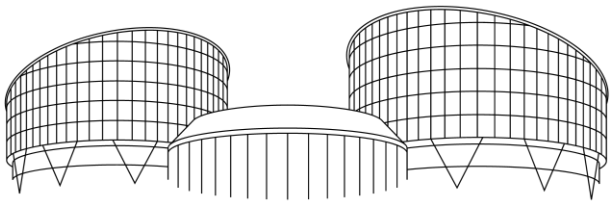

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ISAYEV AND OTHERS v. RUSSIA

(Application no. 43368/04)

JUDGMENT

STRASBOURG

21 June 2011

FINAL

28/11/2011

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

In the case of Isayev and Others v. Russia**,**

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
George Nicolaou,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 31 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 43368/04) 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 four Russian nationals listed in paragraph 7 below ("the applicants"), on 15 November 2004.

2. The applicants were represented by lawyers of the NGO EHRAC/Memorial Human Rights Centre. 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 alleged , in particular, that their relative had died as a result of torture inflicted on him in custody, that the authorities had failed to provide him with adequate medical treatment and to investigate his death and ill-treatment and that the applicants had not had effective remedies.

4. On 1 September 2005 the President of the First Section decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application.

5. On 17 September 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (former Article 29 § 3).

6. The Government objected to the joint examination of the admissibility and merits of the application and to the application of Rule 41 of the Rules of Court. Having considered the Government's objections, the Court dismissed them.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants are:
1) Mr Lecha Isayev, born in 1967;
2) Mr Khamzat Isayev, born in 1975;
3) Ms Madina Alkhanova (subsequently changed her name to Isayeva), born in 1981; and
4) Ms Lipa Dudusheva, born in 1981.

8. The applicants are Russian nationals and residents of the village of Goi-Chu, the Chechen Republic.

9. The first and second applicants are brothers of Mr Zelimkhan Isayev, who was born in 1979. The third and fourth applicants are his sisters-in-law.

10. At the time of the events described below the second to fourth applicants resided together with Zelimkhan Isayev at 24 Sverdlova Street in Goi-Chu. The first applicant resided at 17 Sverdlova Street in Goi-Chu.

A. Zelimkhan Isayev's arrest and subsequent death

1. The applicants' account

11. The account of the events described below is based on the information contained in the application form, a written statement by the first applicant made on 28 October 2004, a written statement by the second applicant dated 30 October 2004, a written statement by the fourth applicant dated 23 October 2004 and a written statement by Mr Zelimkhan Isayev's other brother, T.I., made on 25 October 2004.

(a) Zelimkhan Isayev's arrest and the search of his home on 9 May 2004

12. In the evening of 9 May 2004 Zelimkhan Isayev and the fourth applicant and her child were at home at 24 Sverdlova Street.

13. At about 8.30 p.m. two UAZ vehicles arrived at 24 Sverdlova Street. A group of armed men wearing masks emerged from the vehicles and burst into the courtyard. Zelimkhan Isayev and the fourth applicant inferred that they belonged to the Russian security forces.

14. Zelimkhan Isayev stepped out of the house into the courtyard and the servicemen apprehended and handcuffed him. According to the fourth applicant, Zelimkhan Isayev showed no signs of resistance. Later on the servicemen took the handcuffed man back into the house.

15. According to the written statement of the fourth applicant, two armed men levelled their guns at her and asked her where the weapons

were. They searched the room where the fourth applicant was. One of them tore down a carpet from the wall and checked everything in the room but found nothing.

16. The servicemen also searched the house and courtyard premises without producing any warrant but found no arms. Then they took Zelimkhan Isayev outside, forced him into one of the UAZ vehicles and drove away.

17. Immediately after Zelimkhan Isayev's arrest the first and second applicants pursued the UAZ vehicles in a car, but in vain. They then visited the head of the local administration and told him that Zelimkhan Isayev had been apprehended. The first and second applicants also went to the department of the interior of the Urus-Martan District ("the ROVD"). The ROVD policemen told them that they had no information on Zelimkhan Isayev's whereabouts.

(b) The search of the applicants' home on 10 May 2004

18. In the afternoon of 10 May 2004 a group of servicemen from the Federal Security Service ("the FSB") under the command of D.Ch., an investigator of the FSB Department of the Chechen Republic, arrived at 24 Sverdlova Street and showed the second applicant a search warrant. They searched the house in the presence of two servicemen of the military commander's office of the Urus-Martan District ("the military commander's office") acting as attesting witnesses. D.Ch. asked the second applicant and Zelimkhan Isayev's other brother, T.I., whether there were any arms in the house; they replied in the negative.

19. Having searched the rest of the house, the servicemen went to Zelimkhan Isayev's room. According to the second applicant, he observed one of the servicemen stealthily place a grenade in his brother's bed. Later the servicemen noted in the search report that they had found an explosive device in Zelimkhan Isayev's room. The report was signed by the aforementioned attesting witnesses; when signing it, the second applicant and T.I. added that they had seen that the grenade had been planted by the servicemen.

(c) Zelimkhan Isayev's detention at the ROVD

20. On 10 May 2004 Zelimkhan Isayev was placed in the temporary detention facility of the ROVD. Later that day Mr A., a police officer of the ROVD, informed the applicants that Zelimkhan Isayev had been transferred from the Urus-Martan Division of the Federal Security Service ("the Urus-Martan FSB") to the ROVD and that he was in very poor health.

21. The applicants went to the ROVD, where they met D.Ch., the investigator who had commanded the FSB officers during the search of 10 May 2004. D.Ch. told them that Zelimkhan Isayev was unwell, that he

had been injured during his detention and had a broken rib because he had resisted the servicemen when being arrested.

22. On 11 May 2004 ROVD officers invited a doctor to examine Zelimkhan Isayev because his state of health was growing worse, but they did not allow his transfer to a hospital.

23. On 12 May 2004 the applicants retained a lawyer, who visited Zelimkhan Isayev at the ROVD. The lawyer considered that her client needed urgent medical assistance.

24. On 12 May 2004 (in some of the documents enclosed by the applicants this date is also given as 13 May 2004) the Urus-Martan Town Court held a hearing on the investigators' request to extend the term of Zelimkhan Isayev's detention. The judge authorised the extension with reference to Zelimkhan Isayev's confession and the testimony of his co-accused A.M. Zelimkhan Isayev argued that he had incriminated himself under torture and showed the injuries on his body in the court room. However, that fact did not prompt any reaction on the part of the judge.

(d) Medical assistance dispensed to Zelimkhan Isayev and his death

25. At some point on 12 May 2004 (in some of the documents enclosed by the applicants the date is referred to as 13 May 2004) Zelimkhan Isayev was transferred to the Urus-Martan district hospital ("the Urus-Martan hospital"). The ROVD policemen guarded his ward. His brothers visited him and, unbeknown to the guards, took photographs of Zelimkhan Isayev's body.

26. The three pictures submitted by the applicants to the Court represent a man sitting on a bed, his tee-shirt pulled up. Numerous abrasions and bruises can be seen on the man's body, including his neck, wrists, arms, nipples, navel and a large bruise is visible on the right side of his lower back.

27. In the applicants' submission, during their visits Zelimkhan Isayev told his brothers what had happened to him after his arrest (see below).

28. On 16 May 2004 Zelimkhan Isayev's health deteriorated severely. He was spitting blood. The doctors said that they could not do anything for him and that he needed an artificial kidney. The applicants asked D.Ch. to authorise Zelimkhan Isayev's transfer to a hospital in Nazran, Ingushetia, which, apparently, was better equipped than that of the Urus-Martan District. D.Ch. refused, but sent military doctors from the military commander's office to examine the detainee. The military doctors measured Zelimkhan Isayev's blood pressure and examined the X-ray pictures. After the check-up D.Ch. authorised Zelimkhan Isayev's transfer to the Nazran Hospital. However, Zelimkhan Isayev's relatives were not provided with an ambulance and had to pay 2,000 Russian roubles to hire one. D.Ch. told the ROVD policemen to accompany Zelimkhan Isayev, but they refused. The detainee was transported to Nazran unguarded.

29. At about 11.30 p.m. on 16 May 2004, shortly after his arrival at the Nazran Hospital, Zelimkhan Isayev died.

30. On an unspecified date Zelimkhan Isayev was buried by his relatives.

(e) Zelimkhan Isayev's account of the events between 9 and 13 May 2004

31. In the applicants' submission, Zelimkhan Isayev described to his brothers the events between 9 and 13 May 2004 as follows.

32. When the servicemen apprehended Zelimkhan Isayev on 9 May 2004, they put a plastic bag over his head and forced him down on the floor of the UAZ vehicle. They drove for a while and arrived at the military commander's office. They took the detainee to the third floor where, according to the applicants, the FSB headquarters were located.

33. Without taking the plastic bag off his head, the FSB officers ordered Zelimkhan Isayev to tell them "everything he knew". He said that he had nothing to tell. They then gave him several documents to sign, which he refused to do. After that the officers turned on a tape recorder and some of them left the room. Those who remained kicked and beat Zelimkhan Isayev with truncheons and tortured him with electric shocks and cigarette burns. Among other things, they applied electric wires to his genitals and passed the current through them.

34. The servicemen asked Zelimkhan Isayev to disclose his sources of income. He replied that he was buying and reselling scrap. They beat him again and ordered him to sign the documents. Zelimkhan Isayev asked what the documents were. After that the servicemen put another plastic bag over his head and continued to torture him. At some point they filled his mouth with a foul-smelling liquid and forced him to drink it. The torture of Zelinkhan Isayev continued throughout the whole night.

35. On 10 May 2004 Zelimkhan Isayev agreed to sign the documents and did so without reading them. He was then transferred to the temporary detention facility of the ROVD.

(f) Medical certificates furnished by the applicants

36. An excerpt from Zelimkhan Isayev's medical record issued by the Urus-Martan Town hospital and dated 12 May 2004 mentioned the following injuries:

> "...numerous bruises, abrasions and electrical burns to the body, upper and lower limbs, peritonitis
>
> ...
>
> Blunt trauma of the chest [and] the abdominal cavity. Injuries to the lungs and internal organs; major bruising of the thorax, the front abdominal wall and the upper limbs. First-degree burns of the nipples. Contusion of the internal organs? Broken ribs on the left side."

37. According to the death certificate issued by the Nazran civil registry office and dated 27 June 2004, Zelimkhan Isayev's death was caused by acute renal insufficiency, anuria and pulmonary oedema, as well as by blunt injuries to the abdomen and chest and broken ribs on the left-hand side.

2. The Government's account

38. On 8 May 2004 the Chechen Department of the FSB instituted criminal proceedings against A.M. on suspicion of participation in illegal armed groups and terrorist activities. The investigation established that a group including A.M., Zelimkhan Isayev and other members had on several occasions blown up vehicles of the Russian federal forces. It appears that the case file was assigned the number 37045. In some of the documents it is also referred to as no. 94/22.

39. At 4.55 p.m. on 10 May 2004 Zelimkhan Isayev was arrested on suspicion of having participated in illegal armed groups and carried out terrorist activities.

40. On the same day he was interviewed in the presence of counsel and stated that he was unable to testify owing to his bad state of health.

41. On 10 May 2004 the investigator in charge of the case applied to the Urus-Martan Town Court, seeking authorisation to search Zelimkhan Isayev's home. The request was granted on the same day, following which the authorities searched Zelimkhan Isayev's house and found a hand grenade there.

42. On 12 May 2004 the Urus-Martan Town Court granted the investigators' request and ordered Zelimkhan Isayev's placement in custody. In the Government's submission, he did not complain about ill-treatment at the hearing on his detention.

43. On 12 May 2004 Zelimkhan Isayev was admitted for in-patient treatment to the surgery department of the Urus-Martan Town hospital.

44. On 16 May 2004, following a decision of an investigator of the Chechen Department of the FSB and the recommendations of the doctors of the Urus-Martan Town hospital, Zelimkhan Isayev was transferred to the Nazran hospital where he died on the same day.

45. According to the death certificate of 16 May 2004, Zelimkhan Isayev was admitted to the intensive care unit of the Nazran Hospital from the Urus-Martan Town hospital with the diagnosis: blunt trauma of the chest and the abdomen, broken ribs on the left-hand side, major bruising of the body, oedema of the lungs, acute renal insufficiency. The death was recorded at 11.30 p.m. on 16 May 2004.

B. Proceedings related to Zelimkhan Isayev's death

1. The applicants' account

(a) Decision to discontinue criminal proceedings against Zelimkhan Isayev

46. By a decision of 12 June 2004 D.Ch. discontinued criminal proceedings against Zelimkhan Isayev in view of his death. The decision stated that on 8 May 2004 a criminal investigation had been opened in respect of A.M., who was suspected of terrorist activities and participation in illegal armed groups. The case was assigned the number 94/22. The investigation established that in October 2000 A.M., together with several persons, including Zelimkhan Isayev, had blown up several vehicles of the Russian military. On 10 May 2004 Zelimkhan Isayev was arrested and placed in the temporary detention facility of the department of the interior of the Urus-Martan District. At some point Zelimkhan Isayev confirmed his involvement in the explosions and A.M. testified against him. On 16 May 2004 Zelimkhan Isayev was transferred to hospital and died.

(b) The applicants' request to prosecute the FSB servicemen

47. On 20 July 2004 the first applicant requested the Prosecutor General's Office of the Russian Federation and the prosecutor's office of the Chechen Republic ("the republican prosecutor's office") to institute criminal proceedings against the servicemen of the Urus-Martan FSB in relation to the torture which had caused Zelimkhan Isayev's death. The first applicant described in detail the circumstances of his brother's arrest and detention and the treatment to which he had been subjected while in custody. He insisted that Zelimkhan Isayev had been arrested on 9 and not 10 May 2004, as stated in the official documents, and that a number of witnesses, including the neighbours of the Isayevs and the deputy head of the local administration, Z.D., could confirm that fact. In support of his submissions he enclosed the death certificate dated 16 May 2004, mentioning numerous injuries sustained by his brother, and the pictures of his body bearing marks of torture, taken during his visit to the hospital. He averred that although at the hearing on 10 May 2004 his brother had complained about the torture and shown the judge the marks of ill-treatment on his body, the Urus-Martan Town Court had disregarded his complaints and ordered his placement in custody. The first applicant stressed that, despite Zelimkhan Isayev's grave condition, the authorities had not authorised his transfer to a proper hospital until 16 May 2004.

48. The first applicant further stated that on 9 May 2004 the FSB officers had unlawfully searched Zelimkhan Isayev's home, without providing any further details. He also submitted that during a sweeping operation in Goi-Chu carried out on 11 June 2004, servicemen of the federal

forces had harassed Zelimkhan Isayev's other brothers by taking them to the outskirts of the village, interviewing them about ball bearings they had at home and making a video recording of the interview. The first applicant stated that the FSB servicemen who had tortured his brother were still working in the Urus-Martan FSB and that he considered that Zelimkhan Isayev's relatives, as witnesses to the crime committed by the FSB officers, were in danger. Accordingly, he requested that the authorities provide for their protection. The first applicant also stressed that although the authorities had been made aware of the torture by 10 May 2004, Zelimkhan Isayev's relatives had no information as to whether this fact had prompted the opening of an investigation into the torture. Lastly, he requested that he be admitted to any subsequent criminal proceedings as a victim.

49. On 3 August 2004 the republican prosecutor's office forwarded the first applicant's request to the prosecutor's office of the Urus-Martan District ("the district prosecutor's office") and ordered that the request be included in the investigation file in case no. 94/22 and that the applicants' submissions be examined and they be informed of any decisions taken by 9 August 2004.

50. By a letter dated 18 August 2004 the district prosecutor's office informed the first applicant that it had examined his complaint and had decided not to institute criminal proceedings against the FSB officers. The refusal to institute criminal proceedings was enclosed in the letter and, in so far as relevant, stated as follows:

> "...
>
> On 6 August 2004 the district prosecutor's office received the [first applicant's] request to institute criminal proceedings against FSB officers ... The complaint alleges that upon admission to the district FSB Zelimkhan Isayev was tortured with electric wires, beaten up and made to sign unspecified documents ...
>
> Following the examination of the submissions contained in the complaint it has been established:
>
> On 10 May 2004 ... Zelimkhan Isayev was arrested in the village of Goi-Chu ... in connection with the proceedings in criminal case no. 37045 ... During his arrest Zelimkhan Isayev offered resistance and the officers of the district division of the FSB had to apply physical force. According to statements of servicemen of the 13th military commander's office of the Urus-Martan District ... E.L. and A.Sh., on 10 May 2004 they were invited to participate as attesting witnesses in a search of the Isayevs' home in the village of Goi-Chu .... The investigator conducted the search in accordance with all requirements of the Code of Criminal Procedure. When it was established that Zelimkhan Isayev felt unwell, he was provided with medical assistance and on 16 May 2004 he was transferred for in-patient treatment to a medical institution.
>
> The fact of torture in respect of Zelimkhan Isayev is not confirmed by the materials in the criminal file. From the materials of criminal case no. 37045 ... it appears that suspect Zelimkhan Isayev offered resistance to the law-enforcement officers during

his transfer, as a result of which physical force was applied to him and he sustained numerous injuries.

Under Article 38 § 1 of the Criminal Code of Russia, inflicting of harm on a person who has committed a crime while arresting him with a view to having him brought before law-enforcement authorities and in order to prevent him from committing further offences, if there are no other means of arresting such person and if the use of force is not excessive, does not constitute a crime.

Accordingly, the actions of the officers of the Urus-Martan Division of the FSB, who arrested Zelimkhan Isayev ... did not constitute a crime under Article 286 of the Criminal Code..."

51. The decision stated that it was open to appeal to a higher-ranking prosecutor or a court under Articles 124 and 125 of the Code of Criminal Procedure.

52. By a letter of 7 September 2004 the republican prosecutor's office informed the first applicant, in reply to his complaint of 20 July 2004, that the military prosecutor's office of military unit no. 20102 had refused to institute criminal proceedings against the FSB officers on 13 June 2004. The letter stated that on 12 May 2004 the Urus-Martan Town Court had authorised Zelimkhan Isayev's detention on remand on suspicion of terrorist activities and participation in illegal armed groups. At the time of the arrest Zelimkhan Isayev had hit the FSB servicemen in attempting to escape and, in return, the servicemen had used force and injured him. Accordingly, their actions could be classified as use of force in excess of their powers within the meaning of Article 286 of the Russian Criminal Code. Nevertheless Article 21 of the Russian Federal Law on the Suppression of Terrorism authorised the injuring or killing of terrorists if necessary. The letter concluded that there had been no grounds for prosecuting the FSB servicemen. The letter did not mention that it contained any enclosures, including the decision of 13 June 2004, and there is no indication that the applicants were provided with a copy of the decision of 13 June 2004.

2. The Government's account

53. On 19 May 2004 the district prosecutor's office forwarded the materials concerning the death of Zelimkhan Isayev to the military prosecutor of military unit no. 20102 for examination.

54. On 12 June 2004 criminal proceedings against Zelimkhan Isayev were discontinued owing to his death and on 8 July 2004 the deputy prosecutor of the Chechen Republic forwarded the materials of file no. 94/22 to the district prosecutor's office for further investigation. There the case file was assigned the number 37045.

55. On 13 June 2004 the deputy military prosecutor of military unit no. 20102 decided not to institute criminal proceedings against the officers of the Urus-Martan FSB, finding no evidence of crime. The decision stated

that the head of the Urus-Martan FSB and his subordinates had been in charge of Zelimkhan Isayev's arrest. During his arrest he had attempted to escape and had offered resistance, hitting unspecified FSB officers. The latter had applied physical force to restrain him, as a result of which he had sustained bodily injuries. The above account of events was confirmed by the explanations of FSB officers N. and Ch.

56. On 21 January 2005 the acting prosecutor of the Urus-Martan district set aside the refusal to institute criminal proceedings against the FSB officers and ordered that an additional inquiry be conducted. The Government failed to specify which refusal to institute criminal proceedings had been quashed on that date but it appears that they referred to the decision by the military prosecutor issued on 13 June 2004.

57. On the same date an unspecified authority (apparently the district prosecutor's office) refused to institute criminal proceedings against the officials of the temporary detention facility of the ROVD on suspicion of abuse of authority (Article 286 of the Criminal Code), finding no evidence of crime. On the same day the materials concerning the use of force by the officers of the Urus-Martan FSB against Zelimkhan Isayev were transferred for examination to the military prosecutor's office.

58. On 17 February 2005 the deputy military prosecutor of military unit no. 20102 refused to institute criminal proceedings against the FSB officers, finding no evidence of crime in their actions. The related decision stated that during his arrest Zelimkhan Isayev had offered resistance to the FSB officers, following which they had had to apply physical force to restrain him.

59. On 16 November 2007 the deputy Main Military Prosecutor set aside the decision of 17 February 2005 and forwarded the relevant materials for examination to the investigative department of the Investigating Committee with the Prosecutor General's Office of the Russian Federation.

60. On an unspecified date the relevant materials, as well as a report on the discovery of evidence of crime ("*рапорт об обнаружении признаков преступления*") were forwarded to the head of the military investigating department of the United Group Alignment ("the investigating department of the UGA") for examination.

61. On 21 November 2007 the investigating department of the UGA instituted criminal proceedings against the FSB officers under Article 286 § 3 (a) and (c) (abuse of office associated with the use of violence and entailing serious consequences). The case was assigned the number 34/00/0022-07.

62. In the Government's submission, the investigation in case no. 34/00/0022-07 is pending.

63. Despite the Court's repeated requests, the Government refused to produce any documents from the case file concerning the investigation of the death of Zelimkhan Isayev or the case files related to the inquiries into

his death conducted by the district prosecutor's office or the prosecutor of military unit no. 20102. They referred to Article 161 of the Russian Code of Criminal Procedure.

C. The applicants' alleged intimidation

1. The applicants' account

64. In the applicants' submission, on several occasions D.Ch. invited the Isayev brothers to his office for questioning. They did not specify the dates of those interviews or their subject matter.

65. On 12 June 2004 the Russian military carried out a sweeping operation in the village of Goy-Chu. T.I. and the second applicant were seized and taken to a military base where the servicemen questioned them about ball bearings found in their house. Timur and Khamzat Isayev explained that they used the ball bearings in their work and denied any involvement in illegal activities. They recognised a serviceman who was filming the interrogation as one who had searched their house on 10 May 2004.

66. On an unspecified date D.Ch. questioned the second applicant as a witness. In the second applicant's submission, the FSB officer pressured him in the course of the questioning. The second applicant provided no further details concerning the alleged pressure put on him.

67. On 12 August 2004 the head of the Goy-Chu village local administration, A.A., allegedly called the first applicant to his office and asked him whether he had complained about his brother's death to the Prosecutor General. When the first applicant replied in the affirmative, A.A. told him that his complaint to the Prosecutor General might lead to dangerous consequences and advised him to turn for help to A.K., an official of the administration of the Urus-Martan District.

68. On an unspecified date the first applicant talked to A.K. and the latter advised him to withdraw the complaint, implying that the FSB servicemen might take revenge against the first applicant and other relatives of Zelimkhan Isayev. The first applicant replied that it was not possible to withdraw the complaint, which had been sent to Moscow and Grozny. A.K. told him that if the Isayevs stopped complaining about Zelimkhan's death they would have no further problems with the FSB; the first applicant promised not to file any more complaints or appeals.

69. In the applicants' submission, when they received the refusal to institute criminal proceedings of 18 August 2004 and the letter of 7 September 2004, they did not dare to take any further steps to challenge those decisions in view of the facts described above.

2. Information submitted by the Government

70. The Government furnished copies of two written statements by A.K. dated 21 November 2007 and 24 January 2008.

71. According to those documents, A.K. stated that he had been working in the local administration of Urus-Martan since 2000 and that he remembered Zelimkhan Isayev's arrest in 2004 on suspicion of participation in illegal armed groups. However, A.K. had no information on his fate. Zelimkhan Isayev's relatives had not applied to him in that connection and thus he could not have brought pressure to bear on them or forced them to refrain from lodging complaints against law-enforcement officials. At the material time, owing to a complicated situation in the region, there were many similar cases and A.K. always assisted the residents of the Urus-Martan district in obtaining information on the fate of their relatives and the reasons for their detention. According to A.K., A.A. could not have influenced the applicants either, because he was not a law-enforcement officer and thus had no reason to do so.

II. RELEVANT DOMESTIC LAW

72. Abuse of office associated with the use of violence and entailing serious consequences carries a punishment of three to ten years' imprisonment and a ban on occupying certain positions for up to three years (Article 286 § 3 (a, c) of the Criminal Code of the Russian Federation ("the Criminal Code")).

73. Article 21 of the Suppression of Terrorism Act (Law 130-FZ of 25 July 1998, with further amendments), as in force at the material time, provided that, in accordance with the legislation and within the limits established by it, damage could be caused to the life, health and property of terrorists, as well as to other legally-protected interests, in the course of an anti-terrorist operation. Servicemen, experts and other persons engaged in the suppression of terrorism were exempted from liability for such damage under Russian law. Law 130-FZ was abolished in 2006.

74. Under Article 124 of the Code of Criminal Procedure of the Russian Federation ("the CCP"), 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.

75. Article 125 of the CCP provides that a decision of an investigator or a prosecutor refusing to institute criminal proceedings, as well as other decisions, 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 are open to appeal before a district court. The

district court can examine the lawfulness and well-foundedness of the impugned decision, act or omission. Following the examination of the complaint, the district court is empowered to declare the decision, act or omission unlawful or unfounded and order the authority to rectify the shortcomings (Article 125 § 5).

76. Article 161 § 1 of the CCP prohibits the disclosure of details of the preliminary investigation. Such information can be disclosed only with the permission of a prosecutor or investigator and in the amount determined by them, and only in so far as it does not infringe the rights and lawful interests of the parties to the criminal proceedings and does not prejudice the investigation (Article 161 § 3).

77. Under Article 1069 of the Civil Code of the Russian Federation, a State agency or a State official is liable towards a citizen for damage caused by their unlawful actions or failure to act. Such damage is to be compensated for at the expense of the federal or regional treasury.

THE LAW

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

A. The parties' submissions

1. The Government

78. The Government contended that the applicants' complaints should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into their relative's death was pending. They further stated that the applicants had had an opportunity under Articles 124 and 125 of the CCP to challenge acts and omissions of the investigating authorities before prosecutors or courts but had failed to make use of those procedures. In particular, the Government suggested that the applicants should have appealed against the refusal to institute criminal proceedings issued on 13 June 2004. In that connection they referred to the cases of E., S., I. and D., in which the domestic courts granted the applicants' complaints and ordered the investigating authorities to secure their access to the materials in the files relating to the investigation into their relatives' disappearance. The Government also referred to the case of a Ms Kh., where the domestic courts allowed her complaint about the decision to suspend the investigation into the disappearance of her relative

and instructed the investigating authority to investigate it thoroughly. The Government omitted to furnish copies of the decisions they referred to.

79. They also argued that it had been open to the applicants to claim damages under Article 1069 of the Civil Code. By way of an example, they referred to a decision of the Supreme Court of the Karachay-Cherkess Republic of 19 October 2004, by which it had awarded an applicant 10,000 Russian roubles in respect of non-pecuniary damage sustained as a result of unspecified unlawful actions of a prosecutor's office. The Government failed to produce a copy of that decision.

80. Lastly, with reference to the statements made by A.K., the Government argued that the applicants' submissions regarding the pressure allegedly put on them were unsubstantiated. They submitted that there was no evidence that any officials had pressured the applicants with a view to preventing them from claiming damages at the domestic level in connection with the alleged violations of the Convention, and that the applicants had not complained to the domestic authorities about the alleged pressure.

2. The applicants

81. With reference to the case of *Khashiyev and Akayeva v. Russia* (nos. 57942/00 and 57945/00, 24 February 2005), the applicants submitted that they were not obliged to apply to civil courts to exhaust domestic remedies.

82. As regards criminal remedies, they argued that a complaint under Article 125 of the CCP did not constitute an effective remedy because, even if a judge found a refusal to institute an investigation unlawful, after further examination a prosecutor could again decide to refuse to open a criminal case. As to the examples concerning the use of Article 125 of the CCP referred to by the Government, the applicants stressed that in all those cases the judges' decisions allowing the applicants' complaints had not led to any progress in the investigations, which had remained ineffective. They also claimed that the authorities in the present case had immediately been made aware of the death of Zelimkhan Isayev and thus they had been under an obligation to investigate it, without leaving it to the initiative of his relatives, including a complaint under Article 125 of the CCP. However, in the present case the authorities had preferred to wait until the applicants lodged a formal complaint, and even then they refused to investigate the matter. The applicants averred that if the Government's logic were to be accepted the State would remain unaccountable for the deaths of persons at the hands State agents when the victims had no relatives to pursue the matter.

83. The applicants further stated that they had no legal education or knowledge of criminal proceedings and could not afford legal representation. More importantly, the authorities had subjected them to serious pressure in connection with their complaints about Zelimkhan

Isayev's killing. Given the circumstances of his death and the general climate of impunity for human rights violations in the Chechen Republic, the applicants had come to fear making further complaints to the authorities, including lodging an appeal to a court under Article 125 of the CCP. They considered that it was standard administrative practice not to investigate crimes committed by members of the federal forces in the Chechen Republic. They also insisted that A.K. had exerted undue pressure on them to refrain from complaining further about their relative's killing.

84. Lastly, the applicants argued that the authorities had opened a criminal investigation into their relative's death only after the communication of the application to the Government, and that in any event that investigation did not satisfy the Convention requirements.

B. The Court's assessment

1. General principles

85. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants first to use the remedies that are normally 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, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the 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 laid down in domestic law, but that no recourse should be had to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI, and *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-67, *Reports* 1996-IV).

86. The Court emphasises that the rule of exhaustion of domestic remedies 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* and *Aksoy*, both cited above, § 69 and §§ 53-54).

2. Application of the general principles to the present case

87. Turning to the circumstances of the present case, the Court observes that the Russian legal system provides, in principle, two avenues of recourse for the victims of illegal and criminal acts attributable to the State or its agents, namely civil proceedings and criminal remedies.

(a) Alleged failure to file a civil action

88. As regards a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention (see, among many other authorities, *Khashiyev and Akayeva v. Russia*, cited above, §§ 119-121, and *Estamirov and Others v. Russia*, no. 60272/00, § 77, 12 October 2006). The Court sees no reason to depart from those findings in the present case and confirms that the applicants were not obliged to pursue civil remedies.

(b) Alleged failure to exhaust criminal remedies

89. As to criminal remedies, the Court observes that the Government's argument was twofold. On the one hand they argued that the applicants' complaint was premature because the criminal investigation into their relative's death was pending. On the other hand they submitted that the applicants had failed to challenge acts or omissions of the investigating authorities and, in particular, the refusal of 13 June 2004 to institute criminal proceedings, before higher-ranking prosecutors or courts, under Articles 124 and 125 of the CCP respectively.

(i) The alleged failure to make use of Article 124 of the CCP

90. In so far as the Government relied on Article 124 of the CCP, the Court reiterates that the powers conferred on the superior prosecutors constitute extraordinary remedies, the use of which depends upon the prosecutors' discretion. It therefore does not consider that the applicants had 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, and *Belevitskiy v. Russia*, no. 72967/01, § 59, 1 March 2007).

(ii) The alleged failure to challenge the decision of 13 June 2004 before the domestic courts

91. The Government further argued that the applicants should have challenged before the courts the refusal to institute criminal proceedings issued by the military prosecutor on 13 June 2004.

92. In this connection the Court reiterates that it has held on several occasions that in the Russian legal system the power of a court to reverse a decision refusing to institute criminal proceedings is a substantial safeguard against the arbitrary exercise of powers by the investigating authorities (see *Trubnikov*, cited above, and *Belevitskiy*, cited above, § 61). Therefore, in the ordinary course of events such an appeal might be regarded as a possible remedy where the prosecution decided not to investigate the claims (see *Samoylov v. Russia*, no. 64398/01, §40, 2 October 2008).

93. Nonetheless, the Court is not persuaded by the Government's argument in the present case for the following reasons. It observes in the first place that it emerges from the materials available and the parties' submissions that the applicants learnt about the existence of the decision of 13 June 2004 from the letter of the republican prosecutor's office dated 7 September 2004 and sent to the applicants in reply to their complaint of 20 July 2004 (see paragraphs 47 and 52 above).

94. Leaving aside the question of whether the authorities intended to notify the applicants of the inquiry conducted by the military prosecutor and the ensuing decision not to open a criminal case if they had not complained about their relative's death to the Prosecutor General and the republican prosecutor's office, the Court cannot but note that, whilst the letter of 7 September 2004 referred to the decision of 13 June 2004, it nowhere stated that the impugned decision was enclosed with it. There is also no indication that the applicants were furnished with a copy of that decision in good time or at all (see paragraph 52 above). Against this background the Court is not convinced that they could effectively have challenged the decision of 13 June 2004 before the domestic courts, as suggested by the Government (see *Kantyrev v. Russia*, no. 37213/02, § 43, 21 June 2007, and *Akulinin and Babich v. Russia*, no. 5742/02, § 29, 2 October 2008).

95. In any event, it appears from the Government's submissions that the decision of 13 June 2004 is no longer valid because it was set aside on 20 January 2005 (see paragraph 56 above, and compare *Georgiy Bykov v. Russia*, no. 24271/03, § 46, 14 October 2010).

96. It is further noted that by the time the applicants learnt about the existence of the decision of 13 June 2004, they had been notified of yet another refusal to institute criminal proceedings into the circumstances of their relative's death and alleged ill-treatment, issued by the district prosecutor's office on 18 August 2004 (see paragraph 50 above). It furthermore appears that after the quashing of the decision of 13 June 2004 and an additional inquiry, on 17 February 2005 the military prosecutor of military unit no. 20102 decided, once again, not to institute criminal proceedings against the FSB officers, and that on 21 January 2005 a similar decision was issued in respect of the ROVD officials (see paragraphs 57 and 58 above).

97. It transpires that the authorities instituted criminal proceedings into the circumstances of Zelimkhan Isayev's death only after the Court had given notice of the application to the Government (see paragraph 61 above).

98. The Court reiterates its constant case-law to the effect that when individuals have been killed as a result of the use of force, the authorities are under an obligation to investigate those deaths, and that they must act of their own motion once the matter has come to their attention and cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigatory procedures (see, specifically, in the context of exhaustion of domestic remedies, *İlhan v. Turkey* [GC], no. 22277/93, § 63, ECHR 2000-VII, and *Bazorkina v. Russia*, no. 69481/01, § 117, 27 July 2006).

99. In the present case the authorities were aware of the death of Zelimkhan Isayev by 19 May 2004 at the latest and it transpires that at that moment they considered that the circumstances of his death warranted an inquiry (see paragraph 99 above). In addition, the applicants lodged a formal complaint with the authorities, requesting that the circumstances of their relative's death be elucidated and that those responsible be brought to justice (see paragraph 47 above).

100. Against this background the Court considers that the matter was sufficiently drawn to the attention of the relevant domestic authorities. Regard being had to the repeated refusals of a number of investigating authorities, including the district prosecutor's office and the military prosecutor's office, to institute criminal proceedings and the fact that the investigation was launched only after notice of the application had been given to the Government, it is not convinced, in the special circumstances of the present case, that having recourse to an appeal to a court, as suggested by the Government, would have yielded a different result from the one obtained by the applicants in the present case. In so far as the Government cited a number of cases decided at the domestic level in support of their argument, the Court observes that they failed to produce copies of the related decisions. In any event, it seems that those cases concerned pending investigations of disappearances and specific issues of refusal of access to case-file documents and decisions to suspend the investigation (see paragraph 78 above) which, in the Court's view, are not directly relevant to the matter examined by it in the present case.

101. It follows that the Government's objection regarding the applicants' failure to challenge the decision of 13 June 2004 before the courts must be rejected.

102. In view of this finding the Court does not consider it necessary to examine the applicants' arguments concerning the pressure allegedly put on them by the authorities, the lack of knowledge and legal representation and the existence of an administrative practice of not investigating similar complaints in the Chechen Republic.

(iii) Failure to await the outcome of the criminal proceedings instituted in November 2007

103. The last limb of the Government's objection concerned the fact that the criminal proceedings instituted in connection with the death and alleged ill-treatment of Zelimkhan Isayev were pending and that the applicants' complaints were premature.

104. The Court notes that the authorities decided to open an investigation into the death and alleged ill-treatment of the applicants' relative in November 2007, that is more than three years after the events in question. The investigation is still pending. The parties dispute the effectiveness of the investigation.

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

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

106. The applicants complained that Zelimkhan Isayev had died in custody as a result of torture inflicted on him by State agents, and that the authorities had failed to provide him with prompt and adequate medical assistance and to carry out an effective investigation into his death. They relied on Article 2 of the Convention, which provides:

> "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. Submissions by the parties

1. The Government

107. The Government submitted that, contrary to the applicants' assertion, Zelimkhan Isayev had been arrested not at 8.30 p.m. on 9 May

2004 but at 4.55 a.m. on 10 May 2004. In that respect they relied on unspecified documents from an unspecified criminal file, without producing them.

108. They further argued that the FSB officers had had to use force against Zelimkhan Isayev during his arrest because he had actively resisted it and because they had had to prevent him from escaping or killing other persons. Moreover, he had been suspected of terrorist activities and membership of illegal armed groups, which constituted particularly serious crimes. Relying on the case of *McKerr v. the United Kingdom* (no. 28883/95, ECHR 2001-III), the Government stated that the use of force against Zelimkhan Isayev had been absolutely necessary. In so far as his relatives alleged that he had not offered any resistance at the time of his arrest, they had not witnessed how the events unfolded and, in particular, how he had been transferred to the ROVD. In addition, his death had occurred not immediately after his arrest but several days later and he had been provided with medical assistance in the interim.

109. The Government further submitted that the investigation initiated by the authorities in November 2007 was examining whether the force applied by the State agents had been absolutely necessary and proportionate to the danger posed by the applicants' relative. However, at the time of the submission by the Government of their observations the investigation had not established a causal link between the actions of the law-enforcement officers, Zelimkhan Isayev's injuries and his death. The investigating authorities had conducted two forensic medical examinations on the basis of unspecified medical documents. And a further complex medical examination was under way; within its framework, thirty-two questions had been put to experts with a view to establishing the nature, location and means of infliction of Zelimkhan Isayev's bodily injuries and the cause of his death. In the Government's submission it followed from a number of documents that, apart from internal injuries, Zelimkhan Isayev had had a number of "small wounds on his body". Those wounds had been covered with scabs but their further morphological characteristics had not been indicated. In the absence of a post mortem examination and a histological test it was impossible to establish with certainty the means and time of infliction of those injuries, including whether they had been sustained as a result of cigarette burns or the application of an electric current.

110. Contrary to the applicants' submissions, Zelimkhan Isayev had been provided with the required medical assistance. The issue of the adequacy of the medical assistance rendered to him was moreover being investigated by the domestic authorities. The medical staff of the Urus-Martan District Hospital and the Nazran Hospital, interviewed by the investigators, had stated that the applicants' relative had been admitted to their hospitals in such a poor condition that no medical treatment could have saved him in any event.

111. In the Government's submission, the investigation conducted by the authorities satisfied the Convention requirements.

2. The applicants

112. The applicants argued that there existed a causal link between the ill-treatment of Zelimkhan Isayev and his death and that it had been imputable to the State. Zelimkhan Isayev had been in good health prior to his arrest and had not offered any resistance while being arrested, as was confirmed by the fourth applicant's statement, who had witnessed his arrest. Moreover, he could not have offered any resistance at the time of the arrest or subsequently because immediately after the FSB officers had burst into the applicants' house they had handcuffed him. There had been around fifteen servicemen and it was hardly plausible that Zelimkhan Isayev, handcuffed, could have offered them any resistance. If that was nonetheless the case, the force used against their relative was clearly disproportionate.

113. The applicants insisted that Zelimkhan Isayev had been arrested at about 8.30 p.m. on 9 May 2004. However, the record of the arrest had not been drawn up until 4.55 a.m. on 10 May 2004. Hence, for that period of time he had been held in custody without any procedural guarantees. The Government acknowledged that in the early morning of 10 May 2004 Zelimkhan Isayev had already been unable to testify in view of his poor state of health and that he had sustained his injuries as a result of the actions of State agents. Zelimkhan Isayev had died in a hospital while still being guarded by State officials.

114. The applicants stressed that the Government had refused to submit any documents concerning the investigation of their relative's death which could have confirmed their argument that the force used against him had been absolutely necessary. Accordingly, the burden of proving that his death was not imputable to the State or that the force used against him had been proportionate was to be shifted to the Government. Given that Zelimkhan Isayev's death had occurred in State custody, the Government were under an obligation to provide a convincing and plausible explanation for the related events but had failed to do so.

115. The applicants further submitted that Zelimkhan Isayev had not been provided with adequate medical assistance. Although from the Government's submissions it followed that he had been in need of urgent medical care in the morning of 10 May 2004, he had not been admitted to a hospital until two days later and there was no indication that he had been provided with any medical assistance prior to that date. Upon his admission to the Urus-Martan Town Hospital the authorities must have immediately realised that the hospital did not possess the facilities necessary for Zelimkhan Isayev's treatment, but they had failed to take appropriate action and had not transferred him to a properly equipped hospital until 16 May 2004.

116. As regards the investigation into Zelimkhan Isayev's death and ill-treatment, the applicants argued that the authorities had blatantly refused to institute criminal proceedings in respect of those events until the Court gave notice of the application to the Government, and that even after it was opened the investigation could not be considered to have been either prompt or effective. The applicants had not been granted victim status or informed of any steps taken by the investigating authorities. There was no indication that the investigators had interviewed the officers who had arrested Zelimkhan Isayev or searched his house on 10 May 2004, or the residents of Goy-Chu who had witnessed his arrest. No post-mortem examination had been conducted.

B. The Court's assessment

1. Admissibility

117. The Court considers, in the light of the parties' submissions, that the applicants' complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, it has already found that the Government's objection concerning the alleged non-exhaustion of domestic remedies should be joined to the merits of the complaint (see paragraph 105 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) Zelimkhan Isayev's death

(i) General principles

118. Article 2 of the Convention, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention. Together with Article 3, it enshrines one of the basic values of the democratic societies making up the Council of Europe. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-47, Series A no. 324, and *Salman v. Turkey* [GC], no. 21986/93, § 97, ECHR 2000-VII).

119. In the light of the importance of the protection afforded by Article 2, the Court must subject complaints about deprivation of life to the most careful scrutiny, taking into consideration all relevant circumstances. Persons in custody are in a particularly vulnerable position and the

authorities are under an obligation to account for their treatment. Consequently, where an individual is taken into police custody in good health but later dies, it is incumbent on the State to provide a plausible explanation of the events leading to his death, failing which an issue under Article 2 will arise (see *Carabulea v. Romania*, no. 45661/99, § 108, 13 July 2010, with further references).

120. In assessing evidence, the Court adopts the standard of proof "beyond reasonable doubt". However, such proof may follow from the co-existence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see, among many other authorities, *Anguelova v. Bulgaria*, no. 38361/97, §§ 109-11, ECHR 2002-IV).

121. Lastly, the Court would note that it is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), cited above). Nonetheless, where allegations are made under Articles 2 and 3 of the Convention the Court must apply a particularly thorough scrutiny, even if certain domestic proceedings and investigations have already taken place (see *Aktaş v. Turkey*, no. 24351/94, § 271, ECHR 2003-V (extracts), with further references).

(ii) Application of those principles to the present case

122. Turning to the circumstances of the present case, the Court notes that the parties disputed the exact time of Zelimkhan Isayev's arrest. In particular, the Government claimed, with reference to unspecified documents they refused to provide, that the applicants' relative had been arrested at 4.55 a.m. on 10 May 2004. The applicants submitted that Zelimkhan Isayev had been arrested at about 8.30 p.m. on 9 May 2004. Having regard to the Government's refusal to provide any documents in support of their submission and the fact that the applicants presented a coherent account of their relative's arrest and a number of witness statements to corroborate it (see, in particular, paragraph 11 above), the Court finds that Zelimkhan Isayev was arrested at his home at about 8.30 p.m. on 9 May 2004, as described by the applicants.

123. It is further observed that it was undisputed between the parties that the applicant's relative had been in good health prior to his arrest on 9 May

2004, that on 12 May 2004 he had been transferred from the Urus-Martan ROVD to the Urus-Martan Town hospital and that upon admission to the hospital he had a number of serious injuries, including a blunt trauma of the chest and the abdominal cavity, contusion of internal organs, broken ribs, large scale bruising of the body and electrical burns (see paragraph 36 above).

124. Nor was it contested that Zelimkhan Isayev had been transferred from the Urus-Martan Town Hospital to the Nazran hospital, where he had died on 16 May 2004. According to the death certificate issued by the Nazran civil registry office, the cause of his death was acute renal insufficiency, anuria, pulmonary oedema, as well as blunt injuries to the abdomen and chest and broken ribs on the left-hand side (see paragraph 37 above). The Government did not contest either the authenticity of that document or the accuracy of the information contained therein.

125. Having regard to those facts and the principles enunciated in paragraphs 118-121 above, the Court considers that it was incumbent on the Government to provide a plausible explanation of the events leading to the death of Zelimkhan Isayev. However, it finds that they failed to do so, for the following reasons.

126. The Government argued that Zelimkhan Isayev had offered resistance during his arrest, that the FSB officers had had to use force against him with a view to preventing him from fleeing or harming other persons and that the force used had been absolutely necessary.

127. The Court notes, however, that they failed to submit any evidence – such as statements of officers who had arrested the applicants' relative, or other witnesses to the incident – which could have confirmed that Zelimkhan Isayev had resisted arrest.

128. Moreover, the Government's unsupported allegation contradicts the applicants' submissions, as confirmed by the statement of the fourth applicant who had witnessed Zelimkhan Isayev's arrest, that he had not offered any resistance to the arresting officers.

129. Accordingly, the Court is not persuaded that Zelimkhan Isayev offered any resistance at the time of his arrest as claimed by the Government.

130. In so far as the Government appear to suggest, albeit very vaguely, that the applicants' relative might have offered resistance on the way from his house to the place of his detention (see paragraph 107 above), the Court cannot accept this submission as convincing in view of their failure to substantiate it with any evidence. The same holds true for the Government's allegation concerning the proportionality of the use of force against Zelimkhan Isayev.

131. The Court would further point out that not only have the Government failed to support their submissions with any evidence but that they refused to provide any documents from the criminal file opened into

the death of Zelimkhan Isayev, despite the Court's repeated requests. In so far as they relied in that respect on Article 161 of the CCP, it reiterates that in a number of cases it has already found this explanation insufficient to justify the withholding of key information requested by the Court (see, among many other authorities, *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-XIII (extracts)). It sees no reason to depart from those findings in the present case and considers that the Government's conduct justifies drawing inferences as to the well-foundedness of the applicants' allegations.

132. In sum, in the light of all the relevant circumstances, the Court considers that the Government have failed to provide any plausible or satisfactory explanation for the death of Zelimkhan Isayev and that their responsibility for his death is therefore engaged.

133. It finds therefore that there has been a violation of Article 2 of the Convention, under its substantive limb, in respect of Zelimkhan Isayev.

(b) Alleged failure to provide Zelimkhan Isayev with medical treatment

134. The applicants also claimed that the authorities had failed to provide their relative with prompt and adequate medical assistance.

135. Regard being had to its findings in paragraphs 122-133 above, the Court does not consider it necessary to examine this part of the applicants' submissions.

(c) The alleged inadequacy of the investigation into Zelimkhan Isayev's death

(i) General principles

136. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. The investigation must be, inter alia, thorough, impartial and careful (see, among other authorities, *McCann*, cited above, §§ 161-63, and *Kaya v. Turkey*, 19 February 1998, § 105, *Reports* 1998-I).

137. The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility (see *Carabulea*, cited above, § 128, with further references).

138. For an investigation into alleged unlawful killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events. The investigation must also be effective in the sense that it is capable of leading to the identification and punishment of

those responsible. This is not an obligation of result, but of means. The authorities must have taken 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. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling foul of this standard (see *Anguelova*, cited above, §§ 136-39, with further references, and *Ognyanova and Choban v. Bulgaria*, no. 46317/99, § 105, 23 February 2006).

139. A requirement of promptness and reasonable expedition is implicit in this context. 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 a use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *McKerr*, cited above, § 114, with further references).

140. For the same reason, 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, maintain public confidence in the authorities' adherence to the rule of law and prevent any appearance of collusion in, or tolerance of, unlawful acts. 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 ibid., § 115, and *Anguelova*, cited above, § 140, with further references).

(ii) Application of those principles to the present case

141. The Court notes at the outset that the Government refused to produce any of the documents from case file no. 34/00/0022-07 concerning the investigation into the death of Zeimkhan Isayev or the documents relating to the enquiries into those events conducted by the district prosecutor's office or the military prosecutor and leading to their decisions to refuse to launch criminal proceedings. It therefore has to assess the effectiveness of the investigation on the basis of the very sparse information submitted by the Government and the few documents available to the applicants that they provided to the Court.

142. Turning to the facts of the present case, the Court recalls that the authorities became aware of the death of the applicants' relative by 19 May 2004 at the latest and that they considered at that moment that the circumstances of his death warranted an inquiry (see paragraph 99 above). However, it is unable to discern from the text of the decision of 18 August 2004 what investigative steps the district prosecutor had taken before

deciding not to open a criminal case (see paragraph 50 above). Given the Government's refusal to furnish any documents relating to that inquiry or to the inquiry conducted by the military prosecutor and in the absence of a copy of the decision of 13 June 2004, the Court is prevented from assessing the scope of the authorities' reaction to the death of Zelimkhan Isayev at the material time.

143. In any event, having regard to the text of the decision of 18 August 2004 and the fact that the authorities decided to open an investigation into the circumstances of his death only in November 2007, that is more than three years after the events, the Court has strong doubts as to whether they can be regarded to have complied with the requirements of promptness and reasonable expedition, laid down in its case-law.

144. The Court further has to assess the scope of the investigative measures taken.

145. As it has noted above, it has no information on the investigative steps taken in the framework of the inquiries conducted by the district and military prosecutors. In the Government's submission, after the opening of the investigation the authorities carried out two medical examinations and a further medical examination was under way. They also claimed that the investigators had interviewed unspecified doctors. However, they produced no documents in support of their submissions and hence, not only is it impossible to establish when those measures were taken but whether they were taken at all (compare, for example, *Alapayevy v. Russia*, no. 39676/06, § 94, 3 June 2010).

146. In any event, assuming that those measures were carried out and considering the time that had elapsed since the death of Zelimkhan Isayev, it is clear from the Government's own submissions that the medical examinations, conducted more than three years after the events, were unable to establish either the means or the time of infliction of the injuries sustained by the applicants' relative (see paragraph 109 above).

147. Furthermore, it appears that a number of crucial investigative steps were never taken.

148. In the first place, there is no evidence that the investigating authorities conducted a post-mortem examination of Zelimkhan Isayev. The Court cannot but deplore this failure, for which the Government offered no explanation, because that investigative step was clearly indispensable not only to establish an accurate record of the injuries sustained by him but, more importantly, to determine, with the requisite precision and on the basis of objective clinical findings, the cause of his death.

149. Furthermore, there is no indication that the investigators interviewed the FSB officers who had participated in the applicants' relative's arrest or identified and interviewed other persons who had witnessed it, including the fourth applicant. It considers this failure particularly alarming, given that the authorities must have known which

FSB officers had participated in the operation aimed at Zelimkhan Isayev's arrest.

150. It likewise does not emerge from the materials available or the parties' submissions that any attempts have been made to identify and interview the State officials who had had access to Zelimkhan Isayev after his placement in custody, or his eventual fellow detainees.

151. Those omissions remained unexplained by the Government.

152. In the Court's opinion, the above-mentioned defects critically undermined the ability of the investigation to establish the relevant facts, as well as to identify and bring to justice the persons responsible.

153. It furthermore does not appear from the materials available to the Court that the authorities ever considered granting any of the applicants victim status in the proceedings initiated in connection with their relative's death. Nor did the Government contest the applicants' submission that they had not been provided with any information on the progress of the investigation. Accordingly, the Court has serious doubts that the investigators ensured that the investigation received the required level of public scrutiny to safeguard the interests of the next of kin in the proceedings (see *Oğur v. Turkey* [GC], no. 21594/93, § 92, ECHR 1999-III).

154. Having regard to the part of the Government's objection that was joined to the merits of the complaint, inasmuch as it concerned the fact that the domestic investigation is still pending, the Court notes that the investigation, plagued by inexplicable delays, has been ongoing for several years and has produced no tangible results. Moreover, owing to the time which had elapsed since the events complained of, certain investigative measures that ought to have been carried out much earlier could no longer be usefully conducted. Against this background the Court finds that the remedy relied on by the Government was ineffective in the circumstances and therefore rejects their objection.

155. In the light of the foregoing, the Court concludes that the authorities failed to carry out an effective investigation into the circumstances of Zelimkhan Isayev's death, in breach of Article 2 in its procedural aspect.

III. THE ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

156. The applicants complained under Article 3 of the Convention that Zelimkhan Isayev had been tortured by State agents before he died and that the authorities had not investigated his alleged ill-treatment, in breach of the procedural obligation arising from that provision. Article 3 reads:

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

A. Submissions by the parties

157. The Government argued that the investigation conducted by the domestic authorities had obtained no evidence that the applicants' relative had been subjected to treatment in breach of Article 3 of the Convention. In their submission, the investigation of the allegations concerning his ill-treatment satisfied the Convention requirements.

158. The applicants submitted, with reference to the medical documents they had furnished, that Zelimkhan Isayev had been ill-treated in breach of Article 3 of the Convention and that the treatment to which he had been subjected had amounted to torture. They also stated that there had been a breach of Article 3 in its procedural aspect on account of the authorities' failure to investigate their relative's torture.

B. The Court's assessment

1. Admissibility

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

2. Merits

160. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this level 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 *Ireland v. the United Kingdom*, cited above, § 162).

161. Where a person is injured while in detention or otherwise under the control of the police, any such injury will give rise to a strong presumption that the person was subjected to ill-treatment (see, among many other authorities, *Bursuc v. Romania*, no. 42066/98, § 80, 12 October 2004). Where an individual, when taken into police custody, is in good health, but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see *Tomasi v. France*, 27 August 1992, §§ 108-111, Series A no. 241-A).

162. Turning to the circumstances of the present case, the Court notes that it has already found that the Government have failed to provide a plausible explanation for the injuries sustained by Zelimkhan Isayev (see paragraphs 122-133 above).

163. It will further examine whether the treatment to which Zelimkhan Isayev had been subjected amounted to torture, as claimed by the applicants.

164. In this connection it has regard to the distinction, embodied in Article 3, between the notion of torture and that of inhuman or degrading treatment. As the Court held on numerous occasions, it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering. The Court has previously had before it cases in which it has found that there has been treatment which could only be described as torture (see *Aksoy*, cited above, § 64; *Aydin v. Germany*, no. 16637/07, §§ 83-84, 27 January 2011; *Selmouni v. France* [GC], no. 25803/94, §§ 94-96, ECHR 1999-V; and, more recently, *Maslova and Nalbandov v. Russia*, no. 839/02, §§ 106-08, ECHR 2008-... (extracts), and *Akulinin and Babich v. Russia*, no. 5742/02, § 44, 2 October 2008). The acts complained of were such as to arouse in the applicant feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and moral resistance.

165. The Court also reiterates its well-established case-law that in respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right enshrined in Article 3 of the Convention. It observes that the requirements of an investigation and the undeniable difficulties inherent in the fight against crime cannot justify placing limits on the protection to be afforded in respect of the physical integrity of individuals (see *Tomasi*, cited above, § 115, and *Ribitsch v. Austria*, 4 December 1995, §§ 38-40, Series A no. 336).

166. The Court finds that in the instant case the existence of physical pain and suffering is attested by the medical documents concerning Zelimkhan Isayev and furnished by the applicants (see paragraphs 36 and 37 above). It also considers that the ill-treatment inflicted upon Zelimkhan Isayev was particularly cruel and severe since it resulted in his death. Moreover, the sequence of the events suggests that the pain and suffering were inflicted on him intentionally, in particular, with a view to extracting from him information about his alleged connections to paramilitary groups active in the Chechen Republic.

167. In these circumstances, the Court concludes that, taken as a whole, the treatment to which the applicants' relative was subjected amounted to torture within the meaning of Article 3 of the Convention.

168. Accordingly, there has been a violation of Article 3 under its substantive limb.

169. As to the alleged inadequacy of the investigation, the Court refers to its findings in paragraphs 141-154 and to its conclusion in paragraph 155.

170. It finds, on the same grounds, that there has also been a violation of Article 3 under its procedural limb (see *Carabulea*, cited above, § 151).

IV. THE ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

171. The second, third and fourth applicants complained under Article 8 of the Convention about the unlawful search of their home carried out on 9 May 2004. Article 8 reads:

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

A. Submissions by the parties

172. The Government argued that the domestic investigation had obtained no evidence that the home of the second to fourth applicants had been searched on 9 May 2004. Moreover, the applicants provided no specific information in connection with that complaint, such as, who had searched the house and where, or whether anything had been discovered during the alleged search. Moreover, the applicants had not complained about the search to the authorities.

173. In the Government's submission, contrary to the applicants' assertion, the search in Zelimkhan Isayev's home was carried out on 10 May 2004. It had been authorised by a judge and had been conducted in accordance with all relevant legal requirements. The fact that the search had been conducted on that date was confirmed by a number of documents.

174. The applicants maintained their submissions and claimed that they had raised the issue before the authorities in their complaint about Zelimkhan Isayev's death.

B. The Court's assessment

175. The Government argued that the applicants had failed to exhaust the domestic remedies in respect of their complaint about the allegedly unlawful search of their home under Article 8 of the Convention. The applicants contested that submission.

176. The Court considers that it need not resolve this issue because it finds that the second to fourth applicants' complaint is in any event inadmissible for the following reasons.

177. It notes in the first place that, according to the applicants' submissions, the fourth applicant was the only person, apart from Zelimkhan Isayev, who had been present at 24 Sverdlova Street at the time of his arrest. The other applicants and T.I. had not been present. The Court further observes that, whilst in their application form the applicants claimed that the officers who had arrested Zelimkhan Isayev had also searched the entire house and the yard, in her written statement the fourth applicant stated only that the servicemen had searched her room, without mentioning any other parts of the house (see paragraphs 15 and 16 above). It is also noted that neither the written statement of T.I. nor the statements of any of the applicants, other than the fourth applicant, mentioned anything concerning the alleged search of the premises on 9 May 2004.

178. The Court further points out that, apart from stating that their house had been unlawfully searched on 9 May 2004, the applicants failed to provide any further details either in their complaint to the authorities (see paragraph 48 above) or in their application to the Court.

179. In sum, having regard to the applicants' submissions concerning the alleged search, the Court considers that they are not only vague but also contradictory in a number of important aspects.

180. In the light of the foregoing, it concludes that the applicants' complaint under Article 8 should be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

181. The applicants complained that they had had no effective domestic remedies against the above violations, contrary to 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."

A. Submissions by the parties

182. The Government submitted that the applicants had had effective remedies, as required by Article 13. In essence they reiterated their submissions relating to the applicants' failure to exhaust domestic remedies (see paragraphs 78-79 above).

183. The applicants maintained their complaint.

B. The Court's assessment

1. Admissibility

184. The Court notes that it has declared the applicants' complaint under Article 8 of the Convention inadmissible. It therefore considers that the applicants did not have an arguable claim of a violation of that Convention provision. Accordingly, their complaint under Article 13 that they had no effective remedies in relation to the complaint under Article 8 must be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and of the Convention (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131).

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

2. Merits

186. The Court reiterates that Article 13 of the Convention guarantees the availability at the 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. Given the fundamental importance of the right to protection of life, Article 13 requires, 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 for the deprivation of life and infliction of treatment contrary to Article 3, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *Anguelova*, cited above, §§ 161-162, ECHR 2002-IV, and *Süheyla Aydın v. Turkey*, no. 25660/94, § 206-07, 24 May 2005).

187. The Court also reiterates that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see *Orhan v. Turkey*, no. 25656/94, § 384, 18 June 2002).

188. Having regard to its findings above concerning Articles 2 and 3 of the Convention, the Court considers that these complaints are "arguable" for the purposes of Article 13 (see *Boyle and Rice*, cited above, § 52). Accordingly, the applicants should have been able to avail themselves of effective and practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation, for the purposes of Article 13.

189. However, in circumstances where, as here, the criminal investigation into suspicious deaths was ineffective in that it lacked

sufficient objectivity and thoroughness, and where the effectiveness of any other remedy that may have existed, including the civil remedies suggested by the Government, was consequently undermined, the Court finds that the State has failed in its obligation under Article 13 of the Convention (see *Khashiyev and Akayeva*, cited above, § 185, 24 February 2005; *Chitayev and Chitayev v. Russia*, no. 59334/00, § 202, 18 January 2007, and *Menesheva v. Russia*, no. 59261/00, § 76, ECHR 2006-III).

190. It follows that there has been a violation of Article 13 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

191. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

192. The applicants did not submit any claims for pecuniary damage. They claimed non-pecuniary damage for the suffering they had endured as a result of the loss of their relative and the authorities' failure to investigate his death and alleged ill-treatment, leaving the determination of its amount to the Court.

193. The Government submitted that, should the Court find a violation of the applicants' Convention rights, a finding of a violation would constitute sufficient just satisfaction.

194. The Court notes that it has found a violation of Articles 2, 3 and 13 of the Convention on account of the torture and death of the applicants' relative. It accepts therefore that the applicants must have suffered non-pecuniary damage which cannot be compensated for by findings of violations. Having regard to the particularly grave circumstances of the present case and the nature of the multiple violations found, it awards them 78,000 euros (EUR) jointly in respect of non-pecuniary damage, plus any tax that may be chargeable to them.

B. Costs and expenses

195. The applicants were represented by lawyers from the NGO EHRAC/Memorial Human Rights Centre. The aggregate claim in respect of costs and expenses related to the applicant's legal representation amounted to 1,783.7 pounds sterling (GBP), to be paid into the

representatives' account in the United Kingdom. The amount claimed was broken down as follows:

a) GBP 600 for six hours of legal drafting of documents submitted to the Court at a rate of GBP 100 per hour;

(b) GBP 1,008.7 for translation costs, and

(c) GBP 175 for administrative and postal costs.

196. The Government pointed out that the applicants should be entitled to the reimbursement of the costs and expenses only in so far as it had been shown that they had actually been incurred and were reasonable as to quantum (see *Skorobogatova v. Russia*, no. 33914/02, § 61, 1 December 2005). They further stated that Ms M., in respect of whose services the applicants claimed GBP 600, had not been mentioned in the authority form and it was doubtful whether consulting her could be considered "reasonable", given that the applicants were already represented by a number of EHRAC lawyers.

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

198. Having regard to the details of the information and legal representation contracts submitted by the applicants, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representatives, save in the case of Ms M., in respect of whose services the applicants failed to furnish any supporting documents.

199. As to whether the costs and expenses incurred for legal representation were necessary, the Court accepts that this case was rather complex and required a certain amount of research and preparation.

200. Having regard to the details of the claims submitted by the applicants and in so far as they were substantiated, the Court awards them the amount of EUR 1,481, together with any value-added tax that may be chargeable to the applicants, the net award to be paid into the representatives' bank account in the United Kingdom, as identified by the applicants.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies, in so far as that objection concerns the fact that criminal proceedings pertaining to the death and ill-treatment complaint are pending, and rejects it;

2. *Declares* the complaints under Articles 2, 3 and 13 of the Convention admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 2 of the Convention in respect of Zelimkhan Isayev's death;

4. *Holds* that there is no need to examine the complaint under Article 2 of the Convention concerning the alleged lack of medical treatment provided to Zelimkhan Isayev;

5. *Holds* that there has been a violation of Article 2 of the Convention in that the authorities failed to conduct an effective investigation into Zelimkhan Isayev's death;

6. *Holds* that there has been a violation of Article 3 of the Convention on account of the torture inflicted on Zelimkhan Isayev and the authorities' failure to investigate it;

7. *Holds* that there has been a violation of Article 13 of the Convention;

8. *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, to be converted into Russian roubles at the date of settlement, save in the case of the payment in respect of costs and expenses:

(i) EUR 78,000 (seventy-eight thousand euros) to the applicants jointly in respect of non-pecuniary damage, plus any tax that may be chargeable to them;

(ii) EUR 1,481 (one thousand four hundred and eighty-one euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representatives' bank account in the United Kingdom;

(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;

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

Done in English, and notified in writing on 21 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President