



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

FIRST SECTION

CASE OF GOYGOVA v. RUSSIA

(Application no. 74240/01)

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 Goygova 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. 74240/01) 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, Ms Petimat Kirimovna Goygova (“the applicant”), on 5 January 2001.

2. The applicant, who had been granted legal aid, was represented by lawyers of the Stichting Russian Justice Initiative (“SRJI”), an NGO based in the Netherlands with a representative office in Russia. 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 her mother and brother had been killed by Russian servicemen in Grozny, Chechnya, in January 2000. She alleged a violation of Articles 2, 3, 5, 6 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 1966. Before 1999 she was a resident of Grozny, Chechnya, which she left for Ingushetia. She left Russia on an unspecified date and currently lives in Belgium.

7. The submissions of the parties with regard to the facts concerning the circumstances of the applicant's relatives' deaths 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 killing of the applicant's relatives

8. The applicant submitted that prior to 1999 she and her family had lived in the Novaya Katayama settlement¹ in the Staropromyslovskiy district of Grozny.

9. In October 1999 hostilities resumed in Chechnya between the Russian forces and the Chechen fighters. Grozny and its suburbs came under heavy bombardment. The Staropromyslovskiy district, situated in the northern and central parts of the town, was bombarded from the air and by artillery. The applicant submits that most residents of the district left for safer areas. Following heavy fighting, from 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. In January 2000 the applicant and her four children were staying in Ingushetia, while her brother Said-Magomed (usually referred to as Magomed) Goygov (aged 31) and her mother Maryam Goygova (aged 59) remained in Grozny.

11. On 19 January 2000 the applicant went to Grozny to find out about her relatives. She was not allowed to pass through the military checkpoint at the entrance to the city and spent the night in a neighbouring settlement. On the following morning, on 20 January 2000, the applicant again arrived at the checkpoint.

12. There the applicant met a local resident, identified by her as A., who told her that at the crossroads of Neftyanaya Street and the 4th Neftyanoy Lane there was the body of an old lady in a handcart. He told her that on

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.

19 January 2000 the old lady had been wounded by shrapnel and that three men had tried to take her out of Grozny. They had walked up to the 8th Lane, where there was a group of soldiers and three armoured personnel carriers (APCs), one of which had been damaged. The soldiers had stopped them, beaten the men and led them away. They had shot the woman in the cart, and then A. had seen shots being fired, so he presumed that the men had also been shot. From his story the applicant deduced that the woman was her mother and that her brother, Magomed Goygov, could have been among the three men.

13. At the roadblock on the border of the Staropromyslovskiy district the applicant talked to the military and asked them to let her pass. She identified them as belonging to the 205th detachment of the 58th army. One of them whom she believed was in charge, named Oleg, refused to let her go further. When the applicant stated that she was looking for her mother, he replied that they had taken revenge for their dead comrades whose mothers had also wanted to see them alive. Later the applicant submitted that Oleg's hands had been covered with a bandage and that another local resident, a woman named Lena, had told her that she had heard him complaining that he had injured his hands "beating those bastards".

14. A. helped the applicant to get through the military roadblock and accompanied her to the crossroads, where they found the cart containing the body of the applicant's mother. She had a shrapnel wound in the abdomen and a gunshot wound in the head. The applicant could not stay very long in Grozny, so she took her mother's body to A.'s house and left. She did not find any traces of her brother.

15. The next day the applicant returned with her family to Grozny in a hired minivan. They were not allowed to pass through the roadblock with the vehicle and walked to the Staropromyslovskiy district. There they collected Maryam Goygova's body in the cart and walked back out of Grozny. They then put the body into the minivan and took it to Nazran, where they buried it. At that time the applicant did not apply to any authorities or a doctor, nor did she take any photographs of her mother's body before the burial.

16. The applicant's sisters went to the Chernokozovo and Mozdok detention centres in search of their brother, Magomed Goygov.

17. On 25 January 2000 the applicant again went to Grozny in search of her brother. She travelled together with relatives of other missing persons from the district, Magomed Khashiyev and his sister Movlatkhan Bokova. At the Khashiyevs' house at 107 Neftyanaya Street they found the bodies of Magomed Khashiyev's sister, Lidiya Taymeskhanova, and her son, Anzor Taymeskhanov, as well as the body of their neighbour, Anzor Akayev. All had gunshot wounds and some had broken bones. Magomed Khashiyev and Roza Akayeva applied to the Court in relation to the killing of their relatives

(see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, 24 February 2005).

18. During her trip on 25 January 2000 the applicant did not find her brother. The Khashiyevs were also looking for Lidiya Taymeskhanova's other son, Rizvan Taymeskhanov, and Magomed Khashiyev's brother, Khamid Khashiyev.

19. On 10 February 2000 Magomed Khashiyev and his sister, with the assistance of A., discovered three bodies in a garage about 100 metres away from the crossroads where the applicant's mother had been found. They identified two of the bodies as Rizvan Taymeskhanov and Khamid Khashiyev; the third body belonged to Magomed Goygov, the applicant's brother. The bodies had numerous gunshot wounds. Magomed Khashiyev took photographs of the three bodies in the garage and fetched a car to take them to Ingushetia the same day.

20. The applicant was not present in Grozny on 10 February 2000, but she referred to the statements of A. and Movlatkhan Bokova in relation to the discovery of the bodies.

21. The applicant also referred to the Human Rights Watch report "Civilian Killings in the Staropromyslovskiy District of Grozny", which included statements by two other witnesses, identified as B. and C., who had lived in the Staropromyslovskiy district at the relevant time. They testified that on 20 January 2000 at about 4 p.m. a tall Russian soldier had walked into their house and told them that he had killed a wounded woman in a handcart, and that he would kill them as well. He had also told them that the three men who had accompanied the woman had been transferred to a detachment of the police special forces (OMON). The soldier had then left, without causing any harm to B. and C.

22. The applicant appended to her complaint a sketch map of the district with indications of places where the bodies of her relatives had been discovered and colour photographs of her brother's body taken by Magomed Khashiyev at the time of the discovery of the three bodies on 10 February 2000, and during the autopsy at Nazran Hospital.

2. Investigation into the murder of the applicant's relatives

23. On 10 February 2000 the body of the applicant's brother was examined by an officer of the Nazran Department of the Interior. The examination took place in Nazran Town Hospital in the presence of two male relatives. The report listed numerous bullet wounds (at least a dozen) to the head, body and limbs. The right ear had been cut off.

24. On 11 February 2000 Magomed Goygov was buried in Ingushetia.

25. The applicant submitted that at that time her relatives had requested the prosecutor's office to conduct an investigation into the killing of her brother. At the same time they had informed the law-enforcement bodies of the killing of the applicant's mother. The applicant also submitted that

relatives of other persons killed in Grozny in January 2000 had applied to the authorities with similar requests. The applicant referred to NGO reports and letters and media reports, which should have alerted the Russian authorities to act quickly and diligently in a case concerning a mass killing.

26. In particular, the applicant referred to a Human Rights Watch report of February 2000 entitled “Civilian Killings in the Staropromyslovskiy District of Grozny”, which accused the Russian forces of deliberately murdering at least 38 civilians between late December and mid-January. Human Rights Watch had interviewed survivors, eyewitnesses and relatives of the dead. The report contained information about the killing of Maryam Goygova on 19 or 20 January. It also listed Magomed Goygov as having “disappeared” after being detained by soldiers.

27. On 15 May 2000 the Nazran civil registration office issued death certificates for Maryam Azizovna Goygova, born in 1940, and for Said-Magomed Kirimovich Goygov, born in 1968. The deaths had occurred on 19 January 2000 in Grozny.

28. It appears that the applicant had very little contact with the law-enforcement authorities in relation to her relatives' killing. She contested the effectiveness of the investigation with reference to the documents obtained by the relatives of other victims of the events in Grozny and their representatives.

29. The applicant produced a copy of a letter of 16 January 2001 from the Chechnya Prosecutor in relation to the murders in the Staropromyslovskiy district. The letter stated that on 3 May 2000 criminal investigation no. 12038 had been opened by the Grozny Town Prosecutor's Office under Article 105, paragraph 2, of the Criminal Code (murder of two or more persons with aggravating circumstances). The investigation had been opened following the publication of an article entitled “Freedom or Death” in the *Novaya Gazeta* newspaper on 27 April 2000. The investigation had established that in February 2000, after the entry of the Russian forces into the district, the bodies of ten local inhabitants had been discovered. The list of names contained, among others, “M.M. Kerimov, S.K. Goygov, M. Goygova and A. Goygov”. Forensic examinations carried out on the bodies of S. Goygov, Kh. Khashiyeva and R. Taymeskhanov had established the causes of death. The letter stated that no witnesses had been identified to support the assumption that these people had been killed by servicemen. On 3 July 2000 the criminal case had been adjourned, then reopened on 30 August 2000. It had again been adjourned on 30 September 2000 owing to the failure to identify the culprits. Attempts to identify the culprits, possibly including soldiers of the federal forces, were to continue.

30. The applicant submitted that the prosecutor's letter of 16 January 2001 gave an incorrect list of names of those killed. She stated that her brother's full name was Said-Magomed Kirimovich Goygov, while he had usually been referred to as “Magomed”. The applicant noted that her brother

(S.K. Goygov) and her mother (M. Goygova) had been listed in the letter, whereas the names of M.M. Kerimov and A. Goygov were not familiar to her, even though these were supposed to have been her relatives or neighbours. She concluded that the letter mistakenly referred to her brother two or three times, confusing his name and patronymic. She also stated that by January 2001 the number of confirmed victims of the killings should have been much higher than ten. The applicant considered these mistakes to be characteristic of the level of the investigation and its attitude to the victims.

31. She also referred to the information obtained by the Court after communicating the complaints of Magomed Khashiyev and Roza Akayeva in the case of *Khashiyev and Akayeva* (cited above). According to the applicant, the information submitted by the Russian Government in their memorandum about the progress of the investigation was inconsistent and proved that the investigation into the crimes allegedly committed by the Russian forces was ineffective.

32. On 18 April 2003 the SRJI, on the applicant's behalf, requested the Grozny Town Prosecutor's Office to inform it about the progress of the investigation in case no. 12038 and to forward it a copy of the decision granting the applicant victim status in the proceedings.

33. In May 2003 the Grozny Town Prosecutor's Office informed the SRJI that the applicant had to appear in person for questioning and that she should submit documents confirming her family ties with the deceased, Maryam Goygova and Said-Magomed Goygov. The prosecutor refused to divulge information about the investigation to the SRJI, referring to Article 161 of the Code on Criminal Procedure.

34. On 9 July 2003 the SRJI informed the Grozny Town Prosecutor's Office of the applicant's address in Belgium. It asked the prosecutors to forward a request to their Belgian counterparts so that the applicant could be questioned at her new place of residence and granted victim status in the proceedings. This letter was sent again on 17 November 2004, because no reply had come from the Grozny Town Prosecutor's Office.

35. On 16 August 2004 the investigation questioned Marina D., the applicant's sister. On the same day she was granted victim status.

36. The applicant submitted that neither she nor her relatives had been properly informed about the progress of the investigation or about its adjournment and reopening.

37. The applicant referred to Council of Europe documents deploring the lack of progress of investigations into crimes allegedly committed by Russian forces against civilians in Chechnya.

38. Referring to information from the Prosecutor General's Office, the Government submitted that the investigation in criminal case no. 12038 had established that in January and February 2000 a detachment of the federal forces had conducted a counterterrorist operation in the Staropromyslovskiy

district of Grozny. Within the same period several inhabitants of the district had been killed by unknown persons using firearms. The Government informed the Court that on 25 July 2000 the applicant had been questioned as a witness and had given statements about the discovery of her mother's and brother's bodies. Later the applicant had avoided any contact with the law-enforcement bodies. On 17 March 2003 the applicant had been granted victim status in the proceedings, but she had not been notified of this. On 31 March 2005 the Prosecutor General's Office had sent a request to its counterpart in Belgium to find the applicant. In July 2005 the Belgian authorities had responded that they were working to locate the applicant's whereabouts.

39. The Government further informed the Court that at some stage the applicant's sisters Radima G. and Marina D. had been questioned as witnesses and granted victim status in the proceedings. Radima G. had refused to allow the bodies of her mother and brother to be exhumed for forensic examination.

40. After the case had been declared admissible, following a request by the Court, the Government submitted certain documents from the criminal investigation file in case no. 12038, mostly decisions by the prosecutors to adjourn and reopen the proceedings. They are summarised below in Part B. It follows from their submissions that the investigation had been adjourned and reopened, and was still ongoing. It had failed to locate and question the applicant or to identify the culprits.

B. Relevant documents

1. Documents from investigation file no. 12038

41. In the context of the proceedings in *Khashiyev and Akayeva* (cited above, §§ 46-68), the Government submitted a copy of the investigation file in criminal case no. 12038, opened on 3 May 2000 by the Grozny Town Prosecutor's Office into the "mass murder by the '205th brigade' of civilians in the Novaya Katayama settlement in Grozny on 19 January 2000". The investigation was opened under Article 105 (a), (d), (e) and (j) of the Criminal Code following the publication of an article entitled "Freedom or Death" in the *Novaya Gazeta* newspaper on 27 April 2000.

42. Some of the documents related to the discovery on 10 February 2000 of three bodies in a garage near Neftyanaya Street. One body was identified as Magomed Goygov, the applicant's brother. Below is a brief summary of the documents from that file which are relevant to the present case. In addition, in November 2006 the Government submitted about 160 pages of documents from the file, mainly prosecutors' orders relating to the adjournment and reopening of the proceedings and notifications to the victims issued after December 2003.

(a) Witness statements by the applicant and her sister

43. At some time in 2000 the applicant and her sister Marina D. produced statements, addressed to the Nazran Town Prosecutor, about the discovery of the bodies of Maryam Goygova and Magomed Goygov.

44. The applicant stated that on 19 January 2000 she had travelled to Grozny to find out about her mother and brother. There she had met a man from the neighbourhood named Viskhan, who told her that the body of an old woman was lying in a cart at a crossroads nearby. He told her that she had been killed by soldiers from the 205th infantry brigade from Budennovsk, and referred to two soldiers who had told him the same thing – one named Oleg, the other Dima. Together with Viskhan the applicant went to the place indicated by him and found her mother's body in a cart. They took it to Viskhan's home and the applicant returned to Ingushetia. Viskhan had also told her that three men who had accompanied Maryam Goygova had been taken away by the soldiers and probably shot. He identified them as Magomed Goygov and his two neighbours, Khamid Khashiyev and Rizvan Taymeskhanov. On the following day, 21 January 2000, the applicant returned to Grozny with her sister to collect their mother's body. When returning to Ingushetia, they took along a wounded woman, Elena Goncharuk (see *Goncharuk v. Russia*, no. 58643/00), who had been shot by soldiers on 19 January 2000. They took her to the Sunzhenskiy Hospital in Ingushetia. The applicant further recalled that, after the burial of her mother in Nazran, she had returned to Grozny on 24 January 2000 together with Magomed Khashiyev and Movlatkhan Bokova. Together with Viskhan they searched the area surrounding the place where he had last seen the soldiers and the three missing men, but found nothing. On 10 February 2000 the Khashiyevs again went to Grozny and found the three bodies about 50 metres from the place where they had searched on 24 January 2000. They took pictures of the bodies and brought them to Ingushetia. Her brother was buried in Nazran on 11 February 2000.

45. The applicant's sister Marina D. confirmed her statements. She added that on 21 January 2000 they had hired a minivan in Ingushetia to go to Grozny, but were not allowed to enter the city with the vehicle. They had had to walk to the Staropromyslovskiy district and back with the cart. She also stated that on 24 January 2000 the Ministry for Emergency Situations (Emercom) of Ingushetia had given them a lorry to travel to Grozny, but the vehicle had again not been allowed to enter the city. She stated that both times on the road they had on numerous occasions been stopped and checked by the military, who had treated them rudely. After 24 January 2000 the family had searched for Magomed Goygov in detention centres.

(b) Witness statements by the relatives of Khamid Khashiyev and Rizvan Taymeskhanov

46. In their testimonies dated 5 May 2000 Magomed Khashiyev and his sister Movlatkhan Bokova gave details concerning the discovery of their relatives' bodies. Both stated that on 25 January 2000 they had travelled to Grozny with the applicant and met Viskhan, who had told them that their relatives had been taken away by federal soldiers. They also testified about their return to Grozny on 10 February 2000, when they had followed Viskhan's directions and found three bodies, all frozen to the ground and with severe wounds to the head. Magomed Khashiyev had taken photographs of the bodies at the scene and fetched a car. On the same day they had delivered the bodies to Ingushetia, where they were buried the following day, on 11 February 2000.

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

(c) Description of the bodies and forensic expert reports

48. An examination of the bodies of Khamid Khashiyev, Rizvan Taymeskhanov and Magomed Goygov was conducted by an investigator from the Malgobek Town Prosecutor's Office in the municipal morgue on 10 February 2000. The bodies were frozen. In respect of Magomed Goygov the expert noted numerous (at least a dozen) gunshot wounds to the head, body and limbs. The right ear had been cut off. The report stated that the relatives had refused to submit the body for a complete forensic examination. One bullet extracted from the body was handed to the relatives.

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

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

50. On 4 March 2001 an investigator from the Chechnya Prosecutor's Office sent a request to the military prosecutor of military unit no. 20102 (Khankala), asking him to identify the exact locations of the military units at the relevant time, to identify the commanding officers and to retrieve notes referring to operations in the Staropromyslovskiy district. The file seen by the Court contains no reply to that request.

(e) The prosecutors' orders

51. At different stages of the proceedings in criminal case no. 12038 several orders were produced by the Chechnya Prosecutor's Office listing the steps to be taken by the investigators, such as identifying and questioning all the victims and witnesses, and carrying out forensic and ballistics reports. The order of 14 August 2001 listed ten persons whose bodies had been discovered in Novaya Katayama, including the applicant's two relatives. On 16 January 2003 the same prosecutor's office ordered the investigators to establish possible places where other civilians were buried, to identify further witnesses and victims and to identify the military units that could have been responsible for the crimes.

52. In September 2006 the Government submitted additional documents relating to the progress of the proceedings after December 2003. Some of the orders criticised the manner in which the investigation had been conducted. From 2003 to 2006 the prosecutors on several occasions issued a list of tasks to be carried out by the investigation team, including identifying the military units deployed in the Staropromyslovskiy district of Grozny on the relevant dates, identifying the burial places of civilians in the Novaya Katayama settlement, carrying out exhumation orders, identifying witnesses and the victims of the crimes, and obtaining the findings of the expert reports that had been ordered. It is unclear if any of these steps were taken.

53. The investigation file was transferred four times between the Grozny Town Prosecutor's Office and the Chechnya Prosecutor's Office. Between May 2000 and August 2006 the investigation was adjourned and reopened 23 times. The victims were informed of the decisions to adjourn and to reopen the investigation. From August 2004 this information was also forwarded to the applicant's two sisters.

2. Related civil proceedings

54. In 2000 and 2003 Magomed Khashiyev, whose brother and nephew were killed together with the applicant's brother, applied to the domestic courts. First, he obtained a decision certifying the death of his relatives for administrative purposes; then he obtained civil compensation for their deaths. Below are the relevant details of these proceedings, as submitted by the parties in *Khashiyev and Akayeva* (cited above).

(a) Certification of deaths

55. On 5 April 2000 Magomed Khashiyev submitted an application to the Malgobek Town Court in Ingushetia, seeking to have certified the deaths of his brother Khamid Khashiyev, his sister Lidiya Khashiyeva and his two nephews, Rizvan Taymeskhanov and Anzor Taymeskhanov. Mr Khashiyev submitted that his relatives had remained in Grozny during the winter of 1999 to 2000, while he and the rest of the family had gone to Ingushetia to

escape the hostilities. On 17 January 2000 the soldiers of the “205th battalion” of the federal army entered the Staropromyslovskiy district and “committed outrages”. On 19 January 2000 they entered his sister's household and killed his relatives in a brutal fashion, causing numerous firearm and stab wounds. Mr Khashiyev learnt the details of the killings when he attended the funeral of Maryam Goygova. His relatives were buried in Ingushetia. A criminal investigation had been opened and was ongoing. Notification of the deaths was required in order to obtain death certificates from the civil registration office.

56. On 7 April 2000 the Malgobek Town Court in Ingushetia certified the deaths of Khamid Khashiyev, Lidiya Khashiyeva, Rizvan Taymeskhanov and Anzor Taymeskhanov, which had occurred in Grozny, Chechnya, on 19 January 2000. The court based its decision on statements by the applicant and two witnesses. The court noted in the decision that a criminal case had been opened and that an investigation was in progress (there is no evidence that a criminal case had been opened at that time).

(b) Proceedings to obtain damages

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

58. On 26 February 2003 the Nazran District Court in Ingushetia granted the claim in part and awarded Mr Khashiyev compensation for pecuniary and non-pecuniary damage in the amount of 675,000 roubles.

59. The court noted that it was common knowledge that the Staropromyslovskiy district had been under the firm control of the Russian federal forces by the material time, and that this did not need to be proved. At that time only federal soldiers were able to travel about the town in an

APC and to conduct identity checks. That Lidiya Khashiyeva and Anzor Taymeskhanov had been killed during an identity check was corroborated by the fact that their bodies were found in the courtyard of their house with identity documents in their hands. The court further noted that the exact military unit responsible for the killings had not been established by the investigation, which at that time was adjourned. However, all military units were State bodies and therefore compensation for pecuniary damage should be paid by the State.

60. The decision was upheld at final instance by the Ingushetia Supreme Court on 4 April 2003 and executed in 2004.

3. *Other relevant documents*

61. In the context of the proceedings in the *Khashiyev and Akayeva* case (cited above) the applicants submitted a statement by Christopher Mark Milroy, registered medical practitioner, Professor of Forensic Pathology at the University of Sheffield and Consultant Pathologist to the British Home Office. The statement was prepared on the basis of the witness statements and of colour photographs taken by Magomed Khashiyev at the time when the bodies of Khamid Khashiyev, Rizvan Taymeskhanov and Magomed Goygov had been found.

62. The expert concluded: "... the photographs show injuries in keeping with bullets fired from a high velocity rifle. ... High velocity rifles can cause significantly destructive injuries. Those unused to looking at injuries caused by these weapons may mistake the cause of injuries produced by these weapons." He further listed a number of procedural steps normally taken in the examination of the body of a person who has died in suspicious circumstances. In the expert's opinion, these should include an X-ray of the body to identify and recover the projectiles and detailed examination and photographing of the external injuries, "as the pattern of injuries may indicate whether the victims were shot at close range or they had been tortured" (see *Khashiyev and Akayeva*, cited above, §§ 70-71).

II. RELEVANT DOMESTIC LAW

63. Until 1 July 2002 criminal-law matters were governed by the 1960 Code of Criminal Procedure of the Russian Soviet Federative Socialist Republic. From 1 July 2002 the old Code was replaced by the Code of Criminal Procedure of the Russian Federation (CCP).

64. Article 161 of the new CCP establishes the rule of impermissibility of disclosing data from the preliminary investigation. Under paragraph 3 of the Article, information from the investigation file may be divulged only with the permission of a prosecutor or investigator and only in so far as it does not infringe the rights and lawful interests of the participants in the criminal proceedings and does not prejudice the investigation. Divulging

information about the private life of participants in criminal proceedings without their permission is prohibited.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

1. Arguments of the parties

65. The Government requested the Court to declare the application inadmissible as the applicant had failed to exhaust domestic remedies. They submitted that the investigation into the killings was continuing, in accordance with the domestic legislation. The applicant had not applied to a court with a complaint against the actions of the investigating authorities or against other State bodies. The Government also referred to the Constitution and other legal instruments which permitted individuals to appeal to the courts against actions of the administrative bodies which infringed citizens' rights. The applicant had not applied to a court in Chechnya or further afield in the Northern Caucasus with any complaints, and had therefore failed to use the domestic remedies available.

66. The applicant argued that she had no effective remedies to turn to. First, she claimed that in January 2000 there had been no functioning legal institutions in Chechnya. Referring to Council of Europe documents, reports by human-rights groups and other cases brought before the Court, she alleged the existence of an administrative practice of non-investigation of crimes committed by the military and security forces in Chechnya.

67. In any event, the applicant submitted that she had exhausted domestic remedies by applying to the prosecutors. Despite that, the criminal investigation conducted into the complaint had been wholly ineffective. As to the civil-law remedies, they would be inappropriate to deal with complaints of that type and, in any event, would be ineffective in the absence of any conclusions from the criminal investigation.

2. The Court's assessment

68. 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.

69. 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.

70. 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 of establishing their responsibility (see *Khashiyev and Akayeva*, cited above, §§ 119-121, 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.

71. In so far as the Government suggested that the applicant had not complained about the alleged ineffectiveness of the criminal investigation once it had 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

72. The applicant alleged that her mother and brother had been unlawfully killed by agents of the State and that no effective investigation had been carried out into the attack. 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.”

73. 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

74. The applicant alleged that the authorities had failed to conduct an effective investigation into the circumstances of the deaths of her mother and brother, in violation of their 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 measures had never been taken, such as securing the relevant evidence and questioning servicemen who could have been involved. The investigation had been going on for more than six years without producing any tangible results. Despite her requests, she had not been granted victim status in the proceedings. The authorities had systematically failed to inform the applicant or her family of the progress of the investigation and they had been given no information about important procedural steps. The applicant also asked the Court to conclude that the Government had failed in their obligations under Article 38 § 1 (a) of the Convention in that they had not submitted a copy of the entire criminal investigation file to the Court.

75. The Government contended in reply that the investigation was being carried out in accordance with the relevant domestic legislation and Convention standards. They stressed that the applicant had been questioned in July 2000 and in March 2003 had been granted victim status in the proceedings. However, she had moved away from Russia and her whereabouts could not be established. Her sisters, who had been granted victim status in the proceedings, had been regularly informed of the adjournments and reopening of the proceedings. Furthermore, some of the witnesses, such as witnesses "B." and "C." cited in the Human Rights Watch report, could not be identified on account of their refusal to disclose their real names. This was an additional impediment to solving the crime.

2. The Court's assessment

76. 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).

77. In the present case, an investigation was carried out into the murder of the applicant's relatives. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

78. The Court notes from the outset that it has found the investigation of the murders of the inhabitants of the Staropromyslovskiy district, including the applicant's two relatives, to be ineffective and in breach of the requirements of Article 2 of the Convention (see *Khashiyev and Akayeva*, cited above, nos. 57942/00 and 57945/00, §§ 156-166, 24 February 2005). In particular, the Court found in *Khashiyev and Akayeva* that the investigation into such a serious crime had been opened with an unacceptable delay, that once the investigation had started it had not taken the necessary steps to identify the military units that could have been involved, and in particular that servicemen of the two "suspect" units – the 205th brigade stationed in Budennovsk and the special police forces from the North-Western region – had not been questioned properly. The Court also found that the investigation had failed to draw up a comprehensive picture of the events, to identify and question other victims of the crime and witnesses and to inform the victims properly about its progress.

79. The investigation into the murders continued after the Court had given judgment in the case of *Khashiyev and Akayeva* (cited above). The Court will now examine whether the steps taken by the authorities after that judgment could have rectified the initial failures of the investigation. In November 2006 the Government, in response to a request from the Court, submitted an update of the investigation and a number of documents from the case file produced after December 2003, namely the prosecutors' decisions to adjourn and reopen the case, as well as notifications of these steps to the victims, including the applicant's two sisters. The Court's ability to draw conclusions about the adequacy of the investigation in this latter period will be limited to the information contained in these documents.

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

respondent State with its obligations under Article 38 § 1 (a) of the Convention (see *Timurtaş v. Turkey*, no. 23531/94, §§ 66 and 70, ECHR 2000-VI).

81. The Court would further observe that it has found in a number of previous cases that the provisions of Article 161 of the Code of Criminal Procedure, to which the Government referred, do not preclude disclosure of documents from the file on a pending investigation, but rather set out the procedure for and the limits of such disclosure (see, for similar conclusions, *Mikheyev v. Russia*, no. 77617/01, § 104, 26 January 2006).

82. Accordingly, the Court finds that it can draw inferences from the Government's conduct in this regard and presume that the documents made available to it have been selected so as to demonstrate to the maximum extent possible the effectiveness of the investigation in question. In view of the inferences drawn by the Court and the circumstances of the present case, the Court does not find it necessary to draw separate conclusions under Article 38 § 1 (a) of the Convention.

83. The Court notes that the investigation into the deaths was never completed and the individuals responsible were not identified or indicted. Although the obligation under Article 2 to investigate effectively is not an obligation of results, but of means (see *Avşar v. Turkey*, no. 25657/94, § 394, ECHR 2001-VII (extracts)), the Court notes with surprise that the prosecutors' orders submitted by the Government do not show any visible progress in the task of solving the killings of the applicant's two family members over a period of almost three years (see paragraphs 51-53 above). Thus, the prosecutor's order of 20 July 2006 contains a list of tasks for the investigation that is virtually the same as the one contained in the order of 22 January 2003. It does not appear that in the meantime the investigation was able to take any steps towards solving the murders, for example by establishing the exact number of victims in the case, carrying out forensic examinations of the bodies of the deceased, or identifying the type of weapons that had been used. No effort has been made to establish a comprehensive picture of the events in the Staropromyslovskiy district at the relevant time. Most notably, it does not appear that the investigation was able to make any progress in the identification of the military units that had been stationed in the district at the time of the killings and the individuals responsible for the murders.

84. In addition, the Court notes that the decision to grant the applicant victim status was taken only in March 2003, and that one of the applicant's sisters was granted victim status in August 2004, even though both of them had been questioned about their family members' deaths in 2000 (see paragraphs 38, 39, 43 and 44 above). The only information communicated to the victims, it appears, concerned the decisions to adjourn and to reopen the investigation, and these letters did not refer to any progress in solving the crime (see paragraph 53 above).

85. In these circumstances the Court finds that the respondent State has failed in its obligation to conduct an effective, prompt and thorough investigation into the killing of the applicant's mother and brother. 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

86. The applicant argued that there could be no reasonable doubt that State servicemen had been responsible for the killing of her relatives, in breach of Article 2 of the Convention. She relied on numerous documents submitted to the Court in the course of the present case and other cases which supported this allegation. She also submitted that there existed overwhelming and compelling evidence that extrajudicial killings by soldiers had been widespread in Grozny at the beginning of 2000.

87. The Government did not dispute the fact that the applicant's relatives had died. They noted, however, that the identity of the perpetrators had not been established. There was no conclusive evidence to support the applicant's allegations that the State was responsible for the deaths, and no eyewitnesses to the murders had been identified.

2. The Court's assessment

88. It was not disputed by the parties that the applicant's mother and brother had been killed. The Government did not suggest that the exceptions provided for 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 their deaths.

89. 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*, cited above, §§ 98-101). In the light of these principles, the Court will decide whether the deaths of the applicant's relatives can be attributed to the State and whether there has been a violation of Article 2 in this respect.

90. As regards Said-Magomed Goygov, the Court observes that his body was found together with those of two relatives of Magomed Khashiyev, the applicant in the case of *Khashiyev and Akayeva* (cited above). In that judgment the Court found it established that the applicant's two relatives and Magomed Goygov had last been seen alive in the hands of armed persons

and followed by a military vehicle. It also referred to the conclusions of the domestic court, which had found that by 19 January 2000 the Staropromyslovskiy district had been 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 sees no reason to question these conclusions and finds that the applicant's brother was likewise killed on 19 January 2000, together with the two relatives of Magomed Khashiyev, by agents of the State.

91. As to the killing of Maryam Goygova, according to the statement made by the applicant, her body was found, with gunfire and shrapnel wounds, not far from the body of her son, Said-Magomed Goygov. The applicant referred to the statements of three anonymous witnesses, who had said that the applicant's mother, whom her brother and their two neighbours had been trying to take away from Grozny, had been killed at the same time and by the same persons who had killed the three men (see paragraphs 12 and 21 above). The applicant and her sister submitted this information to the prosecutor's office in 2000, with reference to a local resident who had been an eyewitness to the events (see paragraphs 43-45 above). The civil registration office recorded the date of Maryam Goygova's death as 19 January 2000, the same as that of Said-Magomed Goygov (see paragraph 27 above).

92. The Court finds that these factual circumstances 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.

93. 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).

94. 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 State authorities. 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)).

95. The Court has already found that the investigation into the deaths of the applicant's relatives was ineffective (see paragraphs 76-85 above). The 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 her mother and her brother were killed by servicemen during a security operation on 19 January 2000 in the Staropromyslovskiy district, and that the Government have failed to provide any other satisfactory and convincing explanation of the events. Their reference to the absence of conclusions from the criminal investigation, which has already been found to have been ineffective, is not enough to absolve them from their burden of proof under Article 2 of the Convention.

96. On the basis of the above the Court finds it established that the deaths of Maryam Goygova and Said-Magomed Goygov can be attributed to the State. In the absence of any justification 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

97. The applicant alleged that her relatives had been tortured before their deaths. She also submitted that the authorities had failed in their duty to investigate a credible allegation of torture. She relied on Article 3, which provides:

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

98. The applicant alleged that the known circumstances in which her mother and brother had died and the nature of their injuries entailed enough evidence to conclude that they had been subjected to treatment contrary to Article 3. She submitted that acts of torture had been widespread in Grozny at the beginning of 2000. She also contended that the authorities had failed to investigate the ill-treatment.

99. The Government disputed these allegations.

100. As the Court has stated on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies. However, allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt” but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar

unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161 *in fine*).

101. Turning to the present case, the Court notes that it is not disputed that the applicants' relatives were killed. The Court has also found it established that they were killed by servicemen of the State – that is, by persons acting in their official capacity. However, the way in which they died and whether they had been subjected to torture or ill-treatment before their death is not clear.

102. The Court observes that the applicant did not contact the authorities or doctors, nor did she take photographs of her mother's body before burial. She submitted that her mother's body had shrapnel and firearm wounds (see paragraph 14 above). The documents relating to the description of the body of Magomed Goygov refer to firearm wounds and contain no reference to injuries that could have been inflicted as a result of proscribed ill-treatment. An additional statement by a pathologist prepared on the basis of the photographs taken before the burial and a description of the bodies also refers only to injuries caused by bullets fired from a high-velocity rifle (see paragraphs 48 and 61 above).

103. In these circumstances, the Court is unable to find beyond all reasonable doubt that Maryam Goygova or Said-Magomed Goygov were subjected to ill-treatment. It accordingly cannot conclude that there has been a violation of Article 3 on this account.

104. In the absence of any reliable information about the alleged ill-treatment or about the manner in which the applicant's relatives died, the Court does not find that a separate examination is necessary in the present case under the procedural aspect of Article 3.

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

105. The applicant alleged a violation of Article 5 in respect of her relatives' unlawful detention prior to their deaths. Article 5 contains guarantees related to the liberty and security of person from arbitrary arrest and detention.

106. The Court finds that the applicant's complaint under Article 5 concerns essentially the same events as those examined above under Article 2. In these circumstances, no separate issues arise under Article 5 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

107. The applicant stated that she had been deprived of access to a court, contrary to the provisions of Article 6 § 1 of the Convention, the relevant parts of which provide:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

108. The applicant alleged that she had been denied effective access to a court because a civil claim for damages would have depended entirely on the outcome of the criminal investigation. In the absence of any findings by the investigators, she had effectively been unable to apply to a court.

109. The Government disputed this allegation.

110. The Court finds that the applicant's complaint under Article 6 concerns essentially the same issues as those discussed under the procedural aspect of Article 2 (above) and under Article 13 (below). It should also be noted that the applicant submitted no information to prove her alleged intention to apply to a domestic court to claim compensation. In these circumstances, the Court finds that no separate issues arise under Article 6 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

111. The applicant complained that she had had no effective remedy in respect of the violations alleged. 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.”

112. The Government stated that the applicant had had access to effective domestic remedies and could have appealed to a court in respect of the results of the investigation. She and her two sisters had been granted victim status and had had every opportunity to participate effectively in the proceedings.

113. 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).

114. In view of the Court's above findings 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.

115. It follows that in circumstances where, as here, the criminal investigation into the deaths 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.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

116. 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*

117. The applicant claimed, on behalf of Said-Magomed Goygov's wife Madina Gorchkhanova and his son Dzhamaldin Goygov (born in 1998), compensation for the loss of earnings of their breadwinner. She argued that her brother had owned half a bee farm and had earned about 2,000 United States dollars per year. She assumed that he would continue to provide for his family financially, but left the amount of compensation to be determined by the Court.

118. The Government regarded these claims as based on supposition and unfounded.

119. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention, and that this may, in an appropriate case, include compensation in respect of loss of earnings (see, among other authorities, *Çakıcı v. Turkey* [GC], no. 23657/94, ECHR 1999-IV). As to the claim brought by the applicant on behalf of her brother's family in respect of Said-Magomed Goygov's loss of future earnings, it is not claimed that the applicant herself

was in any way dependent on such earnings. In this connection, the Court notes that the applicant has not shown that she suffered the pecuniary loss alleged. The Court does not find it appropriate in the circumstances of this case to make any award under this head.

2. Non-pecuniary damage

120. The applicant sought an award for non-pecuniary damage for the suffering she had endured as a result of the loss of her elderly mother and her brother, the failure to carry out an effective investigation into the killings and the indifference shown by the authorities towards her grief. She also stressed that she had suffered immense frustration and helplessness as a result of her inability to obtain any information about the investigation into her family members' deaths. She left the amount to be determined by the Court.

121. The Government stated that if the Court were to find a violation, a symbolic amount would be equitable in respect of the non-pecuniary damage allegedly caused to the applicant.

122. The Court has found violations of Articles 2 and 13 of the Convention on account of the killings of the applicant's relatives and the deficient domestic investigation. The Court considers that an award should be made in respect of non-pecuniary damage, bearing in mind the close family ties between the applicant and the victims of the killings and the seriousness of the damage sustained, which cannot be compensated for solely by the findings of violations. Acting on an equitable basis, the Court awards the applicant 40,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

123. The applicant was represented by the SRJI. She submitted a schedule of costs and expenses that included research and interviews in Ingushetia and Moscow, at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic authorities, at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff. The aggregate claim in respect of costs and expenses relating to the applicant's legal representation amounted to EUR 10,221, which comprised:

- (a) EUR 450 for the initial research and collection of documents;
- (b) EUR 500 for the preparation of the initial application;
- (c) EUR 1,250 for the preparation of additional submissions in 2002;
- (d) EUR 3,500 for the preparation of the applicant's reply to the Government's memorandum;
- (e) EUR 750 in connection with the preparation of additional correspondence with the Court;

(f) EUR 1,250 for the preparation of the applicant's additional observations on the merits;

(g) EUR 1,000 for the preparation and carrying out of the applicant's correspondence with the national authorities;

(h) EUR 770 for translation costs, as certified by invoices; and

(i) EUR 142 for postal expenses.

124. The applicant also claimed EUR 609 for administrative costs (corresponding to 7% of the legal fees).

125. The Government did not dispute the details of the calculations submitted by the applicant, but contended that the sum claimed was excessive for a non-profit organisation such as the SRJI. They also objected to the representatives' request that the award for legal representation be transferred directly into their account in the Netherlands.

126. 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, § 220). Furthermore, it 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-...).

127. The Court remarks that, under a contract entered into by the applicant in August 2006, she agreed to pay the SRJI's representative the costs and expenses incurred for representation before the Court, subject to delivery by the Court of a final judgment concerning the present application and to payment by the Russian Federation of the legal costs should the Court make an award under that head. Having regard to the rates for the work of the SRJI lawyers and senior staff and to the administrative costs, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representatives.

128. Further, it has to be established whether the costs and expenses incurred for legal representation were necessary. The Court observes that this case was relatively complex and required a certain amount of research and preparation. It notes, however, that the case involved relatively little documentary evidence, in view of the Government's limited submission of information from the investigation file, and that the applicant's correspondence with the domestic authorities has been succinct. The Court thus doubts that the work in these areas was necessary to the extent claimed by the representative.

129. Having regard to the details of the claims submitted by the applicant, the Court awards the amount of EUR 8,000, less EUR 701 received by way of legal aid from the Council of Europe, together with any

value-added tax that may be chargeable, to be paid into the representative's bank account in the Netherlands as identified by the applicant.

C. Default interest

130. 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 is no need to examine separately the applicant's complaints under Article 38 § 1 (a) of the Convention;
3. *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 killing of the applicant's mother and brother;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of the killing of Maryam Goygova and Said-Magomed Goygov;
5. *Holds* that there has been no violation of Article 3 of the Convention in respect of the failure to protect the applicant's two family members from torture;
6. *Holds* that no other separate issues arise under Article 3 of the Convention;
7. *Holds* that no separate issues arise under Article 5 of the Convention;
8. *Holds* that no separate issues arise under Article 6 of the Convention;
9. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
10. *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 40,000 (forty thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 7,299 (seven thousand two hundred and ninety-nine euros) for costs and expenses, to be paid into the representatives' bank account in the Netherlands;
 - (iii) any tax that may be chargeable on the above amounts;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

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

Søren NIELSEN
Registrar

Christos ROZAKIS
President