



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

FIRST SECTION

CASE OF MAKHAURI v. RUSSIA

(Application no. 58701/00)

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 Makhauri 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. 58701/00) 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 Kheyedi Shamilovna Makhauri (“the applicant”), on 20 June 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 1959 and was a resident of Grozny, Chechnya. She currently lives in Ingushetia.

7. The submissions of the parties with regard to the facts concerning the circumstances of the attack on the applicant 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

8. In April 2004 the applicant produced a detailed account of the attack on her. She submitted that, prior to 1999 she lived at 201 Pugacheva Street in the Tashkala settlement¹ in the Staropromyslovskiy district of Grozny. She lived in a private house together with her husband and five children, born in 1980, 1982, 1986, 1987 and 1997. In September 1999 the applicant's four elder children went to Ingushetia to stay with relatives, while the applicant, her husband and their youngest child remained in Grozny to look after the house and property.

9. In October 1999 hostilities resumed in Chechnya between Russian forces and Chechen fighters. Grozny and its suburbs came under heavy bombardment. Staropromyslovskiy district, situated in the northern and central parts of the city, was bombarded from the air and by artillery. The applicant submits that most residents of the district left for safer areas. 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. At the end of October 1999 the applicant and her family also moved to Ingushetia to flee the bombardments. There they rented housing in the village of Nesterovskaya. In Nesterovskaya the applicant met her neighbour from Grozny, Larisa (also known as Satsita) D.

11. On 20 January 2000 the applicant saw a programme on the all-Russian ORT TV station about the situation in Grozny. The report allegedly stated that the Tashkala settlement had been brought under full control of the federal forces and that civilians had started to return. The applicant and

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

Larisa D. decided to go to Grozny to check up on their houses. In addition the applicant wanted to retrieve the documents relating to her children.

12. On the morning of 21 January 2000 the applicant and Larisa D. set off for Grozny. The applicant took her passport and 500 roubles (RUR), of which she paid RUR 100 for the bus trip to the outskirts of Grozny. They spent the night of 21 to 22 January with the applicant's relatives in Grozny. On 22 January 2000 at a military roadblock where about 20 other women were waiting to be let through, they met another neighbour from Tashkala, Nura T., who had also seen the news about the return of civilians. At that time the applicant did not know Nura's family name. Nura joined them, and the three of them went to Tashkala on foot.

13. When they reached the applicant's house, they saw that the house had been destroyed. The applicant was unable to find the documents. The women consoled her and they went to Larisa D.'s house, also situated in Pugacheva Street. They had walked another block when they noticed, 60-90 metres further along the street, a group of 30-40 soldiers and three or four armoured personnel carriers (APCs). The soldiers were taking valuables out of the houses and stacking them into the APCs. The applicant and the other two women were aware of stories about soldiers killing witnesses to looting and became very scared. They immediately turned around and were about to walk away, but the soldiers noticed them and ordered them to approach and to produce identity documents. The soldiers were dressed in camouflage uniforms, spoke Russian and addressed each other as "Lekha" and "Magomed". Some spoke with an accent and the applicant guessed that they were from the Northern Caucasus.

14. The applicant's passport was in order, as were the passports of the other women, and all three had permanent addresses in Grozny. The soldiers checked their passports and told the women to empty their bags and pockets. They then asked if they had forgotten anything, but the applicant was too frightened to understand that they probably meant "any valuables". The soldiers accused them of being fighters' informants and told them to get into the APCs to be taken to the military commander's office for an identity check. The women were scared to get into the APC and asked if they could walk instead. The soldiers permitted them to walk, but they were blindfolded with their own scarves. When the women asked why they had covered their eyes, the soldiers replied rudely that it had been "an order from the superior".

15. They walked about 50 metres further and the soldiers took them into the courtyard of a destroyed house. The applicant walked first and the other two women followed her. She sensed that something was wrong, lifted her scarf and saw a machine gun being aimed at her. The soldiers shot into the air and forced the women into the entrance of a half-destroyed shed. The women started to weep and to plead for mercy. Nura approached the soldiers, while the applicant and Larisa D. stood by the entrance, and asked

the soldiers what they wanted from them and asked them to spare their lives. Then one of the soldiers shot Nura in the head. They then shot at Larisa and the applicant. Larisa was in front and received most of the bullets; the applicant was also wounded. She fell, hit a concrete step with her head and lost consciousness.

16. She was woken by the pain in her ear when one of the soldiers tore a golden earring from her. The soldiers also picked up her ring and a chain from her neck. She realised that she should pretend to be dead or they would kill her. She fainted again.

17. She awoke for the second time to a strong pain in her leg and when she opened her eyes she realized that Larisa and herself were lying partially within the shed, with their legs on the steps outside, covered with a mattress which had been set on fire. The mattress was too damp to burn and was smouldering, but the applicant smelled diesel and realised that it had been spilled around. Her leg was burnt. Nura's body was lying a few metres away. The applicant then heard the sound of a car leaving. She climbed out of the shed, took a few steps and fainted again.

18. When she regained consciousness, she had lost a lot of blood and was very weak. She could not walk, so she crawled out into the street. She made it about 300 metres to the cellar of a five-story building called "the pilots' house" in Reznaya Street, where she knew someone was living. When she reached the cellar it was already dark. She started to knock on a pipe leading into the cellar, and was picked up by some elderly women who lived in the cellar. They carried her into the cellar and gave her first aid. The applicant had received a perforating wound – the bullet had entered her right arm and exited on the left side of her neck.

19. On the following day the women told her that the soldiers had been looking for her because they had not found her body at the place where the killings had taken place. Soldiers visited their cellar but the women dressed the applicant in their clothes and told them that she was one of them. They told her that two girls from 166 Derzhavina Street had stayed with them 10-12 days before that and that their relatives had also been killed (see *Tangiyeva v. Russia*, no. 57935/00).

20. On 24 January 2000 two of the applicant's relatives came from Ingushetia to pick her up. They were alerted by neighbours who had found her passport with bullet holes in it. With the assistance of a military officer the applicant got to Ingushetia.

21. The applicant submitted a hand-drawn plan of the relevant part of the district indicating the places to which she referred.

2. Subsequent events and investigation

22. It appears that the applicant did not seek to make any direct contact with law-enforcement bodies immediately after the attack. Nevertheless the events in the Staropromyslovskiy district, including the attempt on the

applicant's life, became known to the relevant authorities shortly afterwards as a result of NGO and media reports.

23. The applicant spent two months in Ordzhonikidze village hospital, where her wounded hand was operated on. In the hospital she was visited by a number of Russian and foreign journalists and members of human rights NGOs. The applicant submitted copies of press articles and NGO reports in which her story had been related. She was also visited by Nura's and Larisa D.'s relatives, who later told her that they had found their bodies and buried them.

24. 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.

25. In February 2000 Human Rights Watch issued a report entitled "Civilian Killings in the Staropromyslovskiy District of Grozny", in which it accused the Russian forces of murdering at least 38 civilians between late December 1999 and mid-January 2000. Human Rights Watch interviewed survivors, eyewitnesses and relatives of the dead. The report contained information about the deaths of Larisa D. and Nura T., based on an interview with the applicant in Ingushetia.

26. 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 murders of at least 38 civilians in the Staropromyslovskiy district, with reference to the applicant's case.

27. On 14 February 2000 the NGO Memorial addressed the Prosecutor General with information about the applicant's case. It requested that a criminal case be opened on the basis of the applicant's statement concerning the attack on her and the murders of Larisa D. and Nura by Russian soldiers. On 15 and 25 February 2000 Memorial was informed by the Chief Military Prosecutor's Office that their letters had been forwarded to the military prosecutor of the Northern Caucasus circuit. On 18 April 2000 Memorial forwarded to the prosecutors additional information concerning the applicant, including her temporary address in Ingushetia.

28. On 9 June 2000 the military prosecutor of military unit no. 20102 (located in Khankala, the main Russian military base in Chechnya) replied to Memorial with information concerning several cases of alleged crimes against civilians. According to this letter, a criminal investigation had been opened on 31 May 2000 in response to the applicant's complaint under Article 105 part 2 of the Criminal Code (murder in aggravating circumstances).

29. On 18 August 2000 the applicant received a telegram summoning her to the Khankala military base on 19 August 2000 at 11 a.m. "to take part in the investigative actions related to the murder of Nura D." (the telegram

referred to Larisa's family name). The applicant did not go to Khankala, because it was the largest Russian military base, heavily guarded and surrounded by numerous checkpoints, and she was afraid to travel there alone. In October 2000 some officers from the military prosecutor's office came to the applicant's temporary lodging in Ingushetia; however, she was in hospital at the time.

30. In February 2001 Human Rights Watch issued a 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.

31. On 19 November 2003 Memorial wrote a letter to the Military Prosecutor of the Northern Caucasus Circuit, with a copy to the Chief Military Prosecutor, asking for details of the criminal investigation into the attack on the applicant. The letter also contained a request for access to the investigation file by the applicant or her representatives. On 26 December 2003 the Chief Military Prosecutor forwarded the request to the Military Prosecutor of the Northern Caucasus and referred to "criminal case no. 34/33/0262-00" concerning the murder of two women, referred to by their last names, and the wounding of the applicant. From this letter the applicant for the first time learned the number of the criminal case file and Nura's family name. No further information was received.

32. The applicant submitted that she was never informed whether she had been granted victim status in the criminal proceedings.

33. As a result of the wound received on 22 January 2000 the applicant's left arm was left partially paralysed and she suffered from pains and cramps in that arm. In July 2000 and October 2001 the applicant underwent operations on her left arm in a hospital in Kazakhstan. Each time she remained in hospital for about a month. She submitted the relevant medical documents. In July 2003 she again spent a week in hospital. In 2002 she was granted disabled status and receives a monthly disability pension of RUR 1,044 (30 euros (EUR)). She continues to live in Ingushetia, where she rents an apartment; her house and all her property in Chechnya have been destroyed. The applicant submitted that she continued to suffer from the effects of the attack: she could no longer lift weights heavier than five kilograms, she was scared to return to Chechnya, was afraid for her family and had nightmares. The applicant submitted that she was afraid of men in camouflage uniform and every time she saw them she had panic attacks.

34. The Government in their observations submitted that the attack on the applicant had been the subject of two criminal investigations. One was opened in May 2000 by the military prosecutor of military unit no. 20102 following an application by Memorial, and the second one was opened by the Staropromyslovskiy District Prosecutor's Office in September 2003, on the basis of material taken from criminal investigation no. 12038 into the

“mass murder of civilians in the Katayama settlement”. The investigations were joined in July 2004 under file number 50100 (see Part B below for a description of the documents from the investigation file).

35. According to the Government, the investigation established that on 22 January 2000 the applicant and two other women had been detained in Grozny by unidentified persons wearing masks and camouflage uniforms and armed with automatic weapons, under the pretext of conducting an identity check. They were then brought to the house at 204 Koltsova Street and shot. The two other women were killed, while the applicant sustained firearm wounds and was brought to Sunzhenskiy Hospital in Ingushetia. The investigation was adjourned and reopened on several occasions, but failed to identify the culprits. It did not establish the involvement of servicemen of the Ministry of the Interior, the Federal Security Service (FSB) or the army in the crime. The applicant was questioned as a witness and later as a victim, and was granted victim status on 14 July 2004.

B. Documents submitted by the parties

36. The parties submitted numerous documents concerning the attack and the investigation into it. The main documents of relevance are the following:

1. Documents from the investigation file

37. The Government submitted a copy of the investigation file in criminal case no. 14/33/0262 (joined in July 2004 with criminal case no. 50100), which comprises four volumes (about 700 pages), and a list of documents contained therein. The most important documents contained in the file can be summarised as follows:

(a) Decision to open a criminal investigation

38. On 3 May 2000, following a letter from the Memorial Human Rights Centre, the military prosecutor of military unit no. 20102 based in Khankala opened a criminal investigation under Article 105 part 2 (a) and (j) of the Criminal Code concerning the murders of two women and the wounding of the applicant by “unidentified soldiers” on 22 January 2000. The file was assigned the number 14/33/0262-00D. In December 2003 the investigation was transferred to the civilian Chechnya Prosecutor's Office.

39. Independently of the above, in May 2000 the Grozny Town Prosecutor's Office opened criminal case file no. 12038 into “the mass murder of civilians in the Katayama settlement by the '205th brigade’”, following the publication of an article entitled “Freedom or Death” in the *Novaya Gazeta* newspaper on 27 April 2000. In September 2003 the investigation decided that the information concerning the attack on the

applicant and the killing of the two women constituted a separate episode and forwarded the relevant part of the file to the Staropromyslovskiy District Prosecutor for further investigation. On 9 September 2003 the district prosecutor's office opened criminal investigation file no. 50100.

40. In July 2004 the two files were joined at the Staropromyslovskiy District Prosecutor's Office under the number 50100.

(b) Statements by the applicant and the search for her

41. The case file contains the applicant's "explanations" which she gave to a military prosecutor on 2 May 2000. The applicant gave a detailed account of the attack, including the description of two soldiers aged about 18-20 who had shot her and her two companions. The applicant stated that she would be able to recognise at least one of them. The document did not contain the applicant's new address.

42. On 20 July 2000 and in March 2001 the investigator from the military prosecutor's office requested prosecutors in Ingushetia to locate and question the applicant. On 18 August 2000 the applicant was invited by telex to report for questioning to the military prosecutor in Khankala.

43. On 9 April 2001 the military prosecutor in Ingushetia reported that the applicant had left for Chechnya and could not be questioned.

44. In August 2001 the applicant's neighbour in Grozny testified that the applicant occasionally came to Grozny but was afraid to stay there. He was aware that the applicant still suffered from the effects of the attack, feared men in uniforms and was afraid to speak about the incident.

45. Between October 2001 and January 2002 the investigation on several occasions requested the military and civilian prosecutors and the local Interior Ministry entities in Ingushetia to locate and question the applicant. Several of her relatives and neighbours were questioned about her whereabouts. In November 2001 the applicant's daughter (born in 1986) stated that her mother had left for Kazakhstan for treatment. In February 2002 another relative of the applicant in Ingushetia confirmed this information.

46. In April 2002 the applicant's sister-in-law Alimat U. testified that the applicant was living in Ingushetia but went every month to Grozny, where she was registered, to receive social-security benefits. She confirmed that the applicant continued to suffer from stress and was afraid of men in uniforms.

47. On 29 April 2002 the applicant was finally questioned in Ingushetia by a military prosecutor. She gave a detailed statement about the attack of 22 January 2000 and described in detail the servicemen who had detained the women, escorted them to the house in Koltsova Street and shot at them. She described their camouflage uniform as being "pale" in colour, similar to the one worn by the police, and stated that some of the men had been wearing black bulletproof jackets and carrying portable radios. The

applicant stated that she could identify one of the servicemen, addressed by the others as “Magomed”.

48. The Chechnya Prosecutor's Office also took steps to find the applicant while investigating criminal case no. 12038 into the murders in the Staropromyslovskiy district. In October 2003 the applicant was questioned in Ingushetia about the circumstances of the attack. She confirmed that the perpetrators belonged to the federal forces, referring to the uniforms, military vehicles and the fact that they had spoken Russian.

(c) Statements by the relatives of Larisa D. and Nura T. and other neighbours

49. On 3 June 2000 the military prosecutor questioned Larisa D.'s sister, Zara A., who testified that on 23 January 2000 she had learned from the applicant's relatives in Ingushetia of the death of her sister Larisa (Satsita) in Grozny. Also on 23 January the witness talked to the applicant in Sunzhenskiy Hospital. On 24 January 2000 the witness and two other women had gone to the house in Koltsova Street indicated by the applicant and found two bodies – that of her sister Larisa and a second woman. Larisa's body had numerous wounds to the chest area, while the body of the other woman had the upper part of the head missing. Both bodies had been damaged by animals. The witness concealed the bodies in the courtyard and left to seek help. Both women were buried around 28 January 2000 in one grave in the cemetery of the Oktyabrskiy *sovkhoz*, bordering on the Staropromyslovskiy district, with the assistance of a local imam. Zara A. agreed to identify the burial place and to allow her sister's body to be exhumed for the purposes of a forensic expert report. In November 2003 Zara A. was again questioned by civilian investigators in Grozny and confirmed her previous statements.

50. On 3 June 2000 the investigation questioned Larisa D.'s widower, Usman S., whose cousin was married to the applicant. He testified that on the morning of 21 January 2000 he had seen Larisa and the applicant to the bus to Grozny. Two days later he learnt that his wife, the applicant and a third woman had been shot in Grozny by servicemen. They had two daughters from the marriage. He did not object to the exhumation of his wife's body for forensic purposes. In November 2003 Usman S. was questioned by the civilian prosecutors and gave similar statements. In May 2004 he was again questioned and granted victim status in the proceedings. In July 2004 Usman S. was again questioned and this time he expressly objected to the exhumation of his wife's remains.

51. Zayna M., Larisa's other sister, and her husband Mouldi M. gave testimony in November 2001 which tallied with the statements of Zara A. They indicated, in addition, that near the body of Nura they had found her passport and thus learnt her family name. The passport was kept by the imam who later gave it to her relatives. They indicated the date of burial as 3 February 2000. Zayna M. also gave detailed statements about the

discovery of the bodies. She stated that the clothes on the bodies of her sister and Nura had been opened, as if they had been searched. They found an open wallet which they guessed had belonged to Nura and an empty pouch which her sister Satsita had worn around her neck and where she had kept her gold jewellery. Zayna M. produced a detailed drawing of the site and gave a description of the district, indicating the places to which she had referred. She indicated the locations occupied by the military units, but could not identify those units by name or by any other means. She also stated her firm conviction that the murders had been committed by servicemen, based on the accounts of the applicant and the women who had sheltered her in the cellar. The witness asserted that by 20 January 2000 there had been no fighters left in the district, and that therefore the armed men could only have been soldiers. On 8 November 2001 Zayna M. was granted victim status.

52. In November 2001 the local imam testified that on 3 February 2000 he had assisted in the burial of two women found in the courtyard of a house in Koltsova Street with gunshot wounds. He identified them as Larisa D. and Nadezhda (Nura) T.

53. In November 2001 the investigation forwarded requests for information about the family of Nura T. to the town of Achkhoy-Martan where her family had lived.

54. The investigation questioned a number of local residents of the Staropromyslovskiy district in an attempt to find witnesses to the attack on the applicant. Other local residents did not have any additional information, because they had spent the winter of 1999-2000 away from Grozny.

(d) Death certificates

55. On 1 June 2000 the Staropromyslovskiy district civil registry office issued a death certificate for Satsita Akhmadovna D. The date and place of death were recorded as 21 January 2000, Staropromyslovskiy district of Grozny. Death had occurred as a result of a gunshot wound to the head, according to death certificate no. 95 issued on 29 May 2000 by [Grozny] City Hospital no. 3.

56. The investigation requested the corresponding information from the hospital, which in November 2001 replied that the medical document had been issued on the basis of a report by an officer of the Staropromyslovskiy VOVD dated 27 May 2000.

57. The investigation also tried unsuccessfully to find out whether the death of Nura T. had been recorded by the medical authorities or by the civil registry bodies in Grozny or Achkhoy-Martan.

(e) Examination of the site and the ballistics expert's report

58. On 27 June and 29 July 2000 the military investigators examined the courtyard of the house at 204 Koltsova Street. During the first examination

in the courtyard they collected 71 cartridges from 5.45 mm automatic rifles and 62 cartridges from 7.62 mm automatic rifles. During the second examination they collected one 5.45 mm calibre bullet. Some photographs and a drawing of the site were annexed to the reports.

59. On 11 August 2000 the ballistics expert report concluded that the bullet had come from a standard round of ammunition used for Kalashnikov automatic rifles with a calibre of 5.45 mm, and that no other information could be obtained owing to the deformation of the bullet.

60. On 18 August 2000 the investigator forwarded the collected cartridges for a ballistics report. However, it appears that on the same day the military prosecutor of the Northern Caucasus military circuit ordered that the compilation of an expert report would serve no purpose and its conclusions would have no evidential value, given the length of time (over five months) that had elapsed between the murders and the collection of the cartridges.

61. A further examination of the site was carried out in November 2001 when the investigators, together with Zayna M., Larisa D.'s sister, travelled around the Staropromyslovskiy district. Zayna M. showed her route on 24 January 2000 and indicated the cellar of the house in Partizanskaya Street where she had first seen the wounded applicant, two military roadblocks (still functioning at that time), the former hostel of a radio manufacturing plant in which a detachment of OMON troops from North Ossetia had been stationed at the relevant time and, finally, the house at 204 Koltsova Street where she had found the bodies of her sister and Nura T.

62. In 2003 and 2004 the investigators from the Staropromyslovskiy District Prosecutor's Office again examined the house and courtyard at 204 Koltsova Street, but found nothing of interest.

(f) Documents relating to identification of the relevant military units

63. The investigation sent dozens of requests and collected various pieces of information relating to the participation of military units of the Ministry of Defence and the Ministry of the Interior in operations in the Staropromyslovskiy district of Grozny in January 2000.

64. In June 2000 the military prosecutor requested the chief of staff of the United Group Alignment (UGA) (*начальник штаба ОГВ*), the chief of staff of the Internal Troops Alliance in the Northern Caucasus (*начальник штаба группировки ВВ МВД РФ на территории Северо-Кавказского региона*) and the chief of staff of the Northern Caucasus military circuit to submit copies of the combat situation maps and situation reports for Grozny and, in particular, Staropromyslovskiy district for 21 and 22 January 2000.

65. In July 2000 the military prosecutor again requested the chief of staff of the UGA, the chief of staff of the Internal Troops Alliance in the Northern Caucasus and the head of the mobile detachment of the Ministry of the Interior in Grozny (*мобильный отряд МВД РФ г. Грозный*) to

identify the exact location of their respective units at the relevant time, to identify the commanding officers and to retrieve combat situation maps, situation reports and mission orders and submit information relating to the vehicles used, including APCs, and the types and numbers of weapons.

66. On 4 June 2000 the Grozny Department of the Federal Security Service notified the investigation that they had no information relevant to the case. It appears that in July 2000 the headquarters of the UGA replied to the military prosecutor that no copies of the documents in question existed. On 30 July 2000 the headquarters of the Internal Troops Alliance in the Northern Caucasus replied that all the relevant information had been transferred to the central archives of the Internal Troops. On 15 August 2000 the chief of staff of the UGA replied that all information related to the counter-terrorist operation in the Northern Caucasus prior to 15 May 2000 had been forwarded to the archives of the Northern Caucasus military circuit. In June-July 2001 the archives of the Northern Caucasus military circuit and the central archives of the Internal Troops stated that they did not have the documents requested.

67. In January 2001 the headquarters of the Internal Troops of the Ministry of the Interior informed the investigation that on 21-22 January 2000 no detachments of the Ministry had been based or been operating in the Staropromyslovskiy district or the Tashkala settlement.

68. In October 2001 the investigation requested similar information from the commander-in chief of the Internal Troops and the archives of the Northern Caucasus military circuit. The archives again stated that they did not have the documents in question.

69. In November 2001 the investigation again requested the UGA to disclose information about the engagement of military units in the Staropromyslovskiy district on the relevant dates and to indicate which military unit had been based in the area of the former metal storage facility in the Tashkala settlement. The letter referred to the previous correspondence with the archives of the Northern Caucasus military circuit which denied receiving any such information from the UGA. Another request to identify the temporary and permanent positions of the military units in question was sent to the staff of the UGA in January 2002.

70. In August 2002 the investigation again requested the chief of staff of the Northern Caucasus military circuit to submit details about the deployment and positioning on 20-22 January 2000 in the Staropromyslovskiy district of 30 military units, the numbers of which had been previously communicated to the investigation. In September 2002 the staff responded that they had no information about the operations in question and submitted the addresses of the relevant military units.

71. In April 2002 the investigation requested access to the relevant documents at the headquarters of the UGA. The reply stated that the

documents in question had either been transferred to the archives of the Northern Caucasus military circuit or been destroyed.

72. In the meantime, in August 2000, having obtained a list of all the military units involved in operations in Grozny between December 1999 and February 2000, the investigators requested the chief of staff of the Internal Troops Alliance in the Northern Caucasus and the chief of staff of the UGA to submit detailed information about the participation of these military units in operations in the Staropromyslovskiy district. The investigation received replies from the relevant authorities containing some of the requested information. On the basis of these, the investigators sent dozens of requests to the current locations of the military units and to the military prosecutors in those regions. The investigation also forwarded a number of requests to the relevant civilian prosecutors and the regional departments of the interior whose detachments had been deployed in Grozny in the winter of 2000.

73. It appears that all the military and interior servicemen questioned about their participation in the operations in Grozny denied that their detachments had taken part in operations in or near Koltsova Street and Pugacheva Street. In particular, the commander of the OMON from North Ossetia wrote to the investigators and stated that their servicemen had not been on mission in Chechnya between December 1999 and January 2000. Other military units replied that they had no information relevant to the investigation of the criminal case.

74. In May and June 2002 the military prosecutor in Budennovsk, Stavropol region, reviewed the operation reports, orders and log book of the 205th motor rifle brigade (*205 омбр*) for the period between December 1999 and February 2000 and concluded that they contained no information relevant to the investigation of the criminal case. Two officers of that military unit stated that their unit had been engaged in the Staropromyslovskiy district in January 2000, but that by 22 January they had advanced to the centre of the city. They stated that their unit had no APCs and that their servicemen had not been involved in patrolling the territory either on their own or in cooperation with other military units. They denied having any information about the attack on the applicant or any other attacks on civilians.

75. The Chechnya Prosecutor's Office also attempted to identify the relevant military units while investigating the murders of civilians. In December 2003 the staff of the Northern Caucasus military circuit forwarded to the Staropromyslovskiy District Prosecutor's Office information about the military operations in the district in January and February 2000, which stated that the 205th motor rifle brigade had been involved in operations in the Staropromyslovskiy district from 1 January to 13 February 2000. On 17-22 January 2000 the brigade had been stationed in Pugacheva Street.

76. In April 2004 the Chechnya Prosecutor's Office requested the military prosecutor of the UGA to provide it with the information concerning the relevant military units and to question UGA servicemen.

(g) Information from the Staropromyslovskiy district authorities

77. The investigation questioned several servicemen from the Staropromyslovskiy VOVD, who stated that their office had been set up on 7 February 2000. The servicemen from the office of the district military commander stated that their office had been set up on 18 February 2000. Neither office had any information relating to the events preceding these dates, and both were staffed by servicemen from different regions on short-term missions to Chechnya. They had no information relating to the crime, but stated that in January 2000 a group of the special police forces (OMON) from the Perm region and a group of servicemen from the Moscow Regional Department of the Interior had been deployed in the district.

78. In August 2001 and again in October 2001, the investigation requested the Staropromyslovskiy VOVD to submit information about the location and manning of roadblocks in the district on 21-22 January 2000.

79. In October and November 2001 the servicemen of the Staropromyslovskiy VOVD informed the investigation that a criminal case into the murder of two women and the wounding of the applicant had been opened by the Grozny Town Prosecutor's Office in 2000. They also stated that the applicant and her relatives did not live in the district and could not be found, and that they had not identified any witnesses to the crime.

80. In December 2001 the head of the Staropromyslovskiy district department of the interior (ROVD) informed the military prosecutor that the killings in question had been committed by a group of servicemen stationed at the relevant time in Derzhavina Street. He gave the family name of Nura T., and stated that her body had been buried by her relatives in Achkhoy-Martan in 2000. He also stated, in November 2001, that no witnesses to the crimes could be identified in view of the time that had elapsed, and that the applicant did not live at her permanent address.

81. The military investigation then requested information about the case from the Grozny Town Prosecutor's Office; however, it appears that no reply was received.

82. In April 2002 the head and deputy head of the Staropromyslovskiy ROVD testified about the events of January and February 2000. Both stated that they had arrived in the district around 22 January 2000 with the troops, that they were aware of the applicant's case and that it was one of many instances of servicemen killing civilians in the district. The head of the Staropromyslovskiy VOVD stated that he was aware of about 40 similar cases in the district, all committed in the same style – people shot with automatic rifles in courtyards and garages. Both servicemen also spoke of widespread looting committed by servicemen who had been conducting

house-to-house searches. The witnesses testified that, according to their information, the crimes against civilians had been committed by servicemen of the Ministry of the Interior, most probably by a consolidated team of special police forces (SOBR) of the North-Western region, which had included servicemen from the Leningradskiy region and Komy Republic. The witnesses described them as well-built men aged more than 25, dressed in various types of camouflage and clearly distinguishable from the military units, which were usually staffed by younger conscripts. They stated that various detachments of the Ministry of the Interior had been stationed in the district and had refused to cooperate with the newly established VOVD, in contrast to the military units who had maintained stricter discipline and better control of their troops.

(h) Information about other murders

83. The investigation questioned a number of local residents of the Staropromyslovskiy district in an attempt to find witnesses to the attack on the applicant.

84. In August 2000 the investigation questioned Galina P. (born in 1937), who stated that in the winter of 1999-2000 she had remained in Grozny. She had moved in to the Tangiyevs' house in Derzhavina Street, where nine people were staying in the cellar, and remained there until 24 December 1999. They had then moved to another house at 144 Pugacheva Street, because the shelling had become too intense and the first house had been damaged. About sixty people, mostly elderly, had stayed in the big cellar at 144 Pugacheva Street. The Chechen fighters had left their district around 18 December 1999. The witness testified that the federal soldiers had regularly visited their cellar and forced the inhabitants to help them retrieve the wounded and dead. On 1 or 2 January 2000 the three youngest men from the cellar (aged below 50) had been taken away by soldiers and later found dead. The witness described the soldiers as wearing blue-grey camouflage uniforms. She also testified that on 10 January 2000, along with the two Tangiyev sisters, she had visited the Tangiyev's house, where four persons had been staying: Abdul-Vagap Tangiyev, his wife Khirzhan Gadaborsheva, his brother Ismail Gadaborshev and an elderly woman, "Valya". They had found the bodies of Mr Tangiyev and Valya in the house with gunshot wounds; the cellar was closed up and burning. A neighbour told them to leave because the killers could return, and later told them that he had buried the four bodies in the courtyard. On the same day, 10 January 2000, the witness had left for Ingushetia.

85. In 2000, on the basis of this information, the military investigators requested the Grozny Town Prosecutor's Office to provide them with information about the murder of three members of the Tangiyev family and the woman named Valentina. It appears that no reply was received.

(i) Testimony by Anna Politkovskaya

86. Within the framework of criminal case no. 12038 concerning the murders in the Staropromyslovskiy district, the Grozny Town Prosecutor's Office questioned Anna Politkovskaya, the author of the article "Freedom or Death". She testified that in February 2000 she had been in Ingushetia and in the Staropromyslovskiy district of Grozny, where she had interviewed several witnesses to the killings and relatives of the deceased. She had also interviewed the applicant in the hospital in Ingushetia, and the article contained a piece about the attack on her. Mrs Politkovskaya stated that in their interviews several witnesses had referred to the "205th brigade" as being responsible for the murders.

(j) The applicant's medical documents

87. On 20 August 2001 an expert report was drawn up on the basis of the applicant's medical file from the hospital. It stated that the applicant suffered from gunshot wounds to the left shoulder and neck that could have been sustained in the circumstances described.

88. In September 2001 the Grozny Town Prosecutor's Office also ordered a medical examination of the applicant while investigating criminal case no. 20138 (mass murders in the Katayama settlement) and sought the relevant medical documents from Sunzhenksiy Hospital. Similar requests were again sent in 2003.

89. In October 2001 the Sunzhenskiy district hospital confirmed to the military prosecutors that the applicant had remained there from 24 January to 13 March 2000 with gunshot wounds.

(k) Decision to recognise the applicant as a victim

90. Several decisions were issued by the investigation granting the applicant victim status in the proceedings. None of them was countersigned by the applicant.

(l) The prosecutor's orders

91. Between May 2000 and August 2006 the case was adjourned and reopened on sixteen occasions. In their decisions the supervising military and civilian prosecutors criticised the investigation as being "carried out at a low professional level", "superficial and incomplete" and "failing to take the necessary steps to identify the culprits".

92. The case file reviewed by the Court concludes with the order issued by the Staropromyslovskiy District Prosecutor on 17 August 2004 for the investigation to be reopened and a number of tasks to be performed, including questioning the applicant and granting her victim status, identifying the culprits, carrying out the exhumation of the bodies and preparing forensic expert reports.

2. Documents submitted by the applicant

93. In 2004 the applicant submitted a number of documents relating to the events of January 2000. The main documents of relevance are as follows:

(a) NGO and press reports

94. The applicant's story was related in a number of Russian and international publications submitted by the applicant. She was also cited in the Human Rights Watch and Memorial reports of February 2000 concerning the murders of civilians in the Staropromyslovskiy district.

95. On 9 February 2001 Human Rights Watch issued a memorandum on the state of the national investigation into human rights and international humanitarian law violations in Chechnya. The report stated that the investigation into the mass murder of civilians in Grozny, including the applicant's case, was not being conducted effectively and had produced no results. The report deplored the situation of impunity and called upon the authorities to carry out a proper investigation into the attacks on civilians.

(b) Information from the Prosecutor General's Office

96. In a letter dated 25 April 2003 the deputy Prosecutor General Mr Fridinsky replied to a request for information sent by Mr Kovalev, a member of the State Duma. The letter contained information relating to the prosecution of army servicemen in Chechnya for crimes committed against civilians. According to that letter, since the beginning of the "counter-terrorist operation", 58 indictments had been forwarded to the courts by the military prosecutors and 74 persons had been indicted. Of those, 12 cases related to murder, 13 to theft, four to abuse of power and five to reckless driving of military vehicles. 51 persons had been 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 Chechnya Prosecutor's Office brought 17 charges against 29 servicemen of the Ministry of the Interior for crimes against the civilian population. The list of cases attached to the letter showed that in the majority of cases the sentences were conditional or had been lifted under an amnesty.

(c) Other sources

97. The applicant submitted an extract from the book "My War" by General Gennady Troshev, who at the relevant time had been the Commander of the Eastern Direction of the UGA in Chechnya (*командующий восточным направлением Объединенной группировки Российских федеральных войск в Чечне*). The book stated that by 3 January 2000 all major parts of the Staropromyslovskiy district of Grozny were under the control of Russian forces.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

98. In their submissions following the Court's decision as to the admissibility of the application, the Government stated that the applicant had failed to exhaust domestic remedies, in view of the criminal proceedings pending in Russia.

99. The Court reiterates that, under Rule 55 of the Rules of Court, any plea of inadmissibility must be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application (see *K. and T. v. Finland* [GC], no. 25702/94, § 145, ECHR 2001-VII, and *N.C. v. Italy* [GC], no. 24952/94, § 44, ECHR 2002-X). However, in their observations on the admissibility of the application the Government did not raise this point. Moreover, the Court cannot discern any exceptional circumstances that could have dispensed the Government from the obligation to raise their preliminary objection before the adoption of the Chamber's admissibility decision of 18 May 2006 (see *Prokopovich v. Russia*, no. 58255/00, § 29, 18 November 2004).

100. Consequently, the Government are estopped at this stage of the proceedings from raising the preliminary objection of failure to make use of a domestic remedy (see, *mutatis mutandis*, *Bracci v. Italy*, no. 36822/02, §§ 35-37, 13 October 2005). It follows that the Government's preliminary objection must be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

101. 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.”

102. 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

103. 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 their procedural obligations under Article 2. She argued that the investigation had fallen short of the standards established by the Convention and national legislation. She pointed to the considerable length of time – more than six years – that had elapsed without the investigation producing any conclusive results. 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 investigators had failed to inform her of progress and to properly recognise her victim status in the proceedings.

104. The Government replied that the investigation was being carried out in accordance with the domestic legislation and Convention standards. They stressed that the applicant had been questioned on two occasions and granted victim status in the proceedings. However, at some point the applicant had changed her place of residence without notifying the authorities and had not contacted the law-enforcement bodies since.

2. The Court's assessment

105. 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).

106. In the present case, an investigation was 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 the domestic level as well as the parties' written observations.

107. The Court notes from the outset that, while the information about the attack on the applicant and other similar crimes committed in the Staropromyslovskiy district had been available to the authorities no later than early February 2000 (see paragraphs 25-27 above), it was not until May 2000 that a criminal investigation began. No explanation has been put forward for this delay of three months in giving a prompt and adequate response to the allegations of such a serious crime (for similar conclusions, see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 157, 24 February 2005).

108. While the Court notes that in 2001 and 2002 a significant amount of work was indeed carried out by the military prosecutors both in Chechnya and in other regions in an attempt to establish the circumstances of the attack on the applicant, it was nevertheless plagued by serious delays and omissions. To give some examples: in May 2000 and April 2002 the applicant gave a detailed description of two servicemen who had been among the perpetrators of the attack and stated that she could have identified at least one of them (see paragraphs 41 and 47 above). No steps were taken by the investigators to follow up this information. In August 2000 the investigation decided not to obtain an expert ballistics report on the cartridges found at the scene of the killings (see paragraph 60 above), although the results of such a report could have been vital in identifying the persons who had committed the crime. Although some servicemen were questioned about the attack, the majority of them stated that they knew nothing of the events or that their units had not been deployed in the area. The servicemen of the two "suspect" units – the 205th brigade stationed in Budennovsk and the special police forces from the North-Western region – were not questioned properly. In particular no attempts were made to resolve the apparent discrepancy between the statements of the officers of the 205th brigade and the information from the staff of the Northern Caucasus military circuit about the position of the brigade in the end of January 2000 (see paragraphs 74 and 75 above). The review of the relevant documents from the 205th motor rifle brigade did not go beyond stating that they contained no information relevant to the investigation (see paragraph 74 above).

109. Furthermore, the Court notes that 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. In reviewing the investigation files submitted 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 events in the Staropromyslovskiy district at the relevant time. 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, most probably servicemen stationed in the district. The Court finds the statements to that effect made by the officers of the Staropromyslovskiy ROVD in December 2001 and April 2002 to be particularly striking (see paragraphs 80 and 82 above).

110. The investigation of various episodes – or even of the same one, as in the present case – was spread between different prosecutors' offices, which were not aware of each others' work for years. In the present case, the two separate examinations were joined in July 2004, that is, over four years after they had been started. There is no apparent reason why in September 2003 the investigation of the attack on the applicant was separated from the initial investigation into the “mass murder of civilians in the Katayama settlement”. The file reviewed by the Court contains no comprehensive list of victims of similar attacks. There is no map or plan of the district which might show the locations of the bodies and of important evidence, or the positions of military units. No attempt seems to have been made to draw up a list of local residents who remained in the district in the winter of 1999-2000.

111. No adequate measures were taken to ensure the applicant's participation in the proceedings. In May 2000 a criminal investigation into the killings committed in the Staropromyslovskiy district was opened by the Grozny Town Prosecutor's Office. On 2 May 2000, as part of this investigation, the applicant was questioned and gave detailed statements about the attack on her and the killing of the two other women. She was again questioned in October 2003. Independently of these proceedings, the applicant was questioned by military prosecutors in April 2003. Despite that, she was only granted victim status in July 2004 (see paragraph 35 above). Even after she was granted victim status, the only information communicated to her, it appears, was the information about the adjournment and reopening of the investigation.

112. The witness statements and other documents contained in the criminal investigation file consistently indicate that the crime was committed by servicemen (see paragraphs 38, 39, 41, 47, 48, 51, 80, 82, 84 and 86 above). However, the investigation apparently 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 operations took place. Such a plan could have constituted vital evidence as to the circumstances of the crimes in question. The commanders of the operations and of the military units were not identified or questioned.

113. At least some of these omissions were evident to the prosecutors in charge of the investigation, who on several occasions ordered certain steps to be taken (see paragraph 91 above). However, their instructions were not followed.

114. 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. There has therefore been a violation of Article 2 on this account.

B. Alleged violation of the right to life

1. Arguments of the parties

115. The applicant submitted that there was overwhelming evidence that she had been the victim of an unlawful attack on her life carried out by State servicemen. She referred to her own statements and to press and NGO reports. She also relied on the information that Russian forces were in control of the district at that time, cited by the official Russian media, including the TV report which she had seen on 20 January 2000 and which had prompted her to go to Grozny. The applicant pointed to the documents in the investigation file exploring the thesis that the attack had been carried out by servicemen, and to the witness statements.

116. The Government did not dispute the fact of the attack on the applicant. They submitted that between 10 December 1999 and 10 February 2000 the Staropromyslovskiy district of Grozny had been occupied by both federal forces and illegal armed groups and that it was therefore impossible to identify the perpetrators of the attack. The applicant's right to life had not been breached by representatives of the State.

2. The Court's assessment

117. At the outset, the Court should 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, 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.

118. 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*, no. 60272/00, §§ 98-101, 12 October 2006). 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.

119. It is not disputed by the parties that on 22 January 2000 the applicant was the victim of an attack during which two persons were killed and the applicant sustained firearm wounds to the left arm and neck. The Government did not suggest that the exceptions set forth in 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.

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

121. Furthermore, the Court recalls that in the *Khashiyev and Akayeva* judgment it was established that the applicants' relatives had been last seen alive in the hands of armed persons and being followed by a military vehicle, or were 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 Russian forces and therefore only they could have conducted security operations there (see *Khashiyev and Akayeva* cited above, § 39-42). The Court finds no reasons to question these conclusions and finds that they too support the applicant's account.

122. 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).

123. 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)).

124. The Court has already found above that the investigation into the attack on the applicant and the deaths of five other persons was ineffective (see paragraphs 105-114 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 the victim of an attack on her life, committed by servicemen during a security operation on 22 January 2000 in the Staropromyslovskiy district, and that the Government 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 to be ineffective, is not enough to absolve them from their burden of proof under Article 2 of the Convention.

125. 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

126. 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.”

127. The Government denied State involvement in the alleged violation of Article 3 of the Convention.

128. 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 READ IN CONJUNCTION WITH ARTICLE 2

129. 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.”

130. 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.

131. 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; *Assenov 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).

132. 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.

133. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

134. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

1. *Pecuniary damage*

135. The applicant submitted that as a result of the injuries sustained she had had to undergo medical treatment at her own expense. She stated that she had paid 8,500 United States dollars (USD) to the hospital in Ingushetia for emergency medical treatment in January 2000. She further alleged that she had paid USD 27,850 for two operations in Kazakhstan on 10 July 2000 and 9 October 2001. She did not submit any receipts.

136. The Government stressed that the applicant's claim in this respect was not supported by any relevant documents.

137. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention. Furthermore, under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”.

138. The Court notes that the applicant had previously submitted medical documents issued by a hospital in Kazakhstan, confirming that she had been operated on within the dates indicated by her. The Court agrees that the applicant must have borne some costs of medical treatment, and that there is a clear causal connection between the medical treatment for the injuries sustained by her and the violation of Article 2 found above.

139. In the absence of any conclusive evidence as to the applicant's claims for the medical expenses and on the basis of the principles of equity, the Court awards an amount of EUR 5,000 to the applicant as compensation for the pecuniary losses sustained.

2. *Non-pecuniary damage*

140. As to non-pecuniary damage, the applicant stressed that she had been shot by servicemen and presumed to be dead. This had caused her feelings of pain, anguish, distress and anxiety. She claimed EUR 100,000 in this respect.

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

142. 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

143. The applicant was represented by lawyers from the NGO EHRAC/Memorial Human Rights Centre. She submitted the following breakdown of costs:

- (a) EUR 1,500 for 60 hours of research in Chechnya and Ingushetia at a rate of EUR 25 per hour;
- (b) EUR 800 in travel expenses for the field workers;
- (c) EUR 5,850 for 117 hours of drafting by the lawyers in Moscow of legal documents submitted to the Court and the domestic authorities, at a rate of EUR 50 per hour;
- (d) 1,267 pounds sterling (GBP) for 12 hours and 40 minutes of legal work by a United Kingdom-based lawyer at a rate of GBP 100 per hour;
- (e) GBP 1,600 for the professional fees of a barrister in London consulted on the presentation of evidence and drafting of documents;
- (f) GBP 66 for translation costs, as certified by invoices; and
- (g) GBP 160 for administrative and postal costs.

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

145. 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*, judgment of 27 September 1995, Series A no. 324, p. 63, § 220).

146. 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 are reasonable and reflect the expenses actually incurred by the applicant's representatives.

147. 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 substantial quantity of factual and documentary evidence and required a fair amount of research and preparation. Furthermore, the Court notes that it is its standard practice to rule that awards in relation to costs and expenses are to be paid directly into 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-...).

148. In these circumstances, and having regard to the details of the claims submitted by the applicant, the Court awards the following sums as claimed under this heading: EUR 8,150 and GBP 3,093, 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

149. 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 of the Convention;
6. *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 5,000 (five thousand euros) in respect of pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (ii) EUR 50,000 (fifty thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;

- (iii) EUR 8,150 (eight thousand one hundred and fifty euros) and GBP 3,093 (three thousand and ninety-three pounds sterling), 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;
- (iv) 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;

7. *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