considers that the suffering endured by the first applicant was of such severity for the authorities' acts resulting in the deaths of the first applicant's family members to be categorised as inhuman treatment within the meaning of Article 3.

191. In sum, the Court finds that there has been a violation of Article 3 of the Convention on account of the moral suffering endured by the first applicant as a result of the deaths of his wife and two sons and that there has been no violation of the provision in so far as the complaints were submitted by the other applicants.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

192. 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

1. The applicants

193. The applicants claimed various amounts indicated in Annex II, totalling 6,315,510.96 euros (EUR). They referred to their statements produced to the Court, where each of them described in detail, and indicated the value of, the property that had been destroyed during the attack of 12 September 1999 and sought compensation for that property, as well as for the loss of income and the costs of renting alternative accommodation and buying food after the attack of 12 September 1999. The first three applicants also claimed reimbursement of expenses they had incurred in connection with the burial of their relatives.

194. Each of the applicants stated, in particular, that, prior to the incident in question, his or her family had grown crops, part of which, in amounts ranging between 35,000 Russian roubles (RUB) and RUB 40,000 for each applicant per year, had been kept for personal consumption, whereas the surplus had been sold and generated a yearly profit of RUB 50,000 to RUB 70,000 for each applicant. The applicants further listed the exact number of each kind of livestock raised by each of them before the events of 12 September 1999, described the crops in the garden, gave the exact number of each kind of tree in the orchard and provided the total value of all this property, which ranged between RUB 256,000 and RUB 390,000. Each of the applicants went on to describe the house, indicating its surface area, and outbuildings owned by his or her family before the attack and provided their value, ranging between RUB 640,000 and RUB 920,000. The applicants also listed their household belongings, indicating their overall value, which ranged between RUB 190,000 and RUB 420,000. The applicants then indicated the amount of income received by them in 1998 from the sale of their crops, varying between RUB 22,000 and RUB 56,000, and from the sale of their livestock, ranging from RUB 256,000 to RUB 390,000.

195. The applicants further mentioned the various amounts of rent which at present they were paying monthly, ranging between RUB 500 and RUB 1,000, and indicated the overall sums, varying between RUB 38,000 and RUB 75,000, which they had paid in rent from 1999 until the time of the submission of their claims to the Court. They also indicated various amounts paid since 1999 for food, clothes and utilities.

196. In support of their claim, the applicants relied on the certificates of 24 December 2007 (see paragraph 30 above) and other documents. In particular, the applicants submitted certificates issued by the head of the administration of the Shelkovskiy District of the Chechen Republic on 27 December 2007 in respect of each of them. Each certificate attested that, prior to 12 September 1999, the relevant applicant had resided in farm no. 2 of the Shelkovskiy State farm (the village of Kogi) and had had in ownership a house, outbuildings, garden, orchard, cattle and poultry. The certificates further gave a description, and indicated the value, of the applicants' lost property, as well as the average yearly income from the sale of the applicants' crops and livestock and the income received in 1998. As can be ascertained, all that information is taken word for word from the applicants' statements submitted to the Court (see paragraphs 194-195 above).

197. A certificate issued on 22 January 2008 by the Property Committee of the administration of the Shelkovskiy District attested that the average price of a house with annexes in the district in 1999 varied between RUB 500,000 and RUB 900,000. Another certificate issued by the same authority on the same date confirmed that the average value of household

belongings of a villager in the district in 1999 ranged between RUB 250,000 and RUB 400,000.

198. A certificate issued on 22 January 2008 by the Land Committee of the administration of the Shelkovskiy District stated that the average price of a plot of land measuring 150 to 200 square metres in the district in 1999 amounted to between RUB 40,000 and RUB 70,000.

199. A certificate of the same date issued by the Department for Agriculture of the administration of the Shelkovskiy District indicated that the average yearly value of the crops from the garden of a villager of that district totalled RUB 50,000 to RUB 70,000, and that the average yearly income from the sale of such crops amounted to a sum from RUB 30,000 to RUB 50,000. In a certificate dated 27 January 2008 the Department of Agriculture of the Nogayskiy District of the Republic of Dagestan referred to the same figures with regard to the Nogayskiy District. Another certificate issued by the latter authority on the same date listed approximate prices for various kinds of livestock in the district in 1999.

200. In a certificate of 28 January 2008 the local council of one of the villages in the Nogayskiy District stated that in 1999 plots of land measuring approximately 100 square metres, which at that time had had a market value of RUB 20,000 to RUB 30,000, had been allocated free of charge. A certificate issued on the same date by an inventory authority of the Nogayskiy District confirmed that the average price of a house with annexes in that district in 2008 ranged between RUB 500,000 and RUB 900,000.

201. The first three applicants also referred to certificates of 25 December 2007 issued by the local councils of the villages in which they were now living, confirming that they had incurred expenses in the amount of RUB 160,000, RUB 80,000 and RUB 88,000 respectively for the burial of their family members killed on 12 September 1999.

2. The Government

202. The Government contested the applicants' claim under this head as unsubstantiated and unsupported by any reliable documents. They stated that the certificates relied on by the applicants could not be regarded as evidence attesting the real pecuniary damage.

3. The Court's assessment

203. The Court reiterates that there must be a clear causal connection between the pecuniary damage claimed by the applicants and the violation of the Convention (see, among other authorities, *Çakıcı v. Turkey* [GC], no. 23657/94, § 127, ECHR 1999-IV). It has found a violation of Article 2 on account of the deaths of the relatives of the first, second, third, thirteenth and twenty-second applicants and a violation of Article 1 of Protocol No. 1

on account of the destruction of all applicants' property during the attack of 12 September 1999 by the federal forces. The Court has no doubt that there is a direct link between those violations and the pecuniary losses alleged by the applicants.

204. It further observes that, in order to substantiate their claim as to the quantity and value of their lost property, the applicants relied on a number of certificates issued by the authorities of the Shelkovskiy District of the Chechen Republic and the authorities of the Nogayskiy District of the Republic of Dagestan (see paragraphs 196-201 above). The Court notes that it is only the certificates of 27 December 2007 that listed the applicants' destroyed possessions and indicated their value. The other documents provided reference information regarding the average prices of relevant items of property at the material time.

205. As regards the certificates of 27 December 2007, the Court observes that these documents, although issued more than eight years after the attack, describe the applicants' destroyed possessions in detail, indicating, in particular, the exact surface area of their houses, and the exact number of each kind of livestock, fruit trees, and so on. In the absence of references in these certificates to any reliable source for those descriptions, it is more than likely that they were based solely on the applicants' own submissions as made to the Court. In such circumstances, the Court is not convinced that these certificates can serve as reliable evidence confirming the quantity of the applicants' lost property and its exact value to enable it to make an assessment of the amounts to be awarded.

206. On the other hand, the Court recognises the practical difficulties for the applicants to obtain documents relating to their destroyed property and considers it appropriate to award the applicants equal amounts on an equitable basis, taking into account information on the average prices of the relevant items of property at the material time, as reflected in the documents submitted by the applicants (see paragraphs 197-201 above). In this connection, the Court rejects the Government's argument that the certificates adduced cannot be regarded as reliable evidence confirming the extent of the damage actually incurred by the applicants, as the Government did not dispute the authenticity of the documents, or the amounts indicated therein, and did not suggest any alternative methods of evaluating the damage inflicted.

207. In so far as the applicants sought compensation for their destroyed houses and outbuildings, the Court firstly refers to its above finding, in which it has accepted that the applicants owned the houses in which they were living (see paragraph 173 above). It further takes account of the relevant certificate of 22 January 2008, stating that in 1999 the average price of a house with annexes in the Shelkovskiy District varied between RUB 500,000 (approximately EUR 12,000) and 900,000 (approximately EUR 22,000). The indicated amounts do not appear excessive or

unreasonable. With this in mind, and having regard to the relevant part of the applicants' claims, the Court awards EUR 20,000 to each of them in respect of their destroyed houses, which takes into account the time that has elapsed since the events in question.

208. On the other hand, the Court is unable to accept the applicants' claim regarding compensation for plots of land. Even assuming that the applicants had title to the plots of land, there is no evidence that the authorities obstructed them from using those plots. Indeed, it is clear from the facts of the case that some time after the attack some of the applicants returned to the village and resettled there (see paragraph 28 above). Accordingly, the Court makes no award on that account.

209. The applicants also submitted a claim for compensation for their lost household belongings, livestock and crops. Seeing that the Government did not dispute the existence of such property before the attack, the Court finds it reasonable to assume that the applicants possessed the property in question. In the absence of any independent and conclusive evidence as to the quantity and the exact value of that property, on the basis of principles of equity and taking into account the relevant certificates indicating the average value of property of that kind, the Court considers it reasonable to award each of the applicants EUR 18,000 on that account.

210. As regards the applicants' claim for compensation for their lost income, the Court observes that the certificates of 27 December 2007 are the only documents confirming that the applicants received some income from farming. However, the Court has already noted above that these documents appear to have been based entirely on the applicants' own submissions and therefore cannot serve as reliable evidence in support of their claim in its relevant part. The applicants did not adduce any other documents, such as, for example, their tax returns, capable of confirming that their farming was at all profitable, and attesting the amount of any such profit. The Court recognises that it might be difficult in practice for the applicants to obtain documents relating to their farming activities before the attack. Nevertheless, in the absence of any reliable documents confirming that those activities brought the applicants profit, the Court considers that any award regarding their lost income would be speculative. It therefore dismisses this part of the applicants' claim (see *Khamidov*, cited above, § 197).

211. Similarly, the Court finds the applicants' claim for reimbursement of the costs of alternative accommodation unsubstantiated, as the applicants did not corroborate their claim with any reliable documents, such as lease contracts confirming that they paid any rent at all and indicating its amount and the duration of the lease (see, by contrast, *Khamidov*, cited above, § 186). In such circumstances, the Court makes no award on that account.

212. Lastly, in so far as the first three applicants sought compensation for funeral expenses, the Court finds it reasonable to assume that some

expenses were borne in connection with the burial of these applicants' relatives. In the absence of any reliable information as to the exact amount of those expenses, the Court considers it appropriate to award EUR 3,000 to the first applicant and EUR 1,000 to each of the second and third applicants on that account.

213. Having regard to the above considerations, the Court awards EUR 41,000 to the first applicant, EUR 39,000 to each of the second and third applicants, EUR 38,000 to each of the fourth to ninth, eleventh to sixteenth, eighteenth to twenty-first, and twenty-third to twenty-seventh applicants, EUR 38,000 to Mr Murat Daudovich Tenizbayev, who pursued the present application on the tenth applicant's behalf, EUR 38,000 to Ms Kadyrbike Bayniyazovna Amanakayeva, who pursued the present application on the seventeenth applicant's behalf, and EUR 38,000 to Ms Svetlana Sarsanbiyevna Adilova, who pursued the present application on the twenty-second applicant's behalf, in respect of pecuniary damage, plus any tax that may be chargeable on these amounts.

B. Non-pecuniary damage

214. The applicants also sought compensation for non-pecuniary damage, stating that in the attack of 12 September 1999 the first to third, thirteenth and twenty-second applicants had lost their family members and all of the applicants had lost their homes and property and had been forced to leave their home village. The applicants stated that they had suffered severe emotional pain, fear, anguish and distress on account of those events and in view of the authorities' failure duly to investigate the matter. The applicants claimed the following amounts under this head:

(i) EUR 120,000 for the first applicant,

(ii) EUR 120,000 for the second, thirteenth and twenty-second applicants jointly,

(iii) EUR 120,000 for the third applicant, and

(iv) EUR 25,000 for each of the remaining applicants.

215. The Government made no particular comments in this respect.

216. The Court observes that it has found a violation of Article 2 of the Convention on account of the killing in a federal aerial attack of the relatives of the first, second, third, thirteenth and twenty-second applicants and the Russian authorities' failure to carry out an effective investigation into those deaths. It has further found a violation of Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1 on account of the destruction in that attack of all applicants' homes and property and the absence of effective domestic remedies. It has also found a violation of Article 3 on account of the mental suffering endured by the first applicant because of the deaths of his wife and two sons before his eyes. The applicants must have suffered anguish and distress as a result of all these circumstances, which

cannot be compensated by a mere finding of a violation. Having regard to these considerations, and taking into account the awards received by the first three applicants at the domestic level (see paragraphs 67-71 above), the Court considers it appropriate to award, on an equitable basis, EUR 120,000 to the first applicant, EUR 30,000 to the second applicant, EUR 60,000 to the third applicant, EUR 15,000 to the thirteenth applicant, EUR 10,000 to each of the fourth to ninth, eleventh, twelfth, fourteenth to sixteenth, eighteenth to twenty-first and twenty-third to twenty-seventh applicants, EUR 10,000 to Mr Murat Daudovich Tenizbayev, who pursued the present application on the tenth applicant's behalf, EUR 10,000 to Ms Kadyrbike Bayniyazovna Amanakayeva, who pursued the present application on the seventeenth applicant's behalf, and EUR 15,000 to Ms Svetlana Sarsanbiyevna Adilova, who pursued the present application on the twenty-second applicant's behalf, plus any tax that may be chargeable on these amounts.

C. Request for restoration of rights

217. The applicants also sought an order for the restoration of their houses and outhouses.

218. The Government did not comment on this point.

219. The Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (*restitutio in integrum*). However, if *restitutio in integrum* is in practice impossible, the respondent States are free to choose the means whereby they will comply with a judgment in which the Court has found a breach, and the Court will not make consequential orders or declaratory statements in this regard. It falls to the Committee of Ministers of the Council of Europe, acting under Article 46 § 2 of the Convention, to supervise compliance in this respect (see *Selçuk and Asker*, cited above, § 125, and *Yöyler*, cited above, § 124).

D. Costs and expenses

220. The applicant claimed 8,720.47 United Kingdom pounds sterling (GBP – approximately EUR 10,200) for the fees and costs they had incurred before the Court. These amounts included GBP 4,916 for Mr Philip Leach, a lawyer of the European Human Rights Advocacy Centre, GBP 175 for administrative costs and GBP 3,629.47 for translation of documents. They submitted invoices from translators.

221. The Government made no particular comments on this point.

222. The Court reiterates that costs and expenses will not be awarded under Article 41 unless it is established that they were actually and

necessarily incurred, and are also reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). The Court, having regard to the documents submitted by the applicants, is satisfied that their claim was substantiated. It further notes that this case has been quite complex, involving a great number of applicants, and required research work. Having regard to the amount of research and preparation carried out by the applicants' representatives, the Court does not find the amount claimed to be excessive.

223. In these circumstances, the Court awards the applicants the overall amount of EUR 10,200, less EUR 850 already received by way of legal aid from the Council of Europe, together with any tax that may be chargeable to the applicants. The amount awarded in respect of costs and expenses shall be payable to the representatives directly.

E. Default interest

224. 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. *Joins to the merits* the Government's objections concerning the exhaustion of domestic remedies and the first three applicants' victim status and *rejects* them;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 2 of the Convention on account of the authorities' failure to carry out an adequate and effective investigation into the circumstances surrounding the deaths of Borambike Esmukhambetova, Elmurat Esmukhambetov, Eldar Esmukhambetov, Melikhan Abdurakhmanova and Bota Kartakayeva;

4. *Holds* that there has been a violation of Article 2 of the Convention as regards the deaths of Borambike Esmukhambetova, Elmurat Esmukhambetov, Eldar Esmukhambetov, Melikhan Abdurakhmanova and Bota Kartakayeva;

5. *Holds* that there has been a violation of Article 13, taken in conjunction with Article 2 of the Convention in respect of the first, second, third, thirteenth and twenty-second applicants, and a violation of Article 13,

taken in conjunction with Article 8 of the Convention and Article 1 of Protocol No. 1 in respect of all applicants;

6. *Holds* that no separate issue arises under Article 13 of the Convention, taken in conjunction with Article 3 of the Convention;

7. *Holds* that there has been a violation of Article 8 of the Convention and Article 1 of Protocol No. 1 in respect of all applicants;

8. *Holds* that there has been no violation of Article 3 of the Convention as far as the second to twenty-seventh applicants are concerned;

9. *Holds* that there has been a violation of Article 3 of the Convention on account of the mental suffering endured by the first applicant because of the deaths of his wife and two sons;

10. *Holds*

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

(i) EUR 41,000 (forty-one thousand euros) to the first applicant, EUR 39,000 (thirty-nine thousand euros) to each of the second and third applicants, EUR 38,000 (thirty-eight thousand euros) to each of the fourth to ninth, eleventh to sixteenth, eighteenth to twenty-first and twenty third to twenty-seventh applicants, EUR 38,000 (thirty-eight thousand euros) to Mr Murat Daudovich Tenizbayev, EUR 38,000 (thirty-eight thousand euros) to Ms Kadyrbike Bayniyazovna Amanakayeva, and EUR 38,000 (thirty-eight thousand euros) to Ms Svetlana Sarsanbiyevna Adilova, all these amounts to be converted into Russian roubles at the rate applicable at the date of settlement, in respect of pecuniary damage;

(ii) EUR 120,000 (one hundred and twenty thousand euros) to the first applicant, EUR 30,000 (thirty thousand euros) to the second applicant, EUR 60,000 (sixty thousand euros) to the third applicant, EUR 15,000 (fifteen thousand euros) to the thirteenth applicant, EUR 10,000 (ten thousand euros) to each of the fourth to ninth, eleventh, twelfth, fourteenth to sixteenth, eighteenth to twenty-first and twenty-third to twenty-seventh applicants, EUR 10,000 (ten thousand euros) to Mr Murat Daudovich Tenizbayev, EUR 10,000 (ten thousand euros) to Ms Kadyrbike Bayniyazovna Amanakayeva, and EUR 15,000 (fifteen thousand euros) to Ms Svetlana Sarsanbiyevna Adilova, all these amounts to be converted into

Russian roubles at the rate applicable at the date of settlement, in respect of non-pecuniary damage;

(iii) EUR 9,350 (nine thousand three hundred and fifty euros), to be converted into United Kingdom pounds sterling at the rate applicable at the date of settlement and paid into the applicants' representatives' bank account in the United Kingdom, in respect of costs and expenses;

(iv) any tax, including value-added tax, that may be chargeable to the applicants on the above amounts;

(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;

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

Done in English, and notified in writing on 29 March 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President

ANNEX I
List of applicants

1. Mr Mautali Mukhtarovich Esmukhambetov, born in 1965 (husband of Borambike Esmukhambetova, father of Elmurat Esmukhambetov and Eldar Esmukhambetov);
2. Ms Dzhamilya Abeydullayevna Mankayeva (Abdurakhmanova), born in 1974 (daughter of Melikhan Abdurakhmanova);
3. Mr Mautali Alimpiyevich Kartakayev, born in 1968 (son of Bota Kartakayeva);
4. Ms Ulmes Ablezovna Yerontayeva, born in 1964;
5. Mr Rustam Alimkhanovich Shurayev, born in 1977;
6. Mr Kastanbek Ayvazovich Murzakayev, born in 1955;
7. Ms Nazbike Muratkanovna Krupova, born in 1969;
8. Mr Adilkhan Biketovich Adzhimurzayev, born in 1973;
9. Mr Mautali Shalishevich Magomedov, born in 1966;
10. Mr Daud Tavliyevich Tenizbayev, date of birth unknown (replaced by Mr Murat Daudovich Tenizbayev, born in 1969);
11. Mr Begali Mambetovich Tenizbayev, born in 1965;
12. Ms Tayduk Yantuganova, born in 1933;
13. Ms Zinaida Sarsinbiyevna Yelmambetova, born in 1953 (sister of Melikhan Abdurakhmanova);
14. Mr Kurpush Shompyrovich Adzhibulatov, born in 1952;
15. Mr Ruslan Kurmambetovich Amanakayev, born in 1967;
16. Mr Arslan Kurmambetovich Amanakayev, born in 1969;
17. Mr Isa Mutalimovich Amanakayev, born in 1947 (replaced by Ms Kadyrbike Bayniyazovna Amanakayeva, born in 1950);
18. Mr Kulmagomed Musayevich Yelmambetov, born in 1954;
19. Mr Koshali Mallaliyevich Aliyev, born in 1952;
20. Mr Aynadin Kurmambetovich Amanakayev, born in 1965;
21. Ms Sekerkan Tatuyevna Esembayeva, born in 1930;
22. Ms Nadezhda Abdurakhmanova, born in 1924 (mother of Melikhan Abdurakhmanova, replaced by Ms Svetlana Sarsanbiyevna Adilova, born in 1958);
23. Mr Edik Duyseyevich Yarykbayev, born in 1976;
24. Ms Alimat Baymurzayevna Soboleva, born in 1950;
25. Ms Khadizhat Abdulkerimovna Tilekova, born in 1973;
26. Ms Kildikhan Adzhigaytarovna Amanakayeva, born in 1954;
27. Mr Alimkhan Kikbayevich Saidov, born in 1969.

ANNEX II

Applicants' claim for pecuniary damage

No.	Name	House and outbuildings	Direct losses, RUB					Loss of profit, RUB	Other expenses, RUB			Total, RUB	Total, EUR
			Land	Livestock total	Crops		Belongings		Rent	Food	Funeral		
					Garden	Orchard							
1	Esmukhambetov M.M	800,000	70,000	304,300	45,000	300,000	380,000	3,909,300	163,400	2,066,700	160,000	8,198,700	226,678.79
2	Abdurakhmanova D.A.	730,000	70,000	246,900	37,000	260,000	364,000	7,726,200	530,800	3,223,200	80,000	13,268,100	366,838.27
3	Kartakayev M.A.	810,000	70,000	290,400	32,000	390,000	383,000	4,743,000	182,952	2,232,000	88,000	9,221,352	254,953.22
4	Yerontayeva U.A.	730,000	70,000	197,000	32,000	342,000	270,000	5,871,800	224,400	2,206,600		9,943,800	274,927.56
5	Shurayev R.A.	810,000	70,000	300,600	41,000	326,000	320,000	6,457,500	225,400	3,062,700		11,613,200	321,083.36
6	Murzakayev K.A.	810,000	70,000	254,500	45,000	348,000	308,000	2,696,900	97,400	1,549,600		6,179,400	170,848.91
7	Krupova N.M.	890,000	70,000	393,100	46,000	312,000	348,000	3,434,400	254,400	4,536,800		10,284,700	284,352.81
8	Adzhimurzayev A.B.	850,000	70,000	334,600	35,000	310,000	335,000	6,251,000	191,400	3,520,300		11,897,300	328,938.20
9	Magomedov M.Sh.	680,000	70,000	334,850	35,000	362,000	310,000	4,610,200	156,400	1,838,900		8,577,350	237,137.76
10	Tenizbayev D.T	840,000	70,000	381,100	38,000	355,000	330,000	5,317,600	179,400	1,618,400		9,129,500	252,413.68
11	Tenizbayev B.M.	640,000	70,000	235,150	39,000	360,000	320,000	3,685,200	181,680	1,992,000		7,523,030	207,997.78
12	Yantuganova T.	640,000		186,500	39,000	360,000	320,000	947,200	132,000	531,200		3,155,900	87,254.76
13	Yelmambetova Z.S.	720,000	70,000	265,900	31,000	360,000	330,000	4,408,800	211,728	2,745,600		9,143,028	252,787.71
14	Adzhibulatov K.Sh.	680,000	70,000	212,900	34,000	330,000	420,000	2,988,000	110,000	830,000		4,927,900	136,247.26
15	Amankayev R.K.	770,000	70,000	364,150	37,000	300,000	360,000	4,546,100	159,400	2,232,700		8,839,350	244,391.58

16	Amankayev A.K.	910,000	70,000	244,600	42,000	280,000	340,000	4,941,900	172,400	2,745,500		10,656,400	294,629.63
17	Amankayev I.M.	880,000	70,000	577,800	44,000	310,000	350,000	1,787,100	195,000	655,500		4,869,400	134,629.85
18	Yelmambetov K.M.	760,000	70,000	385,850	28,000	290,000	320,000	2,085,000	80,320	1,320,500		5,339,670	147,631.94
19	Aliyev K.M.	840,000	70,000	320,500	35,000	315,000	330,000	2,118,200	80,400	987,700		5,096,800	140,917.03
20	Amanakayev A.K.	910,000	70,000	244,600	42,000	280,000	340,000	4,941,900	172,400	2,745,500		10,656,400	294,629.63
21	Esembayeva S.T.	760,000	70,000	179,400	32,000	295,0000	190,000	486,200	98,000	159,800		2,270,400	62,772.33
22	Abdurakhmanova N.	730,000	70,000	246,900	37,000	260,000	364,000	7,726,200	530,800	3,223,200	80,000	13,268,100	366,838.27
23	Yarykbayev E.D.	920,000	70,000	353,200	39,000	256,000	330,000	6,031,200	213,400	2,979,700		11,192,500	309,451.79
24	Soboleva A.B.	840,000	70,000	361,000	45,000	324,000	342,000	3,486,600	163,880	2,223,00		7,855,480	217,189.40
25	Tilekova K.A.	840,000	70,000	296,100	39,000	328,000	310,000	8,398,400	281,400	3,851,200		14,414,100	398,523.04
26	Amanakayeva K.A.	830,000	70,000	228,100	36,000	316,000	280,000	452,100	170,400	1,616,600		3,999,200	110,570.44
27	Saidov A.K.	745,000	70,000	240,300	40,000	330,000	280,000	6,699.200	178,400	2,883,200		13,171,400	364,164.69