



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

FORMER FIRST SECTION

**CASE OF KHASHIYEV
and
AKAYEVA v. RUSSIA**

(Applications nos. 57942/00 and 57945/00)

JUDGMENT

STRASBOURG

24 February 2005

FINAL

06/07/2005

In the case of Khashiyev and Akayeva v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr P. LORENZEN,

Mr G. BONELLO,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mr V. ZAGREBELSKY, *judges*

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 14 October 2004 and 27 January 2005,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in two applications (nos. 57942/00 and 57945/00) 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 two Russian nationals, Mr Magomed Akhmetovich Khashiyev and Mrs Roza Aribovna Akayeva (“the applicants”), on 25 May 2000 and 20 April 2000 respectively.

2. The applicants, who had been granted legal aid, were represented by Mr Kirill Koroteyev, a lawyer of Memorial, a Russian Human Rights NGO based in Moscow, and Mr William Bowring, a lawyer practising in London. The Russian Government (“the Government”) were represented by Mr P. A. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged that their relatives were tortured and killed by members of the Russian federal military in Chechnya in February 2000. They also submitted that the investigation into their deaths was inefficient. They relied on Articles 2, 3 and 13 of the Convention.

4. The applications were allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

6. The Chamber decided to join the proceedings in the two applications (Rule 42 § 1).

7. By a decision of 19 December 2002, the Court declared the applications admissible.

8. The applicants and the Government each filed observations on the merits (Rule 59 § 1).

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 14 October 2004 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Mr P. LAPTEV, Representative of the Russian Federation at the European Court of Human Rights,	<i>Agent,</i>
Mr Y. BERESTNEV,	<i>Counsel,</i>
Mrs A. SAPRYKINA,	<i>Adviser;</i>

(b) *for the applicants*

Mr B. BOWRING, Professor,	<i>Counsel,</i>
Mr P. LEACH,	
Mr K. KOROTEEV,	
Mr D. ITSLAEV,	<i>Advisers.</i>

The Court heard addresses by Mr Laptev, Mr Bowring, Mr Leach and Mr Koroteev.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicants were born in 1942 and 1955 respectively and were residents of Grozny, Chechnya. The first applicant currently resides in Ingushetia, and the second applicant in the Moscow Region.

A. The facts

11. The facts surrounding the deaths of the applicants' relatives and the ensuing investigation were partially disputed. In view of this the Court requested that the Government produce copies of the entire investigation files opened in relation to the applicants' relatives' deaths. The Court also requested that the applicants produce additional documentary evidence in support of their allegations.

12. The submissions of the parties on the facts concerning the circumstances of the applicants' relatives' deaths and the ensuing investigations are set out in Sections 1 and 2 below. A description of the materials submitted to the Court is contained in Part B.

1. The killing of the applicants' relatives

13. The first applicant lived at 101 Tashkalinskaya Street in the Staropromyslovskiy district of Grozny. After 1991 the first applicant, who is ethnic Ingush, attempted to sell the house and leave because he felt threatened by the situation in Chechnya, but could not find anyone to buy it. During the hostilities in 1994-1996 the first applicant and his family stayed in Ingushetia, and on their return found that all their property had been destroyed or looted.

14. In November 1999 the first applicant left Grozny because of the renewed hostilities. His relatives decided to stay in Grozny to look after their houses and property. They were his brother, Khamid Khashiyev (born in 1952), his sister Lidiya Khashiyeva (born in 1943) and her two sons, Rizvan Taymeskhanov (born in 1977) and Anzor Taymeskhanov (born in 1982). The first applicant's brother lived in the street parallel to Tashkalinskaya Street, at 109 Neftyanaya Street, and his sister lived in the neighbouring house at 107 Neftyanaya Street.

15. The second applicant was a resident of the "Tashkala" quarter in the Staropromyslovskiy district of Grozny. In October 1999 she left the city together with her mother and sister because of the hostilities. Her brother, Adlan Akayev (born in 1953) remained to look after their property and house, located at 24 4-th Neftyanoy Lane.

16. In December 1999 the Russian federal army started an operation to take control of Grozny. Heavy fighting lasted until the end of January 2000, when the central parts of the city were finally taken. The exact date on which the Staropromyslovskiy district of Grozny was taken by the federal forces is somewhat unclear. The applicants submitted, referring to the Government RIA and Interfax news agencies, that by 20 January 2000 the Staropromyslovskiy district was under the Russian federal forces' firm control. Several witness statements produced by the parties indicate that the federal troops were in control of the district as from 27 December 1999. The Government disputed this allegation and referred to two witness statements, allegedly contained in criminal investigation file no. 12038 which suggest that, although troops were present in the district as early as 1 January 2000, they still faced scattered resistance from the Chechen fighters ("boyeviki"). However, no such testimonies are contained in the copy of the file submitted by the Government to the Court, nor are they listed in the list of documents attached to the criminal case-file.

17. At the end of January 2000 the applicants learned that their relatives had been killed in Grozny. On 25 January 2000 the first applicant, his sister

Movlatkhan Bokova (maiden name Khashiyeva), and one of their former neighbours from Grozny, Petimat (also spelled Fatima) Goygova, travelled to Grozny to find out more about the state of their relatives. At 107 Neftyanaya Street they found three bodies lying in the courtyard with gunshot wounds and other marks. These were Lidiya Khashiyeva and Anzor Taymeskhanov, the first applicant's sister and nephew, and Adlan Akayev, the second applicant's brother. The second applicant's brother was holding his identity card as Head of the Physics Department of the Grozny Teaching Institute. Other documents were in a shirt pocket: his passport, identity card as researcher for the Grozny Oil Institute and his driving licence. Identity documents were also found on the two other bodies.

18. The first applicant and the women had to return to Ingushetia on the same day, because of the curfew imposed after 5 p.m. There they informed the family of Adlan Akayev, including the second applicant, of his death. Having arranged for transport, on 28 January 2000 they went to Grozny to collect the bodies. Soldiers from a roadblock in the Staropromyslovskiy district accompanied them to the house at 107 Neftyanaya Street and helped them to collect the bodies. The first applicant brought the bodies to the village of Voznesenskoye in Ingushetia, where they were buried on 29 January 2000.

19. The first applicant submits that the bodies of his relatives bore marks of numerous stab and gunshot wounds and bruises, and that some bones were broken. In particular, the body of Lidiya Khashiyeva had 19 stab wounds, her arms and legs were broken and teeth were missing. The body of Anzor Taymeskhanov had multiple stab and gunshot wounds, and his jaw was broken (see § 51 below).

20. On 28 January 2000 the second applicant travelled to Voznesenskoye and saw the bodies of her brother and of the first applicant's relatives. She saw numerous gunshot and stab wounds and traces of beatings and torture on the body of her brother and on the other bodies. In particular, she submits that her brother's body had seven gunshot wounds to his skull, heart and abdominal area. The left side of his face was bruised and his collar-bone was broken (see § 61).

21. Both applicants submit that they did not contact a medical doctor or take photographs of the bodies at that stage due to the state of shock caused by their relatives' violent deaths.

22. On 2 February 2000 the village authorities of Psedakh, Ingushetia, issued a certificate to confirm that the body of Adlan Akayev, brought from the Staropromyslovskiy district of Grozny, was buried on 29 January 2000 in the village cemetery.

23. On 9 February 2000 the second applicant travelled to Grozny. In the courtyard of the house at 107 Neftyanaya Street she picked up machine-gun cartridges and her brother's hat. On the same day she saw five other bodies in a nearby house. All had been shot. She learned that a sixth woman from

the same group, Elena G., had been wounded but survived. The second applicant later traced her to Ingushetia. Elena G. informed the second applicant that they had been shot at by soldiers and that she had last seen the applicant's brother alive on the evening of 19 January 2000.

24. On 10 February 2000, the first applicant, together with his daughter and sister, travelled to Grozny again, hoping to find his missing brother and nephew. With help from a local resident they found three bodies lying between nearby garages. These were the bodies of Khamid Khashiyev and Rizvan Taymeskhanov, the first applicant's brother and second nephew. The third body belonged to Magomed Goygov, a neighbour. The first applicant took photographs of the bodies. He then brought a car to transport the bodies to Ingushetia, where they were buried the next day. Goygov's body was collected by his relatives on 11 February 2000 for burial.

25. The first applicant submits that Khamid Khashiyev's body was mutilated, half of his skull was smashed and some fingers had been cut off. Rizvan Taymeskhanov's body was grossly mutilated from numerous gunshots (see §§ 52 and 54).

26. On 10 February 2000 at the first applicant's request, the three bodies were examined by officers of the Nazran Department of the Interior, who reported numerous wounds to the head, body and extremities. The examination took place in the Malgobek town morgue. The officers did not remove the clothes from the bodies, which were frozen.

27. The second's applicant's mother, Isit Akayeva, died on 29 April 2000 at the age of 65 of a heart attack. The second applicant submits that her death was brought about by the news of her only son's death.

2. The investigation into the deaths

28. On 7 February 2000 the Malgobek Town Court in Ingushetia, acting on a motion by the second applicant, certified the death of her brother, Adlan Akayev, which had occurred in Grozny on 20 January 2000. The court based its decision on statements of the applicant and two witnesses. They confirmed that his body had been found in Grozny in the courtyard of the Khashiyevs' house with numerous gunshot wounds and that he had been buried on 29 January 2000 in the village of Psedakh. Following the court's decision, the civil registration office of the Malgobek district in Ingushetia issued a death certificate for the second applicant's brother on 18 February 2000.

29. On 14 March 2000 the office of the Malgobek Town Prosecutor issued a paper to the first applicant certifying that on 10 February 2000 the dead body of his brother, Khamid Khashiyev, had been found in Grozny and that, given the numerous gunshot wounds to the head and body, his brother appeared to have died a violent death.

30. On 7 April 2000 the Malgobek Town Court in Ingushetia, at the first applicant's request, certified the deaths of Khamid Khashiyev, Lidiya

Khashiyeva, Rizvan Taymeskhanov and Anzor Taymeskhanov, which had occurred in Grozny, Chechnya, on 19 January 2000. The court based its decision on statements by the applicant and two witnesses. The court noted in the decision that a criminal case had been opened and that an investigation was in progress (there is no evidence that a criminal case had been opened at that time). Following the court decision, the civil registration office of the Malgobek district in Ingushetia issued death certificates for the first applicant's four relatives on 19 April 2000.

31. The Government submitted a copy of investigation file no. 12038, opened on 3 May 2000 by the Grozny Town Prosecutor's Office following a publication entitled "Freedom or Death" in the Novaya Gazeta newspaper on 27 April 2000 about mass murder of civilians by the "205th brigade" in the Novaya Katayama settlement in Grozny on 19 January 2000. The relevant documents, as submitted by the Government, are listed below in Part B.

32. On 27 May 2000 the military prosecutor of military unit no. 20102 (the Russian federal military headquarters in Chechnya) informed the first applicant, in response to a complaint he had made on 5 April 2000 concerning the killing of his relatives, that, after a review by the prosecutor, no decision to open a criminal investigation had been taken for lack of *corpus delicti* in the actions of federal servicemen.

33. On 6 June 2000 the Malgobek Town Prosecutor informed the first applicant that criminal case no. 20540020, opened on 4 May 2000 into the deaths of Rizvan Taymeskhanov and Khamid Khashiyev, had been transferred on 15 May 2000 to the Republican Prosecutor in Ingushetia.

34. On 30 June 2000 the office of the Chief Military Prosecutor, in response to a request by the Memorial Human Rights Centre for information regarding the investigation into the second applicant's brother's death, forwarded this request to the Military Prosecutor of the Northern Caucasus.

35. On 17 July 2000 the second applicant was informed by a letter from the office of the Chief Military Prosecutor, addressed to the special prosecutor's office in the Northern Caucasus, that a "local prosecutor's office" was investigating the case of her brother's death.

36. On 20 July 2000 the Chief Military Prosecutor, in response to an enquiry from the NGO Human Rights Watch about violations of the rights of civilians in Grozny in December 1999 - January 2000, informed the NGO that the military prosecutors were investigating only one case - that of the murder and injury of two women - which was unconnected with the applicants. That investigation was still ongoing and was being supervised by the office of the Chief Military Prosecutor.

37. In September 2000 the two criminal cases opened at the applicants' requests were joined in the Grozny Town Prosecutor's Office with investigation no. 12038. This investigation was adjourned and reopened several times. The last document in the file submitted by the Government is

dated 22 January 2003; in it the Deputy to the Chechnya Republican Prosecutor extended the period of investigation until 27 February 2003. The investigation carried out by the Grozny Town Prosecutor's Office focused on the version initially submitted by the applicants and by all witnesses whose statements had been produced, alleging that the killings were committed by a military detachment. The investigation failed to identify the detachment which was responsible and no one was charged with the crimes (see Part B below for a description of the documents in the investigation file).

38. In November 2000 the Presidium of the Supreme Court in Ingushetia rejected a request for supervisory review (*protest*) by the Republican Prosecutor, in which he sought to quash the decision of the Malgobek Town Court of 7 February 2000. Another request for supervisory review was made by the Deputy Chairman of the Supreme Court of the Russian Federation, and on 1 October 2001 the Supreme Court quashed the decision. The Supreme Court referred to Article 250 of the Russian Code of Civil Procedure, which states that those who request courts to establish facts of legal significance must indicate the reasons for that request. It found that the second applicant had failed to set out the reasons for which she sought “legal certification” of her brother's death. The case was remitted back to the Malgobek Town Court. On 27 November 2001 the Malgobek Town Court decided not to consider the case on the merits, since the second applicant had twice failed to appear for a hearing without valid reasons. The second applicant submits that she was not informed of the new set of proceedings in the Malgobek Town Court and that the summonses were not delivered to her.

39. At the end of 2002 the first applicant applied to a district court in Ingushetia seeking pecuniary and non-pecuniary damages from the Ministry of Finance. The applicant stated that his four relatives had been killed in Grozny in January 2000 by the military. He had found their bodies and had transported them with great difficulty to Ingushetia, where they were buried. A criminal investigation was opened, but failed to establish the servicemen responsible for the killings. Witness Nikolay G. testified to the court that he lived in the Staropromyslovskiy district not far from the applicant's family. In January 2000, about a month after the federal troops had established firm control over the district, he saw the servicemen leading Khamid Khashiyev and two of his nephews towards the garages. They were walking in front of an armoured personnel carrier (APC); armed soldiers were sitting on its hull. Soon afterwards he heard automatic rifle shots from the garages. When he attempted to go there, soldiers threatened him. He also submitted that he was threatened by someone from the prosecutor's office to “keep his mouth shut”. Other witnesses testified about the circumstances in which the bodies were discovered in Grozny, transported to Ingushetia and buried, and about the state of the bodies prior to burial.

40. On 26 February 2003 the Nazran District Court in Ingushetia partially granted the first applicant's claim and awarded him pecuniary and non-pecuniary damages in the amount of 675,000 roubles.

41. The court noted that it was common knowledge that the Staropromyslovskiy district was under the firm control of the Russian federal forces by the material time, and that this did not need to be proved. At that time only federal soldiers were able to travel about town on an APC and to conduct identity checks. That Lidiya Khashiyeva and Anzor Taymeskhanov had been killed during an identity check was corroborated by the fact that their bodies were found in the courtyard of their house with identity documents in their hands. The court further noted that the exact military unit responsible for the killings had not been established by the investigation, which had been adjourned on 8 June 2002. However, all military units were State bodies and therefore pecuniary damage should be paid by the State.

42. The decision was upheld at the final instance by the Ingushetia Supreme Court on 4 April 2003, and on 23 April 2003 the applicant was issued the writ of execution. The decision was not executed immediately because, as the Government submit, the applicant failed to present details of his bank account. On 29 December 2004 the applicant received the award in full.

43. In their submissions on the merits the Government stated that investigative measures continued in 2003. On 18 March 2003 the second applicant was recognised as a victim in the criminal proceedings. On 15 April 2003 additional forensic reports were prepared on the bodies of Khamid Khashiyev and Rizvan Taymeskhanov (presumably, on the basis of the existing descriptions of the bodies). Certain additional witnesses were questioned. The Government did not, however, submit copies of these documents to the Court.

44. The Government submit that the investigation into criminal case no. 12038 found itself in a "deadlock", since it proved impossible to identify eye-witnesses to the killings.

B. Documents submitted by the parties

45. The parties submitted numerous documents concerning the investigation into the killings. The main documents of relevance are as follows:

1. Documents from the investigation file

46. The Government submitted a copy of the investigation file in criminal case no. 12038, which comprises two volumes, and a list of documents contained therein. According to the list, the file contained 130 documents, of which 88 were submitted to the Court. On 7 March 2003 the

Court reiterated its request to the Russian Government to submit a copy of the complete investigation file. The Government responded that the documents withheld were not relevant to the circumstances of the present case.

47. The most important documents contained in the file are as follows:

a) Decision to open a criminal investigation

48. On 3 May 2000, following the publication of an article entitled “Freedom or Death” in the Novaya Gazeta newspaper on 27 April 2000, the investigator of the Grozny Town Prosecutor's Office opened a criminal investigation under Article 105 (a), (d), (e) and (j) of the Criminal Code “concerning mass murder by the ‘205th brigade’ of civilian population in the Novaya Katayama settlement in Grozny on 19 January 2000”.

b) Statements by the first applicant and his sister

49. The case file contains the first applicant's brief statements of facts concerning his relatives' deaths and requests to conduct an investigation, dated 10 February 2000 (addressed to the Malgobek Town Prosecutor) and of 1 March 2000 (addressed to the Russian President).

50. In their further testimonies dated 5 May 2000 the first applicant and his sister Movlatkhan Bokova (born Khashiyeva) gave details concerning the discovery of their relatives' bodies. Both stated that on 25 January 2000 they had travelled to Grozny with Petimat Goygova, their neighbour from Grozny. On Ipronovskaya Street they met a local resident, Viskhan, who told them that their relatives had been taken away by federal soldiers. After discovering the three bodies at 107 Neftyanaya Street they returned to Ipronovskaya Street, where they met a group of soldiers who were taking things from a house and stacking them in a lorry. The first applicant asked the soldiers' help to remove the bodies, but one of them, who introduced himself as the commander, Dima, who was aged about 19 and dressed in camouflage, refused. When the applicant insisted and said that his sister and nephew had been killed, Dima said that the fighters had killed 32 soldiers and that the murders were an act of revenge on their part. The applicant lost his temper and started to curse, but one of the soldiers raised his gun and Movlatkhan stepped forward to protect him, then led him away. Both certified that they could have identified the house and “commander Dima”. They returned to Grozny on 28 January with a car, removed the bodies with the assistance of soldiers from a nearby roadblock and transported them to Ingushetia.

51. Movlatkhan Bokova further testified that she had washed Lidiya Khashiyeva's body before burial, and had seen numerous (about 20) stab and gunshot wounds on her body. Her left arm was broken and front teeth were missing. She further testified that Anzor Taymeskhanov's head bore numerous blow marks and that his jaw had been broken.

52. The first applicant and his sister also testified about their return to Grozny on 10 February 2000. They stated that they again met Viskhan, who told them that their relatives had been led away by soldiers towards the garages. They followed his directions and found three bodies, all frozen to the ground and with heavy wounds to the head. The first applicant took photographs of the bodies at the spot and went to fetch a car. On the same day they delivered the bodies to Ingushetia, where they were buried the following day, on 11 February 2000. They also stated that they had collected cartridges in the yard of 107 Neftyanaya Street which were still in their possession.

c) Statement by Raykhat Khashiyeva

53. The first applicant's daughter, Raykhat Khashiyeva, accompanied her father and aunt on their trip to Grozny on 10 February 2000. In her statement of 10 May 2000 she confirmed their accounts regarding the discovery of the bodies of Khamid Khashiyev, Rizvan Taymeskhanov and Magomed Goygov.

d) Description of the bodies and forensic expertise

54. An examination of the bodies of Khamid Khashiyev and Rizvan Taymeskhanov was conducted by an investigator from the Malgobek Town Prosecutor's Office in the municipal morgue on 10 February 2000. The bodies were frozen, and the examination was conducted without removing the clothes. On 14 February 2000 two forensic reports were prepared by a forensic expert, based on the investigator's descriptions and without examining the bodies. The report stated that Khashiyev's body had eight gunshot wounds and that his death had been caused by a gunshot wound to the head. Taymeskhanov's body had eight gunshot wounds and his death also appeared to have been caused by numerous gunshot wounds to the head and body.

55. On 7 and 8 May 2000 the Malgobek Town Prosecutor's Office made a report and took photographs of other evidence in the case – identity documents of the deceased persons, photographs of the bodies taken by the first applicant and Rizvan Taymeskhanov's and Khamid Khashiyev's clothes.

e) Decision to recognise the first applicant as a victim

56. On 5 May 2000 the first applicant was recognised as a victim in the criminal proceedings and he signed the notification thereof in the Malgobek Town Prosecutor's Office. On 15 June 2000 the same notification was signed at the Grozny Town Prosecutor's Office.

f) Statements by local residents

57. On 14 May 2000 U. and Y., two women residents of the Staropromyslovskiy district of Grozny, made statements. Both witnesses confirmed that they had seen the bodies of people who had been shot and that, at the relevant time, the district had been under the control of federal forces. Neither of them had witnessed the executions but referred to the “rumours” that the murders had been committed by federal troops. Both witnesses testified that they had seen soldiers looting abandoned houses in the district.

g) Statements by Magomed Goygov's relatives

58. Two female relatives of Magomed Goygov, Petimat Goygova and M., made statements related to the circumstances surrounding the discovery of the bodies of Maryam Goygova, Magomed's mother, on 19 January 2000 at the intersection of Neftyanaya Street and 4th Lane, and Magomed Goygov, on 10 February 2000. Petimat testified that a man from the neighbourhood named Viskhan told her that their relatives had been killed by soldiers from the 205th infantry brigade from Budennovsk, and referred to two soldiers who had told him the same thing – one named Oleg, the other Dima. She also testified that on 21 January 2000, when they were taking Maryam Goygova's body to Ingushetia, they took along a wounded woman, Elena G., who had survived an attack by soldiers on 19 January and who was later taken to the Sunzhenskiy hospital in Ingushetia.

h) Evidence related to Yuriy Zh.

59. Several documents refer to a certain Yuriy Zh., whose family had resided at 130 Neftyanaya Street. From the witnesses' testimonies it appears that Yuriy Zh. left Grozny at the end of 1980s, while his parents (or aunt and uncle) lived at the said address. They had been killed in 1997 by Chechen fighters and their house had been occupied. The witnesses referred to “rumours” that Yuriy Zh. was among the soldiers involved in the killings and that he was motivated by revenge. The house at 130 Neftyanaya was destroyed during the fighting. Several requests for information about Yuriy Zh. were sent by the investigators to the military authorities and to the civil authorities of the neighbouring regions, but the answers to these requests were either negative or were not provided by the Government.

i) Testimony by Anna Politkovskaya

60. The journalist Anna Politkovskaya, author of the article “Freedom or Death”, was questioned on several occasions by the investigators. She testified that in February 2000 she was in Ingushetia and in the Staropromyslovskiy district of Grozny, where she had interviewed several witnesses of the massacre and the relatives of the deceased. In their

interviews, several witnesses had referred to the “205th brigade” as being responsible for the murders.

j) The second applicant's statement

61. In her statement by 12 July 2000, addressed to the Chief Military Prosecutor, the second applicant testified that on 25 January 2000 her brother's body had been found in the courtyard of the Khashiyevs' house by Magomed Khashiyev and his sister Movlatkhan. The second applicant saw her brother's body in Ingushetia and noted several gunshot wounds to his face, heart and abdomen. His left collar-bone was broken. His identity card from the Grozny Teaching Institute had been found in his hand, and his passport and other identity documents and two 50-rouble notes were in his pocket.

62. On 9 February 2000 the second applicant travelled to Grozny. In the courtyard at 107 Neftyanaya Street she picked up several cartridges from an automatic weapon and her brother's hat. On the same day the second applicant saw five dead bodies in a nearby garage, belonging to three women and two men. A sixth person from that group, Elena G., had survived the massacre and later told the applicant, who found her in a hospital in Ingushetia, that they were shot on 19 January by soldiers from the 205th brigade from Budennovsk. She also said that she had seen Adlan Akayev and the Khashiyevs in the evening of 19 January 2000 and that they were alive. On the same day she was picked up by the Goygovs, who had come to collect their dead, and taken to Ingushetia to a hospital. On 22 February 2000 the second applicant met with Omar S., who was at the material time living in Grozny, who had heard the members of the military talking in the commendatura of the Staropromyslovskiy district after 20 January that they had shot a “professor”. Omar's story was related in the article “Freedom or Death”.

k) Decision to join the investigations

63. On 22 August 2000 the Grozny Town Prosecutor's Office opened a criminal investigation into the killing of the second applicant's brother. On 5 September 2000 this investigation was joined with criminal case no. 12038 related to the mass murder in the Staropromyslovskiy district. On 5 September 2000 the deputy Grozny Town Prosecutor created an investigating group, made up of three investigators, to work on the case.

l) Documents relating to identification of the relevant military units

64. On 19 November 2000 the headquarters of the United Group Alignment (UGA) of the Ministry of Defence (based in Khankala) replied to the prosecutor's request and submitted a list of military units identified by five-digit numbers only, which had been deployed in Grozny between 5 January and 25 February 2000.

65. On 4 March 2001 an investigator from the Chechen Republican Prosecutor's Office sent a request to the military prosecutor of military unit no. 20102 (Khankala), asking to identify the exact temporary location of the military units at the relevant time, to identify the commanding officers and retrieve notes referring to operations in the Staropromyslovskiy district. The file reviewed by the Court contained no reply to that request.

m) The prosecutor's orders

66. At different stages of the proceedings several orders were produced by the Chechen Republican Prosecutor's Office enumerating the steps to be taken by the investigators. The order of 14 August 2001 listed ten persons whose bodies had been discovered in Novaya Katayama, including the applicants' relatives. On 16 January 2003 the same prosecutor's office ordered the investigators to establish possible places of burial of other civilians, to identify further witnesses and victims and to identify military units possibly responsible for the crimes.

67. A summary of the main steps of the investigation is given in the order by the Grozny Town Prosecutor dated 22 January 2003, which is the last document in the case-file. Criminal investigation file no. 12038 was started by the Grozny Town Prosecutor's Office on 3 May 2000 following the publication of the article "Freedom or Death" about mass murder in the Staropromyslovskiy district. On 4 May 2000 the Malgobek Town Prosecutor's Office in Ingushetia opened a criminal investigation following the first applicant's complaint concerning the killing of his relatives. On 23 July 2000 both criminal cases were joined as no. 12038. On 22 August 2000 the Grozny Town Prosecutor's Office opened a criminal investigation following the second applicant's complaint concerning the killing of her brother. On 5 September 2000 it was joined to criminal case no. 12038.

68. The case was adjourned seven times and the investigation was renewed on eight occasions. The file was transferred four times between the Grozny Town Prosecutor's Office and the Chechen Republican Prosecutor's Office. The document concludes with a list of tasks that should be carried out by the investigation team, including identification of the military units deployed in the Staropromyslovskiy district of Grozny at the relevant dates, identification of the burial places of civilians in the Novaya Katayama settlement, identification of witnesses and the victims of the crimes, etc.

2. Additional documents submitted by the applicants

69. The applicants submitted a number of additional documents relating to the circumstances of the killings and discovery of the bodies. The main documents of relevance are as follows:

a) Forensic report

70. The applicants submitted a statement by Christopher Mark Milroy, registered medical practitioner, Professor of Forensic Pathology at the University of Sheffield and Consultant Pathologist to the British Home Office. The statement was prepared on the basis of the applicants' submissions concerning the circumstances of their relatives' deaths and of eight colour photographs taken by the first applicant when the bodies of Khamid Khashiyev, Rizvan Taymeskhanov and Magomed Goygov were found.

71. The expert concluded that “the photographs show injuries in keeping with bullets fired from a high velocity rifle. ... High velocity rifles can cause significantly destructive injuries. Those unused to looking at injuries caused by these weapons may mistake the cause of injuries produced by these weapons.” He further listed a number of procedural steps normally taken in an examination of a body of a person who has died in suspicious circumstances. In the expert's opinion, these should include an x-ray of the body to identify and recover the projectiles and detailed examination and photographing of the external injuries, “as the pattern of injuries may indicate whether the victims were shot at close range or they had been tortured”.

b) Information from the Office of the General Prosecutor

72. In his letter dated 25 April 2003, Deputy General Prosecutor Mr Fridinsky replied to a request for information sent by Mr Kovalev, a member of the State Duma. The letter contains information relating to the prosecution of army servicemen in Chechnya for crimes committed against civilians. Since the beginning of the “counter-terrorist operation”, 58 indictments have been forwarded to the courts by the military prosecutors and 74 persons have been indicted. Of those, 12 cases concerned murder, 13 – theft, four – abuse of power, five – careless driving of military vehicles, etc. 51 persons were found guilty, of whom seven were officers, 22 were professional soldiers and sergeants, 19 were conscript soldiers and three were non-commissioned officers. In addition, the Chechen Republican Prosecutor's Office brought 17 charges against 29 servicemen of the Ministry of Interior for crimes against the civilian population. From the description attached to the letter it follows that, in the majority of cases, the sentences were conditional or were lifted in application of an amnesty.

3. Documents relating to the establishment of facts in the domestic courts

73. A number of documents submitted by the applicants relate to the proceedings initiated by them in the domestic courts in order to have the facts of their relatives' deaths established.

a) The first applicant's statement

74. On 5 April 2000 the first applicant submitted an application to the Malgobek Town Court in Ingushetia, seeking to have certified the facts of the deaths of his brother Khamid Khashiyev, his sister Lidiya Khashiyeva and his two nephews, Rizvan Taymeskhanov and Anzor Taymeskhanov. The first applicant submitted that his relatives had remained in Grozny during the winter of 1999 – 2000, while he and the rest of the family escaped the hostilities to Ingushetia. On 17 January 2000 the soldiers of the “205th battalion” of the federal army entered Staropromyslovskiy district and “committed outrages”. On 19 January 2000 they entered his sister's household and killed his relatives in a brutal fashion, causing numerous firearms and stab wounds. The first applicant learnt the details of the killings when he attended the funeral of a neighbour, Maryam Goygova. His relatives were buried in Ingushetia. A criminal investigation had been opened and was ongoing. The declaration of deaths was required to obtain death certificates from the civil registration office.

b) Transcript of the court proceedings of 5 – 7 April 2000

75. From the transcript of the hearing of 5 April 2000 it follows that the court heard the applicant, who repeated his statement, and two witnesses to the burial from the village of Voznesenskoye. They merely confirmed that the bodies had been brought to Voznesenskoye for burial and that they were aware that the killings had been committed by the federal soldiers. The court issued its decision on 7 April 2000.

c) The second applicant's statement

76. On 3 February 2000 the second applicant submitted an application to the Malgobek Town Court, seeking to establish the fact of her brother's death. She submitted that her brother's body had been found in Grozny on 21 January 2000 in the vicinity of his house. His death was caused by numerous gunshot wounds. His body had been brought from Grozny and buried in the village of Psedakh in Ingushetia on 28 January 2000. The court decision certifying his death was required to obtain a death certificate from the civil registration office.

d) Transcript of the court proceedings of 7 February 2000

77. From the transcript of the hearing of 7 February 2000 it follows that the court heard the second applicant and two witnesses. The second applicant testified that in November 1999 she and her aunt (her mother's sister) had moved from Grozny to Ingushetia and lived with her mother in the village of Psedakh. Her brother Adlan remained in Grozny to look after the property. On 27 January 2000 Liza Khashiyeva and Raya Khashiyeva came to them and said that three bodies had been found in their family

house in Grozny, and that one of them was her brother's. Her relative D. went to Grozny with the Khashiyevs and brought the body back. On 28 January 2000 her brother was buried in Psedakh.

78. Witness D. testified that she was a close relative of the second applicant's mother. On 27 January 2000 they were visited in Psedakh by the Khashiyevs who told them that the body of Adlan Akayev was in the courtyard of their house in Grozny. They identified him by his card from the Grozny Teaching Institute, where he had been the Head of the Physics department. On 28 January 2000 they brought his body to Psedakh and buried him. Another witness from Psedakh confirmed the fact of burial. The court issued its decision on 7 February 2000.

II. RELEVANT DOMESTIC LAW AND PRACTICE

a) The Constitutional provisions

79. Article 20 of the Constitution of the Russian Federation protects the right to life.

80. Article 46 of the Constitution guarantees the protection of rights and liberties in a court of law by providing that the decisions and actions of any public authority may be appealed to a court of law. Section 3 of the same Article guarantees the right to apply to international bodies for the protection of human rights once domestic legal remedies have been exhausted.

81. Articles 52 and 53 provide that the rights of victims of crime and abuse of power shall be protected by the law. They are guaranteed access to the courts and compensation by the State for damage caused by the unlawful actions of a public authority.

82. Article 55 (3) provides for the restriction of rights and liberties by a federal law, but only to the extent required for the protection of the fundamental principles of the constitutional system, morality, health, rights and lawful interests of other persons, the defence of the country and the security of the state.

83. Article 56 of the Constitution provides that a state of emergency may be declared in accordance with federal law. Certain rights, including the right to life and freedom from torture, may not be restricted.

b) The Law on Defence

84. Section 25 of the Law on Defence (*Федеральный закон от 31 мая 1996 г. N 61-ФЗ "Об обороне"*) provides that "supervision of adherence to laws and investigations of crimes committed in the Armed Forces of the Russian Federation, other Forces, military formations and authorities shall be exercised by the General Prosecutor of the Russian Federation and subordinate prosecutors. Civil and criminal cases in the Armed Forces of

the Russian Federation, other forces, military formations and authorities shall be examined by the courts in accordance with the legislation of the Russian Federation.”

c) The Law on the Suppression of Terrorism

85. The Law on the Suppression of Terrorism (*Федеральный закон от 25 июля 1998 г. № 130-ФЗ «О борьбе с терроризмом»*) provides as follows:

“Section 3. Basic Concepts

For purposes of the present Federal Law the following basic concepts shall be applied:

... 'the suppression of terrorism' shall refer to activities aimed at the prevention, detection, suppression and minimisation of the consequences of terrorist activities;

'counter terrorist operation' shall refer to special activities aimed at the prevention of terrorist acts, ensuring the security of individuals, neutralising terrorists and minimising the consequences of terrorist acts;

'zone of a counter-terrorist operation' shall refer to an individual terrain or water surface, means of transport, building, structure or premises with adjacent territory where a counter-terrorist operation is conducted; ...

Section 13. Legal regime in the zone of an anti-terrorist operation

1. In the zone of an anti-terrorist operation, the persons conducting the operation shall be entitled:

... 2) to check the identity documents of private persons and officials and, where they have no identity documents, to detain them for identification;

3) to detain persons who have committed or are committing offences or other acts in defiance of the lawful demands of persons engaged in an anti-terrorist operation, including acts of unauthorised entry or attempted entry to the zone of the anti-terrorist operation, and to convey such persons to the local bodies of the Ministry of the Interior of the Russian Federation;

4) to enter private residential or other premises ... and means of transport while suppressing a terrorist act or pursuing persons suspected of committing such an act, when a delay may jeopardise human life or health;

5) to search persons, their belongings and vehicles entering or exiting the zone of an anti-terrorist operation, including with the use of technical means; ...

Section 21. Exemption from liability for damage

In accordance with and within the limits established by the legislation, damage may be caused to the life, health and property of terrorists, as well as to other legally-protected interests, in the course of conducting an anti-terrorist operation. However, servicemen, experts and other persons engaged in the suppression of terrorism shall be exempted from liability for such damage, in accordance with the legislation of the Russian Federation.”

d) The Code of Civil Procedure

86. Articles 126-127 of the Code of Civil Procedure (*Гражданский процессуальный Кодекс РСФСР*), in force at the material time, contained general formal requirements governing an application to a court, including, *inter alia*, the defendant's name and address, the exact circumstances on which the claim was based and any documents supporting the claim.

Article 214 part 4 provided that the court had to suspend consideration of a case if it could not be considered until completion of another set of civil, criminal or administrative proceedings.

87. Article 225 of the Code provided that if in the course of reviewing a complaint against the actions of an official or a civil claim a court came across information indicating that a crime had been committed, it was required to inform the prosecutor.

88. Chapter 24-1 established that a citizen could apply to a court for redress in respect of unlawful actions by a state body or official. Such complaints could have been submitted to a court, either at the location of the state body or at the plaintiff's place of residence, at the latter's discretion. Under the same procedure, the courts could also rule on an award of damages, including non-pecuniary damages, where they concluded that a violation had occurred.

e) The Code of Criminal Procedure

89. The 1960 Code of Criminal Procedure (*Уголовно-процессуальный Кодекс РСФСР 1960г. с изменениями и дополнениями*), in force at the material time, contained provisions relating to criminal investigations.

90. Article 53 stated that where a victim had died as a result of a crime, his or her close relatives should be granted victim status. During the investigation the victim was entitled to submit evidence and bring motions. Once the investigation was complete the victim had full access to the case-file.

91. Article 108 provided that criminal proceedings could be instituted on the basis of letters and complaints from citizens, public or private bodies, articles in the press or the discovery by an investigating body, prosecutor or court of evidence that a crime had been committed.

92. Article 109 provided that the investigating body was to take one of the following decisions within a maximum period of ten days after notification of a crime: open or refuse to open a criminal investigation, or transmit the information to an appropriate body. The informants were to be informed of any decision.

93. Article 113 provided that, where an investigating body refused to open a criminal investigation, a reasoned decision was to be provided. The informant was to be made aware of the decision and could appeal to a higher-ranking prosecutor or to a court.

94. Article 126 provided that the military prosecutor's office was responsible for the investigation of crimes committed by military servicemen in relation to their official duties or within the boundaries of a military unit.

95. Article 195 provided that a criminal investigation could be suspended, *inter alia*, if it was impossible to identify the persons who could be charged with the crime. In such cases, a reasoned decision was to be issued. No investigative actions were to be carried out once a case had been suspended. A suspended criminal case could be closed on expiry of the limitation period.

96. Articles 208 and 209 contained information relating to the closure of a criminal investigation. Reasons for closing a criminal case included the absence of *corpus delicti*. Such decisions could be appealed to a higher-ranking prosecutor or to a court.

f) Situation in the Chechen Republic

97. No state of emergency or martial law has been declared in Chechnya. No federal law has been enacted to restrict the rights of the population of the area. No derogation under Article 15 of the Convention has been made.

g) Amnesty

98. On 6 June 2003 the State Duma adopted Decree no. 4124-III by which an amnesty was granted in respect of criminal acts committed by the participants to the conflict on both sides in the period between December 1993 and June 2003. The amnesty does not apply to serious intentional crimes, such as murder.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

A. Arguments of the parties

1. The Government

99. The Government requested the Court to declare the applications inadmissible on the grounds that the applicants had failed to exhaust the domestic remedies available to them. They submitted that the relevant

authorities had conducted and continued to conduct criminal investigations into civilian deaths and injuries and the destruction of property in Chechnya, in accordance with the domestic legislation.

100. The Government also submitted that, although the courts in Chechnya had indeed ceased to function in 1996, civil remedies were still available to those who moved out of Chechnya. Established practice allowed them to apply to the Supreme Court or directly to the courts at their new place of residence, which would then consider their applications. In 2001 the courts in Chechnya had resumed work and had reviewed a large number of civil and criminal cases.

a) The Supreme Court

101. The availability of the Supreme Court remedy was supported, in the Government's view, by the possibility for the Supreme Court to act as a court of first instance in civil cases. The Government referred to two Supreme Court decisions of 2002 and 2003, by which the provisions of two Government decrees were found null and void following individual complaints. They also referred to the case of K., at whose request his claim for non-pecuniary damages against a military unit was transferred from a district court in Chechnya to the Supreme Court of Dagestan because he insisted on the participation of lay assessors in the proceedings, and such assessors were not available in Chechnya.

b) Application to other courts

102. The possibility of applying to a court at their new places of residence was supported by the fact that the applicants successfully applied to the Malgobek District Court in Ingushetia for verification of their relatives' deaths.

103. The effectiveness of this avenue was further strengthened by the fact that the first applicant had successfully applied to the Nazran District Court in Ingushetia, which on 26 February 2003 awarded him substantial pecuniary and non-pecuniary damages for the deaths of his relatives. This decision was upheld at final instance and executed, thereby proving that an application to a relevant district court is an effective remedy in cases such as the applicants'.

2. The applicants

104. The applicants submitted that they had complied with the obligation to exhaust domestic remedies, in that the remedies referred to by the Government would be illusory, inadequate and ineffective. In particular, the applicants based this assertion on the following arguments.

a) The violations were carried out by State agents

105. The applicants submitted that the anti-terrorist operation in Chechnya, run by agents of the State, was based on the provisions of the Law on the Suppression of Terrorism and was officially sanctioned at the highest level of State power.

106. The applicants referred to the text of the Law on the Suppression of Terrorism. This Law allowed anti-terrorist units to interfere with a number of important rights, without setting clear limits on the extent to which such rights could be restricted and without providing remedies for victims of violations. Nor did it contain provisions regarding officials' responsibility for possible abuses of power.

107. They also submitted that although the officials who mounted the anti-terrorist operations in Chechnya should have been aware of the possibility of wide-scale human rights abuses, no meaningful steps had been taken to stop or prevent them. They submitted press-cuttings containing praise for the military and police operations in Chechnya by the President of the Russian Federation, and suggested that prosecutors would be unwilling to contradict the "official line" by prosecuting agents of the law-enforcement bodies or the military.

108. The applicants alleged that there was a practice of non-respect of the requirement to investigate abuses committed by army servicemen and members of the police effectively, both in peacetime and during conflict. The applicants based this assertion on four principal grounds: impunity for the crimes committed during the current period of hostilities (since 1999), impunity for the crimes committed in 1994-1996, impunity for police torture and ill-treatment all over Russia, and impunity for the torture and ill-treatment that occur in army units in general.

109. As to the current situation in Chechnya, the applicants cited human rights groups, NGO and media reports on violations of civilians' rights by federal forces. They also referred to a number of the Council of Europe documents deploring lack of progress in investigations into credible allegations of human rights abuses committed by the federal forces.

b) Ineffectiveness of the legal system in the applicants' case

110. The applicants further argued that the domestic remedies to which the Government referred were ineffective due to the legal system's failure to provide redress. They invoked the Court judgment in the case of *Akdivar and Others v. Turkey* and argued that the Russian Federation failed to satisfy the requirement that the remedy was "an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaint and offered reasonable prospects of success" (see the *Akdivar and Others v. Turkey* judgment of 30 August 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1210, § 68).

111. In the applicants' view, the Government had not satisfied the criteria set out in the *Akdivar* judgment, as they provided no evidence that the remedies that exist in theory are or were capable of providing redress, or offered any reasonable prospects of success. The applicants challenged both of the remedies mentioned by the Government.

112. So far as civil proceedings were concerned, the applicants submitted that they did not have effective access to the remedies suggested by the Government. An application to the Supreme Court would plainly be useless, since it had only limited jurisdiction as a court of first instance, e.g. to review the lawfulness of administrative acts. The Supreme Court's published case-law did not contain a single example of a civil case brought against the state authorities by a victim of the armed conflict in Chechnya. As to a possible transfer of cases by the Supreme Court, the applicants referred to a decision by the Constitutional Court of 16 March 1998, which found that the relevant provisions of the then Code of Civil Procedure, permitting higher courts to transfer cases from one court to another, were unconstitutional. As to the possibility of applying to a district court in a neighbouring region or in Chechnya, the applicants submitted that this would have been impractical and inefficient.

113. In respect of a civil claim, the applicants argued that, in any event, it could not have provided an effective remedy within the meaning of the Convention. A civil claim would ultimately be unsuccessful in the absence of a meaningful investigation, and a civil court would be forced to suspend consideration of any such claim pending investigation under Article 214 (4) of the Code of Civil Procedure. They further argued that civil proceedings could only lead to compensation for pecuniary and non-pecuniary damages, whereas their principal objective was to see the perpetrators brought to justice. Finally, they pointed out that although civil claims to obtain compensation for the military's illicit actions had been submitted to the courts, almost none had been successful.

114. The applicants submitted that criminal proceedings were alone capable of providing adequate effective remedies and that compensation could be awarded to them in the course of criminal proceedings as victims of the crimes. The applicants questioned the effectiveness of the investigation into their case.

B. The Court's assessment

115. In the present case the Court made no decision about exhaustion of domestic remedies at the admissibility stage, having found that this question was too closely linked to the merits. The same preliminary objection being raised by the Government at the stage of consideration on the merits, the Court should proceed to evaluate the arguments of the parties in view of the Convention provisions and its relevant practice.

116. The Court recalls that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants first to use the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law, but that no recourse should be had to remedies which are inadequate or ineffective (see the *Aksoy v. Turkey* judgment of 18 December 1996, *Reports* 1996-VI, pp. 2275-76, §§ 51-52, and the *Akdivar and Others v. Turkey* judgment cited above, p. 1210, §§ 65-67).

117. The Court emphasises that the application of the rule of exhaustion of domestic remedies must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting States have agreed to set up. Accordingly, it has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned but also of the general context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see the *Akdivar and Others* judgment cited above, p. 1211, § 69, and the *Aksoy* judgment cited above, p. 2276, §§ 53 and 54).

118. The Court observes that Russian law provides, in principle, two avenues of recourse for the victims of illegal and criminal acts attributable to the State or its agents, namely civil procedure and criminal remedies.

119. As regards a civil action to obtain redress for damage sustained through alleged illegal acts or unlawful conduct on the part of State agents, the Court recalls that the Government have relied on two possibilities, namely to lodge a complaint with the Supreme Court or to lodge a complaint with other courts (see §§ 98-101 above). The Court notes that at the date on which the present application was declared admissible, no decision had been produced to it in which the Supreme Court or other courts were able, in the absence of any results from the criminal investigation, to consider the merits of a claim relating to alleged serious criminal actions. In the instant case the applicants are not aware of the identity of the potential

defendant, and so, being dependent for such information on the outcome of the criminal investigation, did not initially bring such an action.

120. It is true that the first applicant, after receiving the Government's assertion that a civil remedy existed, brought an action before the Nazran District Court in Ingushetia. That court was unable to pursue any independent investigation as to the person or persons responsible for the fatal assaults, nor did it do so, but it did award damages to the first applicant on the basis of common knowledge of the military superiority of the Russian federal forces in the Staropromyslovskiy district at the relevant time, and a general liability of the State for actions by the military.

121. The Court does not consider that the decision by the Nazran District Court confirms the effectiveness of a civil action as regards exhaustion of domestic remedies. Despite a positive outcome for the first applicant in the form of a financial award, these proceedings confirm that a civil action is incapable, without the benefit of the conclusions of a criminal investigation, of making any meaningful findings as to the perpetrators of fatal assaults, and still less to establish their responsibility. Furthermore, a Contracting State's obligation under Articles 2 and 13 of the Convention to conduct an investigation capable of leading to the identification and punishment of those responsible in cases of fatal assault might be rendered illusory if, in respect of complaints under those Articles, an applicant would be required to exhaust an action leading only to an award of damages (see *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, p. 2431, § 74).

122. In the light of the above the Court finds that the applicants were not obliged to pursue the civil remedies suggested by the Government in order to exhaust domestic remedies, and the preliminary objection is in this respect unfounded.

123. As regards criminal law remedies, the Court observes that the applicants notified the authorities about the killings of their relatives at a sufficiently early stage. On 10 February 2000 the first applicant requested the Malgobek Department of Interior to conduct an examination of his brother's and nephew's bodies, at the same time requesting that an investigation be conducted. The second applicant applied to a court in Malgobek, which on 7 February 2000 certified her brother's death from firearm wounds. In July 2000 the second applicant wrote to a prosecutor requesting an investigation into her brother's death (see §§ 26, 28-30 and 61 above). Upon their complaints the investigation was started, albeit after a delay, and lasted for three and a half years. No charges were brought against any individuals. The applicants argued that the investigation has proven ineffective and that they were not properly informed of the proceedings in order to be able to participate or to challenge its results. The Government maintained that the relevant authorities had conducted, and continued to conduct, criminal investigations in accordance with the domestic legislation.

124. The Court considers that this limb of the Government's preliminary objection raises issues concerning the effectiveness of the criminal investigation in uncovering the facts and responsibility for the killings of the applicants' relatives, which are closely linked to the merits of the applicants' complaints. Thus, it considers that these matters fall to be examined under the substantive provisions of the Convention invoked by the applicants. In view of the above, it is not necessary for the Court to decide whether there was indeed a practice of non-investigation of crimes committed by police or military officials, as claimed by the applicants.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

125. The applicants alleged that their relatives were killed by the agents of the State in violation of Article 2. They also submitted that the authorities failed to carry out an effective and adequate investigation into their deaths. They relied on Article 2 of the Convention, which provides:

“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. The alleged failure to protect the right to life

1. Arguments of the parties

a) The applicants

126. The applicants alleged that it was established beyond reasonable doubt that their relatives had been intentionally killed by federal soldiers. They submitted that there existed sufficiently strong, clear and concordant evidence to satisfy the established evidentiary standard.

127. In particular, they referred to the evidence to the effect that the first applicant's relatives, Khamid Khashiyev and Rizvan Taymeskhanov, were seen by the eye-witnesses detained by federal servicemen on 19 January

2000, and that their bodies were later discovered with bullet wounds and signs of beatings. They also submitted that there existed overwhelming and compelling evidence that acts of torture and extra-judicial killings by soldiers were widespread in Grozny at the beginning of 2000. They pointed at the domestic courts' decisions, by which the first applicant's claim for damages against the State was granted on the ground that his relatives had been killed by unidentified servicemen.

128. The applicants also pointed to the Government's failure to produce all the documents contained in the case-file related to the investigation of their relatives' deaths. In their opinion, this should lead the Court to draw inferences as to the well-foundedness of their allegations.

b) The Government

129. In their submissions related to the admissibility of the complaint, the Government submitted that the circumstances of the applicants' relatives' deaths were unclear. The Government provided several alternative explanations, submitting that they could have been killed by Chechen fighters in retribution for not joining their forces, or by robbers. The Government also suggested that the notion that the applicants' relatives were executed by the Russian federal troops could be a part of the propaganda war waged by Chechen armed groups, aimed at discrediting the federal army. Finally, the Government suggested that the applicants' relatives could have been participating in armed resistance to the federal troops and were killed in action.

130. The Government maintained that the exact circumstances of the applicants' relatives' deaths remained unclear. A criminal investigation was initiated at the applicants' requests, in the course of which all their arguments were duly checked but were not corroborated by the evidence gathered.

2. The Court's assessment

a) General considerations

131. The Court reiterates that Article 2, which safeguards the right to life and sets out those circumstances in which deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, to which no derogation is permitted. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which deprivation of life may be justified must therefore be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make

its safeguards practical and effective (*McCann and Others v. the United Kingdom* judgment of 27 September 1995, Series A no. 324, §§ 146-147).

132. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of state agents but also all the surrounding circumstances (see, amongst other authorities, *Avsar v. Turkey*, no. 25657/94, § 391, ECHR 2001).

133. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in detention, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (*Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII; *Çakici v. Turkey* [GC], no. 23657/94, § 85, ECHR 1999-IV; *Ertak v. Turkey*, no. 20764/92, § 32, ECHR 2000-V, and *Timurtaş v. Turkey*, no. 23531/94, § 82, ECHR 2000-VI).

134. As to the facts that are in dispute, the Court recalls its jurisprudence confirming the standard of proof “beyond reasonable doubt” in its assessment of evidence (*Avsar v. Turkey*, cited above, § 282). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (*Ireland v. the United Kingdom* judgment of 18 January 1978, Series A no. 25, p. 65, § 161).

135. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Articles 2 and 3 of the Convention the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, the *Ribitsch v. Austria* judgment of 4 December 1995, Series A no. 336, § 32, and *Avsar v. Turkey*, cited above, § 283) even if certain domestic proceedings and investigations have already taken place.

b) Application in the present case

136. In order to be able to assess the merits of the applicants' complaints and in view of the nature of the allegations, the Court requested the Government to submit a copy of the complete criminal investigation file in the present case. The Government submitted about two-thirds of the file, because the remaining documents were, in the Government's view, irrelevant. No other explanation has been provided for the failure to produce the remaining documents.

137. The Court recalls in this respect that it is of utmost importance for the effective operation of the system of individual petition instituted under Article 34 of the Convention that states should furnish all necessary facilities to make possible a proper and effective examination of applications (*Tanrikulu v. Turkey* [GC], no. 23763/94, § 70, ECHR 1999-IV). It is inherent in proceedings related to cases of this nature, where an individual applicant accuses State agents of violating his rights under the Convention, that in certain instances solely the respondent Government have access to information capable of corroborating or refuting these allegations. A failure on the Government's part to submit such information which is in their hands without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicants' allegations. It may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a) of the Convention (*Timurtaş v. Turkey*, cited above, §§ 66 and 70).

138. The Court is not persuaded by the Government's explanation for a failure to produce the entire investigation file on the pretext of some documents being not relevant to the case. Where an application contains a complaint that there has not been an effective investigation, and where, as in the instant case, a copy of the file is requested from the Government, the Court considers it incumbent on the respondent State to furnish all necessary documentation pertaining to that investigation. The question of whether certain documents are relevant or not cannot be unilaterally decided by the respondent Government. Moreover, the Court notes that the Government referred in their observations to documents copies of which were not submitted to the Court.

139. Accordingly, the Court finds that it can draw inferences from the Government's conduct in this respect. The Court does not find it necessary, however, to draw separate conclusions under Article 38 of the Convention as to whether the Government complied with their obligations, in view of the submission of the large part of the case-file.

140. As to the merits of the complaint, it is undisputed that the applicants' relatives died in circumstances falling outside the exceptions set out in the second paragraph of Article 2. The Government did not suggest in their observations that the exceptions of the second paragraph of Article 2 could be applicable in the present case (see §§ 129-130 above). The question remains whether the Government may be held responsible for their deaths.

141. The domestic authorities indicated on a number of occasions that the deaths had been unlawful. In particular, the criminal investigation in case no. 12038 was an investigation into "mass murder" of civilians.

142. Although the investigation was never completed and individuals were not identified and indicted, it clearly follows from the case-file that the only version of the events considered by the prosecution was that put

forward by the applicants. The documents contained in the criminal investigation file repeatedly refer to the killings as having been committed by military servicemen. The investigator's decision of 3 May 2000 to open a criminal investigation refers to the "mass murder of the civilian population by the '205th brigade'" (see § 48 above). The statements by the first applicant to the investigating authorities and to the civil court refer to federal servicemen as the perpetrators of the killings. The statements by the first applicant and his sister, of 5 May 2000, contain an account of a meeting with soldiers on 25 January 2000. These soldiers apparently acknowledged that the killings were committed by them as revenge. Testimony by other witnesses all pointed to the servicemen as the perpetrators of the killings (see §§ 50 - 62).

143. Certain steps were undertaken – or ordered by the prosecutors – to attempt to identify the military units stationed in the district at the relevant time, as well as their commanders and operational plans. The investigation closely followed the trail of a certain Yuriy Zh., who could have been among the soldiers responsible for the killings (see § 59 above) and who may have been motivated by reasons of personal revenge.

144. The Court has also had regard to the reports by human rights groups and documents by international organisations which have been submitted, and which support the version of events submitted by the applicants.

145. Additional strong evidence in respect of the identity of the perpetrators comes from the decision by the Nazran District Court, which stated that the killings of the first applicant's relatives were conducted by the servicemen and awarded the first applicant damages against the State. The District Court did not make any findings as to the individuals responsible for the killings, but considered it established that at the material time the Staropromyslovskiy district of Grozny had been under the firm control of the federal forces, and that only its servicemen could have conducted identity checks. The Nazran District Court also found that the first applicant's relatives had been killed during an identity check (see § 41 above).

146. Although no similar findings were made in respect of the second applicant's brother, his body had been found together with those of the first applicant's relatives, and, presumably, he had been killed in the same circumstances.

147. On the basis of the material in its possession the Court finds it established that the applicants' relatives were killed by servicemen and that their deaths can be attributed to the State. It observes that no explanation has been forthcoming from the Russian Government as to the circumstances of the deaths, nor has any ground of justification been relied on by them in respect of any use of lethal force by their agents (see §§ 129-130 above). Liability for the applicants' relatives' deaths is therefore attributable to the

respondent State and there has been accordingly a violation of Article 2 on that account.

B. The alleged inadequacy of the investigation

1. Arguments of the parties

a) The applicants

148. The applicants maintained also that the respondent Government had failed to conduct an independent, effective and thorough investigation into their relatives' deaths.

149. In this respect the applicants submitted that the situation which had existed in Chechnya since 1999 was characterised by significant civil strife due to the confrontation between the federal forces and Chechen armed groups. They referred to press cuttings and NGO reports which, in their view, demonstrated that serious obstacles existed to the proper functioning of the system for the administration of justice and put the effectiveness of the prosecutors' work under serious doubt. They submitted that the difficult circumstances in the Republic do not dispense the Russian Government from their obligations under the Convention and that the Government had failed to provide any evidence that any investigation into abuses against civilians was effective and adequate.

150. Both applicants submitted that they had good reason not to apply to the prosecutors immediately when they learned of their relatives' deaths, because they felt vulnerable, powerless and apprehensive of the State representatives. They also asserted that the prosecutor's office failed to act with sufficient expediency with regard to allegations of summary executions of the applicants' relatives and others in the Staropromyslovskiy district in January 2000. They submitted that the prosecutor's office must have known about the deaths of their relatives and other people as early as the beginning of February 2000, and that the fact that no criminal case was opened until May 2000 was a clear sign of a lack of interest in the investigation. On 7 February 2000 the Malgobek Town Court established the death of Adlan Akayev, the second applicant's brother. In accordance with Article 225 of the Civil Procedural Code, the courts should have notified the prosecutor's office of any facts brought to their attention indicating that a criminal offence had been committed. On 10 February 2000, upon the first applicant's request, examinations were carried out by officers of the Nazran Department of the Interior on the bodies of his brother and nephew and of Magomed Goygov. At the beginning of February 2000 Human Rights Watch issued several press releases concerning the events in the Staropromyslovskiy district, which contained information about the deaths

and disappearance of the applicants' relatives. In February and March 2000 these reports and press releases were forwarded to the General Prosecutor's Office and handed over to the President's Special Representative for Human Rights in Chechnya and to the Chief Military Prosecutor. The first applicant applied to the prosecutor's office with a written application on 5 April 2000, and on 7 April 2000 the Malgobek Town Court certified the deaths of his four relatives.

151. The applicants further claimed that once the investigation into the crimes had started, it was inadequate and incomplete and could not be regarded as effective. They referred to shortcomings in the investigation. They noted that the second applicant was not granted victim status until March 2003, which made it impossible for her to be involved in the procedure. They noted that forensic examinations had not been properly performed, that relevant evidence had not been collected from the relatives, that other witnesses and survivors had not been questioned, and claimed that not enough had been done to identify the perpetrators of the crime among the military.

b) The Government

152. The Government disputed that there were failures in the investigation. They pointed out that both applicants had been granted victim status and thus could have participated in the proceedings and made appeals against the decisions with which they disagreed. The allegations and statements made by the applicants during the investigation had been thoroughly checked.

2. The Court's assessment

a) General considerations

153. The obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, the *McCann and Others v. the United Kingdom* judgment cited above, p. 49, § 161, and the *Kaya v. Turkey* judgment of 19 February 1998, *Reports* 1998-I, p. 329, § 105). The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving state agents or bodies, to ensure their accountability for deaths occurring under their responsibility. What form of investigation will achieve those purposes may vary in different circumstances. However, whatever mode is employed, the

authorities must act of their own motion once the matter has come to their attention. They cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigatory procedures (see, for example, *mutatis mutandis*, *İlhan v. Turkey* [GC] no. 22277/93, § 63, ECHR 2000-VII). The Court recalls that the obligations of the State under Article 2 cannot be satisfied merely by awarding damages. The investigations required under Article 2 of the Convention must be able to lead to the identification and punishment of those responsible (see *McKerr v. the United Kingdom*, no. 28883/95, § 121, ECHR 2001-III).

154. For an investigation into alleged unlawful killing by state agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events (see, for example, the *Güleç v. Turkey* judgment of 27 July 1998, *Reports* 1998-IV, §§ 81-82, *Öğur v. Turkey* [GC], no. 21954/93, §§ 91-92, ECHR 1999-III). The investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances (for example, *Kaya v. Turkey* judgment, cited above, p. 324, § 87) and to the identification and punishment of those responsible (*Öğur v. Turkey*, cited above, § 88). This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including *inter alia* eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death (with regard to autopsies, see, for example, *Salman v. Turkey*, cited above, § 106; concerning witnesses, for example, *Tanrikulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 109; concerning forensic evidence, for example, *Gül v. Turkey*, no. 22676/93, § 89, judgment of 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling below this standard.

155. In this context, there must also be an implicit requirement of promptness and reasonable expedition (see the *Yaşa v. Turkey* cited above, § 102-104; *Çakici v. Turkey*, cited above, §§ 80, 87, 106; *Tanrikulu v. Turkey*, cited above, § 109, *Mahmut Kaya v. Turkey*, no. 22535/93, ECHR 2000-III, §§ 106-107). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating the use of lethal force may generally be regarded as essential in preserving public confidence in maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.

b) Application in the present case

156. In the present case, an investigation was carried out into the killings of the applicants' relatives. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

157. The Court finds that the local Department of Interior and the courts in Ingushetia can be said to have received detailed and serious allegations regarding the murder of several persons as early as February 2000. Despite this, it was only after a considerable delay - in May 2000 - that a criminal investigation was opened. The Government submit that in the meantime the investigators had to conduct a check at the place where the crime had been committed, i.e. in Chechnya. This does not seem sufficient to explain a delay of three months in giving a prompt and adequate response to the allegations of such a serious crime.

158. The Court is struck by a series of serious and unexplained failures to act once the investigation had commenced. Most notably, the Court has not been furnished with evidence of any attempt to establish the location of the "205th brigade from Budennovsk", referred to extensively in the criminal investigation, and to examine its possible involvement in the killings. It does not appear that the investigators tried to establish the exact name and location of this military unit, to contact its commanders or to try and identify the soldiers whom some witnesses mentioned by name with the aim of at least questioning them in relation to the crimes. In the absence of an attempt to establish any details of the military unit which had been referred to by name, it is difficult to imagine how the investigation could be described as efficient.

159. Further, the Court would note that the investigation failed to obtain a plan of the military operations conducted in the Staropromyslovskiy district of Grozny at the material time, despite strong evidence that such an operation was taking place. Such a plan could have constituted vital evidence in respect of the circumstances of the crimes in question.

160. A further element of the investigation which calls for comment is the failure to identify other victims and possible witnesses of the crimes promptly and to take statements from them. For example, the second applicant, whose brother's body was discovered together with the bodies of the first applicant's sister and nephew, was not accorded the status of a victim in the proceedings until March 2003, almost three years after the start of the investigation. She was not questioned once in the course of the proceedings.

161. The copy of the case-file contains two witness statements from local residents of the Staropromyslovskiy district of Grozny concerning the events in question. There is no indication that the investigators attempted to create a comprehensive picture of the circumstances of the killings: for example there is no map or plan of the district which might show the location of the bodies and important evidence, and no attempt seems to have

been made to establish a list of local residents who remained in Grozny in winter 1999 - 2000. Few attempts were made to identify and locate the witnesses directly identified by the applicants, such as Viskhan, Elena G. and Omar S. (see §§ 50, 52, 58 and 62 above).

162. These omissions were evident to the prosecutors in charge of the investigation, who on several occasions ordered certain steps to be taken (see §§ 66-68 above). However, these instructions were not followed.

163. No autopsies were ordered or conducted in the course of the investigation. The descriptions of the bodies of Khamid Khashiyev and Rizvan Taymeskhanov were prepared by the officers of the local Department of the Interior without removing the clothes from the bodies. These descriptions, together with photographs of the bodies taken by the first applicant, served as the basis for the forensic reports. Information derived from those descriptions is inevitably very limited, and the Court considers that an earlier and more comprehensive forensic report, including a full autopsy, would have provided substantially more details as to the manner of death. There is no indication of any forensic examination whatever having been carried out on the bodies of Lidiya Khashiyeva, Anzor Taymeskhanov and Adlan Akayev, nor does it appear that an exhumation and autopsy were ordered.

164. Finally, as to the manner in which the investigation was conducted, the Court notes that between May 2000 and January 2003 the investigation was adjourned and resumed eight times. The applicants (notwithstanding the procedural status of the first applicant) were not promptly informed of these steps and thus had no possibility to appeal to a higher prosecutor. The investigation was transferred from one prosecutor's office to another on at least four occasions, with no clear explanation for those transfers and again without notification of the applicants.

165. The Government pointed out in their submissions that the investigation was pending at the time of the replies and that the applicants could have appealed its results. In the Government's view, the failure to do so should have resulted in the dismissal of the applications for non-exhaustion of domestic remedies. However, the Court is not persuaded, in the light of the delays and omissions described above, that such appeal would have been able to remedy the defects in the proceedings, even if the applicants had been properly informed of the proceedings and had been involved in it. The applicants must therefore be regarded as having complied with the requirement to exhaust the relevant criminal-law remedies.

166. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the deaths of Khamid Khashiyev, Lidiya Khashiyeva, Rizvan Taymeskhanov, Anzor Taymeskhanov and Adlan Akayev. This rendered recourse to the civil remedies equally ineffective in the circumstances. The

Court accordingly dismisses the Government's preliminary objection and holds that there has been a violation of Article 2 also in this respect.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

167. The applicants alleged that there existed overwhelming evidence to conclude that their relatives were tortured before their deaths. They also submitted that the authorities failed in their duty to investigate a credible allegation of torture. They relied on Article 3 which provides

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

A. The alleged failure to protect from torture

1. Arguments of the parties

a) The applicants

168. The applicants alleged that it was established beyond reasonable doubt that the circumstances in which their relatives had died disclosed a violation of Article 3 of the Convention. They referred to the witnesses' testimonies that the bodies were mutilated and bore numerous stab and firearm wounds. They also submitted that there existed overwhelming and compelling evidence that acts of torture and extra-judicial killings by soldiers were widespread in Grozny at the beginning of 2000.

b) The Government

169. The Government disputed that there were any marks of torture on the applicants' relatives' bodies. They referred to the descriptions of the bodies and the results of the forensic reports, which listed only firearm wounds on the bodies of Khamid Khashiyev and Rizvan Taymeskhanov (see § 54 above).

2. The Court's assessment

a) General considerations

170. As the Court has stated on many occasions, Article 3 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 and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and 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, and the *Assenov and Others v. Bulgaria* judgment of 28 October 1998, *Reports* 1998-VIII, p. 3288, § 93).

171. Allegations of ill-treatment must be supported by appropriate evidence (see, *mutatis mutandis*, the *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, p. 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 unrebutted presumptions of fact (see the *Ireland v. the United Kingdom*, cited above, pp. 64-65, § 161 *in fine*).

b) Application in the present case

172. It is not disputed that the applicants' relatives were killed. The Court also finds it established that they were killed by servicemen of the State, i.e. persons acting in their official capacity. However, the way in which they died and whether they had been subjected to torture or ill-treatment before death is not entirely clear.

173. The Court observes that the facts related to possible torture of the applicants' relatives are not sufficiently established. Witnesses submitted that the bodies of Lidiya Taymeskhanova, Anzor Taymeskhanov and Adlan Akayev bore torture marks (see §§ 51, 61 above). However, the applicants did not contact the authorities or medical doctors nor did they take photographs of the bodies at that stage, due to a state of shock and general distrust of the authorities. The documents relating to the description of the bodies of Khamid Khashiyev and Rizvan Taymeskhanov bear reference only to firearm wounds. An additional statement by a pathologist submitted by the applicants and prepared on the basis of the photographs and a description of the bodies also refers only to injuries caused by bullets fired from a high-velocity rifle (see § 71 above).

174. In conclusion, since the evidence before it does not enable the Court to find beyond all reasonable doubt that the applicants' relatives were subjected to treatment contrary to Article 3, the Court considers that there is insufficient evidence for it to conclude that there has been a violation of Article 3 of the Convention on account of the alleged torture.

B. Concerning the alleged lack of effective investigation

1. Submissions of the parties

175. The applicants also maintained that the respondent Government failed to conduct an independent, effective and thorough investigation into the allegations of torture.

176. The Government disputed that there were any failures in the investigation.

2. General considerations

177. Procedural obligations have been implied in varying contexts under the Convention, where this has been perceived as necessary to ensure that the rights guaranteed under the Convention are not theoretical and illusory but practical and effective. In a number of judgments the Court found that where a credible assertion is made that an individual has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to “secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention”, requires by implication that there should be an effective official investigation. As with an investigation under Article 2, such investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see the *Assenov and Others* judgment cited above, p. 3290, § 102; *Labita v. Italy* [GC], no. 26772/95, p. 138, §§ 131-136, ECHR 2000-IV).

178. The procedural limb of Article 3 is invoked, in particular, where the Court is unable to reach any conclusions as to whether there has been treatment prohibited by Article 3 of the Convention, deriving, at least in part, from the failure of the authorities to react effectively to such complaints at the relevant time (see *Ilhan v. Turkey* [GC], cited above, §§ 89- 92).

3. Application in the present case

179. The Court notes that the State authorities conducted certain investigations into the allegations of the applicants that their relatives suffered torture and inhuman treatment before their deaths. However, no autopsies and no appropriate forensic reports were prepared, with the result that the exact nature and circumstances of the deaths were not established.

Failure to identify and question other possible witnesses of the events that occurred in the Staropromyslovskiy district on 19 and 20 January 2000 and the servicemen of the military units deployed there at the time also possibly prevented any concrete evidence of ill-treatment coming to light and thereby the identification and punishment of those responsible. Bearing in mind its findings about the efficiency of the investigation (see §§ 156-166 above), the Court is not satisfied that those investigations were sufficiently thorough and effective to satisfy the aforementioned requirements of Article 3.

180. In these circumstances, having regard to the lack of a thorough and effective investigation into the credible allegations made by the applicants that their relatives were victims of treatment contrary to Article 3, the Court dismisses the Government's preliminary objection as to exhaustion of domestic remedies and holds that there has been a violation of the procedural requirements of Article 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN CONJUNCTION WITH ARTICLES 2 AND 3 OF THE CONVENTION

181. The applicants complained that they had no effective remedies in respect of the violations alleged under Articles 2 and 3. They referred to Article 13 of the Convention, which states:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

1. General considerations

182. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be “effective” in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by acts or omissions by the authorities of the respondent State (*Aksoy v. Turkey*, cited above, § 95, and *Aydin v. Turkey* judgment of 25 September 1997, *Reports* 1997-VI, § 103).

183. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Given the fundamental importance of the rights guaranteed by Articles 2 and 3 of the Convention, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and infliction of treatment contrary to Article 3, including effective access for the complainant to the investigation procedure (cf. *Avsar v. Turkey*, cited above, § 429; *Anguelova v. Bulgaria*, no. 38361/97, § 161, ECHR 2002-IV). The Court further recalls that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see *Orhan v. Turkey*, no. 25656/94, § 384, 18 June 2002, ECHR 2002).

2. *Application in the present case*

184. In view of the Court's findings above on Articles 2 and 3, these complaints are clearly “arguable” for the purposes of Article 13 (*Boyle and Rice v. the United Kingdom* judgment of 27 April 1988, Series A no. 131 § 52). The applicants should accordingly have been able to avail themselves of effective and practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation, for the purposes of Article 13.

185. However, in circumstances where, as here, the criminal investigation into suspicious deaths was ineffective in that it lacked sufficient objectivity and thoroughness (see §§ 156-166 above), and where the effectiveness of any other remedy that may have existed, including the civil remedies suggested by the Government, was consequently undermined, the Court finds that the State has failed in its obligation under Article 13 of the Convention.

186. Consequently, there has been a violation of Article 13 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

187. 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. **Non-pecuniary damage**

188. The applicants did not submit any claims for pecuniary damages.

189. As to non-pecuniary damages, the first applicant lost his four relatives – a brother, a sister and two nephews. He had to take their bodies to Ingushetia and to organise a burial. These events have deeply affected him. Although he acknowledged that by the decision of the Nazran Town Court of 26 February 2003 he had been awarded RUR 675,000 (about EUR 20,000) for pecuniary and non-pecuniary damage, he claimed EUR 15,000 as non-pecuniary damage.

190. The second applicant lost her brother, and also her mother, who suffered from a heart attack after receiving the news of her son's death and who died in April 2000. The second applicant claimed EUR 20,000 as non-pecuniary damage.

191. The Government stated that the amounts claimed were exaggerated. They also referred to the existing domestic decision to award damages in respect of the first applicant.

192. The Court considers that an award should be made in respect of non-pecuniary damage bearing in mind the seriousness of the violations it has found in respect of Articles 2, 3 and 13 of the Convention. The Court will take into account the amount of damage awarded to the first applicant by the domestic courts.

193. The Court notes the modest nature of the applicants' requests and awards EUR 15,000 to the first applicant. Although the Court does not find it established that the death of the second applicant's mother had been caused by the violations found in the present case, it awards EUR 20,000 to the second applicant as non-pecuniary damage. Both sums are to be converted into Russian roubles at the rate applicable at the date of payment.

B. Costs and expenses

194. The applicants claimed EUR 9,460 and GBP 1,605 for fees and costs involved in bringing the applications. This included GBP 1,605 for the work of the London-based lawyers from the European Human Rights Advocacy Centre; EUR 4,250 for the work of the Moscow-based lawyers from the Human Rights Centre Memorial and EUR 5,210 for the work of the human rights field staff in Moscow and in the Northern Caucasus and for other relevant expenses incurred.

195. In addition, the applicants claimed GBP 2,608 for costs and fees involved in respect of the preparation for, and conduct of the hearing on the merits. This included GBP 2,300 for the work of the London-based lawyers from the European Human Rights Advocacy Centre and GBP 308 for the work of the Moscow-based lawyer.

196. The Government did not submit any comments on the amount or substantiation of the claims under this heading.

197. The Court observes that only legal costs and expenses necessarily and actually incurred and which are reasonable as to quantum can be

reimbursed pursuant to Article 41 of the Convention. It notes that this case involved complex issues of fact and law and gave rise to two sets of written observations and an adversarial hearing. However, it considers excessive the total amount which the applicants claim in respect of their legal costs and expenses and considers that it has not been demonstrated that all of them were necessarily and reasonably incurred. In particular, the Court finds excessive the amount of legal work claimed by the applicants in the course of the preparation for the hearing in view of the extensive written submissions already submitted by parties.

198. In these circumstances, the Court is unable to award the totality of the amount claimed; deciding on an equitable basis and having regard to the details of the claims submitted by the applicants, it awards them the sum of EUR 12,000, less the EUR 1,093 received by way of legal aid from the Council of Europe, together with any value-added tax that may be chargeable.

C. Default interest

199. The Court considers it appropriate that the default interest 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

1. *Dismisses* by six votes to one the Government's preliminary objection;
2. *Holds* unanimously that there has been a violation of Article 2 of the Convention in respect of the applicants' relatives' deaths;
3. *Holds* unanimously that there has been a violation of Article 2 of the Convention in that the authorities failed to carry out an adequate and effective investigation into the circumstances of the applicants' relatives' deaths;
4. *Holds* unanimously that there has been no violation of Article 3 of the Convention in respect of the failure to protect the applicants' relatives from torture;
5. *Holds* unanimously that there has been a violation of Article 3 of the Convention in respect of the failure to carry out an adequate and effective investigation into the allegations of torture;

6. *Holds* by five votes to two that there has been a violation of Article 13 of the Convention;
7. *Holds* unanimously
- (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 15,000 (fifteen thousand euros) to the first applicant and EUR 20,000 (twenty thousand euros) to the second applicant in respect of non-pecuniary damage;
 - (ii) EUR 10,907 (ten thousand nine hundred and seven euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (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.

Done in English, and notified in writing on 24 February 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) partly dissenting opinion of Mr Kovler;
- (b) partly dissenting opinion of Mr Zagrebelsky.

C.L.R.
S.N.

PARTLY DISSENTING OPINION OF JUDGE KOVLER

(Translation)

While sharing my colleagues' conclusions with regard to the applicants' complaints under Articles 2 and 3 of the Convention, Articles which concern absolute rights and are not open to any restriction or derogation, I regret that I cannot endorse their findings with regard to the Government's preliminary objection on the exhaustion of the available domestic remedies and to Article 13 of the Convention.

Rather than dismissing that preliminary objection (although I understand the arguments, which draw on a rich strand of the Court's case-law), I would prefer to accept it, in order subsequently to demonstrate more convincingly the shortcomings in the domestic proceedings (procedural aspects of Articles 2 and 3). I see no contradiction in such an approach.

In contrast to the other two cases (*Isayeva, Yusupova, Bazayeva v. Russia* and *Zara Isayeva v. Russia*), where the investigation had been closed and victim and civil party status had been withdrawn from the applicants, this case reflects a different legal situation, firstly because victim status was granted to Mr Khashiyev at the initial stage of the investigation (May 2000), as well as to Ms Akayeva – albeit with considerable delay (March 2003) – and has never been withdrawn from the two applicants. It follows that the applicants had and still have the possibility of asserting their procedural rights, and in particular of requesting that the criminal investigation be carried out in a more diligent and effective manner: under Articles 208 and 209 of the Code of Criminal Procedure of the RSFSR, as worded at the material time, or especially under Article 125 of the Code of Criminal Procedure of the Russian Federation, which entered into force on 1 July 2002, any decisions and actions (or failures to act) by investigators, investigating judges or prosecutors with regard to a criminal investigation could and may still be challenged before a more senior prosecutor or a court.

The objectivity and impartiality incumbent on any judge oblige me to concede that the rights in question are for the time being merely theoretical. The Court is certainly right to note: “... *at the date on which the present application was declared admissible, no decision had been produced to it in which the Supreme Court or other courts were able, in the absence of any results from the criminal investigation, to consider the merits of a claim relating to alleged serious criminal actions*” (see paragraph 119 of the judgment). While acknowledging with bitterness the truth of those remarks, I should like nonetheless to convey in this separate opinion a more encouraging “message”: yes, the domestic legal order does provide for remedies, and although they are not easily pursued, one must in any event attempt to use them.

The example of Mr Khashiev and, to a lesser degree, that of Ms Akayeva, show that certain remedies (particularly under civil procedure) are more effective than others. Admittedly, the decisions of 7 April 2000 by the Malgobek District Court in Ingushetia (which established as a matter of law that four of the first applicant's relatives had died) and of 26 February 2003 by the Nazran District Court (Ingushetia), awarding the first applicant compensation of 675,000 roubles for pecuniary and non-pecuniary damage, afforded only partial reparation for the losses sustained. It is true, as the Court emphasises in this judgment (paragraph 121), that the Contracting States' obligation under the Convention to conduct an investigation capable of leading to the identification and punishment of those responsible in cases of fatal assault might be rendered illusory if an applicant was required to exhaust an action leading only to an award of damages (*Yaşa v. Turkey*, judgment of 2 September 1998, Reports 1998 VI, p. 2431, § 74). However, I cannot share the Court's opinion that the decision of the Nazran District Court does not have any bearing on the effectiveness of a civil action for the purposes of the rule on the exhaustion of domestic remedies (paragraph 121). Ultimately, the Nazran District Court took the criminal investigation into account, despite the fact that it had been suspended, thus displaying a certain legal realism. In its judgment in the *Akdivar* case, the Court laid stress on the allocation of the burden of proof in the area of the exhaustion of domestic remedies: "*It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement*" (*Akdivar and Others v. Turkey*, judgment of 16 September 1996, Reports of Judgments and Decisions 1996-IV, p. 1211, § 68). Should the domestic courts, as well as applicants, be discouraged from commencing civil proceedings before completion of the criminal investigation? I doubt very much that this would be the correct approach. I am reassured by the fact that Article 413 of the Code of Criminal Procedure of the Russian Federation obliges the judicial authorities to send a case back to the domestic courts for re-examination where the Constitutional Court of the Russian Federation or the European Court of Human Rights finds a violation of an applicant's rights.

As to Article 13 of the Convention, in the light of the grounds on which the Court held that there had been a procedural violation of Articles 2 and 3 but also for the reasons set out above, I come to the conclusion that no separate question arises under that provision in this case.

PARTLY DISSENTING OPINION OF JUDGE ZAGREBELSKY

I regret that I am unable to share the opinion of the majority of the Court with regard to the finding of a violation of Article 13 of the Convention.

In my view, there is no room in this case for finding a violation of Article 13 on the ground that there was no domestic remedy to redress the violation of Articles 2 and 3 of the Convention. I believe that, in this case, the finding a violation of the procedural aspect of those Articles covers all aspects of the shortcomings in the domestic system concerned.

The applicants had an effective domestic remedy for their right to compensation or to an indemnity, and indeed Mr Khashiyev succeeded in obtaining such redress from the Nazran District Court (§ 39-42). The successful conclusion of the civil procedure brought by Mr Khashiyev is, in my opinion, a clear demonstration of the effectiveness of that remedy, which was also open to the other applicant.

I consider that no importance should be attached to the fact that the Nazran District Court ordered the State to pay the indemnity, rather than a private citizen who might be held personally responsible for the violations we are dealing with. The failure to identify the perpetrators of the acts which led to the violation of the applicants' rights had no bearing on the outcome of the civil proceedings brought by Mr Khashiyev.

I accept that an effective criminal investigation may, in some cases, be necessary in order to allow the victims to vindicate their own rights before a civil court. For instance, in the case of *Isayeva, Yusupova and Bazayeva v. Russia* (applications nos. 57947/00, 57948/00 and 57949/00) and in the case of *Zara Isayeva v. Russia* (application no. 57950/00) the criminal investigations were closed for “lack of *corpus delicti*”, and I consider such an outcome to be clearly detrimental to the chances of success of a civil action against the persons responsible and/or the State.

In this case, however, the ineffectiveness of the criminal investigation did not prevent a successful outcome of the civil action.

In my view, the Court's case-law, closely linked as it is to the particular facts of each case, is far from unambiguous with regard to the relationship between the State's procedural obligations under Articles 2 and 3 and the obligation under Article 13 to introduce into the domestic system an effective remedy for violations of the Convention (see the different solutions recently adopted by the Court in *Öneryıldız v. Turkey* ([GC], no. 48939/99, judgment of 30 November 2004), and in *Makaratzis v. Greece* ([GC], no. 50385/99, judgment of 20 December 2004). This ambiguity arises because the introduction by the Court's case-law of various positive procedural obligations under Articles 2 and 3 poses a problem of coordination with the scope of Article 13.

We have first to take into consideration the consistent case-law according to which the Court does not recognise under Article 6 a victim's right to institute criminal proceedings and to obtain punishment of the person who allegedly violated his or her rights.

It is only when Articles 2 and 3 of the Convention are at stake that a criminal investigation must be conducted *ex officio*, to identify and, where appropriate, to punish the individuals responsible.

However, the State's procedural obligations under Articles 2 and 3 give rise to victims' rights that find their protection exclusively in the Court's supervision of the State authorities' compliance with those obligations. In my view, therefore, when the Court finds a violation of the procedural obligations of Articles 2 and 3, no room is left for considering whether there has also been a violation of Article 13: no room, and no necessity in terms of securing effective protection of the Convention's rights. As I have stated, an exception must be made where the lack of an effective investigation hinders an effective domestic remedy which could lead to an appropriate indemnity or compensation.

This not being the case, and having found a violation of the procedural aspects of Article 2 and 3, I conclude that no separate issue arises under Article 13 of the Convention.