



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

FIRST SECTION

CASE OF GONCHARUK v. RUSSIA

(Application no. 58643/00)

JUDGMENT

STRASBOURG

4 October 2007

FINAL

31/03/2008

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

In the case of Goncharuk v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 13 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 58643/00) 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 a Russian national, Mrs Yelena Vitalyevna Goncharuk (“the applicant”), on 3 February 2000.

2. The applicant was represented by the lawyers of the NGO EHRAC/Memorial Human Rights Centre. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that she had been shot by Russian servicemen in Grozny, Chechnya, in January 2000. She alleged a violation of Articles 2, 3 and 13 of the Convention.

4. By a decision of 18 May 2006 the Court declared the application admissible.

5. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1962. Before 2000 she was a resident of Grozny, Chechnya, which she left for Ingushetia. She currently resides in Norway.

7. The submissions of the parties with regard to the facts concerning the circumstances of the events of 19 January 2000 and the ensuing investigation are set out in Part A below. A description of the documents submitted to the Court is contained in Part B.

A. The submissions of the parties

1. The applicant's account of the attack on her on 19 January 2000

8. In July 2004 the applicant produced a detailed account of the attack on her. She submitted that prior to 1999 she and her family lived at 10 Skvoznoy Lane in the Katayama settlement in the Staropromyslovskiy district in Grozny.¹ The applicant has a daughter who was born in 1982. They lived in Kazakhstan until 1990 and then moved to her parents' flat in Grozny. In 1993 the applicant removed her daughter from Chechnya after the school which she attended came under attack.

9. In October 1999 hostilities resumed in Chechnya between the Russian forces and the Chechen fighters. Grozny and its suburbs came under heavy bombardment. Staropromyslovskiy district, situated in the northern and central parts of the town, was bombarded from the air and by artillery. The applicant submitted that most residents of the district left for safer areas. The applicant, who stayed because of her poor health, spent the winter of 1999-2000 hiding from bombardments in the cellars, along with the few other remaining residents of the district. Following heavy fighting, as of December 1999 the Russian forces started to regain control over the city from the north, and by the end of January 2000 the central parts of the city were finally taken.

10. On 19 January 2000 a massive attack by the federal forces on their district began. The applicant and five other persons were hiding in a garage located in 4th Neftyanoy Lane and when the shelling intensified they ran to a nearby cellar. While running, the applicant was wounded in her leg. When the shelling subsided, several military servicemen appeared and ordered

¹ The inhabitants of Grozny traditionally refer to "settlements" within the Staropromyslovskiy District, such as Tashkala, Aldy, Chernorechye etc., even though administratively they are a part of the city.

everyone out of the cellar. The applicant and others walked out, with their hands on their heads. The soldiers told them that they had an order to kill everyone and that those who remained in the city had assisted the fighters (“*boyeviki*”).

11. The applicant submitted that the soldiers had not listened to their explanations and refused to look at their identity documents. They had ordered the inhabitants to return to the cellar and, once the residents went downstairs, threw tear-gas grenades into it. The people in the cellar wept and asked them to stop, and finally the soldiers ordered them to come out again, one by one. The applicant, who was wounded, could not walk by herself and was assisted by a Chechen man. Two Russian women and another Chechen man walked out first and were shot at the entrance to the garage by machine-gun fire. The soldiers then shot at the third woman and at the applicant and her helper, whose body eventually covered hers.

12. The applicant lost consciousness and, when she awoke, she realised that the others were dead. She was wounded in the chest and was bleeding from the mouth. When night fell, the applicant walked over to a neighbouring street where the Khashiyev family lived (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, 24 February 2005). They gave her first aid and allowed her to stay in their shed. They said that they were expecting a second check [by security forces] and were afraid to let her into the house.

13. The applicant, who was bleeding and afraid to remain in Grozny, changed clothes and walked to the roadblock with a white flag. There the soldiers checked her documents and let her through. The applicant did not tell them about the attack on her. On the morning of the following day the applicant was taken to Ingushetia by Petimat Goygova (the applicant in the case of *Goygova v. Russia*, no. 74240/01) who had been looking for her relatives in the Staropromyslovskiy district (they were later found killed).

14. The applicant remained in the Ordzhonikidze village (Sunzhenskiy district) hospital until 7 February 2000. There she was diagnosed with gunshot and shrapnel wounds to the knee joints and chest, concussion and neurotic asthenia. She was treated and her wounds were operated on. She submitted the relevant medical documents.

15. While in the hospital the applicant was interviewed by human-rights activists, who later reported her story. It was also related in several publications.

16. After being discharged from hospital, the applicant stayed in Ingushetia, in the premises of an old pig farm used by other refugees from Chechnya. In summer 2000 the applicant went to Grozny to find out about the state of her flat and property. Her neighbours told her that unknown persons had been looking for her.

2. *Investigation and subsequent events*

17. The applicant did not seek any direct contacts with law-enforcement bodies in the aftermath of the attack. Nevertheless the events in the Staropromyslovskiy district, including the attack on the applicant, became known to the authorities shortly afterwards due to NGO and media reports.

18. Several human-rights NGOs contacted the law-enforcement authorities in relation to the events in the Staropromyslovskiy district of Grozny in January 2000, when several dozen local residents were allegedly executed by unidentified detachments of the Russian military.

19. In February 2000 Human Rights Watch issued a report entitled “Civilian Killings in Staropromyslovskiy District of Grozny” in which it accused the Russian forces of deliberately murdering at least 38 civilians between late December and mid-January. Human Rights Watch interviewed survivors, eyewitnesses and relatives of the dead. The report contains information about the attack on the applicant and the killing of five people in a cellar, based on an interview with her.

20. On 10 February 2000 Human Rights Watch contacted the Russian authorities, including the President, the Prosecutor General and the Minister of Defence with a request to investigate credible allegations of the murder of at least 38 civilians in the Staropromyslovskiy district, with reference to the applicant's case.

21. 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 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 the civilian population in the Novaya Katayama settlement of Grozny on 19 January 2000”. Within the scope of that investigation, on 12 July 2000 Mrs Roza Akayeva submitted a statement to the Chief Military Prosecutor about the murder of her brother Adlan Akayev, whose bullet-ridden body had been found on 25 January 2000 in the courtyard of his house in the Staropromyslovskiy district of Grozny. In her letter she submitted that on 9 February 2000 she had seen five bodies (three women and two men) in a garage at 4th Neftyanoy Lane. She gave the applicant's full name, referred to her as a witness of the killings committed on that day and stated that she had talked to her in the hospital in Ingushetia (see *Khashiyev and Akayeva v. Russia*, cited above, §§ 61-62).

22. In February 2001 Human Rights Watch issued a document entitled “Memorandum on Domestic Prosecutions for Violations of International Human Rights and Humanitarian Law in Chechnya”, in which it reported a lack of progress in the investigation into the attack on the applicant and into other killings committed in the Staropromyslovskiy district at the same time.

23. The applicant submitted that certain persons were looking for her and wanted to punish her for relating her story. She submitted that, between 2001 and 2004, her father in Kazakhstan, a friend in Ingushetia, her former boyfriend and her sister in the Stavropol region had been contacted by persons asking about her whereabouts. Her former boyfriend had been beaten and told to “keep away” from her. The applicant, who still suffered from the consequences of her wounds, was afraid of approaching the authorities for fear that her whereabouts might become known to her persecutors. She submitted that in July 2004 she had received medical treatment in Moscow for neurological problems resulting from the attack.

24. The Government submitted that the applicant had failed to apply to the authorities with a complaint, as a result of which the circumstances of the attack had become known to them only after the communication of the present application. On 26 April 2005 the Chechnya Prosecutor's Office initiated criminal investigation file no. 43037 under Article 111 § 1 of the Criminal Code (infliction of serious injuries). The investigation confirmed the attack on the applicant. It also confirmed that the applicant had spent time in hospital in Ingushetia suffering from gunshot wounds. More than 25 witnesses were questioned. However, the investigation could not question the applicant because she did not make her whereabouts known to the authorities. In October 2005 the Government forwarded to the Court a request by the Chechnya Prosecutor's Office seeking assistance in finding the applicant, and a copy of the decision to grant her victim status in the proceedings of criminal investigation no. 43037, to be countersigned by her.

25. In August 2006 the investigation concerning the attack upon the applicant was joined with another investigation, pending since 2003, concerning the discovery of five bodies with gunshot wounds at 4th Neftyanoy Lane. The investigation had been adjourned and reopened, and was on-going. It failed to locate and question the applicant or to identify the culprits.

26. Following the Court's requests, the Government submitted documents from the criminal investigation file opened in relation to the attack on the applicant (see Part B below).

B. Documents from the investigation file

27. The Government submitted about 115 pages of documents from the investigation file in criminal case no. 43037. The most important documents submitted by the Government can be summarised as follows:

1. Decision to open criminal investigation

28. On 26 April 2005 the Deputy Chechnya Prosecutor decided to open criminal investigation into the infliction of serious injuries on the applicant, following receipt of the appropriate information from the Registry of the

European Court. The case file was assigned no. 43037 and the investigation was entrusted to the investigative department of the Chechnya Ministry of the Interior (*Следственное управление при МВД ЧР*).

2. Search for the applicant

29. The investigation made several unsuccessful attempts to locate and question the applicant through the Interior Ministry entities in Chechnya, Ingushetia and in the Stavropol region.

30. In April 2005 the housing bureau of the Staropromyslovskiy district informed the local department of the interior (ROVD) that house no. 10 at Skvoznoy Lane was unsuitable for habitation and that the applicant was not listed among the residents.

31. In May 2005 the investigation questioned a friend of the applicant in Ingushetia. The woman stated that she had collected the applicant from the Sunzhenskiy hospital in February 2000 and that the latter had stayed in her house for a month afterwards. She confirmed that the applicant had told her that she had been shot by armed men during a “mopping-up” operation in Grozny and that five or six people had been killed during the same attack. The witness was not aware of the applicant's whereabouts.

32. In June 2005 the investigation questioned Olga Zh., the applicant's sister who lived in the Stavropol region and at whose address the applicant had a formal registration. The witness stated that the applicant had stayed with her in 2002, after which she had left and the witness was not aware of her whereabouts. The applicant had told her that she had been wounded during a “mopping-up” operation in Grozny in January 2000, when armed men had killed several people in the cellar. The witness stated that her sister continued to suffer from the consequences of the attack, that she could not talk about the incident and that remembering it provoked serious nervous distress.

33. In September 2005 the investigation requested the criminal police of Chechnya to assist in finding the applicant and to investigate her complaint about harassment by unknown persons in retribution for her complaint. Similar requests were forwarded to the Stavropol Interior Ministry regional investigation department and to the Staropromyslovskiy ROVD.

3. The applicant's medical documents

34. In May 2005 the Sunzhenskiy district hospital in Ingushetia informed the investigation that the applicant had been treated there between 22 January and 8 February 2000 for gunshot wounds to the knees and chest.

35. The investigation then questioned medical personnel from the hospital's accident ward. They confirmed that in January – February 2000 the applicant had been treated there. The applicant's medical record had

been destroyed during a fire in the hospital, except for a registration log containing basic information about the applicant's stay.

4. Information about other victims of the attack on the applicant

36. In May 2005 the investigation questioned Tamara R., whose brother Kasum had been killed during the same attack in which the applicant had been wounded. The witness stated that around 20 January 2000 she had visited the applicant in hospital and had learnt from her that her brother had been killed in the cellar of a garage in 4th Neftyanoy Lane by armed men in camouflaged uniforms. The witness and her two sisters had travelled to Grozny and found seven or eight bodies with gunshot wounds in the cellar of house no. 9 in 4th Neftyanoy Lane. The witness and her sisters removed the body of their brother Kasum, which bore numerous gunshot wounds, and took it to the Nadterechny district for burial. No additional questions were put to the witness at that time about the other details of her brother's death, nor was she asked if an investigation had been mounted.

5. Statements by the local residents of the Staropromyslovskiy district and information about other murders

37. Several local residents questioned by the investigators in April 2005 stated that in the winter of 1999– 2000 they had been outside Grozny and that they were not aware of the circumstances of the attack on the applicant or of her whereabouts. They were aware, however, mostly by hearsay, of the murders of residents who had remained in Grozny, committed in January 2000 by unknown men in military uniforms. Several witnesses stated that they were aware that the murders had been committed during a “mopping-up” operation. In particular, several witnesses were aware of the killing of the Khashiyev family, of Magomed Goygov and of Adlan Akayev (see *Khashiyev and Akayeva v. Russia* mentioned above).

38. Zhabrail Ye. testified that he was aware of the killing of five persons and the wounding of a woman named Yelena in the garage of house no. 9 at the 4th Neftyanoy Lane.

39. In May 2005 the investigation questioned Fatima Goygova (the applicant in the case of *Goygova v. Russia*, no. 74240/01), whose mother and brother had been found killed in the Staropromyslovskiy district in January 2000. She stated that she was aware of the attack on the applicant, but had no information about the exact circumstances of the attack or of the applicant's whereabouts.

6. Examinations of the site

40. On 14 April 2005 the investigator from the Staropromyslovskiy ROVD examined the courtyard and the buildings located at no. 9 in 4th

Neftyanoy Lane. They found the house and the garage destroyed and uninhabited. Nothing of interest to the investigation was noted.

7. Decision to recognise the applicant as a victim

41. On 30 August 2005 the applicant was granted victim status in the proceedings. As the applicant's whereabouts were not established, she did not countersign the document.

8. Documents relating to identification of the relevant military units

42. In May 2005 an officer of the Staropromyslovskiy ROVD in charge of collecting information on the applicant's case reported to the head of the ROVD that, as a result of questioning of the local residents, it could be presumed that "the crime could have been committed by military servicemen, possibly of Ossetian ethnic background, possibly enrolled on a contractual basis. Numbers of military units, vehicles and armoured vehicles could not be established".

43. In September 2005 the Staropromyslovskiy ROVD informed the investigator in charge of the case that they were unable to identify the army units which had conducted the special operations in the district.

44. The investigation requested several agencies of the Ministry of Defence and of the Ministry of the Interior to provide them with information about the location and activities of their units in January 2000 in the Katayama settlement of the Staropromyslovskiy district. In response they were informed that such information was unavailable because the currently functioning structures had been established after January 2000 and had no information relevant to the preceding periods.

9. Information about the other investigation

45. On 22 September 2003 the Staropromyslovskiy District Prosecutor's Office opened a criminal investigation with regard to the discovery of five bodies in 4th Neftyanoy Lane.

46. In September 2005 the Staropromyslovskiy District Prosecutor's Office wrote to the local ROVD and informed it that their office was investigating criminal case no. 50115, related to the discovery of five bodies at "house no. 11 in 4th Neftyanoy Lane". The letter alleged that the information received from the European Court indicated that the applicant had been a witness to the murder of five people at "house no. 4 in Neftyanoy Lane". It further stated that the applicant had never applied to the authorities with information about the incident and instructed the ROVD to carry out a verification of the facts, including locating and questioning the applicant and examination of the site as indicated by her.

47. On 18 August 2006 the proceedings in the two criminal cases were joined, as they concerned the same incident. The new case file was assigned

no. 50115 and the Staropromyslovskiy District Prosecutor's Office was charged with the investigation.

10. The prosecutors' orders

48. In the course of the proceedings several orders were issued by the supervising prosecutors enumerating the steps to be taken by the investigators. In particular, in October 2005 a prosecutor from the Chechnya Prosecutor's Office ordered that additional information be obtained from the local authorities and from the military prosecutor of the United Group Alignment (UGA), and that to other possible witnesses to the crimes, including the applicant, be identified and questioned.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

1. Arguments of the parties

49. The Government requested the Court to declare the case inadmissible as the applicant had failed to exhaust domestic remedies. The applicant had not applied to any authorities with a complaint concerning the attack on her. Moreover, the applicant continued to avoid any contacts with the authorities and could not be questioned in the proceedings initiated further to the information obtained from the European Court.

50. The applicant asked the Court to dismiss the Government's preliminary objection. She argued that no effective remedies had been available to her at the time of the attack, in view of the general situation in Chechnya in the beginning of 2000 and a breakdown of public institutions. She stated that, after what had happened to her, she felt vulnerable and threatened and for that reason she did not apply to the authorities. She stated that, in any event, the criminal investigation was not effective from the outset. She further argued that the civil remedies referred to by the Government would not be able to establish the perpetrators of the crime in the absence of conclusions from the criminal investigation.

2. The Court's assessment

51. In the present case, the Court took no decision about the exhaustion of domestic remedies at the admissibility stage, having found that this question was too closely linked to the merits. It will now proceed to

examine the arguments of the parties in the light of the provisions of the Convention and its relevant practice.

52. The Court notes that the Russian legal system provides, in principle, two avenues of recourse for the victims of illegal and criminal acts attributable to the State or its agents, namely civil and criminal remedies.

53. As regards a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention. A civil court is unable to pursue any independent investigation and is incapable, without the benefit of the conclusions of a criminal investigation, of making any meaningful findings regarding the identity of the perpetrators of fatal assaults, still less to establish their responsibility (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005, and *Estamirov and Others v. Russia*, no. 60272/00, § 77, 12 October 2006). In the light of the above, the Court confirms that the applicant was not obliged to pursue civil remedies. The preliminary objection in this regard is thus dismissed.

54. As regards criminal-law remedies, the Government stressed that the applicant had failed to apply to a domestic authority in relation to the attack on her and that she had not lodged any complaints in the course of the domestic investigation. The Court reiterates here that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants first to use the remedies which are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged (see *Hugh Jordan v. the United Kingdom* (dec.), no. 24746/94, 4 April 2000).

55. Nevertheless, the Court has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the remedies rule 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 to exhaust domestic remedies (see, among many authorities, *İlhan v. Turkey* [GC], no. 22277/93, § 59, ECHR 2000-VII).

56. The Court observes a number of particular features in the present case. First, although the applicant had failed to apply to the authorities in the aftermath of the incident, information about the attack on her was brought to their attention on several occasions. In particular, the applicant was treated

in a hospital in Ingushetia for gunshot wounds between 20 January and 7 February 2000, and the medical workers were under an obligation to inform the law-enforcement bodies of injuries that might have been related to a crime. The letter sent on 10 February 2000 by Human Rights Watch to the Russian authorities, including the Prosecutor General's Office, contained specific reference to the applicant's case. Again, in July 2000, a complaint to the Chief Military Prosecutor, submitted by a relative of another victim, contained information about the attack on the applicant and the murder of five persons. Finally, in September 2003 a criminal investigation was opened into the murder of five persons in 4th Neftyanoy Lane, of which the applicant had been the only survivor (see paragraphs 14, 19-21 and 45 above).

57. Despite this, it does not appear that the law-enforcement bodies made any steps to investigate the circumstances of the attack before the communication of the present complaint to the Russian Government. Once the investigation had started in April 2005, it took another sixteen months before it was joined with the investigation into the same attack, pending with the Staropromyslovskiy District Prosecutor's Office (see paragraph 47). The effectiveness of this investigation is disputed by the parties.

58. Further, the applicant claimed that she had been a victim of an attack by servicemen at a time when the Russian armed and security forces had been actively struggling with illegal insurgents for control of Grozny. She alleged that five persons had been killed during the attack and that she had survived by chance, having been taken for dead, but had sustained serious injuries. In such circumstances, the applicant's feelings of vulnerability and apprehension with regard to the State representatives are understandable. The applicant currently resides in Norway because she claims that she is being persecuted in Russia for exposing her story. The Court considers that in the present case the applicant could legitimately have expected that the necessary investigation would have been conducted even without a specific complaint from her (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, § 56).

59. The Court accordingly rejects the Government's preliminary objection that the applicant failed to exhaust domestic remedies in so far as she did not lodge a complaint concerning the attack on her.

60. In so far as the Government suggest that the applicant did not appeal against the alleged ineffectiveness of the criminal investigation once it commenced, the Court considers that this limb of the Government's preliminary objection raises issues concerning the effectiveness of the criminal investigation which are closely linked to the merits of the applicant's complaints. Thus, it considers that these matters fall to be examined below under the substantive provisions of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

61. The applicant alleged that the attack on her life had been carried out by agents of the State. She also submitted that the authorities had failed to carry out an adequate investigation into the circumstances of the life-threatening attack on her. She relied on Article 2 of the Convention, which reads:

“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.”

62. The Court will first examine the applicant's complaint concerning the effectiveness of the investigation.

A. Alleged inadequacy of the investigation

1. Arguments of the parties

63. The applicant alleged that the authorities had failed to conduct an effective investigation into the circumstances of the life-threatening attack on her, in violation of the procedural obligation under Article 2. She argued that the investigation had fallen short of the standards established by the Convention and national legislation. She argued that the investigation had not been prompt because of the delay in opening it and in taking important steps. A number of investigative actions had never been taken, such as securing the relevant evidence and questioning the servicemen who could have been involved. The applicant noted, in particular, the authorities' failure to investigate the events in the Staropromyslovskiy district in January 2000 in their entirety, even though there had been clearly a pattern to the killings and the information about them had already been available in January and February 2000. She referred to other investigation files, such as that produced by the Government in the case of *Khashiyev and Akayeva v. Russia*, which was opened in 2000 and which had contained information about the applicant's case and other similar incidents.

64. The Government retorted that the investigation was being carried out in accordance with the domestic legislation and Convention standards. The Government also stressed that the applicant herself had never applied to any domestic authority with a complaint concerning the attack on her. Moreover, she continued to avoid any contact with the authorities after the investigation had been commenced. They underlined that the applicant's failure to appear for questioning had severely impeded progress in the investigation of the criminal case.

2. The Court's assessment

65. The Court has on many occasions stated that the obligation to protect the right to life under Article 2 of 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. It has developed a number of guiding principles to be followed for an investigation to comply with the Convention's requirements (for a summary see, for example, *Bazorkina v. Russia*, no. 69481/01, §§ 117-119, 27 July 2006).

66. In the present case, an investigation was eventually carried out into the attack on the applicant. The Court must assess whether that investigation met the requirements of Article 2 of the Convention. The Court will examine the issues that arise in the light of the documentary evidence adduced in the present case, in particular the documents lodged by the Government with respect to the investigation conducted at domestic level as well as the parties' written observations.

67. From the outset, the Court recalls that the essential purpose of an investigation required under Article 2 of the Convention 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 investigative procedures (see *McKerr v. the United Kingdom*, no. 28883/95, § 111, ECHR 2001-III).

68. The complaint brought by the applicant concerns allegations of extra-judicial executions of unarmed civilians committed by Russian servicemen in January 2000 in the Staropromyslovskiy district. As the Court has already found above (see paragraphs 57-58 above), the authorities were well aware of these allegations at a sufficiently early stage and conducted several investigations into the matter (see also *Khashiyev and Akayeva v. Russia*, cited above, §§ 46-67). The applicant's name was brought up

repeatedly in the context of the events, yet no investigation dealt with the attack on her until the complaint was communicated in July 2004. There was thus an unacceptable delay of several years in the investigation of a serious crime, which cannot in the present case be explained solely by the applicant's failure to lodge a formal complaint with the public prosecutor.

69. In reviewing the submitted investigation file in the present and previous cases, the Court is under the impression that the authorities – whether consciously or otherwise – did not attempt to establish a comprehensive picture of the events in the Staropromyslovskiy district at the relevant time. The investigation of various episodes was spread between different prosecutors' offices, which were sometimes not even aware of each others' work. In the present case, for example, an investigation has been pending with the Staropromyslovskiy District Prosecutor's Office into the same attack since September 2003. Yet in April 2005, upon receipt of the information from the Court, the Chechnya Prosecutor's Office opened a criminal investigation into the infliction of serious injuries on the applicant. The two proceedings were joined only in August 2006. It appears that no attempt was made to check credible allegations that a number of attacks committed in the district at the same time had followed the same pattern and could have been committed by the same persons. The investigation clearly failed to identify other victims and possible witnesses to the crimes and to take statements from them. For example, the case file examined by the Court contains hardly any information about the persons who were killed during the same attack as the applicant or about those who were granted victim status in the proceedings. There is no map or plan of the district which might show the locations of the bodies and important evidence, and no attempt seems to have been made to draw up a list of the local residents who remained in the district in the winter of 1999 - 2000.

70. In 2005, in the context of the investigation into the attack on the applicant, information was obtained that the “crime could have been committed by military servicemen” (see paragraph 42 above). However, it appears that the investigation failed to identify any military units or to obtain other information concerning the military operations in the district at the relevant time. The investigation failed to obtain a general plan of the military operations conducted in the Staropromyslovskiy district of Grozny at the material time, despite strong evidence that such an operation took place. Such a plan could have constituted vital evidence in respect of the circumstances of the crimes in question.

71. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the attack on the applicant. It accordingly dismisses the Government's preliminary objection as regards the applicant's failure to exhaust domestic remedies within the context of the criminal investigation, and holds that there has been a violation of Article 2 on this account.

B. Alleged violation of the right to life

1. Arguments of the parties

72. The applicant submitted that there was overwhelming evidence to conclude that she had been the victim of an unlawful attack on her life carried out by State servicemen. She referred to her own statements, to the documents from the criminal investigation and to press and NGO reports, all of which pointed to servicemen from the federal forces as the perpetrators of the attack. She also referred to the Court's conclusion in the *Khashiyev and Akayeva v. Russia* judgment (cited above), noting that, by the relevant time, the district was under the control of the Russian federal forces. She argued that the Government had not suggested any other version of the events.

73. The Government did not dispute the fact of the attack on the applicant. They argued that the investigation had not established the culprits. They stressed that the applicant's failure to appear for questioning severely impeded the progress of the investigation and had rendered the establishment of the identity of the perpetrators more difficult.

2. The Court's assessment

74. At the outset, the Court must address the issue of applicability of Article 2 to the present case. It is true that the applicant did not lose her life in the attack, but the Court has held before that the requirements of Article 2 apply to an attack where the victim survives but which, because of the lethal force used, by its very nature, put his or her life at risk (see *Makaratzis v. Greece* [GC], no. 50385/99, § 49-55, 20 December 2004, and *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, § 196, 24 February 2005). Having regard to the circumstances of the attack on the applicant and the injuries sustained by her, as supported by the medical documents and witness statements, the Court concludes that the degree and type of force used clearly bring the facts of the present case into the ambit of Article 2 of the Convention.

75. The Court observes that it has developed a number of general principles relating to the establishment of facts in dispute, in particular, when faced with allegations of a violation of Article 2 (for a summary of these, see *Estamirov and Others v. Russia*, cited above, §§ 98-101). In the light of these principles, the Court will decide whether the attack on the applicant can be attributed to the State and whether there has been a violation of Article 2 in this respect.

76. It is not disputed by the parties that the applicant was a victim of an attack on 19 January 2000, during which five persons were killed and the applicant sustained firearm wounds to the chest and head. The Government did not suggest that the exceptions of the second paragraph of Article 2

could be applicable in the present case. The question remains whether the respondent State may be held responsible for this attack.

77. The applicant herself stated that the attack had been perpetrated by servicemen. These allegations were not disputed by the Government and were not contradicted by the documents in the investigation file. As it appears, the only version of the events pursued by the investigation was that suggested by the applicant. The Government did not present any alternative account of the attack.

78. Furthermore, the Court recalls that in the *Khashiyev and Akayeva* judgment (cited above) it was established that the applicants' relatives had been last seen alive in the hands of armed persons and followed by a military vehicle, or killed during an identity check on 19 and 20 January 2000. In that judgment the Court also referred to the conclusions of the domestic court which had found that by 19 January 2000 the Staropromyslovskiy district was under the control of the Russian forces and therefore only they could have conducted security operations in it (see *Khashiyev and Akayeva*, cited above, § 39-42). The Court finds no reasons to question these conclusions in the present case and finds that they too support the applicant's account.

79. In addition, the Court has long held that where the events in issue lie wholly, or to a large extent, within the exclusive knowledge of the authorities – as in the case of persons in custody under those authorities' control – strong presumptions of fact will arise in respect of injuries and deaths occurring during such detention. Thus, it has found that where an individual is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which an issue will arise under Article 3 of the Convention (see *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, pp. 40-41, §§ 108-111; *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, pp. 25-26, § 34; and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V). Indeed, in such situations the burden of proof may be regarded as resting on the authorities (see, *inter alia*, *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

80. The Court has also considered it legitimate to draw a parallel between the situation of detainees, for whose well-being the State is held responsible, and the situation of persons found injured or dead in an area within the exclusive control of the authorities of the State. Such a parallel is based on the salient fact that in both situations the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities (see *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II (extracts)).

81. The Court has already found above that the investigation into the attack on the applicant and five other persons' deaths was ineffective (see

paragraphs 66-72 above). That investigation failed to establish the military units presumably involved or to indict the individuals responsible. The Court finds that the applicant has made a prima facie case that she was a victim of a life-threatening attack, committed by servicemen during a security operation on 19 January 2000 in the Staropromyslovskiy district, and that the Government has failed to provide any other satisfactory and convincing explanation of the events. Their reference to the absence of conclusions from the criminal investigation, which was already found ineffective, is not enough to absolve them from their burden of proof under Article 2 of the Convention.

82. On the basis of the above the Court finds it established that the attack on the applicant can be attributed to the State. In the absence of any justification in respect of the use of lethal force by their agents, the Court finds that there has been a violation of Article 2 in this respect also.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

83. The applicant submitted that the feelings of fear, anguish and distress she had suffered as a result of the attack amounted to treatment contrary to Article 3 of the Convention, which reads:

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

84. The Government did not specifically deal with her complaint under Article 3 of the Convention.

85. The Court considers that in the present case no separate issues arise beyond those already examined under Article 2 of the Convention.

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

86. The applicant complained that she had had no effective remedy in respect of the violations alleged under Article 2 of the Convention. She referred to Article 13 of the Convention, which provides:

“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.”

87. The Government stated that the applicant had had access to effective domestic remedies and could have appealed the results of the investigation. She had been granted victim status and had had every opportunity to participate effectively in the proceedings.

88. 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. Given the fundamental importance of the right to protection of life, 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 leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-162, ECHR 2002-IV; *Asenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3293, § 117; and *Süheyla Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005). The Court further reiterates 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, and *Khashiyev and Akayeva*, cited above, § 183).

89. In view of the Court's findings above with regard to Article 2, these complaints are clearly “arguable” for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52). The applicant should accordingly have been able to avail herself 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.

90. It follows that in circumstances where, as here, the criminal investigation into the potentially lethal attack was ineffective and the effectiveness of any other remedy that may have existed, including the civil remedies suggested by the Government, was consequently undermined, the State has failed in its obligation under Article 13 of the Convention.

V. OBSERVANCE OF ARTICLE 34 OF THE CONVENTION

91. The applicant complained that she has been subjected to harassment in reprisal for her application to the Court. She relied on Article 34 of the Convention, which provides:

“The Court may receive applications from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

92. The Government submitted that these allegations were unsubstantiated and not supported by anything other than the applicant's imprecise statements.

93. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual application instituted by Article 34 that applicants should be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. In this context, “pressure” includes

not only direct coercion and flagrant acts of intimidation, but also other improper indirect acts or contacts designed to dissuade or discourage applicants from using a Convention remedy. The issue of whether or not contacts between the authorities and an applicant amount to unacceptable practices from the standpoint of Article 34 must be determined in the light of the particular circumstances of the case. In the context of the questioning of applicants about their applications under the Convention by authorities exercising a domestic investigative function, this will depend on whether the procedures adopted have involved a form of illicit and unacceptable pressure which may be regarded as hindering the exercise of the right of individual application (see, for example, *Aydin v. Turkey*, cited above, §§ 115-117, and *Salman v. Turkey* [GC], no. 21986/93, § 130, ECHR 2000-VII).

94. In the present case, the applicant referred to incidents that had allegedly involved her relatives and friends, in retaliation for her application to the Court (see paragraph 23 above). The Court notes that the applicant has not submitted any evidence to corroborate her allegations other than her own rather vague statements. The applicant did not indicate any details of the alleged harassment, such as the dates and circumstances of the alleged intimidation, or statements by the person allegedly involved. The Court also notes that the authorities had no direct contact with the applicant, either in respect of the initial attack on her, or in relation to the complaint lodged by her to the Court and the ensuing criminal investigation.

95. In these circumstances the Court does not have sufficient material before it to find that the respondent Government have violated their obligation under Article 34 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

96. 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.”

97. A. Damage

98. The applicant did not submit any claims for pecuniary damage. As to non-pecuniary damage, the applicant stressed that she was shot by servicemen and presumed to be dead. This had caused her feelings of pain, anguish, distress and anxiety. She claimed 100,000 euros (EUR) in this respect.

99. The Government found the amount claimed to be excessive.

100. The Court observes that it has found a violation of the procedural and substantive limbs of Article 2 and a violation of Article 13. The Court accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the applicant EUR 50,000, plus any tax that may be chargeable on that amount.

B. Costs and expenses

101. The applicant was represented by lawyers from the NGO EHRAC/Memorial Human Rights Centre. She submitted that the representatives had incurred the following costs:

- (a) EUR 2,000 for 40 hours of drafting legal documents submitted to the Court and the domestic authorities at a rate of EUR 50 per hour by the lawyers in Moscow;
- (b) 1,067 pounds sterling (GBP) for 10 hours and 40 minutes of legal work by a United Kingdom-based lawyer at a rate of GBP 100 per hour;
- (c) GBP 1,037 for translation costs, as certified by invoices (for about 20,700 words); and
- (d) GBP 285 for administrative and postal costs.

102. The Government disputed the reasonableness and the justification of the amounts claimed under this heading. They also objected to the representatives' request to transfer the award for legal representation directly to their account in the UK.

103. The Court has to establish, first, whether the costs and expenses indicated by the applicant were actually incurred and, second, whether they were necessary (see *McCann and Others v. the United Kingdom*, cited above, p. 63, § 220).

104. The Court notes that the applicant was represented by the lawyers of EHRAC/Memorial from the outset of the proceedings before it. It is satisfied that the rates set out above were reasonable and reflect the expenses actually incurred by the applicant's representatives.

105. Further, it has to be established whether the costs and expenses incurred by the applicant for legal representation were necessary. The Court notes that the case involved a certain quantity of factual and documentary evidence and required a fair amount of research and preparation. It is not persuaded, however, that the present case required translation of documents in the amount stipulated by the representatives.

106. Furthermore, the Court notes that it is its standard practice to rule that awards in relation of costs and expenses are to be paid directly to the applicant's representatives' accounts (see, for example, *Toğcu v. Turkey*, no. 27601/95, § 158, 31 May 2005; *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 175, ECHR 2005-VII; and *Imakayeva v. Russia*, no. 7615/02, ECHR 2006-...).

107. Having regard to the details of the claims submitted by the applicant and acting on an equitable basis, the Court awards the following sums under this heading: EUR 2,000 and GBP 1,700, exclusive of any value-added tax that may be chargeable, the net award to be paid in pounds sterling into the representatives' bank account in the United Kingdom, as identified by the applicant.

C. Default interest

108. 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 UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances of the attack on the applicant;
3. *Holds* that there has been a violation of Article 2 of the Convention in respect of the attack on the applicant;
4. *Holds* that no separate issues arise under Article 3 of the Convention;
5. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2;
6. *Holds* that there has been no breach of Article 34 of the Convention;
7. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 50,000 (fifty thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros) and GBP 1,700 (one thousand seven hundred pounds sterling) in respect of costs and expenses, the net award to be converted into pounds sterling at the rate applicable at the date of settlement, to be paid into the representatives' bank account in the United Kingdom;

- (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;

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

Done in English, and notified in writing on 4 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President