



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

## THIRD SECTION

### **CASE OF AVSANOVA AND OTHERS v. RUSSIA**

*(Application no. 62380/12)*

JUDGMENT

STRASBOURG

11 January 2022

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



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

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

Darian Pavli, *President*,

Peeter Roosma,

Andreas Zünd, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the application (no. 62380/12) 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 thirty-nine Russian nationals (“the applicants”), whose details are set out in the Appendix, on 30 April 2012 and 14 September 2012;

the decision to give notice to the Russian Government (“the Government”) of the complaints under Article 2 of the Convention and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 7 December 2021,

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

## INTRODUCTION

1. The application concerns the terrorist attack at a school in Beslan, North Ossetia, from 1 to 3 September 2004 and the authorities’ response to it.

## THE FACTS

2. The applicants were represented by Mr R.V. Kaloyev, a lawyer practising in Khumalag, North Ossetia.

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

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

### I. RELEVANT INFORMATION FROM *TAGAYEVA AND OTHERS v. RUSSIA*

5. The facts of the present case are connected to the case of *Tagayeva and Others v. Russia* (nos. 26562/07 and 6 others, 13 April 2017). Both cases concern the terrorist attack at a school in Beslan, North Ossetia, from 1 to 3 September 2004 and the authorities’ response to it. The hostage-taking occurred at the opening ceremony of the academic year at a school in Beslan,

a town bordering with the region of Ingushetia, where the terrorists had gathered and trained. For over fifty hours, more than thirty heavily armed terrorists associated with the Chechen separatist movement held over a thousand people captive, the majority of them children. A number of hostages were killed by the terrorists on 1-2 September 2004. Following explosions, fire and an armed intervention on 3 September 2004, over 330 people lost their lives (including over 180 children) and over 750 people were injured. All but one of the terrorists were killed; the surviving terrorist was tried and sentenced to life imprisonment. Two groups of policemen, from Ingushetia and North Ossetia, were charged with criminal negligence in relation to the failure to prevent the terrorist act. The government took measures to compensate the victims and to rehabilitate the community after the devastating attack.

6. The *Tagayeva and Others* judgment (cited above) was based on material submitted by the applicants and the Government. This included documents from four sets of criminal investigations, three criminal trials, two sets of civil proceedings for compensation, two reports by parliamentary groups (and one dissenting opinion thereon), books and articles written in the aftermath of the attack, copies of forensic and expert reports in respect of each applicant and/or their relatives, the applicants' own statements to the Court and independent expert reports.

7. The judgment covered admissible complaints by 409 Russian nationals (grouped into seven applications) who had either been taken hostage and/or injured in the incident, or are family members of those killed. In its judgment, the Court found that there had been a violation of several aspects of Article 2 of the Convention: a failure to protect against a known and foreseeable threat to life from a terrorist act, a breach of the State's obligation to investigate, a failure to plan and control the use of lethal force so as to minimise the risk to life, and excessive use of lethal force. Under Article 41 of the Convention, the Court individualised awards to each of the 409 applicants depending on the degree of injuries and the family ties with the deceased. Lastly, the Court made findings under Article 46 of the Convention. It indicated the need for a variety of measures aimed at drawing lessons from the past, raising awareness of applicable legal and operational standards, and deterring similar violations in the future. It also held that the future requirements of the pending investigation into the incident must be determined with regard to the Court's conclusions about the investigation's failures.

## II. THE APPLICANTS IN THE PRESENT CASE AND DEVELOPMENTS IN CRIMINAL CASE No. 20/849

8. The applicants in the present case are thirty-nine individuals who had either been taken hostage and injured in the incident, or are family members of those killed. They participated in the various proceedings brought in

relation to the incident, similarly to the applicants in *Tagayeva and Others* (cited above). In particular, they were granted victim status in criminal case no. 20/849. They submitted their application form to the Court on 14 September 2012.

9. On 16 September 2010 several victims of the incident, including Ms Tauchelova, an applicant in the present case, lodged an application with an investigator in charge of criminal case no. 20/849. They complained that despite the evidence that had emerged during the trial against the surviving terrorist – namely that the key person overseeing the use of heavy arms during the storming operation had been General Tikhonov – they had not been informed of the investigation into his criminal liability, years after that trial had been concluded in 2006. They complained that the official malfeasance committed by other State officials, namely General Andreyev, Mr Gaydenko, Mr Dzugayev and Mr Dzgoyev, had not been elucidated either. They demanded that an investigation into the criminal liability of all those officials be carried out or that they be informed of the results of any such investigation if one had already been conducted. They also expressed their discontent at not being kept informed about any progress in the investigation into the causes of their family members’ deaths and injuries, and having no access to important documents concerning the functioning of the operative headquarters (“OH”) and the storming operation, or to the reasons for the official conclusion ruling out the use of indiscriminate weapons against the hostages.

10. On 5 October 2010 an investigator from the Main Investigative Department for the North Caucasus and Southern Federal Circuits of the Investigative Committee at the Prosecutor General’s Office of the Russian Federation informed the victims that their application had been the same as an application lodged earlier by other victims of the terrorist act, which had been fully granted in respect of the demand to investigate the criminal liability of the State officials. He stated that no information about the current developments and results of the investigation could be provided while the investigation was still pending.

11. In December 2010 the victims enquired about investigative activities in respect of those responsible for the organisation of the terrorist act, and asked for access to documents relating to the investigative actions carried out on 2 and 3 September 2004. On 25 January 2011 the investigator replied that access to material from the criminal case would only be possible upon the completion of the investigation. He also issued a refusal to grant the request in respect of a certain individual who had been reported by the media to have organised the terrorist act, since the investigation had no information about his involvement in the terrorist act.

12. On 28 January 2011 the victims complained to the Leninskiy District Court of Vladikavkaz of the lack of a proper investigation and the lack of

access to the investigation documents. There is no information about the examination of their complaint.

13. In 2012 the applicants made a number of unsuccessful requests to the investigating authority in criminal case no. 20/849. In particular, they requested information about the investigation results in respect of those responsible for the use of heavy arms and indiscriminate weapons during the storming and rescue operation, and prosecution of the OH members who had authorised the use of such weapons.

14. On 30 March 2012 the applicants complained to the Leninskiy District Court of Vladikavkaz that the investigation had been protracted and lacked objectivity, that they had not had access to the case documents, that responsibility for the storming had not been properly investigated and no decision had been taken, that the OH full composition had remained unknown and its senior members had not been questioned, and that the exact causes of the injuries and deaths had not been determined.

15. On 18 April 2012 the District Court dismissed their application, stating, in particular, that the applicants had no right to have access to records of the OH meetings and the questioning of the OH members – the assessment of evidence being beyond the court’s scope of review – and that it had no power to order the investigating authority to take a procedural decision, all the more so during a pending investigation while certain investigative actions were being carried out. On 30 May 2012 the North Ossetia Supreme Court upheld the District Court’s decision on an appeal by the applicants. Further appeals by the applicants were not examined as being substantially the same or lacking subject matter (the North Ossetia Supreme Court’s final decisions of 30 May and 4 July 2012).

16. The Government submitted the following information about the latest developments concerning the investigation.

17. On 1 December 2017 the victims, including some of the applicants in the present case, had lodged a request with the head of the Main Investigative Department for the North Caucasus Federal Circuit to carry out an investigation in order to elucidate the main circumstances surrounding the use of indiscriminate weapons by the State agents and evaluate their actions, in compliance with the Court’s judgment in *Tagayeva and Others*.

18. On 22 December 2017 their request had been dismissed with reference to the decisions taken in 2004 and 2006 not to open a criminal investigation in respect of military servicemen and internal troops of the Ministry of the Interior, the head and members of the OH, the Deputy Minister of the North Ossetian Ministry of Emergency Situations (Emercom) and head of the fire service, and the head of the fire service of the Pravoberezhny District.

19. The applicants informed the Court that according to a letter from the Main Investigative Department for the North Caucasus Federal Circuit dated 30 November 2018 and addressed to the victims in criminal case no. 20/849, on 19 October 2018 a deputy head of the Investigative Committee of the

Russian Federation had extended the term of the preliminary investigation in the case until 1 June 2019.

## THE LAW

### I. PRELIMINARY ISSUES

20. Some of the applicants informed the Court of corrections to their names as reflected in the list of applicants (see the Appendix, applicants nos. 2 and 7).

### II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

21. The applicants alleged a breach of Article 2 of the Convention on account of the following. First, they argued that there had been a breach of the positive obligation to protect life and that security at the school had not been properly ensured prior to the attack. Next, they argued that the obligation to investigate the loss of life had not been complied with. Criminal proceedings and other procedures had failed to establish all the relevant circumstances of the tragic events and to identify the persons responsible; only one person had been found guilty. The victims and their relatives had not been accorded full access to the documents of the criminal investigation, and as a result they had been unable to argue their positions. Many of their demands and applications brought in the proceedings had been dismissed or left without proper consideration. They also contended that the fighting, which had entailed numerous deaths and injuries, had been a direct consequence of the first explosion and that the responsibility of the OH should have been elucidated in that respect. The storming of the building had not been carried out with the primary aim of preserving lives and there had been a disproportionate use of force. They also argued that the OH, in its negotiation strategy, had chosen not to be guided by the need above all else to preserve the lives of the hostages.

Article 2 of the Convention reads as follows:

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

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

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

## A. Admissibility

### 1. *The parties' submissions*

#### (a) **The Government**

22. The Government argued that the complaints of Ms Amaga Valeryevna Dzutseva (maiden name Tsibirova, applicant no. 8) had already been examined by the Court in *Tagayeva and Others v. Russia* (nos. 26562/07 and 6 others, 13 April 2017). Though she had not been an applicant in that case, her grandmother Ms Zoya Dzutseva had been an applicant and had been awarded compensation. Since her grandmother had represented her in that case, her complaints in the present case should be declared inadmissible as being substantially the same.

23. The Government further submitted that Ms Olga Vyacheslavovna Karlova (applicant no. 13) could not be considered an applicant in the present case, as she had not signed the application.

24. The Government further noted that, while the present application had been lodged on 14 September 2012, the date of lodging of Ms V.M. Gafurova's application should be recorded differently, as 9 December 2017.

25. The Government pleaded non-exhaustion of domestic remedies and non-compliance with the six-month time-limit, noting that individual participation and appeals against the decisions taken in criminal case no. 20/849 and the criminal cases against the two groups of police officers, from Ingushetia and North Ossetia, had been required for each applicant in order to exhaust domestic remedies.

26. They stated that as early as 2006 persons affected by the terrorist attack had formed the opinion that the domestic remedies in respect of the alleged violations of Article 2 of the Convention had been ineffective. That distrust had been expressed in public manifestations, such as a hunger strike by members of the organisation Golos Beslana, and in letters and documents published on the organisation's website. The applicants, however, had remained "totally inactive" and had failed to appeal against the refusals to institute criminal proceedings in respect of the OH members, the military, Emercom, medics and firefighters among others. The court proceedings to challenge the investigators' decisions had been brought in 2012 solely "to re-trigger the six-month time-limit".

27. Only fourteen applicants had been granted victim status in criminal case no. 20/852 against the police officers of the Pravoberezhny district police station (ROVD) in North Ossetia, and no explanation had been offered as to why the remaining applicants had not requested victim status. In 2006 eleven applicants had requested that the case be examined in their absence and agreed with the final judgment. Almost all of them had refused to familiarise themselves with forensic medical expert reports.

**(b) The applicants**

28. The applicants stated that Ms Amaga Dzutseva was an applicant in the present case only, and that Ms Zoya Dzutseva had been an applicant in *Tagayeva and Others* (cited above) solely in respect of her late granddaughter. As to Ms Karlova, she had in fact signed her application. Ms Gafurova, a minor at the time of the initial application signed by her mother, had confirmed her intention to maintain the application after reaching the age of majority.

29. The applicants argued that they had exhausted domestic remedies by appealing to courts against the investigating authority's decisions, similarly to the applicants in *Tagayeva and Others* (cited above). Their requests to acquaint themselves with the investigation documents had been lodged in compliance with domestic criminal procedural law, under which they had been entitled to do so at any stage of the proceedings. They had expected a trial in respect of those responsible for the storming of the school and those who had failed to prevent the tragedy. The nature of their complaints related to the main criminal case (no. 20/849), in which the investigation was still pending.

30. The applicants explained that criminal case no. 20/852 had been opened under Article 293 §§ 2 and 3 of the Criminal Code, which established responsibility for negligent actions causing serious harm to health, death or significant pecuniary damage. Therefore, those individuals who had suffered serious harm to health, whose family members had died or who had sustained significant pecuniary damage had been granted victim status (a total of fourteen applicants in the present case); and those hostages who had suffered light or medium gravity injuries had been unjustly excluded. The victims had in fact appealed against the decision in that case granting amnesty to three police officers. The applicants had submitted many requests to initiate criminal proceedings and carry out investigative actions, and had appealed to the courts against the investigators' refusals.

**2. The Court's assessment**

31. The Court held in *Tagayeva and Others* (cited above) that wherever the initial complaints under Article 2 of the Convention had been lodged on behalf of surviving direct victims who had reached the age of majority and had not confirmed their intention to pursue the applications, the relatives could not be considered to be directly affected by the alleged violations for the purposes of Article 34 of the Convention, and thus lacked standing unless another reason existed for it (in other words, they themselves had been among the hostages or they had complained about the loss of another family member). Therefore, Ms Zoya Dzutseva's status as an applicant in *Tagayeva and Others* was upheld in respect of her late granddaughter only (see *Tagayeva and Others v. Russia* ((dec.), no. 26562/07, §§ 483-84, 9 June 2015;

see also the Appendix to the judgment in *Tagayeva and Others*, cited above, in respect of applicant no. 279). Ms Amaga Valeryevna Dzutseva, whose maiden name was Tsibirova (applicant no. 8 in the present case), a hostage who had suffered grave injuries, was not an applicant in *Tagayeva and Others*, and this is not disputed by the Government.

32. The Court notes further that Ms Olga Vyacheslavovna Karlova (applicant no. 13), daughter of Ms Viktoriya Zenonovna Sautenkova (a hostage who died on 25 July 2012) and daughter-in-law of Mr Ivan Ilyich Karlov (a hostage who was killed), signed the application.

33. The Government's objections in respect of those two applicants should therefore be dismissed.

34. As regards Ms Valeriya Muslimovna Gafurova (applicant no. 10), a hostage who had suffered medium gravity injuries, the Court notes that the initial complaints (as part of the present application) had, in view of her minor age at the time, been lodged on her behalf by her mother, Ms O.M. Tsarayeva. After reaching the age of majority Ms Gafurova confirmed her intention to pursue the application.

35. The Court also notes that Mr Ruslan Georgiyevich Tebiyev submitted that a number of his relatives had been killed in the incident, notably his wife, his son-in-law and his son-in-law's mother. Even assuming that the last-mentioned relationship may be sufficient to qualify for victim status under Article 2 of the Convention, in view of the insufficient evidence to support the applicant's submissions, the Court grants Mr Tebiyev standing only in relation to the complaints concerning the deaths of his wife and his son-in-law (see the Appendix, applicant no. 34).

36. As to the Government's objections that the Court should take into account the applicants' individual involvement in each set of proceedings in order to determine their compliance with the admissibility criteria of exhaustion of domestic remedies and the six-month period, and that the applicants' court appeals had been lodged to artificially satisfy the six-month requirement, they are largely the same as the Government's objections in *Tagayeva and Others* ((dec.), cited above, §§ 486-90 and Appendix).

37. The Court dismissed those objections (*ibid.*, §§ 495-99). It has no reason to hold otherwise in the present case. It reiterates that the applicants in the present case have been part of the restricted group of people who were directly and personally affected by the events that took place between 1 and 3 September 2004, had similar complaints, coordinated their efforts and took similar steps *vis-à-vis* the domestic authorities. More specifically, the requests lodged by various applicants in the context of criminal investigation no. 20/849 demonstrate that they aimed to influence the scope of the investigation as a whole, and thus the outcome was relevant to the entire group (*ibid.*, §§ 265-66; and see paragraphs 9-15 above). In such circumstances, the applicants who have not pursued the same remedy that had

proven ineffective for the other victims in the same position can be reasonably absolved from doing so (*ibid.*, §§ 496-97).

38. The Court notes that the criminal investigation in case no. 20/849 is still pending, and the crux of the applicants' grievances is inseparably linked with the present set of proceedings. In so far as the Government argued that the applicants should have realised that the investigation was futile no later than 2006, this stands in contrast with the victims' continued and steadfast efforts to obtain an effective investigation after that date (*ibid.*, §§ 262-67 and 498; and see paragraphs 9-15 above). It cannot be said that by the time of the lodging of the complaints the applicants had remained idle in the face of a dormant investigation for significant periods of time, or that the overall length of proceedings has been such as to alert them to the obvious ineffectiveness of the investigation. The Court does not find that the present application raises an issue under Article 35 § 1 of the Convention.

39. In view of the above, the Court maintains the "restricted group" approach as outlined above, rejects the Government's request to apply the criteria of exhaustion and six months to each applicant separately, and dismisses the objections as to the applicants' standing, non-exhaustion and six months (*ibid.*, § 499).

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

## **B. Merits**

41. The applicants maintained their complaints, stating that the investigation was still pending, the victims had not been kept aware of any developments, and the State officials responsible for the alleged violations of Article 2 of the Convention had still not been punished.

42. The Government suggested that their request for referral of the case of *Tagayeva and Others* to the Grand Chamber should be re-examined.

43. The Court notes that the complaints raised by the applicants in the present case are essentially the same as the complaints examined by the Court in *Tagayeva and Others*. The Government's request for referral of that case to the Grand Chamber was rejected and the judgment became final. Having regard to the parties' submissions in the present case, the Court sees no reason to depart from its findings in *Tagayeva and Others* and the reasoning therein.

44. It finds that at least several days prior to the terrorist attack the authorities had sufficiently specific information about a planned terrorist attack in the area targeting an educational facility on 1 September. The intelligence information likened the threat to previous major attacks carried out by Chechen separatists, which had resulted in heavy casualties. A threat of this kind clearly indicated a real and immediate risk to the lives of the potential target population, including a vulnerable group of schoolchildren

and their entourage who would be at the Day of Knowledge celebrations in the area. The authorities had a sufficient level of control over the situation and could be expected to carry out any measures within their powers that could reasonably be expected to avoid, or at least mitigate, this risk. Although some measures were taken, in general the preventive measures in the present case could be characterised as inadequate. The terrorists were able to successfully gather, prepare, travel to and seize their target, without encountering any preventive security arrangements. No single sufficiently high-level structure was responsible for the handling of the situation, evaluating and allocating resources, creating a defence for the vulnerable target group and ensuring effective containment of the threat and communication with the field teams. The Russian authorities failed to take measures which, when judged reasonably, should have been able to prevent or minimise the known risk (see the judgment in *Tagayeva and Others*, cited above, §§ 481-92).

45. There has therefore been a violation of Article 2 of the Convention in the present case in respect of the positive obligation to prevent the threat to life.

46. The Court further reiterates that the causes of death of the majority of victims were established on the basis of external examinations of the bodies only. No additional examinations were carried out, for example, to locate, extract and match external objects such as metal fragments, shrapnel and bullets. A third of the victims had died of causes that could not be established with certainty, in view of extensive burns, which was a strikingly high proportion of unestablished deaths. Once the identifications had been carried out, individual and more conclusive scrutiny about the causes of death should have been one of the crucial tasks of the investigation. Where the exact causes of deaths were not established with precision, the investigation failed to provide an objective ground for the analysis of the use of lethal force by the State agents. Moreover, the locations of the hostages' bodies in the school were not marked or recorded with any precision. This contributed to the ambiguity concerning the circumstances in which their deaths had occurred (*ibid.*, §§ 500-09).

47. The investigation failed to properly secure, collect and record material evidence at a time when the integrity of the site could still be ensured. This caused irreparable harm to the investigation's ability to carry out a thorough, objective and impartial analysis of all relevant elements. No single and concerted effort was made by the investigation to make an inventory of the weapons and ammunition used by the State agents. The absence of a complete record of the weapons and ammunition used by the State agents effectively precluded the investigation from undertaking a meaningful evaluation of the adequacy and proportionality aspects of the use of force. The investigation did not fully assess a credible body of evidence pointing at the use of indiscriminate weapons by the State agents in the first hours of the storming.

In view of those considerations, the investigation's conclusion that no one among the hostages had been injured or killed by the lethal force used by the State agents was untenable, and any conclusions reached about the criminal responsibility of the State agents in this respect were without objective grounds and thus inadequate (*ibid.*, §§ 510-27).

48. The investigation was not capable of leading to a determination of whether the force used in the case was or was not justified in the circumstances, and was not, therefore, "effective" (*ibid.*, §§ 496-99 and 539).

49. There has thus been a breach of the obligation under Article 2 of the Convention to carry out an effective investigation, in respect of the applicants in the present case.

50. The Court further reiterates that the absence of a single coordinating structure tasked with centralised handling of the threat, planning, allocating resources and securing feedback with the field teams contributed to the failure to take reasonable steps that could have averted or minimised the risk before it materialised. That lack of coordination was repeated during later stages of the authorities' response. The leadership and composition of the body that was responsible for the handling of the crisis was officially determined approximately thirty hours after it had started. Such a long delay in setting up the key structure that was supposed to prepare and coordinate the responses to the hostage-taking was not explained. Even once it had been set up, its configuration was not respected. The absence of formal leadership of the operation resulted in serious flaws in the decision-making process and coordination with other relevant agencies. No plan for a rescue operation was prepared and communicated to the services concerned until two and a half days after the unfolding of the crisis. No sufficient provision had been made for forensic work, body storage and autopsy equipment. It was unclear when and how the most important decisions were taken and communicated with the principal partners, and who took them (*ibid.*, §§ 562-74).

51. There has accordingly been a violation of Article 2 of the Convention in the present case in respect of the obligation to plan and control the operation involving the use of lethal force so as to minimise the risk to life.

52. The Court reiterates further that overall the evidence established a *prima facie* complaint that State agents had used indiscriminate weapons while the terrorists and hostages were intermingled, and that the known elements of the case allowed the Court to conclude that the use of lethal force by the State agents had contributed, to some extent, to the casualties among the hostages. The primary aim of the operation should have been to protect lives from unlawful violence. The massive use of indiscriminate weapons stood in flagrant contrast with that aim and could not be considered compatible with the standard of care prerequisite to an operation of that kind involving the use of lethal force by State agents. Such use of explosive and indiscriminate weapons, with the attendant risk for human life, could not be regarded as absolutely necessary in the circumstances. Moreover, the

domestic legal framework had failed to set out the most important principles and constraints of the use of force in lawful anti-terrorist operations, including the obligation to protect everyone's life by law, as required by the Convention. Coupled with wide-ranging immunity for any harm caused in the course of anti-terrorism operations, that situation had resulted in a dangerous gap in regulating situations involving deprivation of life. Russia had failed to set up a framework of adequate and effective safeguards against arbitrariness and abuse of force (*ibid.*, §§ 584-611).

53. There has accordingly been a violation of Article 2 of the Convention in the present case in that the use of lethal force by the State agents was more than absolutely necessary.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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**

55. The applicants claimed the following amounts in respect of non-pecuniary damage: 10,000 euros (EUR) for the family members of a deceased hostage, EUR 7,000 for the applicants who had suffered grave injuries, and EUR 5,000 for the applicants who had suffered medium gravity injuries.

56. The Government stated that the finding of a violation of the Convention would be sufficient just satisfaction.

57. The Court has found a number of violations under Article 2 of the Convention. These violations relate to the authorities' response to the terrorist attack and their failure to carry out an effective investigation into the State agents' actions. Having regard to these findings, other steps taken with the aim of compensating and rehabilitating the victims of the terrorist act, the seriousness of the damage caused, family links with the deceased and other individual circumstances, bearing in mind the awards in the above-mentioned *Tagayeva and Others* judgment, and acting on an equitable basis, the Court awards the applicants the amounts as detailed in the Appendix below in respect of non-pecuniary damage, plus any tax that may be chargeable.

#### **B. Costs and expenses**

58. The applicants also claimed EUR 2,250 for legal costs in respect of their representation by Mr Ruslan Kaloyev, and EUR 1,109.67 for office

devices, stationery and postal expenses incurred in the domestic proceedings and before the Court by Mrs Zh. Tagayeva.

59. The Government contested the claim, arguing that Mr Kaloyev had had no authority to represent the applicants, and that the expenses incurred by Mrs Tagayeva had been unauthorised by the applicants and unnecessary.

60. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, Mr Kaloyev had been authorised by the applicants to represent them in the proceedings before the Court, of which the Government were informed. However, no supporting documents have been submitted to show that the applicants paid or are liable to pay the legal fees to Mr Kaloyev, or to reimburse expenses to Mrs Tagayeva, who is not an applicant in the present case. The Court therefore rejects the claims.

### **C. Default interest**

61. 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 violation of Article 2 of the Convention in respect of the positive obligation to prevent the threat to life;
3. *Holds* that there has been a violation of Article 2 of the Convention in respect of the obligation to carry out an effective investigation;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of the obligation to plan and control the operation involving the use of lethal force so as to minimise the risk to life;
5. *Holds* that there has been a violation of Article 2 of the Convention in that the use of lethal force by the State agents was more than absolutely necessary;
6. *Holds*
  - (a) that the respondent State is to pay the applicants, within three months, the amounts in respect of non-pecuniary damage as specified in the Appendix. These payments are to be converted into the currency of

the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 11 January 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova  
Deputy Registrar

Darian Pavli  
President

## APPENDIX

List of applicants and awards made by the Court under Article 41 of the Convention:

No.	Applicant's name Year of birth Place of residence	Sustained injury/relationship to other hostages and/or applicant	Article 41 awards (non-pecuniary): loss of close relative – EUR 10,000 per deceased; grave injuries – EUR 7,000; medium gravity injuries – EUR 5,000	Comments on Article 41 awards
1.	Fatima Anzorovna AVSANOVA 1952 Beslan	Hostage (medium gravity injuries)	EUR 5,000	
2.	Bela Anatolyevna AVSANOVA 1987 Beslan	Hostage (grave injuries)	EUR 7,000	
3.	Alina Khazbiyevna BADZIYEVA 1994 Beslan	Hostage (medium gravity injuries)	EUR 5,000	
4.	Sarmat Vadimovich BOLLOYEV 1998 Vladikavkaz	Hostage (medium gravity injuries)	EUR 5,000	
5.	Zalina Semenovna BOLLOYEVA 1968 Vladikavkaz	Wife of dead hostage Vadim Vladimirovich Bolloyev 1965 and mother of dead child hostages Zarina Vadimovna Bolloyeva 1993 and Madina Vadimovna Bolloyeva 1995	EUR 30,000	

AVSANOVA AND OTHERS v. RUSSIA JUDGMENT

No.	Applicant's name Year of birth Place of residence	Sustained injury/relationship to other hostages and/or applicant	Article 41 awards (non-pecuniary): loss of close relative – EUR 10,000 per deceased; grave injuries – EUR 7,000; medium gravity injuries – EUR 5,000	Comments on Article 41 awards
6.	Madina Feliksovna DULAYEVA 1980 Beslan	Hostage (medium gravity injuries)	EUR 5,000	
7.	Artur Taymurazovich DZAGOYEV 1996 Beslan	Hostage (grave injuries)	EUR 7,000	
8.	Amaga Valeryevna DZUTSEVA 1991 Beslan	Hostage (grave injuries)	EUR 7,000	
9.	Ayteg Elbrusovich GADZHINOV 1993 Beslan	Hostage (medium gravity injuries)	EUR 5,000	
10.	Valeriya Muslimovna GAFUROVA 1996 Beslan	Hostage (medium gravity injuries)	EUR 5,000	
11.	Zara Aleksandrovna GAYTOVA 1940 Beslan	Hostage (medium gravity injuries)	EUR 5,000	

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No.	Applicant's name Year of birth Place of residence	Sustained injury/relationship to other hostages and/or applicant	Article 41 awards (non-pecuniary): loss of close relative – EUR 10,000 per deceased; grave injuries – EUR 7,000; medium gravity injuries – EUR 5,000	Comments on Article 41 awards
12.	Malik Maratovich KALCHAKEYEV 1991 Beslan	Hostage (medium gravity injuries)	EUR 5,000	
13.	Olga Vyacheslavovna KARLOVA 1965 Beslan	Daughter of Viktoriya Zenonovna Sautenkova 1945 (dead hostage) and daughter-in-law of Ivan Ilyich Karlov 1932 (dead hostage)	EUR 20,000	
14.	Samurbek Makharbekovich KESAYEV 1994 Beslan	Hostage (grave injuries)	EUR 7,000	
15.	Taymuraz Makharbekovich KESAYEV 1990 Beslan	Hostage (grave injuries)	EUR 7,000	
16.	Larisa Kazbekovna KESAYEVA 1969 Beslan	Hostage (grave injuries)	EUR 7,000	

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No.	Applicant's name Year of birth Place of residence	Sustained injury/relationship to other hostages and/or applicant	Article 41 awards (non-pecuniary): loss of close relative – EUR 10,000 per deceased; grave injuries – EUR 7,000; medium gravity injuries – EUR 5,000	Comments on Article 41 awards
17.	Irina Ivanovna KHABLIYEVA 1966 Belsan	Mother of dead hostage Batraz Eduardovich Khabliyev 1992	EUR 10,000	
18.	Kristina Eduardovna KHABLIYEVA 1991 Beslan	Escaped (medium gravity injuries)	EUR 5,000	
19.	Irina Totrazovna KHADARTSEVA 1927 Beslan	Grandmother of dead hostage Madina Yuryevna Sozanova 1993	EUR 10,000	
20.	Zoya Georgiyevna KHAMITSAYEVA 1946 Beslan	Mother of dead hostage Svetlana Dudarovna Dzampayeva 1976, grandmother of dead hostages Agunda Arturovna Dzampayeva 1997, Aspar Arturovich Dzampayev 2002, and mother-in-law of Artur Taymurazovich Dzampayev 1964	EUR 40,000	
21.	Khazbi Sultanbekovich KHODOV 1990 Beslan	Hostage (medium gravity injuries)	EUR 5,000	

AVSANOVA AND OTHERS v. RUSSIA JUDGMENT

No.	Applicant's name Year of birth Place of residence	Sustained injury/relationship to other hostages and/or applicant	Article 41 awards (non-pecuniary): loss of close relative – EUR 10,000 per deceased; grave injuries – EUR 7,000; medium gravity injuries – EUR 5,000	Comments on Article 41 awards
22.	Anna Alekseyevna MARGIYEVA 1992 Beslan	Hostage (medium gravity injuries)	EUR 5,000	
23.	Azamat Kazbekovich MELIKOV 1990 Beslan	Hostage (grave injuries)	EUR 7,000	
24.	Taymuraz Kazbekovich MELIKOV 1988 Beslan	Hostage (grave injuries)	EUR 7,000	
25.	Alina Yanislavovna NALDIKOYEVA 1993 Beslan	Hostage (medium gravity injuries)	EUR 5,000	
26.	Alla Olegovna NOGAYEVA 1997 Beslan	Hostage (medium gravity injuries), sister of dead hostage Marina Olegovna Nogayeva 1992	EUR 5,000; and EUR 10,000 jointly with applicants <b>27</b> and <b>28</b>	
27.	Elina Olegovna NOGAYEVA 1995 Beslan	Hostage (medium gravity injuries), sister of dead hostage Marina Olegovna Nogayeva 1992	EUR 5,000	See also joint award with applicants <b>26</b> and <b>28</b>
28.	Zalina Olegovna NOGAYEVA 1991 Beslan	Hostage (medium gravity injuries), sister of dead hostage Marina Olegovna Nogayeva 1992	EUR 5,000	See also joint award with applicants <b>26</b> and <b>27</b>

AVSANOVA AND OTHERS v. RUSSIA JUDGMENT

No.	Applicant's name Year of birth Place of residence	Sustained injury/relationship to other hostages and/or applicant	Article 41 awards (non-pecuniary): loss of close relative – EUR 10,000 per deceased; grave injuries – EUR 7,000; medium gravity injuries – EUR 5,000	Comments on Article 41 awards
29.	Raisa Zenonovna SAGUTONOVA 1949 Beslan	Hostage (medium gravity injuries)	EUR 5,000	
30.	Anatoliy Vladimirovich SIKOYEV 1960 Beslan	Hostage (grave injuries)	EUR 7,000	
31.	Vladislav Anatolyevich SIKOYEV 1990 Beslan	Hostage (medium gravity injuries), son of dead hostage Galina Astemirovna Muriyeva 1968	EUR 5,000; and EUR 10,000 jointly with applicant 32	
32.	Anzhelika Anatolyevna SIKOYEVA 1996 Beslan	Hostage (medium gravity injuries), daughter of dead hostage Galina Astemirovna Muriyeva 1968	EUR 5,000	See also joint award with applicant 31
33.	Zalina Mironovna TAUCHELOVA 1968 Beslan	Mother of dead hostages Irina Arturovna Tauchelova 1990 and Svetlana Arturovna Tauchelova 1991	EUR 20,000	
34.	Ruslan Georgiyevich TEBIYEV 1937 Beslan	Husband of dead hostage Larisa Afanasyevna Tebiyeva 1949  Son-in-law Frayev Ruslan Mikhaylovich (dead hostage) 1967	EUR 20,000	

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No.	Applicant's name Year of birth Place of residence	Sustained injury/relationship to other hostages and/or applicant	Article 41 awards (non-pecuniary): loss of close relative – EUR 10,000 per deceased; grave injuries – EUR 7,000; medium gravity injuries – EUR 5,000	Comments on Article 41 awards
35.	Elmira Nikolayevna TEDEYEVA 1980 Beslan	Hostage (medium gravity injuries), mother of dead hostage Svetlana Aslanovna Maliyeva 2001	EUR 5,000; and EUR 10,000 jointly with applicant 36	
36.	Khetag Aslanovich MALIYEV 2000 Beslan	Hostage (medium gravity injuries) brother of dead hostage Svetlana Aslanovna Maliyeva 2001	EUR 5,000	See also joint award with applicant 35
37.	Fatima Taymurazovna TOKAYEVA 1991 Beslan	Hostage (medium gravity injuries)	EUR 5,000	
38.	Madina Taymurazovna TOKAYEVA 1989 Beslan	Hostage (grave injuries)	EUR 7,000	
39.	Oksana Magometovna TSARAYEVA 1974 Beslan	Hostage (medium gravity injuries)	EUR 5,000	