



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

THIRD SECTION

CASE OF KHAYAURI AND OTHERS v. RUSSIA

(Applications nos. 33862/17 and 2 others – see appended list)

JUDGMENT

Art 2 (procedural and substantive) • Ineffective investigation into the killing of the applicants' relatives at a university campus as a result of a special operation by State agents • Domestic authorities' repeated refusals to open a criminal investigation into applicants' credible allegations • Use of lethal force not absolutely necessary

STRASBOURG

19 October 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Khayauri and Others v. Russia,

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

Georges Ravarani, *President*,

Georgios A. Serghides,

Dmitry Dedov,

María Elósegui,

Anja Seibert-Fohr,

Peeter Roosma,

Frédéric Krenc, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the applications (nos. 33862/17, 83040/17 and 83409/17; the dates on which they were lodged with the Court and the applicants' personal details are listed in the appended table) 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");

the decision to give notice to the Russian Government ("the Government") of the complaints concerning Articles 2 and 13 of the Convention and to declare inadmissible the remainder of the applications;

the parties' observations;

Having deliberated in private on 21 September 2021,

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

INTRODUCTION

1. The applicants alleged that their relatives had been killed by State agents at a university campus in a botched security operation and that no effective investigation into the matter had taken place.

THE FACTS

2. The applicants are Russian nationals who live in the Republic of Ingushetia, Russia. They are close relatives of Mr Magomed Khayauri, who was born in 1991, Mr Islam Tachiyev (also spelt as Tochiyev), who was born in 1992, and Mr Artur Karsamauli, who was born in 1986.

3. The applicants were represented by the NGO Materi Chechni, which is based in Grozny. The Russian Government ("the Government") were represented initially by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

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

I. DEATHS OF THE APPLICANTS' RELATIVES

5. At the material time, the applicants' relatives Magomed Khayauri and Islam Tachiyev were studying at universities in Moscow, and Artur Karsamauli was working in Moscow. By 27 July 2012 they had all returned to Ingushetia to visit their relatives for the summer holidays.

6. On the evening on 28 July 2012 the three young men were sitting on a bench on the campus of the Ingushetia State University in Demchenko St. in Ordzhonikidzevskaya (as of 2016 named Sunzha) in Ingushetia, awaiting the time for service at the mosque.

7. At about 10 p.m. several officers of the Federal Security Service ("the FSB") opened fire on the three young men and killed all of them. Mr Khayauri received numerous gunshot wounds to the head and the torso and died instantly. According to the applicants, Mr Karsamauli and Mr Tachiyev were wounded and on the ground when the officers killed them with execution-style shots to their heads.

8. Shortly after the shooting the crime scene was examined and several pieces of evidence were found, including a pistol next to Islam Tachiyev's right hand.

9. According to the applicants, the three young men were unarmed; the FSB officers planted the firearms at the scene shortly after the shooting.

10. The Government argued, without referring to the details of the special operation, that the use of force by the FSB officers against the three young men had been justified and that Islam Tachiyev and Artur Karsamauli had not been killed by point-blank shots to the heads, but had died from wounds from shots fired at a distance.

II. INVESTIGATION INTO THE INCIDENT

A. Criminal case against the dead men

1. Main steps taken within the framework of criminal case no. 1200068

11. On 29 July 2012 the Sunzhenskiy district investigative committee ("the investigators") opened criminal case no. 1200068 against Magomed Khayauri, Artur Karsamauli and Islam Tachiyev under Articles 222 (unlawful possession of firearms) and 317 (attempt on the life of a law-enforcement officer) of the Criminal Code.

12. On the same date, the investigators examined the crime scene and collected two Kalashnikov machine guns, three pistols (in the documents submitted the number of pistols was also referred to as two), a number of bullets and cartridges.

13. On the same date, the investigators also ordered a forensic examination of the bodies of the three young men. According to its conclusions issued on 27 and 28 August 2012, the body of Islam Tachiyev had several gunshot wounds to the head and torso; the cause of his death

was the gunshot wounds to the chest and the stomach. The body of Artur Karsmauli had several gunshot wounds to the torso, which had caused his death. The body of Magomed Khayauri had “numerous” gunshot wounds to the torso, which had been the cause of his death.

14. On 29 July 2012 the investigators questioned the deputy head of the FSB in Ingushetia, Officer V., who stated that on 28 July 2012 they had received information on a gathering of members of illegal armed groups on the campus of the university. In order to verify this information, a group of officers had hid there in ambush. At about 9.30 p.m. they had noticed four suspicious-looking young men, one of whom had a sports bag. Then the officers had demanded that the young men lie on the ground, but the latter had opened fire. As a result of return of fire by the FSB officers, three of the young men had been killed; one had managed to abscond. It had been later established that the man who had absconded had been Mr M.Dz., who had been wanted by the authorities. Neither any of the FSB officers who had participated in the special operation nor any civilians had been wounded.

15. On 1 August 2012 the investigators commissioned a molecular-genetic examination of the firearms collected to determine whose biological material had been left on them (see paragraph 18 below).

16. On 7 and 8 August 2012 the investigators questioned the parents of Magomed Khayauri, Artur Karsmauli and Islam Tachiyev, including the applicants, all of whom stated that their sons had not been involved in illegal armed groups, had not adhered to radical Islam, and had not had any firearms or ammunition. Their sons had lived in Moscow and rarely returned to Ingushetia, only for holidays.

17. On 7 August 2012, the investigators refused to open a criminal case into the killing of Magomed Khayauri for lack of *corpus delicti*, referring to his mother’s complaint of 6 August 2012 as lodged within the framework of criminal case no. 1200068. The decision stated that the applicant’s request for investigation had been forwarded to the military investigators of the 507th military investigations department (“the military investigators”) owing to the rules of jurisdiction on the investigation of crimes committed by service personnel (see also paragraph 54 below).

18. On 6 November 2012 the forensic bureau in the main office of the Investigative Committee in the North Caucasus Federal Circuit (“the Bureau”) concluded that the pistols collected from the crime scene did not have biological material belonging to Magomed Khayauri, Artur Karsmauli or Islam Tachiyev on them.

19. On 1 or 6 November 2012 the applicants’ lawyer, Mr M.T., requested that the investigators allow him access to the investigation file in the criminal case as he represented relatives of Magomed Khayauri, Artur Karsmauli and Islam Tachiyev. No reply was given to this request.

20. On 11 December 2012 the investigators questioned the head of the special operation Lt. Col. B. He stated that according to the operational information received on 28 July 2012 a certain Mr M.Dzh., who had been

wanted by the authorities and had been on the federal wanted list, had planned a meeting with other members of illegal armed groups. The meeting had been set to take place on the university campus. Prior to that, the FSB had not had information on the involvement of Magomed Khayauri, Artur Karsamauli and Islam Tachiyev in illegal armed groups. The group of FSB officers under his command had arrived at the university campus in the evening on 28 July 2012 and waited in ambush. They had seen Magomed Khayauri, Artur Karsamauli and Islam Tachiyev arrive there shortly afterwards, wearing light summer clothing. Mr M.Dzh. had later approached them. He had been carrying a bag with something heavy in it. When the officers had tried to arrest them, the three young men had taken firearms out of the bag and opened fire. Mr M.Dzh. had run away. Given that the three men had opened fire on the FSB officers, the latter had had to return fire and therefore there had been no chance to detain the young men.

21. On 11 December 2012 the investigators questioned Officer A.B., whose statement was similar to the one given by his commanding officer B. on the same day.

22. On 13 December 2012 the investigators commissioned a forensic examination of the clothing from the bodies of Magomed Khayauri, Artur Karsamauli and Islam Tachiyev. According to the expert findings made between 30 January and 19 February 2013, the clothing of Magomed Khayauri had sixteen bullet holes in it; no evidence of point-blank shots was found on the clothing. The clothing of Artur Karsamauli had twenty-five bullet holes in it; no evidence of point-blank shots was found on the clothing either. The clothing of Islam Tachiyev had five bullet holes; no evidence of point-blank shots was found on the clothing.

23. Between December 2012 and February 2013 the investigators questioned ten students, all of whom stated that they had studied with either Islam Tachiyev or Magomed Khayauri in Moscow, and characterised them in positive terms and stated that to their knowledge neither of the young men had been critical of the authorities or adhered to radical views.

24. On 11 February 2013 the investigators questioned the father of Artur Karsamauli, the applicant in *Karsamauli* (no. 83409/17), who stated that the FSB officers had killed his son and his two friends and then the officers had fabricated the crime scene and changed the clothing of the victims to camouflage uniforms.

25. On 18 February 2013 the applicants' lawyer requested that the investigators order an expert examination of the two Kalashnikov machine guns collected from the crime scene in order to determine whether any fingerprints had been left on them.

26. On 22 February 2013 the investigators replied to the above request stating that none of the relatives of Magomed Khayauri, Artur Karsamauli and Islam Tachiyev had any procedural status in the criminal case and, therefore, none had a right to make any requests.

2. Terminations of the criminal case and the appeals

27. On 28 February 2013 the investigators decided to terminate the investigation in criminal case no. 12600068 owing to the death of the suspects.

28. On 6 May 2013 the applicants' lawyer appealed against the termination to the Sunzhenskiy District Court. He stated, amongst other things, that Magomed Khayauri, Artur Karsamauli and Islam Tachiyev had had nothing to do with illegal armed groups, that they had been fired on at point-blank range and killed and that the crime scene had been subsequently set up by service personnel of the FSB, including the planting of firearms. The consistent requests of the relatives of the three men to initiate a criminal investigation against the officers had been rejected, and the decision to refuse to open criminal case had been taken. He requested that the decision to terminate the criminal case be annulled as no evidence of commission of a crime by Magomed Khayauri, Artur Karsamauli and Islam Tachiyev had been obtained, and that the criminal case be examined on the merits in court.

29. On 20 May 2013 the Sunzhenskiy District Court rejected the above appeal as the decision to terminate the proceedings had been annulled on 16 May 2013 and the criminal case was to be reopened for further investigation.

30. On 16 June 2013 the investigators again decided to terminate the investigation in the criminal case owing to the death of the suspects. On 2 August 2013 the investigators' superiors annulled the termination as unlawful and ordered that the criminal case be reopened and a number of steps be taken to remedy the shortcomings established.

31. On 2 September 2013 the investigators terminated the investigation in the criminal case for the third time on the same grounds.

32. On 29 October 2013 the applicants' lawyer appealed in detail against the termination of the criminal case to the Sunzhenskiy District Court, stating that the investigators had failed to provide any new evidence of the commission of a crime by Magomed Khayauri, Artur Karsamauli and Islam Tachiyev. The failure of the investigators to take the requested steps showed that they either had been incompetent or had been in cahoots with the FSB officers in covering up their unlawful actions. For instance, Officer M.B., when questioned by the investigators, had stated that he had not participated in the special operation and his statement had been based on the report filed by his commanding officer. None of the FSB officers questioned had stated that the loudspeakers had been used to warn Magomed Khayauri, Artur Karsamauli and Islam Tachiyev and to offer them a chance to surrender. The witness statements, the character references and the conclusions of the expert examination of the evidence, all those factors demonstrated that Magomed Khayauri, Artur Karsamauli and Islam Tachiyev had not been involved in commission of a crime. The lawyer

pointed out numerous inconsistencies in the statements of the FSB officers concerning their actions during the incident and stressed that the investigators had failed to elucidate them. In particular, some of the FSB officers had not mentioned the alleged presence of Mr M.Dz. and numerous witnesses had stated that shortly before the shooting they had seen Magomed Khayauri, Artur Karsmauli and Islam Tachiyev wearing T-shirts and flip-flops, outfits which would not be suitable for commission of a crime with the use of firearms. None of the witnesses had seen the fourth person, Mr M.Dz. None of the witnesses, including the university nightwatchmen, had heard the alleged warning given by loudspeaker and they had not seen any firearms next to the bodies of Magomed Khayauri, Artur Karsmauli and Islam Tachiyev. Furthermore, the expert examination of the firearms collected at the crime scene showed that the three men could not have used them; the FSB officers had differed in their statements concerning the types of firearms allegedly used by Magomed Khayauri, Artur Karsmauli and Islam Tachiyev. The alleged participation of the fourth person, Mr M.Dz., had been invented by the commanding officer B. to justify the killing of the innocent young men. The investigators had taken that version at face value and failed to verify it. Moreover, they had not ordered an expert examination of the FSB officers' firearms and had failed to establish by bullets from which guns the three men had been killed and whether the biological material left on the firearms examined could have belonged to the FSB officers. Given the numerous inconsistencies and contradictions in the evidence and the witness statements, the decision to terminate the criminal case was unlawful. The lawyer requested that the decision be annulled and the individuals from the FSB, the police and the investigative committee who had showed negligence during the investigation and forged evidence be held responsible.

33. On 6 November 2013 the Sunzhenskiy District Court rejected the appeal as unsubstantiated. The applicants' lawyer appealed against that decision to the Ingushetia Supreme Court, which on 10 December 2013 quashed the impugned decision and remitted the case file for a fresh examination.

34. On 23 December 2013 Sunzhenskiy District Court left the above appeal without examination as the decision to terminate the investigation in criminal case no. 12600068 had been annulled on 23 December 2013 and the investigation had been resumed. Then on an unspecified date between December 2013 and January 2014 the investigation of the criminal case was terminated again on the same grounds.

35. On 3 February 2014 investigators' superiors annulled the above termination as unlawful and ordered that the criminal case be reopened and a number of steps be taken to remedy the shortcomings established. Subsequently, between 5 February 2014 and 15 October 2018 the investigation was terminated on five more occasions and then reopened following the superiors' criticism on six more occasions. The last reopening

of the investigation took place on 15 October 2018. It appears that it is still pending.

B. The applicants' attempts to have a criminal investigation opened into their relatives' killing

1. The applicants' requests for the opening of a criminal case

36. On 6 August 2012 the second applicant in *Khayauri* (no. 33862/17) complained of the killing by officers of the FSB based in Ingushetia (see also paragraph 17 above) to the investigators, stating that her son Magomed had been killed by law-enforcement officers on the university campus. She stressed that her son and his friends Artur Karsmauli and Islam Tachiyev had neither been armed nor resisted arrest; they had been sitting on a bench when they had been shot and killed. Referring to unnamed witnesses to the incident, the applicant stated that after killing the young men the law-enforcement officers had placed firearms at the crime scene; they had put camouflage uniforms on the bodies; and then taken videos and photographs of the scene. Several dozen witnesses could testify that Magomed Khayauri and his two friends had been dressed in T-shirts and flip-flops about twenty to thirty minutes before the killing. The following day, when she and the other applicants had taken the three bodies from the morgue for the funeral, they had found the gunshot wounds to the heads of Artur Karsmauli and Islam Tachiyev. The applicant stressed that all three killed men had been studying and working in Moscow and had returned to Ingushetia for the summer holidays shortly before the incident. They therefore could not have been involved in the activities of illegal armed groups operating in the region. The applicant requested that a criminal case be opened into the killing of her son and his friends Artur Karsmauli and Islam Tachiyev.

37. On 15 August 2012 the Chechnya Human Rights Envoy wrote to the Deputy Prosecutor General of Russia and the head of the Investigative Committee in the North Caucasus Federal Circuit on behalf of the applicants and requested that an investigation be initiated into the killing of the three young men. The letter stated, amongst other things, the following:

“... [O]n 29 July 2012 the website Kavkazskiy Uzel published an article [entitled] ‘Three fighters killed at the university campus have been identified’. Referring to a representative of the law-enforcement agencies, it stated that on the night of 29 July 2012 during a shootout service personnel of the special services in Ingushetia had killed three presumed illegal fighters who could have been involved in blowing up shops and attempts on the lives of law-enforcement officials.

At the crime scene two Kalashnikov machine guns and two Makarov pistols were found, one of which had been equipped with silencer.

The same web site on 7 August 2012 published an article [entitled] ‘The relatives claim that men killed at the university campus did not resist’. From the text, it is apparent that the relatives of Magomed Khayauri, Artur Karsmauli and Islam

Tachiyev stated that the young men had not offered armed resistance and had been shot dead without warning ...

Eyewitnesses to the incident told the young men's relatives that after the shooting the law-enforcement officers had changed the clothing on the bodies of the three men to camouflage uniforms, placed firearms next to them and taken photographs and video of the scene.

On 29 July 2012 relatives of the deceased had been able to take their bodies for burial only after signing waivers in respect of their right to pursue any proceedings against law-enforcement agencies ...

Relatives of the deceased stated that Magomed Khayauri, Artur Karsamauli and Islam Tachiyev had not committed any crimes, had not been involved in illegal armed groups, had not had either firearms or camouflage uniforms and had not been wanted by the authorities. They had been wearing trousers, T-shirts and flip-flops [as]confirmed by dozens of witnesses ... They had arrived in Ingushetia the day before the incident for the summer holidays ...”

38. Between 6 and 27 August 2012 the applicants lodged a number of complaints with various State authorities, including the military investigators, requesting that the deaths of Magomed Khayauri, Artur Karsamauli and Islam Tachiyev be investigated as the three men had neither been armed nor had offered resistance.

39. On 27 August 2012 the applicants complained to the Sunzhenskiy district prosecutor that their repeated requests for opening of a criminal case into the deaths had been refused despite the fact that the three men had not been armed and they had not offered resistance.

40. On an unspecified date between September and November 2012 the applicants lodged a complaint about the investigators' failure to open a criminal case into their relatives' killing to the Sunzhenskiy District Court. On 13 November 2012 the court refused to examine their complaint, stating that on 6 August 2012 the investigators had severed a part from criminal case no. 12600068 and forwarded it to the military investigators for further investigation under the rules of jurisdiction. Therefore, on 7 August 2012 the investigators had refused to open a criminal case into the applicants' complaints as it had been for the military investigators to investigate them.

2. Refusals to open a criminal case by the military investigators

41. On 19 September 2012 (in the documents submitted the date was also referred to 23 August 2012) the military investigators refused to open a criminal case into the killing of Magomed Khayauri, Artur Karsamauli and Islam Tachiyev for lack of *corpus delicti* in the actions of the FSB officers. The decision stated, amongst other things, the following:

“... Lt. Col. B. from the FSB in Ingushetia, who had been questioned during the pre-investigation inquiry, stated that in the beginning of July 2012 the FSB had received information concerning members of illegal armed groups operating in Ingushetia ...

On 28 July 2012 he had been in charge of the operational group of the FSB in Ingushetia which had been conducting a search [for the suspects]. At about 10.10 p.m.

on the campus of the university ... citizens M. Khayauri, A. Karsamauli and I. Tachiyev had been found.

By the means of a loudspeaker these men had been asked to give up their firearms and show their identity documents. In reply, Magomed Khayauri, Artur Karsamauli and Islam Tachiyev had opened fire on the officers of the FSB and tried to abscond. As a result, the service personnel had been ordered to return fire; as a result of that clash of brief duration those individuals had received lethal wounds from which they had died on the spot ...”

42. From the text of the decision, it transpires that within the pre-investigation inquiry two other FSB officers, that is to say Major A.G. and Major A.B., who had been involved in the incident, were also questioned. Both gave statements similar to that of their commander, Lt. Col. B. The decision also stated that the three young men had died because of multiple gunshot wounds to the torso. The investigators also questioned the fathers of Magomed Khayauri and Artur Karsamauli; both of their statements were summarised as having “... positively characterised his son and claimed that he had not been involved in illegal armed groups ...”.

43. On 1 October 2012 the applicants complained to the head of the military investigators under Article 124 of the Code of Criminal Procedure, asking that the refusal to open a criminal case be annulled and a criminal case be opened, with other witnesses to the incident being identified and questioned. They stressed, in particular, the following:

“... [I]n the decision to refuse to open a criminal case the investigator stated that the [three] FSB officers had explained that when they had found the three young men, they had offered them a chance to surrender, to give up their firearms and show their identity documents using a loudspeaker. In reply, Magomed Khayauri, Artur Karsamauli and Islam Tachiyev had opened fire at the FSB officers and tried to abscond ...

Eye-witnesses state that M. Khayauri, A. Karsamauli and I. Tachiyev had not been armed and they had not resisted. Moreover, according to the witnesses, nobody had used a loudspeaker to offer them a chance to surrender and show their documents. According to a nightwatchman, the three young men had been sitting on a bench in the university courtyard, they had not been armed and had not been in camouflage uniforms, when armed men in military vehicles and uniforms had arrived and opened gunfire at the young men without any warning ...”

44. On 3 October 2012 the head of the military investigators replied to the second applicant that on 26 September 2012 the refusal to open a criminal case had been annulled and the case file had been forwarded for an additional inquiry.

45. On 18 October 2012 the applicants reiterated the complaint of 1 October 2012 to the military prosecutors and requested in addition that four witnesses – Mr I.B., Mr M.Ts., Ms Z.A., Mr R.U. – be questioned, providing their full names and addresses, and asked that their lawyer Mr M.T. be allowed to attend the interviews.

46. On 6 November 2012 the applicants’ lawyer complained to the head of the military investigators that none of the witnesses mentioned in the

request of 18 October 2012 had been questioned and asked that the questioning of the four witnesses be carried out.

47. On an unidentified date in November 2012 the military investigators questioned Mr I.B. as a witness. He stated that he worked as a nightwatchman at the university. On 28 July 2012 he had been on duty there. At about 9.30 p.m. he had gone to the greenhouse situated on the university campus to have tea with his colleague Mr M. After about ten minutes they had heard popping sounds and ran out, but they had been immediately stopped by a law-enforcement officer in a balaclava and a uniform without insignia. He had pointed his gun at them, asking their identity. They had informed him of their positions as nightwatchmen but, without any explanations, the officer had refused to let them go through. The witness and his colleague Mr M. had spent three hours next to the officer; meanwhile vehicles, including URAL lorries had arrived and left the university courtyard. At about midnight, the witness and Mr M. had been allowed to approach the university building. About 15 m from the first part of the building, they had seen the bodies of three young men on the ground; the bodies had been in T-shirts and other civilian clothing. There had been no firearms next to the bodies. The witness had not heard any loudspeakers, and could not tell whether there had been an exchange of gunfire as all he had heard had been the strange popping back sounds.

48. On an unidentified date in November 2012 the military investigators questioned Ms Z.A. as a witness. She stated that at about 9.40 p.m. on 28 July 2012 she had been walking home from work when she had met Magomed Khayauri in the street, about 200-300 m from the university. He had been with two friends; he had told her that on 27 July 2012 he had arrived from Moscow for summer holiday. Magomed had been in a T-shirt, jeans, flip-flops and a cap; his friends had had similar outfits. None of them had been armed.

49. On 17 November 2012 the military investigators again refused to open a criminal case on the same grounds.

50. The applicants appealed against the refusal to the Nalchik Garrison Military Court. On 30 January 2013 the court left the appeal without examination, as on 29 January 2013 the impugned decision had been annulled as unlawful by the investigators' superiors and an additional pre-investigation inquiry into the circumstances of the killing had been ordered.

51. On 1 September 2014 the military investigators refused to open a criminal case into the deaths of the applicants' relatives for lack of *corpus delicti* for the third time.

52. Subsequently, between 7 June 2015 and 5 April 2018 the military investigators refused on the same grounds to open a criminal case into the deaths on another eight occasions. The investigators' superiors annulled each of the refusals as unlawful and unsubstantiated, and ordered that additional enquires be carried out and a number of additional investigative

steps be taken. Meanwhile, requests by the applicants that the investigators' superiors annul those refusals were rejected, as new decisions annulling the impugned refusals had just been taken.

53. On 5 April 2018 the military investigators refused to open a criminal case for the twelfth time. That decision was annulled, yet again, on 13 June 2018 by the investigators' superiors as "unlawful, unsubstantiated and uncorroborated". The superiors stated that the investigators had failed to comply with the previously issued orders. Therefore, they were to carry out a new pre-investigation inquiry and to take a number of essential steps. The documents stated, amongst other things, the following:

"... [T]he identities of the participants in the special operation, including those who had used firearms against Karsmauli, Tachiyev and Khayauri, were not established [by the pre-investigation inquiry]. Steps aimed at establishing the circumstances of the incident, including the distance from which Tachiyev, Karsmauli and Khayauri had received the gunshot wounds and their location at the time of the fire, were not taken either.

The pre-investigation inquiry failed to examine the theory of the relatives of Karsmauli, Tachiyev and Khayauri, according to which the firearms collected from the crime scene had been planted there by officers in order to show that the killing of the three men by mistake had in fact been warranted.

From the statements of the nightwatchman Mr I.B. and the statement of Mr Ts., who resided close to the university, it is apparent that the firearms were not next to the bodies of the young men, nor was a loudspeaker warning given ..."

54. On 27 June 2018 the military investigators issued the thirteenth refusal to open a criminal case for lack of *corpus delicti* in the actions of the FSB officers. The superiors' orders of 13 June 2018 were not complied with.

55. To date no criminal case has been opened into the killing of Magomed Khayauri, Artur Karsmauli and Islam Tachiyev.

RELEVANT LEGAL FRAMEWORK

56. For a summary of the relevant domestic law before March 2013, see *Lyapin v. Russia* (no. 46956/09, §§ 96-102, 24 July 2014).

57. Article 144 of the Code of Criminal Procedure, as amended by Federal Law no. 23-FZ of 4 March 2013, reads in the relevant part as follows:

Article 144. Procedure for examining a report of a crime

"1. [A pre-investigation] inquiry officer, [an] agency [responsible for such an inquiry], [an] investigator, or [a] head of an investigation unit shall accept and examine every report of a crime ... and shall take a decision on that report ... no later than three days after [receiving] the report ... [They have] the right to receive explanations, samples for comparative examination, request documents and objects, seize them ..., order forensic examinations, participate in the carrying out [of such examinations] and receive an expert's report within a reasonable time, carry out an inspection of a crime scene, documents, objects, [and/or] dead bodies, physical

examinations, request documentary inspections, revisions, examination of documents, objects, dead bodies, engage specialists in carrying out these actions, give an inquiry agency mandatory written instructions on carrying out operative and investigative measures ...

3. A head of an investigation unit or head of an [pre-investigation] inquiry agency ... may extend the time period specified in paragraph 1 of this Article to [a maximum of] ten days. Where the documentary inspections, revisions, forensic examinations, examination of documents, objects or dead bodies, as well as operative and investigative measures are to be performed, a head of an investigation unit ... or a prosecutor ... may extend this period [to a maximum of] thirty days ...”

58. Section VIII of the Code of Criminal Procedure, which regulates preliminary investigations, provides, *inter alia*, (after amendments by Federal Law no. 23-FZ of 4 March 2013) that investigative measures such as an inspection of a crime scene, documents and/or objects, a forensic examination and receipt of samples for a comparative examination may be ordered and/or carried out, as applicable, before a criminal case is opened (Articles 176 § 2, 195 § 4 and 202 § 1).

THE LAW

I. JOINDER OF THE APPLICATIONS

59. 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

60. The applicants complained that State agents had killed their relatives Magomed Khayauri, Islam Tachiyev and Artur Karsamauli and that the authorities had failed to investigate the matter effectively, contrary to Article 2 of the Convention, which reads as follows:

“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

A. Admissibility

1. *The parties' submissions*

61. The Government submitted that the applications should be declared inadmissible for failure to comply with the six-month time-limit. According to them, firstly, the applicants had lodged their complaints belatedly and had failed to justify the failure to lodge them at an earlier date. Secondly, the applicants should have realised that the domestic remedies had been ineffective before 30 January 2013, when the Nalchik Garrison Military Court had left their appeal without examination (see paragraph 50 above).

62. The applicants submitted that they had complied with the six-month time-limit. They lodged their applications as soon as they realised that no effective investigation into such a serious crime would be carried out by the domestic authorities.

2. *The Court's assessment*

63. The Court observes that the applicants' relatives were killed on 28 July 2012 and the applicants lodged their applications with the Court on 20 April and 1 December 2017 respectively, that is to say about four years and nine months and five years and four months after the incident. At the time of the lodging, the investigation in criminal case no. 12600068 opened against Magomed Khayauri, Islam Tachiyev and Artur Karsamauli had been terminated on six occasions and four refusals to open a criminal case into their killing had been issued: one by the investigators from the Sunzhenskiy district investigative committee and three by the military investigators (see paragraphs 17, 49 and 51 above). The last refusal, out of thirteen issued by the military investigators overall, was taken on 27 June 2018 (see paragraphs 52 and 54 above). The investigators' superiors annulled each of the refusals and ordered a new pre-investigation inquiry into the incident. As of the time of writing, no criminal case into the killing of Magomed Khayauri, Islam Tachiyev and Artur Karsamauli has been opened. The investigation of the criminal case against them has been resumed and the results are pending (see paragraphs 35 above).

64. Turning to the decision of the Nalchik Garrison Military Court referred to by the Government as that which had triggered the six-month time-limit, the Court observes that that decision was not final. It was merely of a procedural nature and was issued to rule that the impugned refusal to open a criminal case had already been annulled by the investigators' superiors, and, therefore, there was no need to examine the applicants' complaint against that refusal. Therefore, the decision referred to by the Government cannot serve as a final domestic decision capable of triggering the time-limit.

65. The Court reiterates that as a rule the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies.

Where an applicant avails himself or herself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, the six-month period starts from the date when the applicant first became or ought to have become aware of those circumstances (see *Edwards v. the United Kingdom* (dec.), no. 46477/99, 7 June 2001). In cases concerning an investigation into the suspicious death of a relative, applicants are expected to show due diligence by taking steps to keep track of the investigation's progress, or lack thereof, and by lodging their applications once they are, or should have become, aware of the lack of any effective criminal investigation (see *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002, and *Atallah v. France* (dec.), no. 51987/07, 30 August 2011). As long as there is some meaningful contact between relatives and the authorities concerning complaints and requests for information, or some indication, or realistic possibility, of progress in the investigative measures, considerations of undue delay by the applicants will not generally arise (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 269, ECHR 2014 (extracts)).

66. The Court observes that within the few years which passed between the incident and the time of lodging their applications, the applicants demonstrated a consistently active stance *vis-à-vis* the authorities (see paragraphs 16, 19, 25-26, 28, 32, 37-38, 43, 45-46 and 50 above). The authorities' reaction to their complaints, that is to say the annulments of the refusals to open an investigation each time as unlawful and premature (see paragraphs 44, 50 and 52-54 above) must have created the expectation on the part of the applicants that such a serious incident leading to the deprivation of their relatives' lives would be effectively investigated (see *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 158, ECHR 2009, and *Mocanu and Others*, cited above, § 269). In such circumstances, the Court finds that the application cannot be rejected as having been lodged belatedly and dismisses the Government's objection.

67. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 §§ 3 (a) and 4 of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

68. The applicants submitted that their relatives had been killed by State agents and that the pre-investigation inquiry had failed to elucidate the circumstances of the incident and to resolve the conflicting evidence showing that the State agents had deliberately killed their relatives and staged the crime scene to justify the unlawful use of lethal force. They stated that a fully-fledged investigation within the framework of an open criminal case would have been a more appropriate remedy in their case.

69. The Government made no comments on the merits of the applicants' complaints.

2. *The Court's assessment*

70. For a summary of the general principles concerning the procedural requirement in cases concerning the use of lethal force by State agents see *Armani Da Silva v. the United Kingdom* ([GC], no. 5878/08, §§ 229-39, 30 March 2016), and *Dalakov v. Russia* (no. 35152/09, §§ 61-65, 16 February 2016).

71. The Court has found in its judgment in the case of *Dalakov* (cited above), that a "pre-investigation inquiry" (if it is not followed by a "preliminary investigation"), especially if there are conflicting versions of the events, as in the present case, is unable to elucidate the circumstances of the use of lethal force. It is therefore incumbent on the authorities to institute criminal proceedings and conduct a fully-fledged criminal investigation in which the whole range of investigative measures can be carried out, as indicated in the Russian Code of Criminal Procedure (see paragraphs 56-58 above).

72. It is common ground between the parties that the death of the applicants' relatives Magomed Khayauri, Islam Tachiyev and Artur Karsamauli resulted from the use of lethal force by the State agents. The Court will firstly assess whether the investigation into their deaths complied with the Convention standards and it will then turn to the assessment of the actions of those agents of the State who actually administered the force.

(a) Alleged violation of the procedural obligation under Article 2 of the Convention

73. The Court observes that on the day following the incident, 29 July 2012, the domestic authorities opened criminal case no. 1200068 against Magomed Khayauri, Islam Tachiyev and Artur Karsamauli. The investigation of that criminal case was terminated on at least seven occasions because of the death of the suspects (see paragraphs 27, 30, 31 and 35 above); each time that decision was annulled as unsubstantiated. In addition, between 7 August 2012 and 27 June 2018 the investigators issued thirteen refusals to initiate an investigation into the use of lethal force against the three young men by FSB officers for lack of *corpus delicti* in the actions of the latter (see paragraphs 17 and 54 above).

74. Thus, from the documents submitted it is apparent that no criminal investigation, other than the pre-investigation inquiry, was officially carried out into the death of Magomed Khayauri, Islam Tachiyev and Artur Karsamauli. Therefore, the Court is bound to assess the circumstances of their killing based on the documents furnished as part of criminal case

no. 1200068 and the pre-investigation inquiry, which resulted in the multiple decisions not to initiate a criminal investigation into their death.

75. The information collected by the investigators in the criminal case and the pre-investigation inquiry contained clear indications of the conflicting evidence and versions of the circumstances of the death of Magomed Khayauri, Islam Tachiyev and Artur Karsamauli (see, for example, paragraphs 20, 22, 32, 37, 43, 47, 48 and 53 above) and, therefore, should have prompted the authorities to initiate a fully-fledged criminal investigation into the matter. However, in spite of the evidence contained in the files and the applicants' consistent complaints that the actual circumstances of their relatives' killing were in contradiction to the official version, the authorities limited themselves to the inquiry and refused to investigate the allegations by opening a fully-fledged investigation of a criminal case. The Court reiterates in this regard, that Article 2 of the Convention implies that there should be an effective, impartial investigation where deprivation of life occurs.

76. As a result, neither all of local residents who had witnessed the incident, nor all of the FSB officers who had participated in the special operation and/or attended the crime scene afterwards and who could have shed light on the circumstances of the death of Magomed Khayauri, Islam Tachiyev and Artur Karsamauli were questioned in the investigation into their deaths (see paragraphs 45 and 47 above). Meanwhile, the implicated FSB officers gave "an explanation", which did not bind them in the same way as it would have in the context of criminal proceedings if they had been opened against them, and did not entail the necessary safeguards inherent in an effective criminal investigation, such as criminal liability for perjury. No confrontation was ever held between the FSB officers and the witnesses concerning the alleged lack of use of loudspeakers to warn the young men before the shooting and the possible planting of firearms next to their bodies (see paragraphs 37, 47, 48 and 53 above). The Court observes that the applicants consistently requested that the authorities take measures aiming at opening of a criminal case and verify the evidence which was in contradiction to the official version of the events (see paragraphs 19, 25-26, 28, 32, 43 and 45 above). Despite the range of steps which could have been taken by the pre-investigation inquiry to verify the applicants' allegations, the investigators limited themselves to taking insufficient superficial steps, which were consistently criticised by their superiors, leading to their decisions being annulled by those superiors as unlawful, unsubstantiated or based on an incomplete inquiry due to the investigators' failure to carry out previously given orders (see paragraphs 53-54 above).

77. In view of the foregoing, and having regard to its previous well-established case-law in respect of the State's procedural obligation under Article 2 (see paragraphs 70-71 above), the Court sees no reason to hold otherwise in the present case. It finds that the repeated refusals to open a criminal case into the applicants' credible allegations of unlawful use of

lethal force by the State agents, of which the authorities were promptly made aware, amounted to a failure to carry out an effective investigation as required by Article 2 of the Convention.

78. There has therefore been a violation of Article 2 of the Convention under its procedural limb.

(b) Alleged violation of the substantive aspect of Article 2 of the Convention

79. The Court reiterates that Article 2 safeguards the right to life and sets out the circumstances where deprivation of life may be justified. The situations where deprivation of life may be justified are exhaustive and must be narrowly interpreted. The use of force which may result in the deprivation of life must be no more than “absolutely necessary” and must be strictly proportionate to the achievement of one of the purposes set out in Article 2 § 2 (a), (b) and (c) (see *Oğur v. Turkey* [GC], no. 21594/93, § 78, ECHR 1999-III). The Court must, in making its assessment, subject deprivations of life to the most careful scrutiny, particularly where deliberate lethal force is used, taking into consideration not only the actions of the agents of the State who actually administer the force, but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination and whether a law-enforcement operation has been planned and carried out so as to minimise to the greatest extent possible recourse to lethal force or incidental loss of life (see *Bubbins v. the United Kingdom*, no. 50196/99, §§ 135-36, ECHR 2005-II (extracts), and *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 150 and 194, Series A no. 324).

80. The Court notes that it is common ground between the parties that the applicants’ relatives were shot and killed on 28 July 2012 in Ordzhonikidzevskaya as a result of a special operation carried out by State agents. However, the parties disagreed on the key circumstances of the incident, such as whether the behaviour of the applicants’ relatives and their actions necessitated the use of lethal force against them. Therefore, the Court will have to assess the planning and control of the special operation and then it will evaluate whether the State agents’ actions were justified by the circumstances of the incident. To this end, the Court notes that its ability to evaluate the operation has been seriously hampered by the absence of any meaningful investigation into the State agents’ conduct (see paragraph 78 above). Nevertheless, it will base its assessment on the relevant evidence submitted by the parties. The Court recalls that its standard of proof “beyond reasonable doubt” may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact and that the conduct of the parties when evidence is being obtained may also be taken into account (see *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, §§ 180-82, ECHR 2011 (extracts)).

81. The Court notes that the special operation was not spontaneous; the FSB officers had waited in ambush for individuals suspected of membership of illegal armed groups (see paragraphs 14, 20 and 41 above). The officers were well-equipped and were intending to arrest the suspects. However, there is nothing in the documents reviewed by the Court to suggest that any serious consideration was devoted at the planning stage of the operation to the possibility that the suspects would try to resist arrest or escape. Furthermore, the documents submitted contain no indication of either chain of command of the officers during the special operation, their physical location during the events or any indication of the roles each of the officers involved played therein and what type of service guns they had been armed with. There is no information on such basic facts as to who participated in the condoning of the area, drove the military vehicles or waited in the ambush. Furthermore, from the statements given by the FSB officers implicated in the incident, it is unclear how many officers participated in the special operation and who exactly returned fire and by whose bullets Magomed Khayauri, Artur Karsamauli or Islam Tachiyev were shot and killed (see paragraphs 20, 41-42, 47 and 53 above).

82. The Court further notes that the documents submitted to the Court state that, according to the FSB officers, the officers offered the suspects a chance to surrender. However, in return, Magomed Khayauri, Artur Karsamauli and Islam Tachiyev had taken firearms from the bag and opened fire (see paragraph 12 above), while the fourth person, Mr M.Dz., managed to escape. The forensic examination of the three pistols found at the crime scene showed that none of them had been touched by any of the young men (see paragraph 18 above), and the only other two weapons, the Kalashnikov machine guns, were never tested for fingerprints or biological material (see paragraphs 25-26 above). Therefore, even assuming that the two machine guns had been hidden in the sports bag, and then taken out by Magomed Khayauri, Artur Karsamauli or Islam Tachiyev to shoot at the officers, it is unclear whether and how the three of them could have been able to use the two machine guns (see paragraph 53 above). Furthermore, the implicated officers' statements concerning a loud-speaker warning made shortly before the shooting are in contradiction with the statements of the witnesses to the incident (see paragraphs 47 and 53 above). Considering the numerous gunshot wounds on the bodies of the three young men (see paragraphs 13 and 22 above), the documents submitted do not show, in the Court's view, that the officers tried to take any measures to avoid using such intense gunfire and subjecting the lives of the three young men to a high risk of death. Having regard to those facts, the Court finds that it has not been demonstrated that the lethal force used, which brought about Magomed Khayauri, Artur Karsamauli and Islam Tachiyev's death, was absolutely necessary, as required by Article 2 of the Convention.

83. In the light of the above, the Court finds that there has accordingly been a violation of the substantive limb of Article 2 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

84. The applicants complained that they had had no effective remedy at their disposal in respect of the alleged violation of Article 2 of the Convention. They relied on Article 13 of the Convention, which provides 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.”

85. The Court observes that this complaint concerns the same issues as those examined in paragraphs 78 above under the procedural limb of Article 2 of the Convention. Therefore, the complaint should be declared admissible. However, having regard to its conclusion above under Article 2 of the Convention, the Court considers it unnecessary to examine those issues separately under Article 13 of the Convention (see *Fanzyeva v. Russia*, no. 41675/08, § 85, 18 June 2015, and *Dalakov*, cited above, § 90).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

86. 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

87. The applicants claimed the following amounts in respect of pecuniary damage. The applicant in *Khayauri* (no. 33862/17) submitted that even though at the time of the events his son, Magomed Khayauri, had been a student, he would have provided financial assistance to his relatives until reaching the age of retirement in 2061. Therefore, the first and second applicants as his parents could have counted on a third of his wages for that period, which would have amounted to 105,121 euros (EUR). The applicants enclosed neither documents showing the method for their calculations nor any proof substantiating the amount claimed.

88. The applicant in *Tachiyeva* (no. 83040/17) submitted that even though at the time of the events her son, Islam Tachiyev, had been a student, he would have provided financial assistance to her until reaching the age of retirement in 2062. The applicant could have counted on a third of his wages for that period, which would have amounted to EUR 107,164. The applicant enclosed neither documents showing the method for her calculations nor any proof substantiating the amount claimed.

89. The applicant in *Karsamauli* (no. 83409/17) submitted that even though at the time of the events his son, Artur Karsamauli, had been unemployed, he would have provided financial assistance to his father until reaching the age of his retirement in 2062. The applicant could have counted on a third of his wages for that period, which would have amounted to 107,164 euros (EUR). The applicant enclosed neither documents showing the method for his calculation nor any proof substantiating the amount claimed.

90. The Government submitted that the claims in respect of pecuniary damage were unsubstantiated and that there was a domestic mechanism for compensation for loss of a breadwinner.

91. In the absence of any documents substantiating the amounts claimed, the Court rejects the applicants' claims in respect of pecuniary damage.

92. As for the non-pecuniary damage, the amounts claimed are specified in the attached table. The Government submitted no comment on the amounts claimed.

93. The awards made by the Court in respect of non-pecuniary damage are specified in the attached table.

B. Costs and expenses

94. The applicants also claimed the amounts specified in the attached table for the costs and expenses related to their legal representation before the Court.

95. The Government submitted that the amounts claimed were excessive and unnecessary.

96. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the amounts specified in the attached table covering the costs incurred before the Court. The award in respect of the costs and expenses is to be paid to the representatives' bank accounts, as indicated by the applicants.

C. Default interest

97. 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 procedural head;
4. *Holds* that there has been a violation of Article 2 of the Convention under its substantive head;
5. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention in conjunction with Article 2 of the Convention;
6. *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 amounts indicated in the appended table, plus any tax that may be chargeable to the applicants, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicants' claim 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.

{signature_p_2}

Milan Blaško
Registrar

Georges Ravarani
President

APPENDIX

List of cases:

No.	Application name, number and the date of introduction	Applicants, their nationality, year of birth, place of residence and kinship to the individual killed	Individual killed	Pecuniary damage	Non-pecuniary damage	Costs and expenses
1.	<i>Khayauri v. Russia</i> (no. 33862/17) lodged on 20 April 2017	(1) Mr Musa Khayauri, Russian, 1960, Ordzhonikidzevskaya Ingushetia (father) (2) Ms Madash Khayauri, Russian, 1963, Ordzhonikidzevskaya Ingushetia (mother) (3) Ms Maryam Khayauri, Russian, 1985, Ordzhonikidzevskaya Ingushetia (sister) (4) Ms Rayana Khayauri, Russian, 1989, Ordzhonikidzevskaya Ingushetia (sister)	Mr Magomed Khayauri, who was born in 1991	Claimed by the applicants		
				EUR 105,121 jointly	EUR 80,000 jointly	EUR 8,518
				Awarded by the Court		
				-	EUR 60,000 (sixty thousand euros) to the applicants jointly	EUR 850 (eight hundred and fifty euros) to be paid to the representatives' bank account as indicated by the applicants
2.	<i>Tachiyeva v. Russia</i> (no. 83040/17) lodged on 1 December 2017	Ms Liza Tachiyeva, Russian, 1956, Moscow (mother)	Mr Islam Tachiyev (also spelt as Tochiyev) who was born in 1992	Claimed by the applicant		
				EUR 107,164	EUR 80,000	EUR 8,518
				Awarded by the Court		
				-	EUR 60,000 (sixty thousand euros)	EUR 850 (eight hundred and fifty euros) to be paid to the representatives' bank account as indicated by the applicant

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No.	Application name, number and the date of introduction	Applicants, their nationality, year of birth, place of residence and kinship to the individual killed	Individual killed	Pecuniary damage	Non-pecuniary damage	Costs and expenses
3.	<i>Karsamauli v. Russia</i> (no. 83409/17) lodged on 1 December 2017	Mr Enver Karsamauli, Russian, 1952, Ordzhonikidzevskaya Ingushetia (father)	Mr Artur Karsamauli, who was born in 1986	Claimed by the applicant		
				EUR 107,164	EUR 80,000	EUR 8,518
				Awarded by the Court		
				-	EUR 60,000 (sixty thousand euros)	EUR 850 (eight hundred and fifty euros) to be paid to the representatives' bank account as indicated by the applicant