



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

THIRD SECTION

CASE OF GASANGUSENOV v. RUSSIA

(Application no. 78019/17)

JUDGMENT

Art 2 (substantive) • Positive obligations • Killing of applicant's two sons during special operation carried out by State agents • Use of lethal force not absolutely necessary
Art. 2 (procedural) • Authorities' failure to carry out an effective investigation into the serious allegations of inappropriate use of lethal force by State agents
Art 46 • Execution of judgment • Individual measures • Pending criminal investigation to elucidate main circumstances of the use of lethal force by the State agents, evaluate their actions and secure next-of-kin access to key documents

STRASBOURG

30 March 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 Gasangusenov v. Russia,

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

Paul Lemmens, *President*,

Georgios A. Serghides,

Dmitry Dedov,

Georges Ravarani,

María Elósegui,

Darian Pavli,

Anja Seibert-Fohr, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the above application against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Murtazaali Gasangusenov (“the applicant”), on 2 November 2017;

the decision to give notice to the Russian Government (“the Government”) of the complaints concerning Articles 2 and 13 of the Convention;

the parties’ observations,

Having deliberated in private on 9 March 2021,

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

INTRODUCTION

1. The case concerns the killing of the applicant’s two sons during a special operation carried out by State agents on 23 August 2016 in Goor-Khindakh, Dagestan, and the ineffectiveness of the investigation into the matter.

THE FACTS

2. The applicant was born in 1970 and lives in Goor-Khindakh. He was represented by lawyers from Memorial Human Rights Centre in Moscow.

3. 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 applicant is the father of Mr Gasangusen Gasangusenov, who was born in 1997, and Mr Nabi Gasangusenov, who was born in 1999. In the documents submitted the applicant’s and his sons’ surname was also spelled as Gasanguseynov.

5. The facts of the case, as submitted and undisputed by the parties, may be summarised as follows.

I. CIRCUMSTANCES SURROUNDING THE KILLING OF THE APPLICANT'S SONS

A. Background information

6. The applicant and his wife, Ms P.A., are disabled. At the material time, they lived together with their sons Gasangusen and Nabi Gasangusenov in Goor-Khindakh, a mountain village in Shamilskiy district in Dagestan. The village, which had about 250 residents, was situated several kilometres from Khebda, the main town of the district. The applicant's sons worked as shepherds on the Lagadib grazing land, which was situated about 3 to 4 km away from the village; at times, they stayed there for up to a few days and then returned home for food supplies. The local administration informed the local police of each shepherd working there.

7. On various dates between June and August 2016 several terrorist attacks were carried out by members of illegal armed groups in Shamilskiy district, including the assassination of a judge of the Shamilskiy District Court on 11 August 2016, the blowing-up of a local television tower, and the burning down of a school.

B. Killing of the applicant's sons and discovery of their bodies

8. At about 9.30 p.m. on 23 August 2016 Nabi Gasangusenov called his mother, Ms P.A., and told her that he and his brother Gasangusen were returning home from the grazing land for dinner. However, they did not come.

9. Early in the morning on 24 August 2016, Ms P.A. asked her relative Mr I.M. to go to the grazing land and look for her sons. At about 6 a.m. at about 1 km from the village, in 3 to 4 m from the road, in the bushes, Mr I.M. found the bodies of Gasangusen and Nabi Gasangusenov.

10. The bodies were next to each other: face down, in large black warm jackets with hoods pulled over the heads. There were automatic machine guns on their backs with gun belts on the necks; there were army boots and rucksacks lying nearby. Both men were barefoot. Nabi Gasangusenov's face was covered in dried blood and was unrecognisable; Mr I.M. was able to identify Gasangusen by his face. Mr I.M. immediately called his relatives, who then informed the applicant and his wife.

11. At about 7 a.m. a group of police officers arrived at the scene with two stretchers, briefly examined the bodies and took them away. Later the bodies were released to the applicant for burial; a post-mortem examination

was not carried out, as, according to the Government, the applicant refused consent. According to the applicant, neither the black coats, nor the army boots and the rucksacks found at the crime scene belonged to his sons. The Government did not dispute this assertion.

12. The official information statement issued in the early hours of 24 August 2016 by the acting head of the Shamilskiy district police station (“the police station”) Maj. I.A. was published on the website of the news agency Interfax (<https://www.interfax.ru/russia/524996>) and contained the following information statement:

“... at about 9.25 p.m. during a special operation [on 23 August 2016] ... unidentified persons fired shots at law-enforcement officers ... as a result of the return of fire, the criminals were eliminated”.

According to the applicant, shortly after the killing of Gasangusen and Nabi Gasangusenov, Maj. I.A. was promoted to head of the police station (see also paragraph 67 below).

II. CRIMINAL PROCEEDINGS INITIATED IN CONNECTION WITH THE DEATH OF THE APPLICANT’S SONS

13. In reply to the Court’s request for copies of the contents of the criminal-investigation files opened in connection with the death of the applicant’s sons, the Government furnished copies of the relevant documents running up to 986 pages. Their contents can be summarised as follows.

A. Criminal case opened against the applicant’s sons

1. Main steps taken by the investigation

14. On 24 August 2016 the Khunzakh inter-district department of the Dagestan Investigative Committee (the investigators) opened criminal case no. 63545 against Gasangusen and Nabi Gasangusenov under Articles 317 and 222 of the Criminal Code (attempt on the life of a law-enforcement officer and trafficking of firearms). The decision stated as follows:

“... at about 9.30 p.m. on 23 August 2016 ... at about 2 km from the settlement of Khindakh in Shamilskiy district, a special operation to verify operative-search information was carried out by representatives of the 5th unit of the Dagestan Federal Security Service [САГ-5 УФСБ РФ по РД], the Dagestan Counterterrorism Centre [ЦИТЭ МВД по РД] stationed in the settlement of Gergebil, the Russia Federal Security Service [ФСБ России] together with officers of the Shamilskiy district police [ОМВД России по Шамильскому району]. Two individuals ... opened fire with the aim to kill [from the firearms they had on them] at the said representatives of the law-enforcement agencies.

Because of the return of fire by the law-enforcement officers, those criminals were eliminated on the spot ...”

15. On the same date, the investigators examined the crime scene and collected a number of pieces of evidence, including a Kalashnikov machine gun with the serial number 3660388, an unidentified Kalashnikov machine gun, a number of cartridges and bullets, and one vest and two rucksacks. Then the investigators ordered a ballistic examination of the evidence. On 25 August 2016, the investigators examined the crime scene again; this time they found and collected two baseball caps, two pairs of combat boots and two pairs of flip-flops.

16. At 4 p.m. on 24 August 2016 the bodies of the applicant's sons were examined at the crime scene. A visual examination established thirteen "injuries" on the body of Gasangusen Gasangusenov and seventeen "injuries" on that of Nabi Gasangusenov. Then the bodies were taken away and subsequently released to the applicant's family for burial.

17. On 2 February 2017 the applicant's two lawyers asked the investigators to grant them access to the criminal case file and to allow them to make copies of the results of the forensic examinations and other documents. On 1 March 2017, the investigators rejected the request, stating that the applicant had no procedural status in the criminal case as "he [was] not a suspect and the criminal case [had] not [been] opened against him".

18. On 2 March 2017 the FSB in Dagestan informed the investigators that on 23 August 2016 a group from the Special Task Force of the FSB (*УЧХ ФСБ*) had carried out a special operation aimed at discovering routes of movement and bases of members of illegal armed groups in Shamil'skiy district in Dagestan. The letter stated that local FSB officers in Dagestan had not participated in the operation (see also paragraph 22 below).

19. On 16 March 2017 the applicant's lawyers appealed against the rejection of 1 March 2017 to the Sovetskiy District Court in Makhachkala ("the District Court") under Article 125 of the Code of Criminal Procedure (appeals against actions or inaction of the investigating authorities).

20. On 3 April 2017 the District Court allowed the complaint and ordered that the applicant's lawyers be allowed to join the proceedings in criminal case no. 63545 as counsel for Gasangusen and Nabi Gasangusenov.

21. The applicant requested that the investigators grant him access to the criminal case file and that he be allowed to make copies of the decision to open the criminal case and of the reports of the forensic examinations. On the same date, 10 April 2017, the investigators allowed the request.

22. On 25 August 2017 the investigators questioned seven FSB officers from unit no. 46441 in Moscow (D.D., A.D., S.Kh., D.A., Yu.M., V.L. and M.Sh.), all of whom gave almost verbatim statements of a general nature to the effect that they had participated in the special operation on 23 August 2016 in Shamil'skiy district in Dagestan. The operation had been aimed at discovering routes of movement and bases of illegal armed groups in the Shamil'skiy district of Dagestan. None of the officers had engaged in any shootings and they had not heard of the Gasangusenov brothers.

23. On 15 November 2017 the investigation in criminal case no. 63545 was terminated for the lack of the elements of a crime as it “had failed to confirm that the Gasangusenov brothers had attacked the law-enforcement officers”. A part of the file was transferred for investigation into the killing of the Gasangusenov brothers (see paragraph 36 below).

2. Forensic expert examinations of the evidence collected in the criminal case

24. On 18 and 19 September 2016 the forensic department of the Dagestan Investigative Committee (“the forensic bureau”) issued its report on the trace ballistic examination of the evidence (see paragraph 15 above). Its conclusions stated, amongst other things, that one of the two Kalashnikov machine guns had been manufactured abroad and one of the cartridges had been fired from it. Three bullets and twelve other cartridges were sent for additional tests to the regional bullets database along with four bullets and eight cartridges of another calibre.

25. On 21 September 2016 the forensic bureau issued its report concerning the bloodstains on pieces of collected evidence, including the applicant’s sons’ clothing, the vest and two rucksacks. According to its conclusions, all of the items, except for the vest, contained bloodstains, which could have belonged to the applicants’ sons.

26. On 7 November 2016 the forensic bureau examined Gasangusen and Nabi Gasangusenovs’ bodies following the investigators’ orders of 30 August 2016. The examination, which was carried out without the actual bodies, on the basis of a transcript of the examination of the bodies at the crime scene of 24 August 2016, stated that the deaths of both men had occurred as a result of several gunshot wounds. Subsequently, on 14 April 2017, the forensic bureau issued additional expert reports on the bodies of Gasangusen and Nabi Gasangusenov based on the transcripts of the bodies’ examination at the crime scene. According to those reports, the death of Gasangusen Gasangusenov occurred because of fifteen gunshot wounds, including seven to the torso and eight to the extremities, and that of Nabi Gasangusenov because of eighteen gunshot wounds, including twelve to the torso and six to the extremities.

27. On 18 November 2016 the forensic bureau examined the jackets, vest and trousers of Gasangusen and Nabi Gasangusenov and found, amongst other things, that the holes in the clothing matched the gunshot wounds on their corpses. Subsequently, on 20 April 2017 the forensic bureau additionally examined Gasangusen and Nabi Gasangusenov’s clothing from the crime scene and found that the blood on those items could have belonged to the applicant’s sons. No blood was found on the vest (see paragraph 15 above).

28. The examination of the gunshot residue found on the corpses of Gasangusen and Nabi Gasangusenov carried out on 7 December 2016

showed, amongst other things, that their hands and faces contained traces of the residue whereas their hair and nails did not.

29. On various dates in January 2017 the forensic bureau, following the investigators' orders of 16 January 2017, issued its reports on the examination of seven of the Kalashnikov machine guns from the Gergebil department of the Dagestan Counterterrorism Centre. The reports concluded that it was impossible to establish whether those guns had been used to kill the applicant's sons as the collected cartridges to which the guns were to be compared had been sent for further examination to the regional bullets database in September 2016 (see paragraph 24 above).

30. On 5 April 2017 the forensic bureau, following the investigators' orders of 3 April 2017, concluded that three cartridges collected from the crime scene had not been fired from two of the Kalashnikov machine guns seized from the police station for the examination (see paragraph 24 above).

31. On 20 June 2017 the forensic expert report stated that one of the Kalashnikov machine guns collected from the crime scene had DNA material belonging to Nabi Gasangusenov; the presence of DNA material belonging to Gasangusen Gasangusenov's on the other Kalashnikov machine gun was not confirmed, but could not be excluded either.

B. Criminal investigation into the killing of the applicants' sons

1. The applicant's attempts to have a criminal case opened

32. On 31 January 2017 the applicant complained to the head of the Dagestan Investigative Committee and requested that a criminal case be opened into his sons' killing. He stated, in particular, the following:

“ ... At about 6 a.m. Mr I.M. found my sons dead. They were lying about 3 m from the road next to each other ... they were in winter jackets with hoods. Mr I.M. called relatives in the village. Then, from the village of Khebda (in Shamil'skiy district) fifteen police officers arrived with firearms and stretchers. He asked them, 'Who did this?' They replied that they did not know. Then Mr M.G., the uncle of the [deceased brothers] asked them, 'Then how come you knew where the bodies were? Why did you come here exactly? Why did you bring two stretchers and two covers?'

Then, next to the scene of the deaths, residents of the village started to gather and express their indignation, asking, 'Who did this?' The police officers replied, 'It was not us, it was the military'. We wanted to take the bodies, but the policemen prevented us from doing it by saying that it was necessary to wait for the experts. Then three men in civilian clothing arrived. They took photographs and collected the spent cartridges. It turned out that shots had been fired at the brothers from three different points ...

... The head of the police said that it was necessary to wait for the experts. The expert arrived with two men in civilian clothing; one of them was a doctor from the main town of the district, Mr U.M. In the presence of [my son's] uncle, Mr M.G., they removed the jackets from the bodies, examined the wounds, took fingerprints and inspected the jackets. One of the jackets had only two holes in it, the other had more.

The experts said that they [my sons] had been killed and then jackets had been put on them and then they had been shot at again. The holes in the jackets did not match the bullet wounds on the bodies. ... After that, the bodies were given to us and we buried them on the same day.

With full confidence, I state that my sons were neither members of illegal armed groups, nor criminals, nor extremists. ... It is obvious, in my opinion, that they were killed by certain agents of law-enforcement bodies for unknown reasons. The perpetrators should be prosecuted and held responsible in accordance with the law ...”

No reply was given to the request.

33. On an unspecified date in March 2017 the applicant complained to the District Court, stating that his request for the opening of a criminal case into his sons’ killing had been ignored by the investigating authorities.

34. On 23 March 2017 the District Court allowed the applicant’s complaint, finding that the investigators had failed to examine his request. The decision stated that the investigators were to remedy the procedural violations and inform the applicant of the steps taken. The investigators unsuccessfully appealed against that decision; it became final on 27 June 2017.

35. On an unspecified date in April 2017 the applicant again complained to the investigators’ superiors and, referring to the court decision of 23 March 2017, reiterated his request for the opening of a criminal case into his sons’ killing. No reply was given to this request.

2. Criminal case into the killing of the applicant’s sons

36. On 15 November 2017, based on the material severed from criminal case no. 63545 (see paragraph 23 above), the Department of Investigations of Particularly Serious Crimes of the Dagestan Investigative Committee opened criminal case no. 11702820021000081 into the killing of Gasangusen and Nabi Gasangusenov.

37. On 28 November 2017 the applicant was granted victim status and questioned. He stated, in particular, that on the day before the incident, a police officer had visited his sons at the grazing land and asked them, amongst other things, about the route and the time of their regular departure for home in the village. According to the applicant, his sons had been killed intentionally under the orders of the head of the police station, Maj. I.A., who had wanted to use the situation around the recent terrorist attacks (see paragraph 7 above) to advance his career. The officer had had his sons killed to show that the local police had been successfully fighting against the terrorists. According to the applicant, on the night of 23 to 24 August 2016 he had seen that the local police had published a press release on the Interfax news-agency website concerning two members of a Shamilskiy illegal organisation who had allegedly opened fire on the officers and then had been killed by return of fire. Along with the statement, a photograph of the bodies of his killed sons had been published; on the photograph, they

had been in somebody else's clothing. On the following morning, 24 August 2016, that photograph had been removed from the website. Also, on the evening on 23 August 2016, Maj. I.A. had called the head of the local administration, Mr A.A., and asked him to warn the residents of Goor-Khindakh not to leave their houses that evening. The applicant stated to the investigators that Maj. I.A. and the head of the Dagestan Counterterrorism Centre Officer N.I. had been involved in his sons' deaths.

38. On 29 November 2016 the investigators questioned the applicant's wife and the mother of Gasangusen and Nabi Gasangusenov, Ms P.A., whose statement was similar to the applicant's submission before the Court. In addition, she stated that officers from the police station had been involved in her sons' killing, as on the night of the incident, 23 August 2016, a group of policemen from that station, including Officer M.M., had spent the night at the mosque of Goor-Khindakh, their village.

39. On 11 December 2017 the applicant requested that the investigators verify the theory of the involvement of law-enforcement officers in his sons' killing. On 13 December 2017 the investigators issued a procedural decision, stating in general terms that the theory would be verified within the course of the investigation.

40. On 13 December 2017 the investigators questioned the deputy head of the police station, Officer Sh.M., who stated that at the time of the incident on 24 August 2016 he had been on holiday in Makhachkala when a colleague had telephoned and told him that the Gasangusenov brothers had attacked the police and had been killed in the ensuing gun battle.

41. On 13 December 2017 the investigators questioned Officer R.I., who stated that he had been on duty at the police station between 23 and 24 August 2016. At about midnight, Maj. I.A. had called him and ordered him to prepare an information statement concerning an exchange of fire next to Goor-Khindakh. According to the statement, the exchange had happened at about 9.25 p.m. on 23 August 2016 between law-enforcement officers carrying out a special operation and two criminals, who had opened fire on the officers and had been killed by return of fire. As a result, there had neither been casualties nor wounded among the law-enforcement officers. Having prepared the statement, Officer R.I. had submitted it to the on-duty officer, Kh.M., in the station's control room.

42. On 20 December 2017 the investigators questioned Officer N.I. from the Dagestan Counterterrorism Centre. He stated that on the night of 23 to 24 August 2016 he had participated in a special operation about 2 km away from Goor-Khindakh along with a number of other officers from law-enforcement agencies. They had used a number of special military-type vehicles, including an armoured personnel carrier. According to the officer, he and his subordinates from the unit had arrived there about 11.40 p.m. and waited until 6 a.m. to go to the site of the gunfight between the law-enforcement officers and criminals, which had happened before their

arrival. At the site, they had found the bodies of the applicant's sons as well as a local resident who had just discovered the bodies. Officer N.I. could not recall the names of any of the other officers who had participated in the special operation with him.

43. On 20 December 2017 Officer M.G. gave a statement similar to that of Officer N.I., but also named three other police officers from the police station who had participated in the special operation.

44. On 23 December 2017 the investigators questioned the head of the police station, Maj. I.A., who stated that at about 10 p.m. on 23 August 2016 Officer N.I. had called him and told him about a shooting in the vicinity of Goor-Khindakh (see paragraph 42 above). Then he had called the police station and ordered his officers to go to the site of shooting. At about 10.30 p.m. he had gone there as well, having called the head of the local administration to "prevent unpredictable situations with the civilian population". At about 2 km from Goor-Khindakh, he had met Officer N.I., who had told him that there had been a gunfight between law-enforcement officers and criminals, as a result of which the two criminals, who had resisted, had been killed. Then he had called the duty officer at the police station and ordered that an official statement about the incident be drawn up (see paragraph 41 above). As for the applicant's allegations of his involvement in the death of Gasangusen and Nabi Gasangusenov, he denied them as groundless. The rest of his statement was similar to that given by Officer N.I. as he could not recall which other law-enforcement officers had participated in the special operation either.

45. On 26 December 2017 the investigators again questioned the applicant, who reaffirmed his previously given statements and insisted that in his opinion, the killing of his sons had been perpetrated under the command of Maj. I.A., who had organised it with the assistance of Officer N.I. The applicant stressed that the day before the incident his son Nabi had told him during a telephone call that that day a police officer, Sh.G., had visited him and his brother at the grazing land and had asked them, in the presence of witnesses, about their regular going-home time in the evening. In the applicant's opinion, the officer had obtained this information to organise the ambush and kill his sons during the subsequent special operation.

46. On the same date the investigators also questioned the applicant's brother, Mr S.G. He stated that on 23 August 2016 he had spoken with his nephews, Nabi and Gasangusen. They had told him that Officer Sh.G. had visited them at the grazing land to have some tea. Then, early on the morning of 24 August 2016 as he had been walking to the grazing land looking for his nephews, who had not returned home the night before, he had come across two men in the black uniforms of officers from the Dagestan Counterterrorism Centre about 50 m away from where his nephews' bodies lay. The officers had asked him where he and his killed

relatives had hidden firearms. He then had had to explain to them that he had been a local shepherd and not a member of an illegal armed group.

47. On 8 January 2018 the investigators questioned Officer Sh.G. He stated that on 23 August 2016 he had visited the grazing land to talk to the shepherds about a sheep. He had had coffee with the Gasangusenov brothers and left (see also paragraphs 45 and 46 above). On the following day, he had learnt about the brothers' death. He had no idea who had participated in the special operation.

48. Between 8 and 10 January 2018 the investigators also questioned Officers G., A.G. and M.Gi., all of whom stated that they had arrived at the scene of the incident on the morning on 24 August 2016 to pick up the bodies of the applicant's sons. They neither had information concerning the perpetrators of the killing nor the names of the participants in the special operation.

49. On 4 February 2018 the investigators questioned Mr I.M., who stated that early in the morning on 24 August 2016 the applicant's wife, Ms P.A., had asked him to check on her sons at the grazing land as they had not returned home. He had gone to the grazing land and had found their bodies. Then he had called the applicant's brother, Mr M.G., and asked him to come to the scene of the incident. He had then seen police officers coming with an officer in a black uniform whom the other officers had called Nasrulla.

50. On 9 February 2018 the investigators questioned Mr D.I., who had stated that on the evening on 23 August 2016 Maj. I.A. had had dinner at his home and that upon receiving a telephone call at about 10.20 p.m. that evening he had called his driver and urgently left in his service car.

51. On 28 February 2018 the investigators questioned the head of the Goor-Khindakh village administration, Mr A.A., who stated that at about 10 p.m. on 23 August 2016 Maj. I.A. had called him to warn that the local residents should not leave the village, as gunfire had been heard in the vicinity. Then he had met a resident of Goor-Khindakh, Mr K.M., who had told him that everything had been calm and no gunshots had been heard.

52. On various dates between January and April 2018 the investigators questioned several officers from the police station. They all gave similar statements to the effect that they had not participated in the special operation against the applicant's sons and had learnt of it only a day later, when they had arrived at the crime scene.

53. On 6 April 2018 the investigators again questioned the applicant, who, in addition to his previously given statements, added that his sons Nabi and Gasangusen had shared a mobile telephone, which had gone missing after their deaths.

54. On 6 April 2018 the investigators severed a part from the criminal case file to open a criminal investigation into the disappearance of the mobile telephone (see the paragraph above).

55. On 30 March 2018 the applicant requested that the investigators order an expert examination of six Kalashnikov machine guns from the Shamilskiy department of the Dagestan counterterrorism centre. That request was granted and on 3 May 2018 the examination was ordered. According to its findings of 22 May 2018, the bullet cartridges collected from the crime scene had not been shot from the six examined machine guns.

56. Also, on 30 March 2018 the applicant requested that the investigators question six residents of Goor-Khindakh, including his wife and brother. On 6 April 2018 the investigators granted his request and subsequently questioned several witnesses (see below).

57. On 20 April 2018 the investigators questioned Mr Dzh.G., who stated that, amongst other things, in his opinion, the killing of the Gasangusenov brothers had been organised by Maj. I.A. and Officer N.I.

58. On 9 May 2018 the investigators questioned Officer Kh.G., who gave a statement similar to that of his colleague Officer N.I., and also stated, similarly to Officer N.I. and Maj. I.A., that he could not recall any other participants in the special operation (see paragraphs 42 and 44 above).

59. On 7 June 2018 the investigators again questioned the applicant's brother Mr S.G., who reaffirmed his previous statement (see paragraph 46 above). He also stated that he and the other relatives had prepared the bodies of Nabi and Gasangusen for the funeral in the presence of an investigator and a medical expert from Khunzakh at the mosque of Goor-Khindakh. During the procedure all of them had observed that the bullet holes on the clothing had not matched those on the bodies. In particular, the body of Nabi had had eleven bullet wounds, but his jacket had had only three bullet holes, whereas the body of Gasangusen had had eight bullet wounds and his jacket had had two bullet holes.

60. On the same date, 7 June 2018, the investigators questioned the applicant's relative, Mr M.A., who stated, among other things, that at about 11 p.m. on 23 August 2016 he had been driving from Goor-Khindakh to a village nearby, in the vicinity of which he had been stopped twice by police officers from the police station who had checked his car.

61. The applicant's relative, Ms A.Z., and his fellow villager, Mr M.M., were questioned by the investigators on 7 and 12 June 2018. Their statements did not provide new information.

62. On 5 July 2018 the investigators questioned Officers M.A. and O.M. from the police station, whose statements were to the effect that they had not participated in the special operation. They stated that their role had been to remove the bodies of the Gasangusenov brothers from the crime scene, and they could not recall any details thereof, including the identities of the other officers from their police station who had also been there (see also paragraphs 42, 44 and 58 above).

63. On 5 July 2018 the investigators also questioned the applicant's nephew, Mr Ma.G., who stated that at about 9.30 p.m. on 23 August 2016 he and his cousin, Mr M.G., had been on the outskirts of Goor-Khindakh. He had called Nabi Gasangusenov, who had told him that he and his brother Gasangusen had been walking to the village from the pasture. About three to four minutes after the conversation, Mr Ma.G. and Mr M.G. had heard machine gun shots and had called Nabi Gasangusenov back right away, but to no avail. At about 9.39 p.m., as Mr Ma.G. and Mr M.G. had got worried, they had gone to the village's central square to find out what had been happening. On the way, about fifteen minutes after the machine gun fire, they had heard several single shots. Then, while dialling the telephone number of Nabi Gasangusenov, Mr Ma.G. and Mr M.G. along with four other fellow villagers, had gone in the direction of the grazing land pasture looking for the Gasangusenov brothers. Someone had picked up for three seconds one of their calls to Nabi Gasangusenov, had not said anything, then had hung up and switched the telephone off. Having reached a tree with a mark about 1.5 km from the village, the six men had stopped and waited for the Gasangusenov brothers for about ten to fifteen minutes, but to no avail. Then, having thought that the Gasangusenov brothers had used an alternative path to go to the village, the men had returned home. The following morning they had found out that the bodies of Nabi and Gasangusen had been found in less than 100 m from that tree.

64. The applicant's relative, Mr M.G., who was questioned on the same date, reaffirmed the statements given by his cousin, Mr Ma.G. (see the paragraph above).

65. On 1 October 2018 (in the documents submitted the date was also referred to as 1 November 2018) the investigation of the criminal case was transferred to the Department of Investigations of Particularly Serious Crimes in the office of the Chairman of the Investigative Committee of Russia.

66. It appears that the investigation is still pending and the perpetrators of the killing of Nabi and Gasangusen Gasangusenov have not been identified.

3. Opening of the criminal case against Maj. I.A.

67. On 6 April 2018 the investigators opened a criminal case concerning falsification and neglect of duty by an official (Articles 292 and 293 of the Criminal Code of Russia). According to the decision to open the case, on 24 August 2016 Maj. I.A., then the acting head of the police station, had issued the false report which had served as the basis for the opening of criminal case no. 63545 (see paragraph 14 above). However, contrary to the report submitted by Maj. I.A., on 23 August 2016 law-enforcement agencies had not taken part in the incident which had occurred in the vicinity of Goor-Khindakh and had resulted in the death of the applicants' sons.

68. No further information on those proceedings was submitted to the Court.

RELEVANT LEGAL FRAMEWORK

69. For a summary of relevant domestic law, see *Turluyeva v. Russia* (no. 63638/09, §§ 56-64, 20 June 2013).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

70. The applicant complained that his sons had been killed as a result of a special operation carried out by State agents and that the authorities had failed to effectively investigate the matter 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

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

B. Merits

1. *The parties’ submissions*

72. The applicant asserted that State agents had killed his sons to pass them off as members of illegal armed groups operating in the area. He referred to the following facts. Prior to 23 August 2016, the local police had been unsuccessful in the investigation of the terrorist attacks which had occurred in the area (see paragraph 7 above). On 23 August 2006 Officer Sh.G. had visited his sons at the grazing land to find out at what time they

would be returning to the village; later on the same day his sons had been killed on their way home. Shortly after the killing of Gasangusen and Nabi Gasangusenov, Maj. I.A. had been promoted to head of the police station. The FSB in Dagestan had confirmed that the special operation had indeed taken place (see paragraph 18 above), and the police had even made a public statement to this effect (see paragraph 12 above), despite subsequent denial thereof (see paragraph 67 above). The state in which the bodies of his sons had been found showed that they had been moved after the death (see paragraphs 11, 27, 32 and 59 above). All those facts showed that the police had tried to conceal the real circumstances of the special operation against his sons.

73. The applicant further submitted that the investigation into the killing had been ineffective and referred to the following facts. His sons had been killed on 23 August 2016, but the investigation had been opened almost fifteen months later, on 15 November 2017 (see paragraph 36 above). Despite the domestic courts' decisions ordering the investigators to investigate the killing, the latter had remained inactive and had opened a criminal case against his sons instead of aiming to identify the perpetrators of their killing (see paragraphs 33-35 and 14 above). Furthermore, the investigators had neither verified the extent of the FSB officers' involvement in the incident, nor established to whom the military vehicles involved in the special operation had belonged (see paragraphs 22 and 42 above). Furthermore, the investigators had failed to identify and examine the firearms belonging to all of the participants in the special operation in order to establish from which guns the bullets which had killed his sons had been fired (see paragraphs 24, 29 and 30 above).

74. The Government stated that unidentified individuals had killed the applicant's sons on the night between 23 and 24 August 2016.

75. The Government furthermore stated that the ongoing investigation into the deaths had been effective as all measures possible to establish the perpetrators' identities had been taken. In particular, the investigators had been verifying the applicant's allegation of the involvement of law-enforcement officers in the deaths.

2. The court's assessment

(a) Alleged violation of the substantive aspect of the right to life

Establishment of the facts

76. The Court has developed a number of general principles relating to the establishment of matters in dispute, in particular when faced with allegations of violations of fundamental rights (see *El Masri v. "the former Yugoslav Republic of Macedonia"* [GC], no. 39630/09, §§ 151-53, 13 December 2012).

- (1) Whether there was a special operation on 23 August 2016 and whether the applicant's sons were killed during that operation

77. It is common ground between the parties that the applicant's sons were killed on 23 August 2016. According to the Government, the killing was perpetrated by unidentified individuals. They neither confirmed nor denied that it had occurred during a special operation or that the operation had actually taken place. The applicant submitted that the special operation had taken place and that his sons had been killed by State agents as a result. The Court has to establish, keeping in mind the absence of results of the pending criminal investigation into the incident (see paragraph 66 above), whether the special operation did take place as alleged by the applicant, and if so, whether his sons were killed during it by State agents.

78. To this end, the Court observes at the outset that the Government's contention is unspecific and of generic nature. It also observes that the documents submitted contain no indication of the applicant's sons' involvement in any types of criminal activities.

79. The Court notes that the circumstances of the discovery of the bodies, which were not disputed by the Government, show that the brothers' bodies had been found in warm clothing, despite the fact that the events had taken place in August (see paragraph 10 above) and they had been barefoot, even though there were pairs of combat boots and flipflops next to them (see paragraphs 10 and 15 above). The state in which the bodies were found suggested the unlikely scenario that the brothers had been killed while walking in winter coats and baseball hats, but barefoot, in the dark summer forest, while each of them was carrying a machinegun, a rucksack and two pairs of footwear. Moreover, the number of the gunshot wounds on each body along with the inconsistency with the number of holes made on their clothing by the bullets (see paragraphs 26 and 59 above), provides grounds to presume that the Gasangusenov brothers had been killed under different circumstances than those under which their bodies were found and that that crime scene had been staged.

80. 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 unrebutted 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 observes that the applicant's allegation that his sons were killed by State agents is supported by the material submitted. In particular, it is supported by the contents of the news report concerning the "elimination" of two alleged criminals as a result of return of fire by law-enforcement officers during a special operation carried out at 9.25 p.m. on 23 August 2016, as well as by an official letter of the FSB further confirming the fact that the operation had taken place (see paragraphs 12 and 18 above). The

validity of those documents and statement has not been disputed by the Government. Furthermore, the decision to open a criminal case against Gasangusen and Nabi Gasangusenov stated that the law-enforcement officers had opened fire on the brothers and killed them during the special operation (see paragraph 14 above). More documents from that criminal case file, such as the statements given by the seven officers in Moscow (see paragraph 22 above), as well as the statements of the local police officers (see paragraphs 40-44 and 52 above) and local residents (see paragraphs 60 and 63-64 above) confirmed the fact of the special operation on 23 August 2016 and the death of Gasangusen and Nabi Gasangusenov as a result of it.

82. In view of the above and considering the lack of an alternative version of the events put forward by the Government, the Court finds that Gasangusen and Nabi Gasangusenov had been killed by State agents during the special operation.

83. Given that it has been established that the Gasangusenov brothers had been killed during the special operation carried out by State agents, the Court has to assess whether the use of the lethal force by those agents against the applicant's sons was justified and in compliance with the State's positive obligation under Article 2 of the Convention.

(2) Whether the use of the lethal force was justified

84. 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).

85. 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. In determining whether the force used is compatible with Article 2 of the Convention, it may therefore be relevant 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).

86. From the documents submitted it is apparent that the special operation was prompted by the terrorist attacks which had taken place in the

area in the preceding weeks. A group of FSB officers from Moscow – more than 2,000 km away – had been deployed to assist the local law-enforcement forces for the special operation (see paragraphs 18 and 22 above). Local police officers also had arrived in the vicinity of the applicant’s village on 23 August 2016 (see paragraph 38 above). Therefore, it is clear that the operation was not spontaneous as it was aimed at the capture of members of illegal armed groups operating in the area (see paragraph 22 above). No further information on the planning of the special operation could be derived from the documents submitted.

87. Furthermore, the documents reviewed by the Court suggest that no serious consideration was devoted to the control and execution of the special operation. The police officers questioned did not provide any information concerning the officer in charge of the operation, the one whose orders they had followed. Furthermore, all of them, including those who had been, by their own admission, in charge of their respective groups (see paragraphs 42 and 44 above), failed to provide any names of their colleagues who had also participated in that operation. It is plausible that they had done so in order to prevent more details on the operation’s execution being given to the investigators. Moreover, the documents submitted show that they themselves did not provide any pertinent details of the operation, such as a description of the circumstances of the encounter of the officers with the Gasangusenov brothers and of the subsequent shooting, which led to their deaths on 23 August 2016 (see paragraphs 42, 44, 48, 58 and 62 above).

88. In the light of the reasons set out above, the Court finds that it has not been demonstrated that the lethal force used, which brought about Gasangusen and Nabi Gasangusenov’s death, was absolutely necessary, as required by Article 2 of the Convention.

89. There has accordingly been a violation of the substantive aspect of that provision.

(b) Alleged violation of the procedural aspect of the right to life

90. The Court assesses compliance with the procedural requirement of Article 2 on the basis of several essential parameters: the adequacy of the investigative measures, the promptness and reasonable expedition of the investigation, the involvement of the deceased person’s family and the independence of the investigation. They are criteria which, taken jointly, enable the degree of effectiveness of the investigation to be assessed (see, *mutatis mutandis*, *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 225, 14 April 2015). If there has been a use of force by State agents, the investigation must be capable of leading to a determination of whether the force used was or was not justified in the circumstances (see *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, §§ 234, 30 March 2016).

91. The Court observes that the examination of the crime scene at the discovery of the bodies of Gasangusen and Nabi Gasangusenov was carried out superficially: despite the fact that both bodies were barefoot, the investigators found the boots and flip-flops, which were nearby, only during the second examination of the scene (see paragraphs 11 and 15 above). Furthermore, that fact should have prompted the investigators to take steps to find out the reasons for the bodies having had no footwear during the alleged attack on the law-enforcement officers, as well as to clarify the reasons for them being in somebody else's warm coats. However, the documents submitted show that throughout the proceedings the investigators took no steps to clarify the matter. Likewise, the investigators took no tangible steps to establish who had been in charge of the special operation, the exact number of participants, the units they had been from and the circumstances of the alleged exchange of gunfire between the officers and the Gasangusenov brothers. In particular, no steps were taken to establish the positions of the officers during the shooting, how many bullets had been shot and whose guns had been used to fire at the brothers. This information could have been obtained, if not from the implicated officers, from the heads of the respective units of the agencies involved, given that officers are supposed to report the details of each use of a firearm.

92. Furthermore, despite the coherent and consistent allegations of the applicant, and the orders of the domestic court (see paragraphs 32, 34 and 35 above), the criminal case into the killing of the applicant's sons was opened one year and three months after the incident. Given that the machine guns from the Gergebil and Shamilskiy departments of the Dagestan Counterterrorism Centre had not been collected as evidence, their examinations in January 2017 and May 2018 appeared devoid of purpose (see paragraphs 29 and 55 above), as it had not been established that those guns had actually been used during the special operation in August 2016. Given that the investigators had failed to identify all of the participants in the special operation, the examination of the firearms of unidentified officers in the hope of identifying the guns used to shoot the Gasangusenov brothers could not be considered as an investigative step susceptible of clarifying the circumstances surrounding the incident (see paragraphs 24, 29 and 30 above).

93. The documents submitted indicate that despite the contradictory information collected by the investigation in criminal cases nos. 63545 and 11702820021000081 and the applicant's credible and consistent complaints, the domestic investigators failed to give a proper response to the serious allegations of inappropriate use of lethal force by agents of the State. By failing in its duty to carry out an effective investigation, the State fostered the State agents' sense of impunity. The Court stresses that a proper response by the authorities in investigating serious allegations of use of lethal force by agents of the State in compliance with the standards of

Article 2 of the Convention is essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion or tolerance of unlawful acts (see, among other authorities, *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 167, ECHR 2011).

94. In view of the foregoing, the Court concludes that there has been a violation of Article 2 of the Convention under its procedural head.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

95. The applicant complained of a violation of Article 13 in connection with Article 2 of the Convention, which reads:

“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.”

96. The Court observes that this complaint concerns the same issues as those examined under the procedural limb of Article 2 of the Convention (see paragraph 94 above). 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 *Dalakov v. Russia*, no. 35152/09, § 90, 16 February 2016, and *Fanziyeva v. Russia*, no. 41675/08, § 85, 18 June 2015).

III. ARTICLE 46 OF THE CONVENTION

97. Referring to the Court’s findings in *Tagayeva and Others v. Russia* (nos. 26562/07 and 6 others, 13 April 2017), the applicant asked the Court to indicate to the respondent Government specific measures to be taken within the framework of the criminal investigation into his sons’ killing.

98. The Government did not comment on this part of the applicant’s submission.

99. Article 46 of the Convention provides as far as relevant:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.”

100. As the Court’s judgments are essentially declaratory, the respondent State remains free, subject to the supervision of the Committee of Ministers, to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court’s judgment (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249,

ECHR 2000-VIII, and *Tagayeva and Others*, cited above, § 638). However, in a number of exceptional cases, where the very nature of the violation found was such as to leave no real choice between measures capable of remedying it, the Court has indicated the necessary measures in its judgments (see, *inter alia*, *McCaughey and Others v. the United Kingdom*, no. 43098/09, § 144, ECHR 2013, and *Nihayet Arıcı and Others v. Turkey*, nos. 24604/04 and 16855/05, §§ 173-76, 23 October 2012).

101. In the present case the Court has found that the applicant's sons were killed as a result of the unjustified use of lethal force, in breach of Article 2 of the Convention (see paragraph 89 above). It has also found that no effective investigation was conducted into the incident (see paragraph 94 above).

102. With respect to the failure to investigate, the Court notes that the investigation in criminal case no. 11702820021000081 is still pending at the national level. However, it is unclear whether any factual findings have been made in the context of the criminal case and the other relevant proceedings (see paragraph 67 above). Having regard to these documents, the Court considers that the specific measures required of the Russian Federation in order to discharge its obligations under Article 46 of the Convention must be determined in the light of the terms of the Court's judgment, and with due regard to the above-mentioned conclusions in respect of the failures of the investigation carried out to date (see paragraphs 91-93 above). In particular, this investigation should elucidate the main circumstances of the use of lethal force by the State agents and evaluate their actions in consideration of all the known facts. It should also secure the next-of-kin access to the key documents in the criminal cases.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

103. 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

104. The applicant did not make a claim in respect of pecuniary damage. He claimed compensation in respect of non-pecuniary damage, the amount of which he left for the Court's determination.

105. The Government stated that the compensation should comply with the Court's case law.

106. Having regard to the parties' submissions and its case law on the matter, the Court awards the applicant 120,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

107. The applicant claimed EUR 10,400 for the costs and expenses incurred before the Court. The amount claimed comprised invoice for legal services rendered by his representatives. It enumerated EUR 9,400 for ninety-four hours of work at EUR 100 per hour for Ms D. Bakhareva, EUR 100 for one hour of work for Mr M. Magomedov and EUR 900 for six hours of work at EUR 150 per hour for Mr K. Koroteev. No other documents were submitted.

108. The Government stated that the applicant's claim should be rejected as unsubstantiated as he had failed to furnish the legal service agreement with his representatives to justify the expenses incurred.

109. Given that the applicant did not submit documents showing that he had paid or was under a legal obligation to pay the fees billed by his representatives or the expenses incurred by them (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 327, 28 November 2017), the Court finds no basis on which to accept that the costs and expenses claimed by the applicant have actually been incurred by him. The claim under this head must therefore be rejected.

C. Default interest

110. 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. *Declares* the application admissible;
2. *Holds* that there has been a substantive violation of Article 2 of the Convention;
3. *Holds* that there has been a procedural violation of Article 2 of the Convention;
4. *Holds* that there is no need to examine separately the complaint under Article 13 in conjunction with Article 2 of the Convention;

5. *Holds*

- (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 120,000 (one hundred and twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

7. *Holds* that the Government must take all necessary and appropriate measures to ensure in the present case that the procedural requirements of Article 2 of the Convention are complied with.

Done in English, and notified in writing on 30 March 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Milan Blaško
Registrar

Paul Lemmens
President