

25 October 2011  
14-6153-11

**EUROPEAN COURT  
OF HUMAN RIGHTS**

**MEMORANDUM**

**Applications nos. 40165/07 and 2593/08**  
***Adzhigitova and Others v. Russia***  
***Abdurakhmanova and Others v. Russia***

On 5 and 11 July 2011 respectively, the European Court of Human Rights (hereinafter – “the European Court”) pursuant to Rule 54 § 2 (b) of its Rules informed the Russian Federation authorities of applications no. 40165/07 *Adzhigitova and Others v. Russia* and no. 2593/08 *Abdurakhmanova v. Russia* lodged with the European Court under Article 34 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – “the Convention”) by 128 Russian nationals, and invited them to submit their observations and answer the following questions:

1. Is the State responsible for the special operation carried out in the village of Borozdinovka in the Shelkovskoy District of the Chechen Republic on 4 June 2005?

2. Has the right to life, as guaranteed by Article 2 of the Convention, been violated in respect of Magomazi Magomazov, Akhmed Abdurakhmanovich Magomedov, Akhmed Payzulayevich Magomedov, Abakar Abdurakhmanovich Aliyev, Magomed Tubalovich Isayev, Akhmed Ramazanovich Kurbanaliyev, Magomed Ramazanovich Kurbanaliyev, Shakhban Nazarbekovich Magomedov, Kamil Magomedov, Murtuz Asludinovich Umarov and Eduard Vyacheslavovich Lachkov?

Has the State complied with its positive obligation under Article 2 of the Convention to safeguard the life of the aforementioned persons? If so, have the persons who were involved in the operation been identified and questioned in the context of the investigation into the events of 4 June 2005? Having regard to the procedural protection of the right to life under Article 2 of the Convention (see *Salman v. Turkey* [GC], no. 21986/93, § 104, ECHR 2000-VII), was the investigation conducted by the domestic



**УПОЛНОМОЧЕННЫЙ РОССИЙСКОЙ ФЕДЕРАЦИИ  
ПРИ ЕВРОПЕЙСКОМ СУДЕ ПО ПРАВАМ ЧЕЛОВЕКА**

**Representative  
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« 01 » *December* 2011 г.

№ 14-6714-11

Mrs Claudia WESTERDIEK  
Fifth Section Registrar,  
European Court of  
Human Rights

COUNCIL OF EUROPE  
STRASBOURG – FRANCE

**Applications nos. 40165/07 and 2593/08**  
**Adzhitova and Others v. Russia**  
**Abdurakhmanova and Others v. Russia**

Dear Madame,

With reference to your letter of 3 November 2011 in respect of the above applications, please find attached a copy of the English translation of the Memorandum of the authorities of the Russian Federation.

Best regards,

Georgy Matyushkin

authorities into the disappearance of the aforementioned persons sufficient to meet their obligation to carry out an effective investigation, as required by Article 2 of the Convention?

Does the trial against Mr. Aziyev meet the requirements of Article 2 of the Convention to bring those responsible for violations of this provision to account?

3. Has the mental suffering of the respective applicants in connection with the disappearance of their close relatives and/or ill-treatment been sufficiently serious to amount to inhuman treatment, within the meaning of Article 3 of the Convention? If so, has there been a breach of Article 3 of the Convention in respect of the applicants?

4. Have the respective applicants exhausted the domestic remedies in respect of their complaints under Article 8 of the Convention? If so, has there been a violation of their right to respect for their home, contrary to Article 8 of the Convention, as a result of the special operation of 4 June 2005?

In respect of the applicants in application no. 40165/07 *Adzhigitova and Others* also answer the following question: has there been a violation of the applicants' right to respect their family life, contrary to Article 8 of the Convention, in respect of the state authorities' failure to inform them of the results of the forensic examination of the human remains which were found at the sites of the burnt houses?

5. In respect of the applicants in application no. 40165/07 *Adzhigitova and Others*: have the applicants exhausted the domestic remedies in respect of their complaints under Article 1 of Protocol no. 1? If so, has there been a violation of their right to peaceful enjoyment of possessions, contrary to Article 1 of Protocol no. 1, as a result of the special operation of 4 June 2005?

In respect of the applicants in application no. 2593/08 *Abdurakhmanova and Others*: have the applicants exhausted the domestic remedies in respect of their complaints under Article 8 of the Convention in conjunction with Article 1 of Protocol no. 1? If so, has there been a violation of their right to peaceful enjoyment of possessions, contrary to Article 1 of Protocol no. 1, as a result of the special operation of 4 June 2005?

6. Have the applicants had at their disposal effective domestic remedies for their complaints under Articles 2, 3 and 8 of the Convention and Article 1 of Protocol no. 1, as required by Article 13 of the Convention? The Russian authorities are requested to substantiate their arguments with reference to the domestic courts' case-law.

7. Have the applicants been discriminated against in the enjoyment of their rights and freedoms guaranteed by the Convention on the ground of their Avarian ethnic origin, contrary to Article 14 of the Convention?

8. The Government are requested to submit copies of the entire investigation file in all criminal cases instituted in relation to the special operation of 4 June 2005 and of all other relevant documents, including the copy of report no. 535 of the Book of Registration of Reports of the duty unit of the Ministry of Internal Affairs of the Chechen Republic at 8.15 p.m.

#### *Circumstances of the case*

1. The circumstances of the events of 4 June 2005 became the subject of investigation by the military prosecution authorities, and eventually by the military investigation agencies in criminal cases no. 14/90/0066-11 (formerly no. 34/00/0013-05) and no. 34/00/0018-05.

2. The preliminary investigation has established that in the night of 2 to 3 June 2005, in the village of Borozdinovskaya in the Shelkovskoy District of the Chechen Republic, members of illegal armed formations (hereinafter referred to as "IAF") killed T.A. Akhmadov, entered the home of the head of the village administration

S.L. Bashirov, beaten him up, wounded police officer A.A. Khesikhmanov who was guarding him, stole their government-issue weapons and their staff car.

3. On the same night in the vicinity of the village of Borozdinovskaya the same persons also killed the police officer of the Shelkovskoy District Department of the Interior (ROVD) Kh.Kh. Talkhatov, his staff car was burned, his government-issue weapon and his police certificate were stolen (criminal proceedings were initiated upon these facts by the Chechen investigative authorities, investigation is currently ongoing).

4. In order to locate the militants' basing sites in the forests near the village of Borozdinovskaya, to search for and to detain the IAF members who have committed crimes, as well as to prevent their sabotage and terrorist activities, on 3 June 2005, the commander of military unit no. 27777, by virtue of the requirements of the Federal Law of 25 July 1998 no. 130-FZ *On Combating Terrorism*, Decree of the President of the Russian Federation of 22 January 2001 no. 61 *On Measures Aimed at Combating Terrorism in the Territory of the North Caucasus Region of the Russian Federation* and Decree of the President of the Russian Federation of 23 September 1999 no. 1255c *On Measures Aimed at Combating Terrorism in the Territory of the North Caucasus Region of the Russian Federation*, issued military orders nos. 0463 and 0464.

5. On 4 June 2005, in accordance with the abovementioned military orders, two detachments of military unit no. 44822 were ordered to carry out search and ambush activities in the Shelkovskoy District and in the vicinity of the village of Borozdinovskaya. To this end, the detachment commanded by Lieutenant M.M. Aziyev was ordered to covertly spread out in the wooded area near the village of Borozdinovskaya and be prepared to provide assistance to the search teams in blocking the bandits. M.M. Aziyev's detachment was strictly forbidden to carry out activities in populated areas, to deviate from the movement routes or to leave the designated squares.

6. On 4 June 2005, the detachment of military unit no. 44822 consisting of 33 men under the command of Lieutenant M.M. Aziyev left for the area in which the special operation was to be conducted in 2 armored personnel carriers, 1 URAL-4320 vehicle, 4 UAZ-3157 vehicles and 2 VAZ-21099 vehicles.

7. At 1.30 pm, while en route, despite the command's prohibition to carry out any operations in the settlements, M.M. Aziyev ordered his subordinate servicemen to block the village of Borozdinovskaya, to search the residents of the village and their households applying violence and threatening to use arms in order to find weapons and evidence of involvement in the IAF, to gather the male population of the village near the school in order to identify the persons responsible for the death of T.A. Akhmadov.

8. Carrying out the order of Lieutenant M.M. Aziyev, at 2 pm, on 4 June 2005, the detachment under his command blocked the village of Borozdinovskaya. Afterwards, between 2 pm and 5 pm, the servicemen, acting by the orders of M.M. Aziyev, against the will of the residents, applying violence and threatening to use arms illegally searched the households of 56 citizens and made personal searches of 22 residents of the village of Borozdinovskaya.

9. During the searches, as well as in the street of the village, the servicemen carrying out the order of M.M. Aziyev, applying violence and threatening to use arms and special means detained 84 people, including A.A. Aliyev, M.T. Isayev, M.R. Kurbanaliyev, A.R. Kurbanaliyev, E.V. Lachkov, A.A. Magomedov, A.P. Magomedov, K. Magomedov, S.N. Magomedov, Sh.N. Magomedov and M.A. Umarov.

All of the persons who had been illegally detained were taken by vehicles to the Borozdinovskaya high school by the orders of M.M. Aziyev.

10. In the school yard, with the use of arms and special means, the residents of the village were forced to lay on the ground with their faces down, to pull their shirts on their heads, to keep their hands on their heads in order to rule out the possibility of their

observing the transpiring events, were forbidden to speak and move; they were kept in such way for about 4 hours.

11. During this time the servicemen were identifying the detainees by checking the passports, their involvement in the IAF and the participation in the murder of T.A. Akhmatov was checked. The relatives had no access to the detained.

12. Following the interrogation, G.Yu. Gadzhimagometov, R.V. Nukayev, A.M. Magomedov, F. Shakhidov and Kh.M. Magomedov were released, and the rest, upon M.M. Aziyev's orders, were taken by the servicemen of the detachment, who continued threatening to apply violence and use arms, to the school's gym and were forcefully laid on the floor. 79 detainees were forcefully held in the gym for another 2 hours, they were forbidden to talk, move or stand up.

13. On 27 July 2005, the Military Prosecutor of the Combined Group of Forces (OGV) initiated criminal case no. 34/00/0018-05 in respect of Lieutenant M.M. Aziyev, the commander of detachment of military unit no. 44822.

14. On 26 September 2005, the criminal case initiated against M.M. Aziyev under Article 286 § 3 (a, b) of the Criminal Code of the Russian Federation (hereinafter – "the CC RF") was forwarded for an examination on the merits to the Grozny Garrison Military Court.

15. On 4 October 2005, the Grozny Garrison Military Court sentenced M.M. Aziyev to three year suspended sentence, with one year probation.

16. The actions of the servicemen in the village of Borozdinovskaya were observed by a group under the command of an active IAF member S.Sh. Akhmedov, which decided to use this situation for their own criminal purposes, to discredit the federal forces and to destabilize the situation in the Shelkovskoy District of the Chechen Republic.

17. Carrying out their intentions, IAF members S.Sh. Akhmedov (aliases "Malysh", "Killer"), A. Mutalipov, S. Abziyev (alias "Khafiz"), unidentified persons with aliases "Ayub", "Anbar", "Malik" and "Bilal" under the guise of military personnel wearing army uniform, black t-shirts with "Spetsnaz" and "Batalion Vostok" written on their backs, having waited for all of the servicemen to gather near the school on the northwestern edge of the village, entered the village of Borozdinovskaya from the opposite side.

18. On 4 June 2005, at about 8 pm, they came up to houses nos. 9 and 11 on the Lenina Street located in the centre of the settlement, where, attracting the attention of residents, A. Mutalipov and "Ayub" doused the houses with flammable liquid and set them aflame. In addition, S. Abziyev fired at least 6 shots from AK-74 assault rifle no. 5251955.

19. Then the armed gang split into two parts, one quickly proceeded to the western edge of the village, the other – to the southern.

20. On the western edge of the village, "Ayub" and S. Abziyev demonstratively poured flammable liquid on house no. 27 on the Mayakovskogo Street and set it on fire; with that, S. Abziyev, attracting the attention of residents, fired at least 5 shots from AK-74 assault rifle no. 5251955. After that, the militants quickly retreated to the meeting place in the southern edge of the village.

21. There, A. Mutalipov demonstratively and in the presence of local residents poured flammable liquid on house no. 9 on the Naberezhnaya Street and fired at least three shots at the house using a PM pistol. S. Akhmedov armed with AKMS assault rifle no. 025897 with an under-barrel grenade launcher fired two shots from the grenade launcher and at least one shot from the assault rifle at the house. "Ayub" fired at least two shots at the house using PK machine gun no. GU 130, S. Abziyev fired at least 32 shots at the house using AK-74 assault rifle no. 5251955. At the same time the armed gang fired a night-action signal cartridge with a red light at the house. As a result of the use of firearms, the house started burning due to thermal influence. M.M. Magomazov who was

in the house received blast injuries and died on the spot because of multiple gunshot wounds.

22. After this, the militants fled south to the woods located beyond the edge of the village.

23. While near the school in the north-western edge of the village, G.M. Gayrabekov, the commander of the detachment of the infantry battalion of military unit no. 44822, after hearing gunshots and seeing smoke, has immediately arrived in the company of servicemen at the centre of the village to the Lenina Street, and then to the Mayakovskogo and Naberezhnaya Streets.

24. Having found out that the houses were set aflame by a group of individuals wearing army uniform who later disappeared in the direction of the forest, and realizing that the servicemen of the battalion were not involved in these house arsons, as all of them were in the school yard, he ordered to pursue the armed gang. However, due to nightfall and the risk to get into an ambush he withdrew this order.

25. On the same day, at about 9.30 pm, the servicemen of military unit no. 44822 left for their permanent deployment place in the city of Gudermes, none of the locals were taken with them.

26. After the departure of the servicemen, the detainees left the school yard for their homes.

27. On 5 June 2005, the residents of the village of Borozdinovskaya reported the disappearances of A.A. Aliyev, M.T. Isayev, A.R. Kurbanaliyev, M.R. Kurbanaliyev, E.V. Lachkov, K. Magomedov, A.A. Magomedov, S.N. Magomedov, A.P. Magomedov, Sh.N. Magomedov and M.A. Umarov, burning of 4 houses and finding the body of M.M. Magomazov in the burnt site of house no. 9 on the Naberezhnaya Street.

28. In this regard, on 6 June 2005, the Prosecutor's Office of the Shelkovskoy District of the Chechen Republic initiated criminal case no. 51038 under Article 105 § 2 (g), Article 126 § 2 (a, d, g), Article 167 § 2 of the CC RF upon the murder of M.M. Magomazov, the abduction of the abovementioned persons and the destruction of houses.

29. At the same time, in the mentioned dates, in the vicinity of the village of Borozdinovskaya, the military and law enforcement authorities continued to search for, pursuit and fight the IAF members who provided active armed resistance.

30. On 5 June 2005, at about 9.45 pm, in the course of search and ambush activities, 3.5 km southeast of the village of Borozdinovskaya in the *Bolshoi Zapovednik* natural boundary the servicemen of military unit no. 44822 found an armed gang consisting of 15 persons. During the fight the IAF members fled.

31. On 6 June 2005, in the course of a sweep operation in the said area a militant base and the following equipment were found: 2 tents, 1 double-barrel gun, 1 *Shmel* flamethrower, VOG-25 grenades, 5.45 and 7.62 mm caliber ammunition and the police certificate of Kh.Kh. Talkhatov, the police officer of the Shelkovskoy ROVD who was killed on 3 June 2005, his police badge with his personal number and a vehicle inspection certificate.

32. On 14-15 June 2005, on the site of house no. 11 on the Lenina Street in the village of Borozdinovskaya, during the ruins excavation charred fragments of two bodies were found: bones, a dental crown and a tooth fragment with traces of thermal influence.

33. On 15 June 2005, the Prosecutor's Office of the Shelkovskoy District initiated criminal case no. 51046 upon this fact under Article 105 § 1 of the CC RF which was joined with criminal case no. 51038.

34. The residents of the village did not lodge any reports with the law enforcement agencies regarding these remains belonging to particular persons.

35. On 20 June 2005, criminal case no. 51038 was received by the Military Prosecutor's Office of the OGV which registered it under number 34/00/0013-05 and initiated proceedings in it.

36. In the course of verification of the applicants' arguments concerning the kidnapping of 11 people during the investigation it was found that on 4 June 2005, A.A. Aliyev, M.T. Isayev, M.R. Kurbanaliyev, A.R. Kurbanaliyev, E.V. Lachkov, A.A. Magomedov, A.P. Magomedov, K. Magomedov, S.N. Magomedov, Sh.N. Magomedov and M.A. Umarov have voluntarily joined the IAF under the leadership of S.Sh. Akhmedov, the so-called "emir" of the Shelkovskoy District, after the departure of troops from the village.

37. Between 10 June and 14 June 2005, Sh.N. Magomedov, along with IAF members Akhmedov, S. Abziyev and the person known as "Malik", came to the base of the IAF commander A. Abdorkhanov which was situated close to the village of Galsonchu of the Nozhai-Yurt District, with that Sh.N. Magomedov was armed with an assault rifle.

38. In July 2005, A.A. Aliyev, M.T. Isayev, M.R. Kurbanaliyev, A.R. Kurbanaliyev, E.V. Lackov, A.A. Magomedov, A.P. Magomedov, K. Magomedov, S.N. Magomedov, Sh.N. Magomedov, M.A. Umarov participated in an attack on the village of Roshni-Chu of the Urus-Martan District as part of S. Akhmedov's armed gang. During the fight Sh.N. Magomedov, Magomed (only his name is known), Akhmed (only his name is known) were injured and taken for treatment to the Shatoy District of the Chechen Republic.

39. On 13 July 2005, at the border of the Shelkovskoy and Gudermes Districts, in the vicinity of the village of Azamat-Yurt, the officers of the Temporary United Alignment of Agencies and Units of the Ministry of the Interior of Russia (hereinafter referred to as "VOGO and P") in the course of the fight killed two militants from S.Sh. Akhmedov's armed gang - A.E. Mutalipov and "Ayub" who were wearing black t-shirts with "Batalion Vostok" written on their backs.

The said t-shirts, small arms (PM pistol, AKM assault rifle, PK machine gun), 7.62 mm and 9 mm caliber cartridges were recovered from the combat site.

40. On 28 July 2005, at about 12 am, in the village of Borozdinovskaya, IAF members S. Akhmedov and S. Abziyev shot at the territorial police department using firearms from the area near house no. 49 on the Lenina Street. As a result of the shooting, a police officer of the Shelkovskoy ROVD F.A. Khasanov had received gunshot wounds of which he died.

41. Upon this fact, on 28 July 2005, the Prosecutor of the Shelkovskoy District initiated criminal case no. 51054 under the elements of the crime under Article 317 of the CC RF.

42. The said criminal case was forwarded to the Military Prosecutor's Office of the OGV according to the jurisdiction, where it was joined with criminal case no. 34/00/0013-05.

43. On 12 August 2005, on the southern edge of the village of Shamil-Khutor of the Vedeno District, IAF members "Malik" and "Bilal", armed with AKMS assault rifle no. 455921 and AK-74 assault rifle no. 525195, had committed an infringement on the lives of servicemen of military unit no. 44822 by firing at least 50 shots at them.

44. As a result of the attack, Master-Sergeant R.N. Titayev and Sergeant Kh.V. Magomedov had been inflicted light bodily harm in the form of a tangential wound of the forearm of the left hand and a tangential wound of the right hand, respectively. The attackers were killed by the servicemen's return fire.

45. Upon this fact, on the same day, the Prosecutor of the Vedeno District of the Chechen Republic initiated criminal case no. 53054 under the elements of the crime under Article 317 of the CC RF against the IAF members, which was subsequently joined with criminal case no. 34/00/0013-05.

46. On 19 October 2005, in house no. 37a on the Shchorsa Street in the city of Khasavyurt of the Republic of Dagestan S.Sh. Akhmedov and S.Ya. Abziyev were located and killed during the investigative activities.

47. On 11 December 2005, a fight took place in the vicinity of the village of Niki-Khita of the Kurchaloy District of the Chechen Republic between the servicemen of military unit no. 62032 and IAF members, in the course of which the IAF member with the alias of "Anbar" who was a part of Akhmedov's armed gang was killed.

48. In the place where the IAF members were killed, firearms (assault rifles), ammunition and cartridges belonging to them were recovered.

49. In May 2006, the residents of the village of Borozdinovskaya Sh.N. Magomedov, S.N. Magomedov and M.T. Isayev, along with an active IAF member Arab "Yasir", came to the base of the so-called "emir" I.L.-A. Muskiyev located in the vicinity of the village of Khidi-Khutor of the Kurchaloy District of the Chechen Republic. All of them were armed with automatic firearms. They had spent several days in the said base, after which they redeployed to the Vedeno District of the Chechen Republic.

50. After the IAF member S. Akhmedov (aliases "Malysh", "Killer") was killed, the residents of the village of Borozdinovskaya A.A. Aliyev, M.T. Isayev, A.R. Kurbanaliyev, M.R. Kurbanaliyev, E.V. Lachkov, A.A. Magomedov, A.P. Magomedov, K. Magomedov, S.N. Magomedov, Sh.N. Magomedov and M.A. Umarov joined A. Avdorkhanov's united armed gang active in the territory of the Nozhay-Yurt and Vedeno Districts of the Chechen Republic.

51. Therefore, the investigation established that on 4 June 2005, the servicemen of military unit no. 44822, acting by the orders of their commander Lieutenant M.M. Aziyev committed illegal house searches, detentions and confinements of residents of the village of Borozdinovskaya, but were not involved in the murder of M.M. Magomazov and other persons, the disappearance of 11 persons as well as in the house arsons. These crimes were committed by IAF members under the command of Akhmedov.

52. The above residents of the village were not captured by the servicemen but have voluntarily joined the IAF under the command of Akhmedov and subsequently took an active part in the crimes committed against the military personnel, government officials and civilian population. These circumstances are confirmed by the criminal case file.

53. Thus, witness A.A. Soltanmuradov who formerly was an IAF member under the command of A. Avdorkhanov explained that in one of the days between 10 and 14 June 2005, 6 armed militants arrived to Avdorkhanov in the village of Galsonchu of the Nozhyi-Yurt District, including S.Sh. Akhmedov and S.Ya. Abziyev who were known to him and an Arab mercenary with the alias of "Malik." Among the arrivals there was one Avar. Akhmedov informed Avdorkhanov that in early June 2005 his group, upon the order of Sh. Basayev, murdered a forester and a police officer in the village of Borozdinovskaya, and afterwards, with the aim of provocation, under the guise of servicemen committed several other civilian murders in the village itself and have burned several houses. During their escape from the village of Borozdinovskaya his group was joined by 11 local residents.

In the presented photographs of the 11 allegedly kidnapped residents of the village, Soltanmuradov identified Sh.N. Magomedov (the Avar) who arrived with Akhmedov to Avdorkhanov.

54. Questioned as a witness A.A. Badayev who formerly was an IAF member under the leadership of the "emir" of the village of Tsatsin-Yurt I.L.-A. Muskiyev (alias "Muskat") indicated that in one of the days of May 2006, an armed militant group of 8 men commanded by an Arab with the alias of "Yasir" arrived at Muskiyev's base located near the village of Khidi-Khutor. From their conversation he learned that among the members of the group there were three Avars who formerly lived in the village of Borozdinovskaya. Since 1999 they were providing active assistance to the IAF members. They were forced to leave the village in June 2005 with Akhmedov's group as a "sweeping-up" operation had been carried there. After the death of Akhmedov they joined

Avdorkhanov's IAF. Afterwards, the Avar militants have been sent to the village of Vedeno.

In the presented photographs of the 11 allegedly kidnapped residents of the village Badayev identified Sh.N. Magomedov, S.N. Magomedov and M.T. Isayev as the persons who had arrived in the village of Tsatsin-Yurt in "Yasir's" IAF.

55. Commission of crimes in the village of Borozdinovskaya by the IAF members commanded by Akhmedov is confirmed by the evidence obtained during the investigation.

56. According to expert report no. 358/05 of 30 December 2005, twenty four cartridges from 5.45 mm caliber assault rifle rounds recovered on 5 June 2005 from house no. 9 on the Naberezhnaya Street in the village of Borozdinovskaya; seven cartridges from 5.45 mm caliber assault rifle rounds recovered on 6 June 2005 from house no. 9 on the Naberezhnaya Street; one cartridge from a 5.45 mm caliber assault rifle round recovered on 6 June 2005 from house no. 9 on the Naberezhnaya Street that were submitted for examination had been shot from the same 5.45 mm caliber Kalashnikov weapon model 1974, and had not been fired from any of the examined 5.45 mm caliber weapons of the rifle battalion of military unit no. 44822. Two cartridges from 7.62 mm caliber assault rifle rounds seized on 5 June 2005 from house no. 9 on the Naberezhnaya Street had been fired from the same 7.62 mm caliber weapon designed for domestic 7.62x53 rounds and had not been fired from any of the examined 7.62 mm caliber weapons of the rifle battalion of military unit no. 44822. Three cartridges from 9 mm PM rounds recovered on 6 June 2005 from house no. 9 on the Naberezhnaya Street had been fired from the same 9 mm caliber weapon designed for domestic 9x18 PM rounds and had not been fired from any of the examined 9 mm caliber weapons of the rifle battalion of military unit no. 44822.

57. In accordance with the findings of several forensic ballistic examinations, the cartridges found in the village of Borozdinovskaya in the yards of the burnt houses are identical to the cartridges found in the places where IAF members have been killed, and had been fired from the weapons belonging to the militants which were recovered after their elimination.

58. During the liquidation of a cache of weapons and ammunition in the vicinity of the village of Dzumsoy of the Itum-Kalinskiy District, an audiotape with a recording in Arab and Chechen on the attack of the IAF members on the village of Roshni-Chu of the Urus-Martan District carried out by the "emir" of the Shelkovskoy District alias "Killer" (Akhmedov) with 11 "brothers" (militants) from the village of Borozdinovskaya, with that, 3 Avars who were a part of the militant group had been injured: Shakhban, Magomed and Akhmed, who were taken for treatment to the vicinity of the village of Borzoy.

The content of audiotape is confirmed by the conclusion of the linguistic and phonographic expert examination.

59. The witnesses from the residents of the village of Borozdinovskaya under pseudonyms R.B. Elgushiyev, M.M. Gaidarov, Kh.A. Kurbanov identified in the photographs presented to them the bodies of the IAF members killed during the special operations, the persons who had shot at and set fire to the houses on 4 June 2005 and who had afterwards hidden in the woods. During the commission of crimes these persons had been wearing black t-shirts with "Batalion Vostok" written on them.

60. The evidence on which the abovementioned conclusions are based on is described in detail in the extract from the judgment terminating the criminal case attached to this Memorandum of the Russian authorities.

61. On 5 October 2011, the preliminary investigation in criminal case no. 14/90/0066-11 has been suspended under Article 208 § 1 (2) of the Code of Criminal Procedure of the Russian Federation (hereinafter referred to as "the CCP RF").

62. Investigative activities aimed at locating A.A. Aliyev, M.T. Isayev, A.R. Kurbanaliyev, M.R. Kurbanaliyev, E.V. Lachkov, A.A. Magomedov, A.P. Magomedov, K. Magomedov, S.N. Magomedov, Sh.N. Magomedov and M.A. Umarov are being taken in the criminal case.

*Answers to the questions posed by the European Court*

*Answer to question no. 1*

63. In the course of investigation into criminal case no. 14/90/0066-11 (formerly no. 34/00/0013-05) and no. 34/00/0018-05 it was established that, in violation of the military orders the commander of military unit no. 27777 of 3 June 2005 nos. 0463 and 0464 prohibiting to carry out special operations in populated areas, the commander of the detachment of military unit no. 44822 Lieutenant M.M. Aziyev, exceeding his official powers, has conducted an unauthorized special operation during which illegal searches were carried out in the households, citizens were arrested and forcibly held in the school.

These circumstances and the responsibility for them are recognised by the authorities of the Russian Federation.

64. Having established the facts of M.M. Aziyev's criminal activities, the law enforcement agencies have taken immediate actions aimed at investigating the crime and bringing the perpetrator to criminal responsibility in accordance with the effective law.

65. On 4 October 2005, the Grozny Garrison Military Court sentenced M.M. Aziyev to three year suspended sentence, with one year probation.

*Answer to question no. 2*

66. In accordance with Article 2 § 1 of the Convention, 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.

67. Article 2 of the Convention which safeguards the right to life and provides the circumstances in which deprivation of life may be justified is one of the fundamental articles of the Convention, the derogation of the value of which is inadmissible. In conjunction with Article 3 of the Convention it also enshrines one of the fundamental values of the democratic societies which are members to the Council of Europe. The circumstances in which deprivation of life may be justified are not subject to extended interpretation. The purpose of the Convention as an instrument for the protection of individual human beings require Article 2 of the Convention to be interpreted and applied so as to make its safeguards practical and effective (see *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A, no. 324, §§ 146-147).

68. The Russian Federation authorities would like to draw attention to the fact that the right to life, as guaranteed by Article 2 of the Convention, has been violated in respect of M.M. Magomazov not by the authorities of the Russian Federation but by members of illegal armed formations S. Akhmedov, A. Mutalipov, S. Abziyev and an unidentified person with the alias of "Ayub." As a result of the criminal actions of these persons M.M. Magomazov has died.

69. The investigation established that as a result of use of firearms by the said persons, M.M. Magomazov received a blast injury and died from multiple gunshot shrapnel penetrating perforating wounds of the chest, abdomen, with damage to the heart, lungs, liver, mesenteric loops of small and large intestines.

70. The Russian Federation authorities believe that the applicants' complaints on violation of Article 2 of the Convention in respect of A.A. Aliyev, M.T. Isayev,

A.R. Kurbanaliyev, M.R. Kurbanaliyev, E.V. Lachkov, K. Magomedov, A.A. Magomedov, S.N. Magomedov, A.P. Magomedov, Sh.N. Magomedov and M.A. Umarov and unfounded, as there is no evidence that they were killed as a result of illegal acts of the federal forces.

72. In the case file of the examined criminal cases there is no evidence of the aforementioned persons' deaths which could comply with the "beyond reasonable doubt" criterion (*Ireland v. the United Kingdom*, judgment of 18 January 1978, § 161).

73. On the contrary, in the course of the investigation evidence was obtained that the said persons have voluntarily joined the illegal armed formations under the leadership of the so-called "emir" (field commander) S. Akhmedov, and eventually of Avdorkhanov and actively participated in the commission of crimes against military personnel, government officials and the civilian population.

74. These circumstances indicate that the abovementioned persons have their motives to conceal their whereabouts from the authorities in order to avoid responsibility for their crimes.

75. As for the procedural component of Article 2 of the Convention, the authorities of the Russian Federation would like to point out that the European Court in its case-law stated that the obligation of the state to protect the right to life requires that there should be some form of effective official investigation when individuals are suspected to have been killed as a result of the use of force (*mutatis mutandis*, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, p. 49 § 161; *Kaya v. Turkey*, judgment of 19 February 1998, Reports 1998-I, p. 329, § 105).

76. It should be noted that during the preliminary investigation a considerable amount of procedural action has been carried out:

- more than 500 people have been questioned as witnesses (including all of the servicemen who took part in the special operation of 4 June 2005);
- 72 persons have been granted victim status and questioned in this procedural status;
- 28 on-site testimony checks have been carried out;
- 23 forensic examinations have been carried out;
- 629 small arms of the *Vostok* battalion have been seized and examined, cartridge samples of each small arm have been obtained;
- other procedural actions have been performed (inspections, obtaining samples for comparative analysis, seizures, requests, etc.).

77. The criminal investigation of the events of 4 June 2005 in the village of Borozdinovskaya was conducted in accordance with the Russian legislation and in full conformity with the Convention.

78. In view of the foregoing, the authorities of the Russian Federation believe they have taken and are taking all required measures within the framework of fulfillment of the obligation to carry out an effective investigation.

79. As regards compliance of the proceedings against M.M. Aziyev with the requirements of Article 2 of the Convention on bringing the persons who have violated this provision to liability, the Russian authorities would like to submit the following.

80. Pursuant to the final judgment of the Grozny Garrison Military Court of 4 October 2005, M.M. Aziyev was found guilty under Article 286 § 3 (a, б) of the CC RF and sentenced to 3 year suspended sentence, with one year probation, with application of Article 64 of the CC RF.

81. According to this judgment, the applicants were recognised as victims of this criminal case and therefore their right to access to justice was realized. The victims did not use their right to appeal against this sentence in the cassational procedure. The case was not considered in the cassational procedure.

82. Victims M.M. Yunusov, A.R. Magomedov, R.A. Magomedgadzhiev, O.M. Gazimagomedov, G.Z. Magomedov, G.K. Magomedov, A.M. Magomedov, I.Kh. Mikmagomedov, M.M. Kadiyev, M.M. Khabibov, Kh.M. Uvaysov, A.I. Labazanov, I.Yu. Yunusov, M.M. Yunusov, A.M. Ramazanov, Sh.A. Ramazanov, I.D. Idrisov, A.M. Magomedov, M.B. Magomedov, R.A. Labazanov, A.Z. Ramazanov, I.Z. Ramazanov, A.I. Dolgatov, K.Kh. Omarov, A.K. Abdulrashidov, M.A. Isayev, R.A. Magomedgadzhiev, M.M. Magomedov, A.M. Shaykhiyev, A.A. Suleymanov, M.B. Magomedov, R.V. Nukayev, A.A. Isayev, A.I. Labazanov, A.O. Magomedov, A.I. Taranin, M.M. Uvaysov, I.N. Radzhabov, Sh.A. Ramazanov, A.I. Magomedov, I.D. Idrisov, A.Z. Ramazanov, Kh.A. Magomedov, G.K. Magomedov, I.Z. Ramazanov, A.Kh. Isayev, A.S. Abakarov, A.M. Omarov, R.A. Kurbanaliyev, B.R. Magomedov, K.O. Omarov, A.R. Magomedov, A.A. Abakarov, Kh.M. Uvaysov, Sh.A. Abuliyev, Z.R. Ibragimov, I.Kh. Mikmagomedov, M.M. Khabibov, M.D. Isayev, O.M. Omarov, M.N. Omarov, K.R. Omarov, D.N. Zaurbekov, M.D. Magomedov, O.M. Gazimagomedov, R. Magomedov, I.Sh. Zagirov, A.G. Bagadurov, Sh.Ya. Ramazanov, S.Yu. Chechkov, N.A. Morozov, A.Kh. Gadzhibagomedov, Z.N. Sharukhanov, D.S. Mikmagomedov, O.Kh. Khanmagomedov, G.Yu. Gadzhimagomedov, K. Megomedov, S.N. Magomedov, Sh.N. Magomedov, A.A. Magomedov, A.P. Magomedov, M.A. Umarov, E.V. Lachkov, M.T. Isayev, A.A. Aliyev, A.R. Kurbanaliyev, M.R. Kurbanaliyev lodged complaints by way of supervisory review.

83. On 20 February 2006, these complaints were returned to the applicants in order to conform them with the requirements of the law because of their inappropriate drawing-up which prevented them from judicial review in accordance with Articles 375 and 404 of the CCP RF. No repeated complaints have been received.

84. In accordance with Act no. 12 of 4 March 2009 the criminal case in respect of M.M. Aziyev was destroyed due to expiration of the document keeping term.

*Answer to question no. 3*

85. As it was reiterated by the European Court, Article 3 of the Convention enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of its Protocols, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V; *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, Reports 1998-VIII, p. 3288, § 93).

86. Allegations of ill-treatment must be supported by appropriate evidence (see, *mutatis mutandis*, *Klass v. Germany*, judgment of 22 September 1993, Series A, no. 9, pp. 17-18, § 30). To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact (see *Ireland v. the United Kingdom*, cited above, pp. 64-65, § 161 in fine).

87. The authorities of the Russian Federation reiterate that the criminal case files only contain the evidence that 11 of the applicants' relatives left the village of Borozdinovskaya having joined an illegal armed formation. Therefore, there is no reason to believe that they had disappeared due to the actions of the armed forces.

88. As regards the use of force by the servicemen who had acted under the command of Lieutenant M.M. Aziyev, attention should be drawn to the fact that as a result of the proceedings M.M. Aziyev was found guilty of having committed a crime

under Article 286 § 3 (a, b) of the CC RF. Therefore, the authorities identified and brought to liability the person who had committed a crime in applicants' respect. The sentence of the Grozny Garrison Military Court of 4 October 2005 was not appealed against by the applicants in the cassational procedure, the supervisory complaints lodged by them were returned to the applicants in order to conform them with the requirements of the law, however, no repeated complaints have been received.

89. At the same time, the applicants could have lodged civil actions under Article 151 of the Civil Code of the Russian Federation. In this case, the court may have imposed on M.M. Aziyev, the person who has violated the applicants' rights, the obligation to pay monetary compensation to them on account of them being inflicted physical and moral suffering. In such case, in determination of the amount of compensation for non-pecuniary damage, the national court could have taken into consideration the degree of culpability of the perpetrator and other relevant circumstances, as well as take into account the degree of physical and mental suffering associated with the individual characteristics of persons who have been caused damages. However, the applicants did not apply to national courts with such claims.

90. Thus, the authorities of the Russian Federation believe that the applicants had failed to the exhaust domestic remedies regarding their complaints under Article 3 of the Convention in connection of the alleged ill-treatment by servicemen.

*Answer to question no. 4*

91. Article 8 of the Convention stipulates that everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

92. In accordance with Article 35 § 1 of the Convention, the Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within six months from the date on which the final decision in national courts was delivered.

93. In accordance with case-law of the European Court, "The respondent-government referring to exhaustion must indicate to the Court with sufficient clarity the remedies that the applicant has not resorted to and to demonstrate that these remedies were effective and accessible both in theory and in practice in the relevant period, that is, they were available, they could provide a remedy in connection with the applicant's complaints could and allowed a reasonable hope of a favourable outcome" (see *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, § 65).

94. "The Court notes that the Russian legal system in principle provides two ways of obtaining redress for the victims of illegal or criminal actions for which the State or its representatives are responsible, namely civil and criminal remedies" (see *Vakayeva v. Russia*, no. 2220/05, judgment of 20 June 2010, § 100).

95. During the preliminary investigation into the criminal case in respect of M.M. Aziyev, who was accused of having committed a crime under Article 268 § 3 (a, b) of the CC RF (no. 34/00/0018-05), all of the residents of the village of Borozdinovskaya who suffered from the illegal actions of the military personnel have been recognised as victims.

96. In accordance with the requirements of Article 42 of the CCP RF, they were explained the right to lodge civil actions for compensation of physical, material and non-pecuniary damages. However, the victims lodged no such actions in this criminal case.

97. Moreover, none of the procedural decisions taken in criminal cases nos. 14/90/0066-11 and 34/00/0018-05 were appealed against by the victims under the domestic procedural law (under Articles 124 and 125 of the CCP RF), although they had a real possibility for doing so (the Chechen Republic has functioning courts of general and special jurisdiction, territorial and military prosecutor's offices).

98. The sentence of the Grozny Garrison Military Court in respect of M.M. Aziyev was appealed against neither by any of the parties to the proceedings nor their representatives.

99. Therefore, the Russian authorities conclude that the applicants have not exhausted all domestic remedies as required by Article 35 § 1 of the Convention. Consequently, the applicant's application alleging violation of their rights stipulated by Article 8 of the Convention is inadmissible.

100. As regards the lack of information from the public authorities on the results of the forensic examination of the human remains found on the sites of the burnt houses as pointed out in application no. 40165/07 *Adzhigitova and Others v. Russia* the following should be noted.

During the investigation forensic medical investigations of the said human remains have been carried out, the victims in the criminal case have been familiarized with the results in accordance with the requirements of the CCP RF. Therefore, there has been no violation of Article 8 of the Convention in this regard.

*Answer to question no. 5*

101. In accordance with Article 1 of Protocol no. 1, every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

102. However, recognizing the violation of Article 8 of the Convention in respect of illegal searches of the applicants' houses committed by official M.M. Aziyev who was brought to liability for this violation it should be noted that in the remaining part, including in respect of a violation of Article 1 of Protocol no. 1, the applicants' complaints are unfounded.

103. On 4 June 2005, the servicemen neither in the said day, nor in the future prevented the applicants from using or disposing of their housing and property. Destruction of the houses of 4 residents was a result of the criminal actions of members of illegal armed formations rather than the servicemen.

104. As it was mentioned above, during the preliminary investigation into the criminal case in respect of M.M. Aziyev, who was accused of having committed a crime under Article 268 § 3 (a, b) of the CC RF (no. 34/00/0018-05), all of the residents of the village of Borozdinovskaya who suffered from the illegal actions of the military personnel have been recognised as victims.

105. In accordance with the requirements of Article 42 of the CCP RF, they were explained the right to lodge civil actions for compensation of physical, material and non-pecuniary damages. However, the victims lodged no such actions in this criminal case.

106. In addition, none of the procedural decisions taken in criminal case no. 34/00/0018-05 were appealed against by the victims under the national procedural law, although they had a real possibility for doing so.

107. Given the above, the authorities of the Russian Federation conclude that the applicants had failed to exhaust all domestic remedies in respect of their complaints of violations of Article 1 of Protocol no. 1 and Article 8 of the Convention in conjunction with Article 1 of Protocol no. 1.

*Answer to question no. 6*

108. At the moment, it would be too early to speak about violation of the applicants' rights guaranteed by the Convention. However, the applicants, in any event, have had and still have at their disposal effective domestic remedies in respect of their complaints, as provided for by Article 13 of the Convention and by the case-law of the European Court (see *Yasa v. Turkey*, no. 22495/93, § 112; *Aksoy v. Turkey*, no. 21987/93, § 95), and the authorities of the Russian Federation do not prevent them from exercising their rights.

109. The authorities of the Russian Federation proceed from the fact that "Article 13 of the Convention imposes obligation to provide any individual who considers himself injured by a measure allegedly incompatible with the Convention with a remedy before national authorities in order both to have his claim examined and, if appropriate, to obtain redress. Nevertheless, this provision does not require unambiguous predetermination of a favourable outcome" (see *Amann v. Switzerland*, no. 27798/95, ECHR, § 88).

110. The applicants have unrestricted access to remedies without any limitations by means of appealing against the actions and decisions of preliminary investigation authorities both directly to the prosecuting authorities and to the domestic courts.

111. The authorities of the Russian Federation note that the applicants did not file any applications under Article 125 of the CCP RF and by way of civil procedure to the Chechen Republic courts. In this respect the national judicial authorities did not have any opportunity to assess the completeness and effectiveness of the investigative activities and behavior of the investigation agencies, in general.

112. Moreover, in accordance with Article 53 of the Constitution of the Russian Federation, everyone shall have the right for a state compensation for damages caused by unlawful acts (omission) of bodies of state authority and their officials. This provision is particularized in Article 1069 of the Civil Code of the Russian Federation (hereinafter – "the CivC RF"), according to which damage caused to the citizen by unlawful acts (omission) of the authorities shall be indemnified, and Article 1070 of the same Code provides for responsibility for damage caused by unlawful actions of the bodies of inquiry, preliminary investigation, the prosecutor's office and the court. Any non-pecuniary damage inflicted to a person (physical or non-pecuniary sufferings) is to be compensated in accordance with the provisions of Article 151 of the CivC RF.

113. As regards the compensation for non-pecuniary damage, according to Article 42 § 4 of the CCP RF, its amount is determined by the court which, also relying on the requirements of Article 151 of the CivC RF, takes into account the degree of perpetrator's guilt and other relevant circumstances. The court must among others consider the degree of the physical and non-pecuniary sufferings connected with the individual peculiarities of the person to whom the damage was done.

114. The applicants could follow the specified procedure for the indemnification of non-pecuniary damage incurred by the crime by initiating civil proceedings before the court, but they have not filed such claims.

115. Therefore, the Russian authorities believe that the applicants had at their disposal the domestic remedies but failed to exercise them.

*Answer to question no. 7*

116. During the preliminary investigation, the version that the servicemen of the *Vostok* battalion of military unit no. 44822 had committed misconduct in respect of the residents of the village of Borozdinovskaya on the ground of their Avarian ethnic origin has not been confirmed. Along with the residents of an Avarian ethnic origin, ethnic

Russians, Chechens and representatives of other ethnicities have also been taken to the school in the village of Borozdinovskaya.

117. In view of the above, the applicants' argument on violation of their rights on the ground of their Avarian ethnic origin is unfounded, no facts of violation of Article 14 of the Convention have been established.

*Answer to question no. 8*

118. Copies of criminal case file no. 14/90/0066-11 are provided with exemptions in accordance with Article 2 of Federal Law *On Combating Terrorism* and Article 161 of the Criminal Procedure Code of the Russian Federation.

**Considering the aforesaid, representing the interests of the Russian Federation in accordance with the Regulations On the Representative of the Russian Federation at the European Court of Human Rights approved by Decree of the President of the Russian Federation of 29 March 1998 no. 310,**

**I SUBMIT:**

**that the applicants' complaints regarding the alleged violations of Article 2, Article 3 (in connection with the alleged disappearance of the applicants' relatives), Article 8 (in connection with the alleged lack of information on the results of forensic examination of human remains), Article 14 of the Convention by the authorities of the Russian Federation are manifestly ill-founded within the meaning of Article 35 § 3 of the Convention;**

**that the applicants' complaints regarding the alleged violations of Article 3 (in connection with alleged inhuman treatment by the authorities), Article 8 (in connection with the alleged violation due to the searches carried out on 4 June 2005), Article 13 of the Convention and Article 1 of Protocol no. 1 to the Convention by the authorities of the Russian Federation are inadmissible within the meaning of Article 35 § 1 of the Convention.**

**I REQUEST:**

**to dismiss the applicants' complaints regarding violation of Articles 2, 3, 8, 13, 14 of the Convention and Article 1 of Protocol no. 1 to the Convention in accordance with Article 35 § 4 of the Convention.**

**Georgy Matyushkin**  
*/Signature/*