



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

FIRST SECTION

CASE OF TANGIYEVA v. RUSSIA

(Application no. 57935/00)

JUDGMENT

STRASBOURG

29 November 2007

FINAL

07/07/2008

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 Tangiyeva v. Russia,

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

Mr L. LOUCAIDES, *President*,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr A. WAMPACH, *Deputy Section Registrar*,

Having deliberated in private on 8 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 57935/00) 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 Zaynap Abdul-Vagapovna Tangiyeva (“the applicant”), on 29 April 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 her three relatives had been killed in Grozny in January 2000 by State servicemen. She referred to 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 1958 and was a resident of Grozny, Chechnya. She currently resides in Ingushetia.

7. The submissions of the parties on 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 relevant materials submitted to the Court is contained in Part B.

A. The submissions of the parties

1. The events of January 2000

8. The applicant and her family lived in the Staropromyslovskiy district of Grozny in their own house at 166 Derzhavina Street.

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 submitted that most residents of the district had left for safer areas. Following heavy fighting, as of December 1999 the Russian forces started to regain control over the city starting from the north, and by the end of January 2000 the central parts of the city were finally taken.

10. In the winter of 1999-2000 the applicant, her father Abdul-Vagap Tangiyev (born in 1926), her mother Khirzhan Ibragimovna Gadaborsheva (born in 1932), her uncle Ismail Ibragimovich Gadaborshev (born in 1924) and her sister Khanifa Gazdiyeva remained in their house in Grozny. In December 1999 they were joined there by five neighbours, all women, because their house had a large cellar where they could take shelter during shelling.

11. The applicant, her sister and a neighbour submitted written accounts of the events of December 1999 and January 2000. According to them, the district had first come under heavy bombardment on 22 November 1999, when one of the women who had been staying with them in the cellar had been killed. On the same day the applicant's mother had been slightly wounded by shrapnel. After that the shelling intensified, and the applicant and her family were unable to leave the town.

12. After 23 December 1999 the shelling became very intense, and the persons who had been staying in their cellar decided to move somewhere safer. On 26 December 1999 most of them moved to a nearby five-storey

building with a larger cellar in Pugacheva Street. The applicant's father, uncle and one neighbour remained in their house to look after the property and cattle. In the evening of the same day the applicant heard the noise of tank engines in the streets. She said that they had been relieved because they had expected an end to the shelling.

13. In the morning of 27 December 1999 the applicant's uncle met a group of Russian servicemen on the way from his house to the Pugacheva Street and told them that a group of forty to forty-five civilians had taken refuge in the cellar of that house. The servicemen then came into the cellar and checked the identity documents of the men, most of whom were about 50 years old. The soldiers then took up battle positions in the neighbourhood.

14. In the morning of 28 December 1999 the applicant noted that their house in Derzhavina Street was partially destroyed. When she and her mother arrived there, they found her father and a neighbour, who had remained in the cellar throughout the day upon orders of the soldiers who had been stationed around the house.

15. On 28 and 29 December 1999 servicemen came to the cellar of the apartment block at Pugacheva Street where the applicant was staying and ordered the men, under threat, to help them collect six bodies of servicemen from the street.

16. On 1 January 2000 a detachment of the OMON (special police forces) arrived in the district and took up position in a former hostel building near Pugacheva Street. On the same day servicemen from that unit took away three men from the cellar. The applicant later learned that they had been shot.

17. Each day from 3-10 January 2000 the applicant went to check up on her relatives in the house at Derzhavina Street. On several occasions there they met an officer who said his name was Tima and who was the commander of a tank crew stationed at 164 Koltsova Street. The officer was often drunk and aggressive, and had once threatened to shoot them all, but the applicant's father had managed to calm him down. Tima said that he was from Ossetia and that he had fought in Dagestan before. The applicant submitted that she could have identified him or composed a sketch of him. She submitted that the situation had been very tense, because the soldiers had regularly visited both houses for identity checks, ordered the residents to help them collect dead bodies under threat, selected men for "exchange" with the fighters, and so on. The applicant also saw the houses in the neighbourhood being systematically set on fire.

18. In the evening of 10 January 2000 the applicant, her family and some neighbours finally decided to leave Grozny on the following day, until the situation grew calmer. The applicant and her sister went to get water from the hostel where the OMON troops were stationed and warned an officer there that old people were staying in the house at Derzhavina Street,

and that they should not shell it or shoot at them when they were carrying water. She then returned to the cellar of the house at Pugacheva Street, while her mother, father, uncle and a neighbour, Valentina Fotiyeva, stayed in their family home at Derzhavina Street.

19. In the morning of 11 January 2000 the applicant, her sister and three other women went to the house at Derzhavina Street to pick up her uncle and to say good-bye to her parents. They found the gates closed and smoke coming out of the house. They received no reply to their calls, and forced the doors open. The cellar was burning and they were unable to access it. In the kitchen they found the applicant's father's body and the body of Valentina Fotiyeva, both with gunshot wounds. The documents, money and valuables were intact. The applicant and her sister took the two bodies out of the burning house, but did not have time to extinguish the flames or to bury them because they were afraid that the killers would come back. They ran to the house in Pugacheva Street and related what had happened. A neighbour told them to leave immediately and promised to take care of the burials. The applicant and her sister took only their personal documents with them and walked several kilometres to the roadblock in Sobachevka, where they took a bus to Ingushetia.

20. On the following day, 12 January 2000, the applicant returned to Grozny with two cars, in order to collect and bury the bodies. At one of the military roadblocks on the way they picked up three servicemen as an escort for security. They also met by chance their neighbour, who explained where he had buried the applicant's father's body. When they arrived at 166 Derzhavina Street, the house was completely burned down. They could not go down to the cellar, because it was still smouldering. They dug up the applicant's father's body and took it away for burial in the village of Chermen in North Ossetia.

21. One month later relatives of Valentina Fotieyeva collected her body and buried it in a cemetery in Grozny.

22. Later, on 6 March 2000, the charred remains of the applicant's mother and uncle were extracted from the cellar by officials of the Russian Ministry of Emergencies (Emercom). Personal belongings and bullets were found near the bodies. The applicant's family buried them at a village cemetery in Ingushetia.

23. In addition to her own statements and three witness statements, the applicant submitted drawings of the neighbourhood and of their house at 166 Derzhavina Street, with indications of the places referred to and the locations of the bodies of her relatives. She also submitted photographs of the ruins of their house and of the cellar in Pugacheva Street.

2. Subsequent events and investigation into the killings

24. The applicant did not apply to any authorities or contact a medical doctor after the incident. However, her story was related in a number of

press articles and NGO reports, copies of which the applicant submitted to the Court.

25. On 26 January 2000 the *Literaturnaya Gazeta* newspaper in the article “Welcome to Hell! Interviews with Persons Who Escaped from Besieged Grozny” reported the story of the killing of the applicant’s relatives, based on an interview with her.

26. In February 2000 Human Rights Watch issued a report entitled “Civilian Killings in Staropromyslovskiy District of Grozny” in which it accused the Russian forces of deliberately murdering at least thirty-eight civilians between late December and mid-January. Human Rights Watch interviewed survivors, eyewitnesses and relatives of the dead. The report contains information about the deaths of Abdul-Vagap Tangiyev, Khirzhan Gadaborsheva, Ismail Gadaborshev and Valentina Fotiyeva, based on interviews with the applicant and another witness in Ingushetia.

27. Several human rights NGOs assisted the applicant and addressed the law-enforcement authorities in relation to the events in the Staropromyslovskiy district of Grozny in January 2000, where several dozen local residents had allegedly been executed by unidentified military units.

28. On 10 February 2000 Human Rights Watch wrote to the Russian authorities, including the President, the Prosecutor General and the Minister of Defence with a request that they investigate credible allegations of the mass murder of civilians in the Staropromyslovskiy district.

29. On 3 May 2000 the applicant was questioned by a prosecutor in the Staropromyslovskiy District Prosecutor’s Office. The applicant submitted that the investigator had asked her questions about the killings, to which the applicant herself was not a witness. When she had stated that only the Russian servicemen stationed around the house could have committed the murders, and had spoken of their previous visits and threats, the investigator had told her that there were no direct witnesses to the murders, and that she could be held responsible for false accusations. The applicant had suggested that officer Tima could be responsible for the killings, and the investigator had told her that he had died. After that the applicant had been convinced that the investigation would not be effective and did not turn to any other official body.

30. She was called for questioning once again, as a witness, on 31 May 2000, but it appears that she failed to attend.

31. It appears that no death certificates were ever issued in respect of the applicant’s relatives. The applicant’s cousin, the son of Ismail Gadaborshev, submitted that he had had difficulties in obtaining a death certificate for his father and for other relatives.

32. The applicant’s representatives, NGO Memorial, asked prosecutors at various levels on several occasions to submit information about the investigation of the killings of civilians in the Staropromyslovskiy district.

In response, they received conflicting information with references to different criminal case numbers. On several occasions they were informed that their requests had been forwarded to different prosecutors' services for processing.

33. On 19 June and 18 July 2002 the Chechnya Prosecutor's Office informed Memorial that on 5 March 2000 criminal case no. 12011 had been opened into the murders committed in Grozny on 10 January 2000 and that it had been transferred for further investigation to the Northern Caucasus Department of the Prosecutor General's Office.

34. However, on 22 August 2002 the Northern Caucasus Department of the Prosecutor General's Office forwarded Memorial's request for information to the Chechnya Prosecutor and asked him to issue an update of the investigation of criminal case no. 12011.

35. On 17 February 2004 the applicant wrote to the Staropromyslovskiy District Prosecutor asking for news about the investigation into her relatives' murder. She did not receive a reply.

36. On 28 May 2004 the Staropromyslovskiy District Prosecutor's Office granted victim status to the applicant's brother Shamsudin Tangiyev in criminal case no. 33024 concerning the murder of his parents and uncle in Grozny on 11 January 2000.

3. Investigation into the murders – information from the Government

37. In March 2005 the application was communicated to the Russian Government, who were requested at that time to submit a copy of investigation file no. 33024. In their memorials submitted in reply the Government gave some details of the investigation, without specifying the dates of the investigative measures. They did not submit any copies of the documents to which they referred. The Government stated that the investigation was pending and that the disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure because the file contained information of a military nature and personal data concerning the witnesses. At the same time, the Government suggested that a Court delegation could have access to the file at the place where the preliminary investigation was being conducted with the exception of "the documents [disclosing military information and personal data of the witnesses], and without the right to make copies of the case file and transmit it to others".

38. In May 2006 the Court declared the application admissible and reiterated its request for the documents. In response, the Government submitted an update of the investigation and several documents from the criminal investigation file (see Part B below). They did not submit any of the witness statements or other important procedural documents, such as descriptions of the sites or results of the ballistic expert reports.

39. Referring to the information from the Prosecutor General's Office, the Government submitted in their memorials that the investigation had

established that between January and February 2000 detachments of the federal forces had conducted a counterterrorist operation in the Staropromyslovskiy district of Grozny. Within the same period several inhabitants of the district, including the applicant's relatives, had been killed by unknown persons.

40. The Government submitted that a number of investigative measures had been carried out by the prosecutors. On 17 April 2004 they inspected the Tangiyevs' house. On 28 May 2004 the applicant's brother Shamsudin Tangiyev was questioned and granted victim status in the proceedings. On 5 May 2004 the applicant, her sister and two relatives were also questioned and granted victim status in the proceedings. On the same day the investigating officers recovered from the applicant two cartridges she had collected near the body of her father. A ballistic examination was carried out and concluded that they were the type of ammunition used for a 5.45 mm calibre automatic rifle and could be used to identify the firearm used.

41. The Government submitted that the applicant and her relatives had refused to allow the bodies of their relatives to be exhumed for forensic tests to be carried out. They had also refused to identify their places of burial, which made it impossible to establish the cause of their deaths.

42. The Government further informed the Court that between April and July 2004 the investigating officers had questioned more than twenty neighbours and acquaintances of the Tangiyevs, who had stated that they had no information about the perpetrators of the killings. One witness stated that the Staropromyslovskiy district had been the scene of heavy fighting between the federal forces and the illegal armed groups. Another witness stated that the applicant's father had had a dispute with the members of the illegal armed groups. The investigators failed to identify the relatives and the place of burial of Valentina Fotiyeva, the woman who had been killed in the Tangiyevs' house.

43. The investigators looked into the possibility that the killings could have been committed by the servicemen, but found no information to support it. According to the information from the Northern Caucasus Military Circuit, between January and February 2000 the detachments of the federal forces in the Staropromyslovskiy district had been subjected to numerous attacks by illegal armed groups, who could be implicated in the killings. On 3 June 2005 a military prosecutor questioned the commander of one of the military units which had taken part in the counterterrorist operation in Grozny. He stated that he had not been aware of the applicant's relatives' killings. The prosecutors continued to carry out investigative measures with the participation of the servicemen.

44. According to the Government, the victims had been systematically informed of the adjournments and reopening of the case. The investigation was pending with the Staropromyslovskiy District Prosecutor's Office and was under the special supervision of the Prosecutor General's Office.

B. Documents submitted by the parties

1. Documents submitted by the applicant

45. In November 2004 the applicant submitted additional documentary evidence in support of her allegations. In addition to her own detailed statements of facts, the applicant submitted three witness statements.

46. The applicant's sister Khanifa Gazdiyeva stated that on 10 January 2000 they had decided to leave Grozny on the following day because of constant harassment by soldiers. In the morning of 11 January 2000 the witness, along with the applicant and two women named Galina and Birlant M., went to collect her parents and uncle from their house at Derzhavina Street. She then described how they had discovered the bodies of her father and of Valentina, both with gunshot wounds to the head. The house was turned upside down and there were a lot of bullet holes. Some of the furniture was smouldering, the cellar door was closed and smoke was coming out of it. The women took two bodies out of the house but could not extinguish the flames in the cellar. They then left the bodies with the neighbour out of fear that the soldiers might return and kill them as witnesses, and left Grozny on the same day. They buried their father's body on 12 January 2000. On 6 March 2000 the remains of their mother and uncle were removed with the assistance of Emercom and buried in Ingushetia.

47. The applicant's cousin, Magomet Gadaborshev, testified about the death of his father, the applicant's uncle. The witness himself was in Ingushetia at the relevant time and learnt of his father's death from the applicant and other relatives.

48. The applicant's neighbour in Grozny, "Galina P.", testified that she had been with the applicant and her sister on 11 January 2000 when they had found their parents' and uncle's bodies in the house at Derzhavina Street. The witness submitted that the Chechen fighters ("*boyeviki*") had left the district by mid-December, and that before that they had caused no harm to the residents, and had sometimes even helped them. From 25 December 1999 the Russian servicemen started to enter the Staropromyslovskiy district. Some of the soldiers helped them and gave them food. Others asked them, sometimes under threat, to help them collect the dead bodies of servicemen, because the "fighters" would not shoot at civilians. She corroborated the relatives' statements about the discovery of the bodies on 11 January 2000.

49. In addition to the documents submitted by the applicant, in the proceedings in the case of, *Makhauri v. Russia* (application no. 58701/00), 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) opened by military investigators in relation to an attack on Mrs Makhauri in January

2000 in the Staropromyslovskiy district. The file also contained a witness statement by Galina P. (born in 1937), made during the investigation in August 2000. On the basis of this information, in 2000 the military investigators requested the Grozny Town Prosecutor's Office to give them information about the murder of the three members of the Tangiyev family and the woman named Valentina. It appears that no reply was received.

50. Galina P. stated to the military investigators that in winter 1999-2000 she had remained in Grozny. She moved in to the Tangiyevs' house at Derzhavina Street, where nine people had stayed in the cellar, and remained there until 24 December 1999. Then they 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 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 visited their house, where four persons had been staying: Abdul-Vagap Tangiyev, his wife Khirzhan Gadaborsheva, his brother Ismail Gadaborshev and an elderly woman, "Valya". They found the bodies of Mr Tangiyev and Valya in the house with gunshot wounds, while the cellar was closed 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, on 10 January 2000, the witness left for Ingushetia.

2. Documents from the criminal investigation file

51. In September 2006 the Government submitted about seventy pages of documents from the file of the criminal investigation carried out into the murder of the applicant's parents and uncle. Those documents include the prosecutors' decisions to open, transfer, adjourn and reopen the investigation, and to grant victim status to the applicant and her brother. They can be summarised as follows.

52. On 3 May 2000, following the publication of "Freedom or Death" in the *Novaya Gazeta* newspaper on 27 April 2000, the Grozny Town Prosecutor's Office opened criminal investigation file no. 12038 under Article 105 part 2 of the Criminal Code (murder of two or more persons in aggravating circumstances) "concerning mass murder by the '205th brigade' of members of the civilian population in the Katayama settlement in Grozny on 19 January 2000". In connection with these proceedings the applicant and her brother were questioned in May and June 2000.

53. On 14 August 2003 an investigator of the Grozny Town Prosecutor's Office decided that the killing of four persons at 166 Derzhavina Street had constituted a separate episode and forwarded the relevant part of the file to the Staropromyslovskiy District Prosecutor for further investigation.

54. On 20 August 2003 the Staropromyslovskiy District Prosecutor's Office refused to carry out an investigation under Article 24 part 1 paragraph 2 of the Code of Criminal Procedure – due to the absence of information indicating that the deaths had occurred as a result of criminal actions. The investigator stated that the information about the circumstances of the applicant's relatives' deaths had been incomplete. Turning to the applicant's statement, he concluded that the deaths and the fire in the house had most probably been a result of shelling, because at the relevant time the district had been the scene of heavy fighting. In the absence of more reliable information about the reasons and circumstances of the deaths, the investigation was closed.

55. On 2 April 2004 the Chechnya Prosecutor's Office quashed that decision. On 16 April 2004 the Staropromyslovskiy District Prosecutor's Office opened criminal investigation file no. 33024 under Article 105 part 2 of the Criminal Code into the applicant's relatives' murder.

56. In May 2004 the applicant's brother, and in May 2005 the applicant, were granted victim status in the proceedings.

57. At different stages of the proceedings several orders were issued by the supervising prosecutors enumerating the steps to be taken by the investigators. On 26 August 2004 a prosecutor from the Staropromyslovskiy District Prosecutor's Office ordered, among other things, that a plan of action be drawn up, that steps be taken to locate the places of burial and to carry out exhumations and forensic tests, that the bullets and cartridges from the crime scene be collected and sent for examination by a ballistic expert, that more personal information about the victims be collected, including the identification of the relatives of Valentina Fotiyeva. Similar orders were issued in October 2004, April and December 2005.

58. Between April 2004 and August 2006 the investigation was adjourned and reopened seven times. The latest document in the case-file reviewed by the Court is dated 14 August 2006. The prosecutor of the Staropromyslovskiy District Prosecutor's Office resumed the investigation and again ordered the collection of missing information about the victims, the identification and questioning of other possible witnesses to the crime, including Galina P., and the implementation of other steps to identify the perpetrators of the killings.

II. RELEVANT DOMESTIC LAW

59. 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.

60. Article 161 of the new Code of Criminal Procedure 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

61. The Government requested the Court to declare the case 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 in Chechnya or further afield in the Northern Caucasus with a complaint against the actions of the investigating authorities or against any other allegedly unlawful actions of State officials. She had therefore failed to use the domestic remedies available.

62. The applicant disagreed with the Government's objection. She argued that the criminal investigation was utterly ineffective in her case. She further argued that the civil remedies referred to by the Government could not establish the identity of the perpetrators of the crime in the absence of conclusions from the criminal investigation. She asked the Court to dismiss the Government's preliminary objection.

2. The Court's assessment

63. 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. The Court has already found in a number of similar cases 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

(see *Estamirov and Others v. Russia*, no. 60272/00, § 73-74, 12 October 2006).

64. As regards a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, 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 v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005, and *Estamirov and Others*, cited above, § 77). 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.

65. As regards criminal-law remedies, the Court observes that an investigation into the murders has been pending since May 2000. The applicant and the Government are in disagreement as to the effectiveness of this investigation.

66. 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. THE COURT'S ASSESEMENT OF THE EVIDENCE AND ESTABLISHMENT OF FACTS

A. Arguments of the parties

67. The applicant alleged that her relatives had been unlawfully killed by agents of the State and that the authorities had failed to carry out an effective and adequate investigation into the circumstances of their deaths. She invited the Court to draw inferences as to the well-foundedness of her factual allegations from the Government's failure to provide the documents requested from them.

68. The Government referred to the absence of conclusions from the pending investigations and denied the State's responsibility for the killing of the applicant's relatives.

B. General principles

69. Before proceeding to assess the evidence, the Court reiterates 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 *Tanrikulu v. Turkey* [GC], no. 23763/94, § 70, ECHR 1999–IV). In cases in which there are conflicting accounts of the events, the Court is inevitably confronted when establishing the facts with the same difficulties as those faced by any first-instance court. 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 a Government's part to submit such information which is in their hands without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations, but 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, and *Taniş and Others v. Turkey*, no. 65899/01, § 160, ECHR 2005–VIII).

70. The Court relies on a number of principles that have been developed in its case-law when it is faced with the task of establishing facts on which the parties disagree. As to the facts in dispute, the Court recalls its jurisprudence confirming the standard of proof “beyond reasonable doubt” in its assessment of evidence (see *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001–VII (extracts)). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (see *Taniş and Others*, cited above, § 160).

71. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Articles 2 and 3 of the Convention the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, the judgments in *Ribitsch v. Austria*, 4 December 1995, Series A no. 336, p.24, § 32; and *Avşar*, cited above, § 283) even if certain domestic proceedings and investigations have already taken place.

72. Finally, when there have been criminal proceedings in the domestic courts concerning those same allegations, it must be borne in mind that criminal-law liability is distinct from international-law responsibility under the Convention. The Court's competence is confined to the latter. Responsibility under the Convention is based on its own provisions which are to be interpreted and applied on the basis of the objectives of the

Convention and in light of the relevant principles of international law. The responsibility of a State under the Convention, arising for the acts of its organs, agents and servants, is not to be confused with the domestic legal issues of individual criminal responsibility under examination in the national criminal courts. The Court is not concerned with reaching any findings as to guilt or innocence in that sense (see *Avşar*, cited above, § 284).

C. Article 38 § 1(a) and consequent inferences drawn by the Court

73. The applicant alleged that her relatives had been killed by servicemen. In support of her allegations she referred to her own statement and the statements of her sister and a neighbour confirming that at the relevant time servicemen of the Russian army and police (OMON) had been present in the Staropromyslovskiy district and the information about their involvement in the killings of civilians. She also argued that the Government's failure to submit the documents requested by the Court, namely the entire criminal investigation file, disclosed a failure to comply with their obligations under Articles 34 and 38 § 1 (a) of the Convention.

74. In view of these statements, the Court communicated the applicant's complaints to the Russian Government and asked them to produce documents from the criminal investigation file opened into the killings of the applicant's relatives. This request was reiterated both before and after the application was declared admissible, because the evidence contained in that file was regarded by the Court as crucial for the establishment of the facts in the present case (see paragraphs 37-38 above).

75. In their submissions the Government did not deny that Abdul-Vagap Tangiyev, Khidzhan Gadaborsheva and Ismail Gadaborshev had been killed on the night of 10-11 January 2000 in Grozny. However, they argued that the exact reasons and circumstances of their deaths had not been elucidated. They refused to disclose most of the documents of substance from the criminal investigation file, invoking Article 161 of the Code of Criminal Procedure which, according to them, precluded the submission of these documents.

76. The Court notes that the Government did not request the application of Rule 33 § 2 of the Rules of Court, which permits a restriction on the principle of the public character of the documents deposited with the Court for legitimate purposes, such as the protection of national security and the private life of the parties, as well as the interests of justice. The Court further remarks that it has already found that the provisions of Article 161 of the Code of Criminal Procedure do not preclude disclosure of the documents from a pending investigation file, but rather set out a procedure for and limits to such disclosure (see, for similar conclusions, *Mikheyev v. Russia*, no. 77617/01, § 104, 26 January 2006). For these reasons the

Court considers the Government's explanations concerning the disclosure of the case file insufficient to justify the withholding of the key information requested by the Court.

77. In view of this and bearing in mind the principles cited above, the Court finds that it can draw inferences from the Government's conduct in this respect. Furthermore, and referring to the importance of a respondent Government's cooperation in Convention proceedings, the Court notes that there has been a breach of the obligations laid down in Article 38 § 1(a) of the Convention to furnish all necessary facilities to the Court in its task of establishing the facts.

78. As to the applicant's claim that the Government's failure to submit the documents from the investigation file also constituted a breach of their obligations under Article 34 of the Convention, in view of the above finding as to Article 38 § 1(a), the Court finds that no separate issues arise under Article 34.

D. The Court's evaluation of the facts

79. The Court notes that is undisputed by the parties that the applicant's relatives had died on the dates indicated by her and that they had been victims of unlawful use of force. It remains to be decided if Government agents may be held responsible for their deaths.

80. The applicant alleged that the killings of her relatives were directly linked to the other murders which had occurred in the Staropromyslovskiy district in January 2000. She argued that the servicemen of the federal forces had conducted "summary executions" of the residents and that her relatives' killings followed that pattern. She referred to the Court's conclusions in *Khashiyev and Akayeva v. Russia*, where the Court had found it established that the Russian forces had been in control of the district at the time and that they had been responsible for the deaths of the applicants' relatives on 19 and 20 January 2000 (see *Khashiyev and Akayeva*, cited above, §§ 142-45).

81. The Court has already noted the difficulties for an applicant to obtain the necessary evidence in support of his or her allegations which is in the hands of the respondent Government in cases where the Government fail to submit relevant documentation. Where the applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions for lack of such documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicants, or to provide a satisfactory and convincing explanation of how the events in question occurred. The burden of proof is thus shifted to the Government and if it fails in its arguments, issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May

2005; *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-... (extracts)).

82. The Court has already noted above that it was unable to benefit from the results of the domestic investigation due to the Government's failure to disclose documents from the file. It also found that it could draw inferences from the Government's conduct in respect of the investigation documents. The Court is satisfied that the applicant made a *prima facie* case that her relatives had been killed by the servicemen on the night of 10-11 January 2000 and that the Government failed to provide any other satisfactory and convincing explanation of the events.

83. In such circumstances, the Court finds it established that the applicant's relatives' deaths can be attributed to the State.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

84. The applicant alleged that her relatives had been unlawfully killed by agents of the State and that the authorities had failed to carry out an effective and adequate investigation into the circumstances of their deaths. She relied on Article 2 of the Convention, which provides:

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

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

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

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

A. The alleged inadequacy of the investigation

1. *Arguments of the parties*

86. The applicant maintained that the respondent Government had failed to conduct an effective and thorough investigation into her relatives' deaths. The investigation was slow and the necessary steps to secure the relevant evidence and identify the perpetrators of the crime were not being taken.

The applicant had not been promptly granted victim status in the proceedings and had not been properly informed of their progress.

87. The Government disputed the allegation that there were failures in the investigation. They pointed to the difficulties associated with investigative work in Chechnya. The Government stressed that the applicant and her brother, who had been granted victim status in the criminal proceedings, had repeatedly objected to the exhumation of the bodies and forensic testing, thus hindering the investigation process.

2. The Court's assessment

88. 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 recent summary, see *Bazorkina v. Russia*, no. 69481/01, §§ 117-119, 27 July 2006).

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

90. The Court notes that the authorities were aware of the crime by at least May 2000, when a criminal investigation into the killings committed in the Staropromyslovskiy district was opened by the Grozny Town Prosecutor's Office. On 3 May 2000, within the scope of this investigation the applicant, and later her brother, were questioned and confirmed information about the finding of their relatives' bodies and their burial. However, it does not appear that any other steps had been taken at that time in order to solve the murders. More than three years later, in August 2003, the documents relating to the murders of the applicant's family members was transferred to the District Prosecutor's Office with an instruction to carry out a separate investigation. However, on 20 August 2003 the investigator of that office took the view that no crime had been committed, referring to the possibility that the persons had died as a result of shelling. This decision was taken without any other additional investigative steps aimed at elucidating the circumstances of the deaths having been taken.

91. The Court notes that even the most basic procedural steps in the investigation were taken after April 2004, when the case had been communicated to the respondent Government, and more than four years after the events in question. The measures taken after April 2004 included such crucial steps as the questioning of other witnesses, inspection of the crime scene, attempts to identify the military units that could have been involved in the murders and the carrying out of a ballistic expert report. It is obvious that these measures, if they were to produce any meaningful results,

should have been taken immediately after the crime was reported to the authorities, and certainly as soon as the investigation had commenced. The Court reiterates that it is crucial in cases of deaths in contentious situations for the investigation to be prompt. The passage of time will inevitably erode the amount and quality of the evidence available and the appearance of a lack of diligence will cast doubt on the good faith of the investigative efforts, as well as drag out the ordeal for the members of the family (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II). These delays, unexplained in this case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime.

92. A number of crucial steps were never taken. For example, no autopsies or forensic reports were conducted in the course of the investigation, even though it appears that certain attempts to obtain the relevant permission from the relatives had been made in 2000 and later, in 2004. The investigation was thus deprived of information about the state of the bodies or the type of injuries sustained, and was unable to establish with any degree of precision the cause of the deaths. The Court notes, in this regard, that the applicant significantly contributed to this failure, because she and her brother had not permitted the exhumation of the bodies, and had even refused to indicate the place of their relatives' burial. However, it considers that the applicant's refusal to permit exhumation cannot absolve the authorities from their obligations to obtain detailed information about the cause of deaths of four persons in suspicious circumstances. It does not appear that the prosecutors, who bore the primary responsibility, ever made appropriate orders or tried otherwise to pursue the matter (see, *mutatis mutandis*, *Tanlı v. Turkey*, no. 26129/95, § 152, ECHR 2001-III (extracts)).

93. The Court also notes that the applicant and her brother were granted victim status only in 2004. Even after that they were only informed of the adjournment and reopening of the proceedings, and not of any other significant developments. Accordingly, the investigators did not ensure sufficient public accountability to provide the investigation and its results with the required level of public scrutiny; nor did it safeguard the interests of the next-of-kin in the proceedings.

94. Finally, the Court notes that the investigation was adjourned and resumed a number of times and that on several occasions the supervising prosecutors pointed out the deficiencies in the proceedings and ordered measures to remedy them, but that these instructions were not complied with.

95. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the deaths of Abdul-Vagap Tangiyev, Khidzhan Gadaborsheva and Ismail Gadaborshev. This rendered recourse to the domestic remedies,

whether civil or criminal, equally ineffective in the circumstances. The Court accordingly dismisses the Government's preliminary objection in this respect and holds that there has been a violation of Article 2 under its procedural limb.

B. The alleged failure to protect the right to life

1. Arguments of the parties

96. The applicant submitted that on the night of 11 January 2000 her relatives had been killed in violation of Article 2 of the Convention by unidentified Russian servicemen stationed in the district.

97. The Government did not dispute the fact that the applicants' relatives had died. However, they did not find it possible to answer the question of whether there had been a violation of Article 2 in respect of the applicants' relatives as an investigation into the deaths was still in progress. They noted that there was no exact information available about the circumstances of her relatives' deaths. No information had been obtained during the investigation to support the allegation that servicemen had been responsible for the crime.

2 The Court's assessment

98. The Court reiterates that Article 2, which safeguards the right to life and sets out those circumstances in which deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which deprivation of life may be justified must therefore be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *McCann and Others*, cited above, §§ 146-47).

99. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, amongst other authorities, *Avşar*, cited above, § 391).

100. The Court has already found above, on inferences, that the State agents were responsible for the deaths Abdul-Vagap Tangiyev, Khirzhan Gadaborsheva and Ismail Gadaborshev (see paragraphs 82 and 83 above). The Government did not suggest that the exceptions of the second paragraph of Article 2 could be applicable in the present case.

101. The Court is therefore led to conclude that there has been also a violation of Article 2 of the Convention under its substantive limb.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

102. The applicant submitted that the feelings of fear, anguish and distress she had suffered as a result of the killing of three members of her family 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.”

103. The Government, beyond denying the factual basis of the applicant’s allegations, did not specifically deal with her complaint under Article 3 of the Convention.

104. The Court considers that in the present case no separate issues arise beyond those already examined under Article 2 and of Article 13 (below).

105. In these circumstances, while the Court does not doubt that the death of her family members caused the applicant profound suffering, it nevertheless finds no basis for finding a violation of Article 3 in this context.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

106. The applicant submitted that she had no effective remedies in respect of the above violations, in breach of 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.”

107. The Government disagreed and referred to the ongoing criminal investigation into the murders.

108. 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, 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 *Khashiyev and Akayeva*, cited above, § 183).

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

110. Consequently, there has been a violation of Article 13 in conjunction with Article 2 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

111. 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

112. The applicant did not submit any claims for pecuniary damage. As to non-pecuniary damage, the applicant stressed that she had lost her parents and her uncle, and was faced with the absence of an effective investigation into their deaths. This had caused her feelings of anguish, distress and anxiety. She claimed 100,000 euros (EUR) in this respect.

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

114. The Court observes that it has found violations of the substantive and procedural limbs of Article 2 and a violation of Article 13 of the Convention. The Court accepts that the applicant has suffered non-pecuniary damage and awards the applicant EUR 60,000, plus any tax that may be chargeable on that amount.

B. Costs and expenses

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

- (a) EUR 500 for 20 hours of research in Chechnya and Ingushetia at a rate of EUR 25 per hour;
- (b) EUR 400 in travel expenses for the field workers;

(c) EUR 2,000 for 40 hours of drafting legal documents submitted to the Court and the domestic authorities at a rate of EUR 50 per hour by the lawyers in Moscow;

(d) 1,792 pounds sterling (GBP) for 17 hours and 55 minutes of legal work by a United Kingdom-based lawyer at a rate of GBP 100 per hour;

(e) GBP 176 for the professional fees of a barrister in London consulted as to the evidence;

(f) GBP 409 for translation costs, as certified by invoices; and

(g) GBP 250 for administrative and postal costs.

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

117. 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*, cited above, p. 63, § 220).

118. 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.

119. Further, it has to be established whether the costs and expenses incurred by the applicant for legal representation were necessary. The Court notes that the case involved a certain quantity of factual and documentary evidence and required a fair amount of research and preparation. 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*, cited above, § 158; *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-...).

120. 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 2,900 and GBP 2,627, 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

121. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Dismisses* unanimously the Government's preliminary objection;
2. *Holds* unanimously that there has been a failure to comply with Article 38 § 1 (a) of the Convention;
3. *Holds* unanimously that no separate issues arise under Article 34 of the Convention;
4. *Holds* unanimously 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 deaths of Abdul-Vagap Tangiyev, Khidzhan Gadaborsheva and Ismail Gadaborshev;
5. *Holds* by 5 votes to 2 that there has been a violation of Article 2 of the Convention in respect of the killing of three members of the applicant's family;
6. *Holds* unanimously that there has been no violation of Article 3 of the Convention in respect of the applicant;
7. *Holds* unanimously that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
8. *Holds* unanimously
 - (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 60,000 (sixty thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the date of settlement;
 - (ii) EUR 2,900 (two thousand nine hundred euros) and GBP 2,627 (two thousand six hundred and twenty-seven 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;
 - (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;

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

Done in English, and notified in writing on 29 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André WAMPACH
Deputy Registrar

Loukis LOUCAIDES
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of MM Kovler and Hajiyeu is annexed to this judgment.

L.L.
A.M.W

PARTLY DISSENTING OPINION OF JUDGES KOVLER AND HAJIYEV

We share the main conclusions of the Chamber in this case with the exception of the conclusion that there has been a violation of Article 2 of the Convention in respect of the killing of three members of the applicant's family.

In the light of the importance of the protection provided by Article 2 of the Convention, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *Avşar v. Turkey*, no. 25657/94, judgment of 10 July 2001, § 391, ECHR 2001-VII).

In this case the applicant was unable to submit persuasive evidence to support her allegations as to the State's responsibility for the murders. The exact cause and circumstances of the applicant's relatives' deaths have never been established. The applicant did not seek the opinion of a medical doctor before the burial of her relatives' remains. No official death certificates were produced by the competent authorities such as to suggest that a basic fact-finding exercise had been carried out on the domestic level and at least indicate the dates and causes of the deaths. No photographs were taken and no detailed description of the bodies was recorded before burial, nor did the applicant apply to a domestic court in order to establish the facts and circumstances of her relatives' deaths (see, by contrast, *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, judgment of 24 February 2005, §§ 28-30 and §§ 39-42, and *Estamirov and Others v. Russia*, no. 60272/00, judgment of 12 October 2006, §§ 18, 20 and 21). Furthermore, in the criminal proceedings the applicant refused to allow the exhumation of her relatives' remains and the preparation of a forensic expert report, or even to identify the place where they were buried. If such reports had been produced their results could have provided valuable information about the exact manner of the deaths and served to support or undermine the applicant's allegation.

The investigation examined the version of the events advanced by the applicant, as well as other possibilities, such as the possibility that the deaths were a result of the shelling of the house or a feud with the illegal "insurgents" operating in the district (it appears that it found no conclusive evidence to support any of these theories). The applicant herself was not an eyewitness to the events. No witnesses were identified who could corroborate her statements about the servicemen being responsible for the murders. The absence of any independent information concerning the cause of the deaths was undoubtedly a major impediment to the investigation.

The Court, to our regret, took into account only the applicant's allegation that the servicemen had been the perpetrators of the crime. According to the applicant, the killings of her relatives were directly linked to the other murders which had occurred in the Staropromyslovskiy district in January 2000 (see paragraph 80 of the judgment). By analogy, she referred to the Court's conclusions in *Khashiyev and Akayeva*.

In view of the Court's conclusions in the *Khashiyev and Akayeva* case, where the Court found it established that the Russian forces had been in control of the district at the time and that they had been responsible for the deaths of the applicants' relatives on 19 and 20 January 2000 (see *Khashiyev and Akayeva*, cited above, §§ 142-45), we think that Mrs Tangiyeva's allegation cannot be discarded as *prima facie untenable*. However, we cannot agree with the applicant and apply these conclusions to the facts of the present case to an extent which would attribute the responsibility for unlawful acts to the respondent State, without having the benefit of additional evidence to that effect.

We reiterate that the required evidentiary standard for the purposes of the Convention is that of proof "beyond reasonable doubt" and that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. We cannot share the conclusion that the burden of proof is exclusively shifted to the Government, even though we regret that the respondent Government failed to disclose all the documents in the investigation file.