



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

THIRD SECTION

CASE OF TATAYEV AND OTHERS v. RUSSIA

(Applications nos. 51928/15 and 52867/15)

JUDGMENT

STRASBOURG

19 October 2021

This judgment is final but it may be subject to editorial revision.

In the case of Tatayev and Others v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Peeter Roosma, *President*,

Dmitry Dedov,

Andreas Zünd, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the applications (nos. 51928/15 and 52867/15) 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 Russian nationals, listed in the Appendix (“the applicants”), on 14 and 16 October 2015 respectively;

the decision to give notice to the Russian Government (“the Government”) of the complaints concerning Articles 2, 3 and 13 and declare inadmissible the remainder of the applications. The Government did not object to the examination of the application by a Committee.

the parties’ observations;

Having deliberated in private on 19 October 2021,

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

INTRODUCTION

1. The case concerns two unrelated incidents of attacks by State agents on the applicants and their relatives in the vicinity of the border between Ingushetia and Chechnya in February 2010 and March 2013 respectively and the authorities’ failure to investigate the matter effectively.

THE FACTS

2. The applicants were represented by lawyers from Stichting Russian Justice Initiative/Astreya NGOs, practising in Moscow.

3. The Government were represented initially by Mr M. Galperin, the Representative of the Russian Federation to the European Court of Human Rights, and lately by Mr M. Vinogradov, his successor in that office.

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

I. TATAYEV AND OTHERS v. RUSSIA (No. 51928/15)

5. The applicants reside in Achkhoy-Martan, Chechen Republic.

6. On 13 January 2017 the second applicant passed away. His son, Mr Rizvan Susayev, who was born in 1966 and who is also the brother of

Ramzan Susayev, on 15 January 2018 expressed his wish to pursue the proceedings in his stead before the Court.

A. The events of 11-13 February 2010

1. Background information

7. On 26 January 2010 the head of the Operational Headquarters of the National Counterterrorism Committee in Ingushetia (*оперативный штаб национального антитеррористического комитета*) ordered a large-scale counter-terrorist operation in the Sunzhenskiy district of the Republic, situated on the administrative border with Chechnya. The operation was to start at 9 a.m. on 27 January 2010 and be carried out after the imposition of a special regime for the counter-terrorist operation. No final date for the operation was specified.

8. At the beginning of February 2010 the residents of the Achkhoy-Martan district of Chechnya, which was adjacent to the Sunzhenskiy district in Ingushetia, obtained written permission from the head of the district administration to pick ramsons (wild garlic, a traditional source of seasonal earnings for local families) in the forest shared by the two districts near Arshty village (see paragraphs 24 below).

9. On the morning of 11 February 2010 about 200 residents of Achkhoy-Martan district drove to the forest in Ingushetia. There were no signs, markings or warnings or any other information concerning a special counter-terrorist operation in the vicinity.

10. At about 2.30 p.m. on 11 February 2010 the people picking ramsons heard shooting nearby and started to leave the forest. At the edge of the forest they saw buses and military vehicles with servicemen and police, who put them into the buses and ordered them to remain inside. When about 150 other pickers came out of the forest, the servicemen opened fire at the forest.

11. At about 8 p.m. the people in the buses were taken to Nesterovskaya police station in Ingushetia and fingerprinted.

12. On 13 February 2010, when the operation was over, the applicants and their relatives found the bodies of four ramson pickers with gunshot and splinter wounds. They were Mr Movsar Tatayev, Mr Shamil Katayev, Mr Ramzan Susayev and Mr Movsar Dokhayev. Mr Mayr-Ali Vakhayev never returned home and has been missing ever since. The fifth applicant, Mr Adlan Multayev, was wounded during the special operation.

13. The fifth applicant was taken to Achkhoy-Martan District Hospital on 13 February 2010, where it was established that he had a “perforating splinter wound of the left shin and a splinter wound in the left knee.” He was discharged from hospital on 24 February 2010.

2. The disappearance of Mr Mayr-Ali Vakhayev

14. According to fellow ramsons pickers, when Mr Vakhayev heard the shooting in the afternoon on 11 February 2010 he had decided to stay in the forest, hoping that he would have a better chance of survival.

15. Shortly after the special operation had ended, the fourth applicant went to the forest with the police to search for his brother, Mr Vakhayev, but to no avail. Shortly thereafter, he lodged a complaint regarding his brother's disappearance with the Sunzhenskiy district investigations department ("the investigators").

16. In support of their application, the applicants submitted copies of their statements to the authorities and of documents from the investigation file in the criminal cases opened in connection with the incident, including the results of forensic examinations of their relatives' bodies.

3. Information submitted by the Government

17. The Government submitted that on 11 February 2010 a special operation had been carried out in Arshty. As a result, four of the applicants' relatives, Mr Movsar Tatayev, Mr Shamil Katayev, Mr Ramzan Susayev, and Mr Movsar Dokhayev, had been killed.

18. The investigation found that "the administration informed the residents of nearby settlements that the regime of counter-terrorism operation had been introduced ..."

19. In reply to the Court's request for a copy of the investigation files in criminal cases which had been opened into the events of 11-13 February 2010, the Government furnished copies of part of the contents of criminal cases nos. 10600021 and 10600034, which ran to 444 pages in total. The information contained in the documents submitted, as well as those provided by the applicants, can be summarised as follows.

B. Official investigation into the events of 10-13 February 2010

1. Investigation into the killing of the applicants' relatives and the wounding of the fifth applicant

(a) Initial steps taken by the investigation

20. On 13 February 2010 the investigators opened criminal case no. 10600021 under Articles 317, 208 and 222 of the Russian Criminal Code (assault on law-enforcement officers, membership of an illegal armed group and unlawful possession of firearms). The decision stated the following:

"... on 11 February 2017, in the forest in the Sunzhenskiy district ... a group of members of illegal armed groups of at least fourteen persons made an attempt on the lives of servicemen of the Federal Security Service ... As a result of the armed clash,

which lasted until 12 February 2010, the fourteen unidentified persons received gunshot wounds from which they died on the spot.”

21. On 18 February 2010 the first and third applicants complained to the prosecutors in Chechnya and Ingushetia respectively stressing that the authorities had provided no information to residents about the special operation. The forest area had been neither cordoned off nor protected with any warning signs. After leaving the forest, the first applicant had told two Ingush police officers that the military servicemen should stop firing as about 100 to 120 ramson pickers remained in the forest, but to no avail. On the following day, 12 February 2010, they had learnt that four civilians had been killed, including their sons.

22. On unspecified dates in February or March 2010 the investigators examined the bodies of the applicants’ four relatives and ordered a forensic examination of the bullets and splinters of shell found in the bodies.

23. Also, in February or March 2010 the investigators questioned four local police officers, all of whom stated that on 11 February 2010 they had been dispatched to the area close to Arshty village but had not been allowed to enter the forest, as the Federal Security Service (FSB) officers from the central part of Russia had been conducting the special operation. On 12 February 2010, after the cordon had already been removed, they had found fourteen bodies, including those of the applicants’ four relatives.

24. In February or March 2010 the investigators obtained copies of the permission for ramsons picking issued by the Achkhoy-Martan village administration to Shamil Katayev and the fifth applicant.

25. Also, in February 2010 the investigators questioned the then head of the Ingushetia Government, who stated that on 7 or 8 February 2010 he had informed the head of the Sunzhenskiy district administration that a large-scale special operation was to be carried out there. Within twenty-four hours the latter had reported to him that residents of villages situated in the area on both sides of the administrative border had been informed.

26. The head of the Ingushetia Department of the FSB stated that on 7 or 8 February 2010 he had asked the Ingushetia Government to inform residents of the border area about the special operation.

27. On 1 March 2010 the investigators questioned an FSB officer who confirmed that between 11 and 12 February 2010 the FSB had carried out the special operation, as a result of which eighteen militants had been eliminated. As for the four civilians who had been killed during the operation, it remained undetermined whether they had indeed been civilians.

28. On various dates in March 2010 the investigators questioned the first, third, fourth and fifth applicants as well as the owner of the PAZ bus which transported the Achkhoy-Martan district residents for ramsons picking, whose statements concerning the circumstances of the special operation were similar to the applicants’ submissions to the Court.

29. On 23 April 2010 the forensic expert examination of the fifth applicant concluded that his gunshot wounds were classified as having caused “slight harm to health.”

(b) Refusal by the military investigators to investigate the incident

30. On 26 March 2010 the investigators severed part of the investigation file in criminal case no. 10600021 and sent it to the military investigative unit of the Tverskoy Garrison in the Tver Region (“the military investigators”) for further investigation.

31. On 30 May 2010 the military investigators refused to initiate a criminal investigation into the killing of the applicants’ relatives and the wounding of the fifth applicant for lack of *corpus delicti* in the actions of the FSB officers. According to the decision, the applicants’ four relatives and the fifth applicant had been about 40 to 50 metres from members of the illegal armed groups and they had been moving towards the FSB officers. Given that the operation had taken place in conditions of insufficient visibility, prior to opening fire it had been impossible to identify whether they were civilians or members of the illegal armed groups. In such circumstances, considering that the local population had been warned about the special operation, the opening of gunfire by the FSB officers had been justified. The applicants were not informed of that decision.

(c) Termination of the investigation in the criminal case

32. On 6 May 2010 the investigation in the criminal case was joined to the investigation of criminal case no. 10600038, opened on 16 March 2010 against a certain Mr B. who had fired at servicemen during the special operation but had managed to escape.

33. On 26 February 2014 the investigators obtained information that Mr B. had actually died on 22 June 2009 and therefore, on 28 February 2014 they terminated the investigation of criminal case no. 10600021. The applicants were not informed of that decision.

(d) Court complaints against the investigators

34. On 24 December 2013 the first, second and third applicants complained to the head of the investigators’ superiors that the investigation had been ineffective. The applicants requested access to the entire contents of the file in criminal case no. 10600021. They received no reply.

35. On 10 February 2014 the first and second applicants complained to the Magas District Court (“the District Court”) of ineffectiveness of the investigation and requested access to the file in criminal case no. 10600021. The outcome of the complaint is unknown.

36. Meanwhile, the investigation in the criminal case was terminated on 28 February 2014 (see paragraph 33 above), but the applicants were not informed thereof.

37. Nonetheless, on 2 March 2015 the applicants appealed to the District Court against the decision of 28 February 2014 to close the investigation.

38. On 10 March 2015 the District Court rejected the applicants' complaint as unsubstantiated and on 14 April 2015 the Supreme Court upheld the impugned decision on appeal.

2. Investigation into the disappearance of Mr Mayr-Ali Vakhayev

(a) Steps taken in the investigation

39. On 12 March 2010 the investigators opened criminal case no. 10600034 into the disappearance of Mr Mayr-Ali Vakhayev under Article 105 of the Criminal Code (murder).

40. In March and April 2010, the investigators questioned the fourth applicant and four local residents who had gone to pick ramsons on 11 February 2020.

41. On 10 November 2010 and then on 19 January 2012, the fourth applicant asked to have access to the entire contents of the investigation file. On 18 November 2010 and 24 January 2012, respectively, the investigators partially allowed his requests.

42. It appears that the investigation is still ongoing. The whereabouts of Mayr-Ali Vakhayev have not been established.

(b) Appeals against the investigators' actions

43. On 8 April 2013 the fourth applicant complained to Sunzhenskiy District Court (the District Court) that the investigation was ineffective.

44. On 26 September 2013 the District Court left the complaint without examination as the criminal case file had been transferred to another department, one located in Magas.

45. On 15 January 2014 the fourth applicant lodged a similar complaint with Magas District Court, which left it without examination as, on 24 January 2014, the investigators had partially allowed the applicants' request of 19 January 2012 (see paragraph 41 above).

II. GAYSULTANOV AND OTHERS v. RUSSIA (No. 52867/15)

46. The applicants reside in Achkhoy-Martan, Chechen Republic.

A. The events of 10 March 2013

1. Killing of Mr Usman Gaysultanov and wounding of the third applicant

47. At the beginning of March 2013, law enforcement agencies and military servicemen conducted a special operation “Barrier 2013” (in the documents submitted also referred to as military manoeuvres) aimed at arresting members of illegal armed groups hiding in the forests on the administrative border of Ingushetia and Chechnya.

48. According to the applicants, residents of the surrounding area were not informed about the operation. No warning announcements prohibiting or limiting access to the forest were made, and no other steps were taken to warn residents.

49. At about 5.30 a.m. on 10 March 2013 the first and second applicants’ sons, Usman and Mayrbek Gaysultanov, the third applicant and eleven other residents of Achkhoy-Martan boarded a URAL lorry to go to Bamut village – in the Sunzhenskiy district of the Ingushetia Republic on the border with Chechnya – to pick ramsons. There were no warning signs or markings around the area and no information concerning a special operation in the vicinity of the forest. On the way to the forest the lorry passed through a stationary checkpoint without being stopped.

50. At about 8.40 a.m., whilst picking ramsons in the forest, the three men were subjected to half an hour of mortar fire, during which time a total of about sixty projectiles exploded in that area. Usman Gaysultanov was severely wounded by one of the projectiles and both of his legs were torn off. The third applicant received serious injuries to the lower part of his body.

51. As soon as the pickers were able to leave the forest, they went to Bamut village, Chechnya, from where Usman Gaysultanov was taken to a hospital in Grozny and the third applicant to a hospital in Urus-Martan. On the following day, Mr Gaysultanov died in hospital.

2. Information submitted by the Government

52. The Government submitted that on 10 March 2013 a special operation had been carried out in the Achkhoy-Martan district in Chechnya, during which shelling at targets had been employed. As a result of the operation, Mr Gaysultanov and the third applicant, who had happened to be in the area due to their own negligence, had been wounded. Mr Gaysultanov had died from the wounds sustained shortly thereafter.

53. The investigation into the events established that “the local administration and the police informed the local residents about the [military] manoeuvres and the security measures to be taken in this connection ...”

54. In reply to the Court's request for a copy of the investigation file in the criminal case which had been opened into the events of 10 March 2013, the Government refused to submit such copy, stating that the file was classified. Instead, they provided a list enumerating the steps taken by the investigators within the framework of criminal case no. 14/90/0017-13. The information submitted by the parties can be summarised as follows.

B. The investigation of the incident

1. Opening of the criminal case

55. On 10 March 2013 the applicants complained to the Achkhoy-Martan department of the interior (the police) about the death of Usman Gaysultanov and wounding of the third applicant. They stated that no advance warnings of the operation had been made to the residents and that the area had neither been marked nor cordoned off.

56. On 12 March 2013 the applicants were informed that their complaint had been forwarded to the 505th military investigations unit in Khankala, Chechnya, which on 8 April returned the complaint to the Achkhoy-Martan police for lack of evidence of the military servicemen's involvement in the incident. However, on 27 May 2013 the police returned the complaint to the military investigators (see paragraph 59 below).

57. On 15 April 2013 the first applicant complained to the Chechnya prosecutor that the police had failed to examine the crime scene and collect fragments of the shells as evidence, which would have been crucial evidence in establishing from which weapons the projectiles had been launched.

58. On 24 February 2014 a preliminary inquiry was initiated into the failure of the local police to warn the population about the special operation (see paragraph 63 below). The outcome of those proceedings is unknown.

2. The investigation in criminal case no. 14/90/0017-13

59. On 26 June 2013 the 3rd military investigations unit of the investigations committee of the Southern military circuit ("the military investigators") opened criminal case no. 14/90/0017-13 under Articles 109 (causing death by negligence) and 118 (causing serious bodily harm by negligence). The case file was classified.

60. On 26 June 2013 (in the documents submitted the date was also cited as 26 June 2014) the first applicant was granted victim status and questioned. His statement was similar to the applicants' submission before the Court.

61. On 14 July 2013 the forensic experts examined the third applicant's injuries on the basis of his medical records and classified his wounds as "severe bodily injuries".

62. On 7 December 2013 the military investigators ordered a complex service combat expert evaluation (*комплексная служебно-боевая экспертиза*) covering the general regulations, the use of artillery during a special operation and the appropriate actions to be taken by officials. None of the questions put by the investigators before the experts pertained to the circumstances of the special operation of 10 March 2013.

63. On 26 February 2014 the military investigators decided to terminate the investigation in the criminal case for lack of *corpus delicti* in the actions of the military servicemen. The decision also stated the following:

“[...] the death of U. Gaysultanov and causing of serious injuries to [the third applicant] were the result of their own negligence, as they had ignored the warning about the special operation and had gone to the vicinity thereof, and the improperly executed responsibilities of the officials of the Achkhoy-Martan administration and the police who had carried out the notification of local residents of the operation and the cordoning off of its area.

The case file materials concerning the officials of the Achkhoy-Martan district police department have been transferred into a separate file and forwarded to the Achkhoy-Martan inter-district investigations department of the Investigations Committee [...]

64. On 12 December 2014, in reply to their request of 5 December 2014, the applicants were provided with “a summary note” (*выписка*) describing the above decision. The entire text of the decision, as well as the rest of the contents of the criminal case file, was classified and therefore could not be divulged to the applicants.

3. *The appeals against the termination of the criminal case*

65. On 28 January 2015 the applicants lodged an appeal against the aforementioned decision before the Grozny Garrison Military Court. They stated, amongst other things, that the residents had not been warned about the special operation and that this allegation had been confirmed by the fact that the case file materials concerning the opening of an inquiry against the local administration and the police for their failure to warn the population had been transferred into a separate file. In addition, the checkpoint on the way to the vicinity of the special operation had not stopped the pickers’ lorry. The applicants stressed that the investigation had been ineffective and requested that it be re-initiated.

66. On 17 February 2015 the Grozny Garrison Military Court rejected the applicants’ appeal as unsubstantiated. That decision was upheld by the North-Caucasus Circuit Military Court on appeal.

RELEVANT LEGAL FRAMEWORK

67. For a summary of relevant domestic law and international regulations see *Abakarova v. Russia* (no. 16664/07, §§ 59-70, 15 October

2015), and *Tagayeva and Others v Russia* (no. 26562/07, et.al. §§ 457-72, 13 April 2017).

THE LAW

I. JOINDER OF THE APPLICATIONS

68. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

69. The applicants complained that their relatives had been killed and gone missing and that the fifth applicant in *Tatayev and Others* (no. 51928/15) and the third applicant in *Gaysultanov and Others* (no. 52867/15) had been wounded as a result of the unjustified use of force by State agents and that the authorities had failed to investigate the matter effectively. They referred to Article 2 of the Convention, which reads as follows:

“1. Everyone’s right to life shall be protected by law ...”

A. Admissibility

1. *The parties’ submissions*

70. The Government submitted in *Tatayev and Others* (no. 51928/15) that the complaint in respect of Mr Vakhayev’s disappearance was lodged out of time.

71. As to *Gaysultanov and Others* (no. 52867/15), the Government stated that the applicants should have claimed civil damages.

72. The applicants maintained their complaints.

2. *The Court’s assessment*

73. In *Tatayev and Others* (no. 51928/15) the investigation into Mr Vakhayev’s disappearance had been ongoing for about five and a half years prior to the lodging of the application with the Court. The applicants’ relatives complained to the authorities shortly after the disappearance and provided detailed statements to the investigators (see paragraphs 28 and 40 above). Between 2010 and 2015 the applicants made requests asking for access to the case file and in reply, they were provided with very limited access to its contents and were not informed of decisions taken by the investigators (see paragraph 41 above). Furthermore, the applicants challenged the investigators’ action before the domestic courts (see paragraphs 43-45 above).

74. Considering the overall time frame for lodging of the application (see *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 165, ECHR 2009), along with the applicants' stance in the criminal proceedings, the Court finds that the applicants in *Tatayev and Others* (no. 51928/15) complied with the admissibility criteria (contrast *Doshuyeva and Yusupov v. Russia* (dec.), no. 58055/10) and the Government's objection in this regard is dismissed.

75. As for *Gaysultanov and Others* (no. 52867/15), the Court reiterates that a civil claim for damages alone cannot be regarded as an effective remedy where the applicants complain about unlawful use of force by State agents (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-21, 24 February 2005). Accordingly, the Government's objection in this regard in *Gaysultanov and Others* (no. 52867/15) is also dismissed.

76. The Court notes that the applicants' complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. Alleged violation of the substantive aspect of Article 2 of the Convention

(a) The parties' submissions

77. The applicants stressed that the use of force during the special operations had been unjustified. Also, in *Tatayev and Others* (no. 51928/15), State agents were responsible for the disappearance of Mr Vakhayev.

78. The Government submitted that the residents had been warned in advance about the special operations and the victims themselves had ignored those warnings.

79. The Government submitted in general terms that the use of force during the special operations had been justified as the victims had been in close proximity to the members of illegal armed groups.

(b) The Court's assessment

80. The Court, in making its assessment of the use of force which may result in the deprivation of life, must take into consideration not only the actions of the State agents who actually administer the force, but also the planning and control of the actions under examination and whether an operation was planned and carried out so as to minimise to the greatest extent possible recourse to lethal force or incidental loss of life (see *Tagayeva and Others*, cited above, §§ 562-63).

(i) Whether the use of lethal force during the special operations was justified

81. According to the Government, the victims had been in proximity to the members of illegal armed groups which had precluded the State agents from assessing the situation appropriately when using lethal force.

82. The applicants submitted that the Government's contention was completely unsubstantiated. The ransom pickers had been unarmed and in civilian clothing and the actual circumstances of the incident had not been elucidated. A number of witness statements directly contradicted the version advanced by the implicated law-enforcement officers (see paragraphs 23, 27- 31 and 65 above).

83. The Court observes that the Government's statement in respect of both applications is generally worded and non-specific (see paragraph 79 above). It provides no explanations concerning the planning and control of the special operations, no information on the actions of the State agents who had actually administered the lethal force and no material on the legal or regulatory framework in place. Most importantly, it contains no conclusive information about the way the local residents had been informed about the carrying out of the special operations and about the measures taken by the authorities to prevent unauthorised civilian access to the area. The fragmented information in this regard indicates, to the contrary, that this aspect of the operations, clearly raised by the applicants (see paragraphs 21, 24 and 55 as examples), had not been pursued in any way.

84. The lack of a detailed information about the exact sequence of the events and the partial contents of the investigation case files (see paragraphs 19 and 54 above) do not allow the Court to accept the Government's version that the operations had been planned and controlled by the authorities so as to minimise, to the greatest extent possible, recourse to lethal force and that appropriate care had been taken to ensure that any risk to life was minimised.

85. In the same vein, the Court cannot accept that the undisputed use of lethal force against the victims has been no more than "absolute necessity". Therefore, the Court cannot accept the Government's justification put forward for the use of lethal force in the circumstances of the present case (see, for a similar situation, *Khatsiyeva and Others v. Russia*, no. 5108/02, §§ 129-39, 17 January 2008, and *Tagayeva and Others*, cited above, §§ 601 and 609).

(ii) Whether Mr Mayr-Ali Vakhayev can be presumed dead

86. Mr Vakhayev was last seen on 11 February 2010 during the special operation in the forest, with the other ramson pickers. According to the applicants, he was killed by law-enforcement officers who carried out the special operation.

87. The Government advanced neither a clarification nor an alternative version of the events pertaining to the faith of Mr Vakhayev during and after the operation. Given the lack of any explanation on the part of the Government and, therefore, their failure to discharge the burden of proof (see, for example, *Alikhanov v. Russia*, no. 17054/06, § 71, 28 August 2018), the Court finds that it can be presumed that Mayr-Ali Vakhayev was killed by State agents carrying out the special operation.

88. In the absence of any submission to the contrary put forward by the Government, the Court finds that the death of Mr Vakhayev can be attributed to the State.

(iii) Conclusion

89. In view of its findings concerning the planning and control of the operation and the justification for the use of lethal force (see paragraphs 85 and 88 above), the Court does not find it necessary to examine whether the authorities took all necessary measures to avoid risk to life.

90. There has accordingly been a violation of Article 2 of the Convention under its substantive limb in respect of Mr Movsar Tatayev, Mr Shamil Katayev, Mr Ramzan Susayev and Mr Movsar Dokhayev, Mr Mayr-Ali Vakhayev and the fifth applicant in *Tatayev and Others* (no. 51928/15), and in respect of Mr Usman Gaysultanov and the third applicant in *Gaysultanov and Others* (no. 52867/15).

2. Alleged violation of the procedural aspect of Article 2 of the Convention

(a) The parties' submissions

91. The applicants insisted that the investigations had been ineffective. In particular, in *Tatayev and Others* (no. 51928/15) no steps were taken to establish the location of the ransom pickers, the members of the illegal armed group and the FSB officers during the gunfire and to determine whether the weapons of the FSB officers had been used to open fire on the victims, as those weapons had not been subjected to forensic expert examination. The investigation into the disappearance of Mr Vakhayev failed to question either his fellow ransom pickers or the officers who had participated in the special operation.

92. In *Gaysultanov and Others* (no. 52867/15), the investigation had been opened more than three months after the incident. Neither the crime scene examination nor medical examination of Mr Gaysultanov's body or the third applicant had been carried out. Furthermore, the servicemen from the checkpoint through which the lorry had passed on the date of the special operation had neither been identified, nor questioned. The classified status of the criminal case file precluded the applicants from having any

information on the progress in the investigation. The Government failed to provide the Court with a copy of the entire contents of the criminal case file.

93. The Government submitted that the investigation into the circumstances of both incidents complied with the requirements of Article 2 of the Convention.

(b) The Court's assessment

94. For a summary of the relevant principles, see *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 234, 30 March 2016, and *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 225, 14 April 2015.

95. The Government submitted only a part of the contents of the investigation files in *Tatayev and Others* (no. 51928/15) and none of the contents of the investigation file in *Gaysultanov and Others* (no. 52867/15) (see paragraphs 19 and 54 above). However, regard being had to the materials provided by the applicants, the Court considers that it is not precluded by the lack of certain documents from examining on the merits the issues raised in the applications.

(i) Tatayev and Others (no. 51928/15)

- (α) The investigation into the killing of the applicants' relatives and the wounding of the fifth applicant

96. The Court observes that the investigation into the incident failed to establish the key circumstances surrounding the attack on the victims. For instance, no steps were taken to identify how many officers and from which law enforcement agencies had participated in the special operation (see paragraphs 23 and 27 above) and what had been their chain of command, and to obtain their statements. The investigators failed to establish the exact number of individuals killed during the special operation and on what date between 10 and 13 February they had been killed (see paragraphs 20, 23, 27 and 28 above). The investigators took no steps to establish the location of the ransom pickers in relation to that of the FSB officers during the gunfire. No steps were taken to determine whose firearms had been used to open fire on the victims and whose bullets had hit them. The firearms used by the officers during the special operation had not been subjected to forensic examination. No steps were taken to obtain the officers' statements to establish their individual involvement in the operation. Most importantly, no steps were taken to elucidate the differences between the applicants' and other residents' statements concerning the circumstances of the incident (see paragraph 28 above as example) and those given by the implicated officers (see paragraphs 23 and 27 above).

97. Having established that the investigation fell short of such essential requirements as the adequacy of the investigative measures, the promptness

and reasonable expedition, the Court does not find it necessary to examine the involvement of the victims' families in the criminal proceedings and independence of the investigation. The Court, therefore, concludes that the investigation into the killing of the applicants' relatives and the wounding of the fifth applicant failed to meet the Convention standards of effectiveness.

(β) The investigation into the disappearance of Mr Vakhayev

98. Similar to a number of cases reviewed by the Court concerning disappearances and killings perpetrated during special operations in Chechnya and Ingushetia between 2009 and 2012 (see, among many examples, *Albakova v. Russia*, no. 69842/10, §§ 59-63, 15 January 2015, *Gaysanova v. Russia*, no. 62235/09, §§ 133-34, 12 May 2016), the investigation in the present case has been pending for a number of years without bringing about any significant developments as to establishing either the identity of the perpetrators or the fate of Mr Vakhayev. The Court notes that the investigation into his disappearance has been plagued by a combination of flaws similar to those enumerated in the judgments referred to above. For instance, the investigation was only opened one month after the disappearance (see paragraphs 15 and 39 above) and neither the crime scene examination nor a thorough search for Mr Vakhayev or his body had been carried out in the forest; no timely and thorough measures were taken to question the law-enforcement officers about his possible whereabouts during and after the events in question, while they were questioned about the special operation (see paragraphs 23 and 27 above). A number of witnesses who had been in the forest with Mr Vakhayev shortly before his disappearance were not questioned (see paragraph 40 above), neither were the police officers who had participated in the operation (see paragraph 27 above).

99. In the light of the foregoing, and keeping in mind its findings in paragraph 97 concerning the investigation into the circumstances surrounding the killing of the applicants' relatives and the wounding of the fifth applicant, the Court finds that the investigation into the disappearance and death of Mr Mayr-Ali Vakhayev also fell below the Convention standards.

(ii) *Gaysultanov and Others* (no. 52867/15)

100. The investigation into the death of Usman Gaysultanov and the wounding of the third applicant was opened, despite the applicants' prompt and detailed complaints (see paragraph 55 above), only in three and half months after the incident (see paragraph 59 above). From the very beginning of the investigation the case file was classified, and the applicants had no access to its contents and were not provided with the text of the decision to terminate the criminal case (see paragraph 64-65 above).

However, from the extract it transpired that the investigators had grounds to suspect the failure of the local police to inform the residents of the special operation and that they had ordered an inquiry into the matter (see paragraph 63 above). Neither the applicants nor the Court were informed of its outcome.

101. Further, the documents submitted show that neither the crime scene examination nor identification and questioning of the servicemen who had opened the fire and the servicemen who had manned the checkpoint were carried out (see paragraph 65 above). Furthermore, the expert examination on the use of fire, commissioned in half year after the opening of the criminal case and in nine months after the incident (see paragraph 62 above) failed to provide any information relevant to establishing the circumstances of the use of lethal force.

102. Given the above, the Court finds that that the investigation into the events surrounding the killing of Mr Gaysultanov and the wounding of the third applicant failed to comply with the requirements of adequacy, the promptness and reasonable expedition, as well as that of the involvement of the applicants in the proceedings. Considering those shortcomings, the Court does not find it necessary to examine the issue of independence of the investigation.

(iii) Conclusion

103. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into circumstances surrounding the death of Mr Movsar Tatayev, Mr Shamil Katayev, Mr Ramzan Susayev and Mr Movsar Dokhayev, the disappearance of Mr Mayr-Ali Vakhayev and the wounding of the fifth applicant in *Tatayev and Others* (no. 51928/15), as well as the circumstances surrounding the death of Mr Usman Gaysultanov and the wounding of the third applicant in *Gaysultanov and Others* (no. 52867/15). Accordingly, there has been a violation of Article 2 of the Convention under its procedural limb.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

104. The fourth and seventh applicants in *Tatayev and Others* (no. 51928/15) relied on Article 3 of the Convention, submitting that as a result of the disappearance of their brother, Mr Mayr-Ali Vakhayev, and the State's failure to investigate it properly, they had endured mental suffering in breach of Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. Admissibility

105. The Court notes that the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

106. The Court notes that, for a number of years, the applicants had neither any news of their missing brother Mayr-Ali Vakhayev nor any plausible explanation or reliable information about what had become of him following his disappearance during the special operation on 11 February 2010 (see *Imakayeva v. Russia*, no. 7615/02, § 164, 9 November 2006). The Court's findings under the procedural aspect of Article 2 are also of direct relevance here (see paragraph 103 above).

107. The Court therefore concludes that there has been a violation of Article 3 of the Convention in respect of the fourth and seventh applicants in *Tatayev and Others* (no. 51928/15).

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

108. The applicants complained under Article 13 that they had been deprived of effective remedies in respect of their complaints under Article 2 of the Convention. In addition, in *Tatayev and Others* (no. 51928/15) the applicants also complained of the lack of effective domestic remedies in respect of their complaint under Article 3 of the Convention. Article 13 reads:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority ...”

109. Having regard to the findings under the procedural limb of Article 2 of the Convention (see paragraph 103 above), the Court considers that it is not necessary to examine separately whether there has been a violation of Article 13 taken in conjunction with Article 2 of the Convention (see *Satybalova and Others v. Russia*, no. 79947/12, § 94, 30 June 2020), and Article 3 of the Convention in *Tatayev and Others* (no. 51928/15) (see *Georgia v. Russia (II)* [GC] (merits), no. 38263/08, § 340, 21 January 2021).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

110. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, ... the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

111. The applicants claimed compensation for pecuniary and non-pecuniary damage in the amounts indicated in the Appendix. Their pecuniary damage calculations were based on the provisions of the Russian Civil Code, the subsistence level and the Ogden Actuarial Tables. As for non-pecuniary damage, the applicants left the determination of the amounts to the Court.

112. The Government submitted that the claims for pecuniary damage should be rejected as unsubstantiated and pointed out that there was domestic machinery for compensation for loss of the breadwinner. As for the award for non-pecuniary damage, it should be in line with the relevant case-law.

113. The Court reiterates that there must be a clear causal connection between the damages claimed by the applicants and the violation of the Convention and that this may, where appropriate, include compensation for loss of earnings applicable to spouses, elderly parents and minor children (see, among other authorities, *Imakayeva v. Russia*, no. 7615/02, § 213, ECHR 2006-XIII (extracts)).

114. In the light of the foregoing conclusions, the principles enumerated above and the parties' submissions, the Court awards the amounts indicated in the Appendix.

B. Costs and expenses

115. The applicants were represented by lawyers from SRJI/Astreya. In *Tatayev and Others* (no. 51928/15) they claimed a total of 9,597 euros (EUR) and in *Gaysultanov and Others* (no. 52867/15) a total of EUR 6,238 for costs and expenses. They enclosed contracts for legal representation and relevant invoices.

116. The Government submitted that the amounts claimed were unreasonable.

117. The Court considers it reasonable to award the sum of EUR 3,500 to the applicants in *Tatayev and Others* (no. 51928/15) and EUR 2,500 in *Gaysultanov and Others* (no. 52867/15) to cover costs under all heads. The award is to be paid into the representative's bank account as specified by the applicants.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 2 of the Convention under its substantive limb in respect of persons enumerated in paragraph 90 of the judgment ;
4. *Holds* that there has been a violation of Article 2 of the Convention under its procedural limb;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the fourth and seventh applicants in *Tatayev and Others* (no. 51928/15);
6. *Holds* that it is not necessary to examine separately the applicants' complaint under Article 13 of the Convention in conjunction with Article 2 and the complaint of the applicants in *Tatayev and Others* (no. 51928/15) under Article 13 in conjunction with Article 3 of the Convention;
7. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months, the following amounts:
 - (i) the amounts indicated in the Appendix in respect of pecuniary and non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable on those amounts;
 - (ii) EUR 3,500 (three thousand five hundred euros) to the applicants in *Tatayev and Others* (no. 51928/15), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representative's bank account as specified by the applicants;
 - (iii) EUR 2,500 (two thousand five hundred euros) to the applicants in *Gaysultanov and Others* (no. 52867/15), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representative's bank account as specified by the applicants;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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8. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 19 October 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Peeter Roosma
President

APPENDIX

Application name and number	Applicant's name Year of birth Kinship with dead/missing person	Compensation for pecuniary and non-pecuniary damage sought by the applicant	Just satisfaction awarded by the Court
Tatayev and Others v. Russia No. 51928/15	1) Mr Said-Khamzat (also written Saidkhamzat) Tatayev, 1958, father of Mr Movsar Tatayev, who was born in 1988, and uncle of Mr Shamil Katayev, who was born in 1991, both killed on 11 February 2010	Non-pecuniary damage: in an amount to be determined by the Court Pecuniary damage: 1,027,691 roubles (RUB) (about 14,900 euros (EUR))	Non-pecuniary damage: EUR 60,000 (sixty thousand euros) to the first and sixth applicants jointly and EUR 60,000 (sixty thousand euros) to the first applicant; Pecuniary damage: EUR 4,000 (four thousand euros) to the first applicant
	2) Mr Lecha Susayev, 1934 (died in 2017), succeeded by his son Mr Rizvan Susayev, father of Mr Ramzan Susayev, who was born in 1969 and killed on 11 February 2010	Non-pecuniary damage: in an amount to be determined by the Court	Non-pecuniary damage: EUR 60,000 (sixty thousand euros) to the second applicant. The award should be paid to his heir, Mr Rizvan Susayev, 1966
	3) Ms Novdash Bakharchiyeva, 1971, mother of Mr Movsar Dokhayev, who was born in 1992 and killed on 11 February 2010	Non-pecuniary damage: in an amount to be determined by the Court Pecuniary damage: RUB 1,264,183 (about EUR 18,300)	Non-pecuniary damage: EUR 60,000 (sixty thousand euros) to the third applicant Pecuniary damage: EUR 5,000 (five thousand euros) to the third applicant

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	4) Mr Ali Vakhayev, 1959, brother of Mr Mayr-Ali Vakhayev, who was born in 1966 and disappeared on 11 February 2010	Non-pecuniary damage: in an amount to be determined by the Court	Non-pecuniary damage: EUR 60,000 (sixty thousand euros) to the fourth and seventh applicants jointly
	5) Mr Adlan Multayev, 1993, wounded on 11 February 2010	Non-pecuniary damage: in an amount to be determined by the Court	Non-pecuniary damage: EUR 16,300 (sixteen thousand three hundred euros) to the fifth applicant
	6) Ms Yakha Tatayeva, 1958, mother of Mr Movsar Tatayev,	Non-pecuniary damage: in an amount to be determined by the Court Pecuniary damage: RUB 1,118,774 (about EUR 16,200)	Non-pecuniary damage: See the award for the first applicant Pecuniary damage: EUR 5,000 (five thousand euros) to the sixth applicant
	7) Ms Malika Vakhayeva, 1963, sister of Mr Mayr-Ali Vakhayev	Non-pecuniary damage: in an amount to be determined by the Court Pecuniary damage: RUB 1,022,265 (about EUR 14,800)	Non-pecuniary damage: See the award for the fourth applicant Pecuniary damage: EUR 1,000 (one thousand euros) to the seventh applicant
Gaysultanov and Others v. Russia No. 52867/15	1) Mr Rezvan Gaysultanov, 1958, father of Mr Usman Gaysultanov, who was born in 1994 and killed on 10 March 2013	Non-pecuniary damage: in an amount to be determined by the Court	Non-pecuniary damage: EUR 60,000 (sixty thousand euros) to the first and second applicants jointly

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		Pecuniary damage: RUB 1,585,750 (about EUR 23,000)	Pecuniary damage: EUR 6,000 (six thousand euros) to the first applicant
	2) Ms Berlant Dashuyeva, 1963, mother of Mr Usman Gaysultanov	Non-pecuniary damage: in an amount to be determined by the Court Pecuniary damage: RUB 2,073,527 (about EUR 30,050)	Non-pecuniary damage: See the award for the first applicant Pecuniary damage: EUR 6,000 (six thousand euros) to the second applicant
	3) Mr Movsar Demayev, 1961, wounded on 10 March 2013	Non-pecuniary damage: in an amount to be determined by the Court Pecuniary damage: RUB 2,195,665 (about EUR 31,800)	Non-pecuniary damage: EUR 40,000 (forty thousand euros) to the third applicant Pecuniary damage: EUR 10,000 (ten thousand euros) to the third applicant