



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

FIRST SECTION

**CASE OF UMayeva v. RUSSIA**

*(Application no. 1200/03)*

JUDGMENT

STRASBOURG

4 December 2008

**FINAL**

*04/05/2009*

*This judgment may be subject to editorial revision.*



**In the case of Umayeva v. Russia,**

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 13 November 2008,

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

**PROCEDURE**

1. The case originated in an application (no. 1200/03) 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 Lipatu Makhmudovna Umayeva (“the applicant”), on 6 January 2003.

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

3. The applicant alleged, in particular, that in January 2000 she had been wounded by the Russian military in Grozny. She relied on Articles 2, 3 and 13.

4. On 29 August 2004 the President of the First Section decided to grant priority to the application under Rule 41 of the Rules of Court.

5. By a decision of 11 December 2007 the Court declared the application partly admissible.

6. 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

7. The applicant was born in 1959 and lives in Grozny, Chechnya.

#### **A. The parties' submissions**

##### *1. The events of January 2000*

8. The applicant has a daughter and three grandsons. Her family lived at 9 Kiyevskiy Lane in the Staropromyslovskiy district of Grozny. Prior to the resumption of hostilities in Chechnya in 1999 the applicant was a lecturer in the Chechen and Russian languages and in teaching methods at the Chechen branch of the Business and Administration University of Ingushetia.

9. In October 1999 hostilities resumed between Russian forces and Chechen armed groups. Grozny came under heavy aerial and artillery bombardment.

10. The applicant remained in Grozny in the winter of 1999 to 2000. On 10 January 2000 her house at 9 Kiyevskiy Lane was destroyed during a rocket attack.

11. After 10 January 2000 the applicant and her family lived in the cellar of a house at 23 Olimpiyskiy Drive, together with several other residents of the area. On 22 January 2000 the residents were informed, via an amplifier installed in a helicopter, that the following day would be their last opportunity to leave the city through a humanitarian corridor. Leaflets containing similar information were dropped, notifying the residents that they could leave on 23 January 2000 at 9 a.m. by the road leading to the settlement of Staraya Sunzha, where they would be picked up by buses and taken out of the Grozny area.

12. On 23 January 2000 at 9 a.m. the applicant and her family left the house at Olimpiyskiy Drive. They were joined by other residents who were heading towards Staraya Sunzha. The applicant recalled that there were about a hundred people in their group, including children. People were carrying only their most valuable possessions, in bags or on sledges. Many had white armbands, and a man walking close to the applicant was carrying a pole with a white sheet to show that they were civilians.

13. At about 9.30 a.m. the front of the group, including the applicant, reached Zhukovskiy Street. Further down that street there stood the premises of a former canning factory, where a regiment of Russian military forces was temporarily stationed. While the applicant was crossing Zhukovskiy Street at the point where it intersects with Olimpiyskiy Drive,

artillery fire and shelling started from the direction of the cannery. Later a helicopter appeared, from which a sniper fired towards the crossroads. As a result of the shelling a nine-storey building nearby was destroyed. The applicant submitted a drawing with a plan of the area where the attack occurred.

14. The applicant received several shell and bullet wounds to her right arm, both legs, hips and left kneecap. She lost consciousness and remained in the street for about ten hours. Her relatives told her later that the shelling had continued and that they could not retrieve her or the other wounded until nightfall.

15. In the evening of the same day the applicant was taken by her relatives to a basement. She could not be taken to a hospital because the shelling was still ongoing. Her relatives and neighbours transported her from one cellar to another, and it was not until 30 January 2000 that she reached the field hospital of the Ministry of Emergencies (Emercom), located in the settlement of Staraya Sunzha on the outskirts of Grozny, where she was for the first time examined by medical personnel.

16. On the following day the applicant was taken further away, to a hospital in the town of Argun. However, that hospital had no electricity and it was impossible to perform an X-ray. On 31 January 2000 the applicant was taken by her sister to a hospital in Gudermes, where she finally received proper treatment. There she was diagnosed with the following injuries: perforating firearm wounds to the soft tissues of the right arm and right hip, a perforating firearm wound to the left kneecap, a transcondylar fracture of the left hip, complicated by osteomyelitis, and a perforating firearm wound to the left foot, resulting in a splintered fracture of an instep bone and forming a defect of the bone.

17. The applicant remained in the Gudermes hospital until August 2000. Subsequently she travelled to Rostov-on-Don for further medical treatment and in September to October 2001 she was treated in Moscow. The applicant continues to suffer from the consequences of her wounds and has difficulty walking. In July 2002 the applicant was recognised as having a third-degree disability. She submitted that the cost of carrying out the necessary operation was too high for her and that she could not pay for the insertion of an implant.

18. The Government did not dispute the factual circumstances of this part of the complaint as presented by the applicant.

## *2. Criminal proceedings concerning the attack of 23 January 2000*

19. On 4 March 2002 the applicant complained to the Grozny Town Prosecutor, described the attack on the civilian convoy on 23 January 2000 and her injuries and asked him to open a criminal investigation.

20. On 14 and 20 May 2002 the applicant submitted additional complaints to the Grozny Town Prosecutor's Office.

21. On 26 June 2002 the Grozny Town Prosecutor's Office opened a criminal investigation file under Article 118, paragraph 3, of the Criminal Code (involuntary causing of bodily harm of medium gravity). The Leninskiy District Department of the Interior of Grozny ("the Leninskiy ROVD") was put in charge of the investigation. On the same day the applicant was notified.

22. On 28 June 2002 an investigator from the Leninskiy ROVD opened a preliminary investigation and assigned the case file no. 48089.

23. In July and August 2002 the applicant and a number of witnesses were questioned. Two witnesses confirmed the applicant's account of the events of January 2000. The investigation also questioned a number of local residents, servicemen from the Leninskiy ROVD and former members of the armed forces who had participated in combat in Grozny. However, none of these witnesses had any information about the episode complained of by the applicant. Furthermore, the investigation questioned medical personnel in the hospital in Argun where the applicant had been taken on 30 January 2000 (see documents in Part B below).

24. In July 2002 a medical report confirmed that the injuries could have been received in the circumstances described by the applicant.

25. On 3 August 2002 the applicant was granted victim status in the proceedings.

26. On 6 August 2002 an investigator from the Leninskiy ROVD issued the applicant with a notice which stated: "On 23 January 2000, during the period of hostilities in Grozny, while using the humanitarian corridor provided by the federal armed forces, Mrs Lipatu Umayeva received firearm wounds, as a result of which she was admitted to hospital in Gudermes. ..."

27. In August 2002 the Leninskiy ROVD and the military commander's office of Grozny informed the investigation that it would be impossible to identify the relevant military units in view of the passage of time and because in January 2000 a large number of military units had participated in the operations in Grozny.

28. The Government also stated that on 11 August 2002 the investigation had forwarded requests for information to the investigative departments of the Ministry of the Interior in the Moscow and Rostov regions. They did not indicate the nature of these requests or whether any answers had been received.

29. On 24 August 2002 the charge against unknown persons was reformulated under Article 213, paragraph 3, of the Criminal Code (hooliganism involving the use of arms; on 27 January 2004 the same charge was brought under Article 213, paragraph 1, to comply with the new wording of that provision).

30. On 26 August 2002 the investigation was adjourned for failure to identify the culprits. The applicant was informed of this but did not appeal against the decision.

31. In September 2005 the present application was communicated to the Russian Government.

32. On 29 December 2005 the investigation was resumed. According to the Government, the investigation requested information from the Ministry of Defence about the locations of military units in Chechnya at the relevant time. The Government also stated that five persons had been questioned as witnesses at that time, without indicating who they were and what they had stated. The Government did not submit any documents produced within this round of the investigation.

33. On 3 February 2006 the investigation was adjourned and on 9 February 2006 it was resumed.

34. On 9 March 2006 the investigation of the criminal case was again adjourned for failure to identify the culprits. The applicant was informed of this decision on 31 March 2006.

35. It appears that the investigation was once again reopened and then adjourned on 4 January 2007, a fact of which the applicant was informed on 22 January 2008.

36. The Government stated that the Prosecutor General's Office was monitoring the progress of the investigation.

37. In January 2006, in response to a request from the Court, the Government submitted about 120 pages of documents from the criminal investigation file concerning the attack against the applicant. The file contained no list of documents, some pages were not numbered and certain parts seemed to be missing. In consequence, the Court requested the Government to submit a list of the documents contained in the file. In March 2006 the Government replied, relying on information obtained from the Prosecutor General's Office, that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained information of a military nature and personal data concerning the witnesses or other participants in the criminal proceedings. 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 the witnesses' personal data, and without the right to make copies of the case file and transmit it to others.

### *3. Civil proceedings brought by the applicant*

38. On an unspecified date in 2002 the applicant lodged a civil suit with the Leninskiy District Court in Grozny. She sought compensation for the pecuniary damage caused by the destruction of her flat and belongings as a result of the rocket attack on 10 January 2000. She also sought compensation for the pecuniary and non-pecuniary damage caused by the attack of 23 January 2000 and the injuries received, as a result of which she

was obliged to undergo medical treatment and remained partially disabled. She claimed that she had spent 69,020 Russian roubles (RUB) and that she needed a further RUB 147,726. The applicant also sought RUB 10,000,000 for non-pecuniary damage. The applicant submitted that both attacks had been carried out by the Russian military forces and named the Ministry of Defence and the Ministry of Finance as co-defendants.

39. On 18 October 2000 the Leninskiy District Court refused to consider the applicant's claim for lack of jurisdiction. The court stated that the applicant should submit her claim at the location where the defendants were based, namely in a district court in Moscow.

40. The applicant appealed against the above decision without giving any reasons, and on 26 November 2002 the Supreme Court of Chechnya confirmed the decision of 18 October 2002. The court stated that a claim against a legal entity should be brought at the location of that entity; accordingly, the applicant should bring her claim before a district court in Moscow. The court also referred to the amount of the applicant's claim.

41. The Government explained in their observations that Government Decree No. 404 of 4 July 2003 had been implemented in Chechnya. Accordingly, action was being taken to set up a compensation scheme for persons whose housing and property had been damaged. In December 2005 the commission in charge of payment of compensation placed the applicant's claim on their agenda. No documents or further information were submitted by the parties on this matter.

## **B. Documents submitted by the parties**

### *1. Documents submitted by the applicant*

42. The applicant submitted a number of additional documents to substantiate her claims. They can be summarised as follows.

#### **(a) Documents relating to the attack of 23 January 2000**

43. In October 2005 four persons produced written accounts of the events of 23 January 2000. They were Sulanbek U., the applicant's brother, and three female neighbours, Roza D., Leyla M. and Tumisha N. They confirmed that on 10 January 2000 the applicant's house had been hit by a rocket and destroyed. The residents of their part of Grozny had been hiding in cellars from heavy shelling. They testified that on 22 January 2000 they had been informed, by means of a helicopter using loudspeakers and flyers, that they could leave the city by road in the direction of Staraya Sunzha. On 23 January 2000 at about 9 a.m. several dozen persons took white cloths to demonstrate that they were civilians and walked towards Staraya Sunzha. The witnesses stated that the group had been on foot and many people had

been carrying their belongings on sledges and in their hands. At some point there was a loud explosion and then the witnesses saw helicopters in the air. They took refuge in a nearby basement, where Sulanbek U. and his sister Maryam realised that their sister, the applicant, was not there. They could not leave the cellar until evening because of the continued shelling. In the evening, with assistance from other persons, Sulanbek U. and his sister retrieved the wounded applicant, took her to the basement and gave her first aid. On the following day they transported her to Staraya Sunzha, where there was a Red Cross field hospital. From there the applicant was taken to the Argun hospital, while the witnesses went to Ingushetia with buses from the Ministry of Emergencies (Emercom).

**(b) Documents relating to the medical treatment of the applicant**

44. The applicant submitted a number of documents attesting to the seriousness of her injuries and the cost of treatment. The Gudermes district hospital confirmed that the applicant had remained there between 31 January and 1 August 2000 and that she had been required to buy various medicines and equipment, for a total cost of RUB 69,020.

45. In November 2001 a Moscow-based medical centre produced an estimate of RUB 147,726 for inserting an implant.

46. In April 2003 the same hospital produced another estimate, amounting to RUB 222,210, as an indication of the suggested treatment for the applicant.

*2. Documents submitted by the Government*

47. The Government submitted about 120 pages of documents from criminal investigation file no. 48089 concerning the applicant's injuries. These can be summarised as follows.

**(a) Decision to open a criminal investigation**

48. On 25 June 2002 the Grozny Town Prosecutor's Office opened a criminal investigation on the basis of a letter of 14 May 2002 from the applicant, in which she stated that she had been wounded by the military while trying to leave Grozny through a corridor for civilians on 23 January 2000. The investigation referred to Article 118, paragraph 3, of the Criminal Code (involuntary causing of bodily harm).

**(b) Statements by the applicant and other eyewitnesses**

49. On 28 June 2002 the applicant was questioned about the circumstances of the attack and gave detailed submissions. She explained that on 22 January 2000 she had learnt from an announcement made through the amplifiers of a helicopter that on 23 January 2000 civilians would have a final chance to leave the city along the Staraya Sunzha road. She further

stated that on the morning of 23 January 2000 she had walked along the indicated route, together with a large group of local residents. In Zhukovskogo Street they had been attacked by gunfire from the premises of the canning factory and from a helicopter. She had been wounded in both legs and the right hand, and had fainted. Later her sister and other people had taken her to a nearby cellar and then transported her to Staraya Sunzha, which they had reached on 28 January 2000. The applicant further explained how she had been treated for her wounds. She named two witnesses who could confirm her statements and explained that her sister was no longer alive.

50. On 3 August 2002 the applicant was granted victim status in the proceedings.

51. On 2 July 2002 the investigation questioned both witnesses indicated by the applicant, Tamara Kh. and Satsita N., who confirmed her statements.

**(c) Description of the site**

52. On 5 July 2002 the investigation examined the site at Zhukovskogo Street where the attack had taken place. The investigators did not find anything noteworthy.

**(d) Statements by local residents, medical staff and servicemen from the Leninskiy ROVD**

53. In July and August 2002 the investigation questioned sixteen residents of the area and servicemen from the Leninskiy ROVD, who had no information about the attack of 23 January 2000. Most of the witnesses were not in Grozny in January 2000 and could only confirm that in January 2000 there had been intense fighting between the army and the illegal insurgents.

54. Medical staff of Argun Town Hospital No. 1 explained that at the relevant time the hospital had received many persons wounded in the hostilities. They could not recall the applicant's case and indicated that records had not been kept properly, in view of the emergency situation.

55. On 16 August 2002 the head of the Leninskiy ROVD informed the investigator in charge of the case that no other witnesses could be identified.

**(e) Medical documents and forensic report**

56. On 24 July 2002 a medical expert, prepared on an order by the investigator, concluded that the applicant's injuries could have been received within the time period and under the circumstances indicated by her. He evaluated the injuries as bodily harm of medium gravity.

**(f) Attempts to identify military units**

57. In July 2002 the Leninskiy ROVD informed the investigator in charge of the case that it was impossible to identify which military units had

been stationed in Zhukovskogo Street on 23 January 2000, in view of the passage of time and the fact that the military units which had participated in active combat with illegal armed groups in Grozny at that time had been redeployed. It would also be impossible to identify the exact provenance of the military helicopters referred to by the applicant.

58. On 25 July 2002 the military commander of Grozny, citing the same reasons, informed the investigator in charge of the case that it would be impossible to identify the military units and helicopters concerned.

**(g) Orders by prosecutors**

59. On 24 August 2002 the charge was reformulated under Article 213, paragraph 3, of the Criminal Code (hooliganism involving the use of arms).

60. On 26 August 2002 the investigator in charge of the case adjourned the investigation for failure to identify the culprits. The applicant was informed of the adjournment.

61. On 27 January 2004 the investigation was resumed for two days in order to bring charges under Article 213, paragraph 1, of the Criminal Code, in view of its new wording. On 29 January 2004 the investigation was adjourned for failure to identify the persons who had committed the crime. The applicant was informed accordingly.

## II. RELEVANT DOMESTIC LAW

62. For a summary of the relevant domestic law, see *Akhmadova and Sadulayeva v. Russia*, no. 40464/02, §§ 67-69, 10 May 2007.

## THE LAW

### I. THE GOVERNMENT'S PRELIMINARY OBJECTION

#### *1. Arguments of the parties*

63. The Government argued that the applicant had failed to exhaust domestic remedies. In particular, they noted that the applicant had not appealed to a court of law against the actions of the investigative authorities, as provided for by Article 125 of the Code of Criminal Procedure. She had also failed to make use in the proceedings of her rights as a victim. Nor had she pursued proceedings in the civil courts.

64. The applicant argued that no effective investigation had taken place following her complaint and that she had had no remedies in respect of the prosecutor's decision to adjourn the proceedings. The applicant stated that

she had been in a vulnerable position after her injury. She alleged that she had not had genuine access to the file, in spite of the victim status accorded to her. She also stated that, following the adoption by the State Duma of the Decree of 7 June 2003, declaring an amnesty for persons responsible for certain crimes committed during the anti-terrorist operation in Chechnya, she had had no right to challenge its application to anyone found responsible for committing a crime against her. She also referred to a general problem of non-investigation of crimes allegedly committed by State agents in Chechnya.

## 2. *The Court's assessment*

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

66. 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.

67. 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 in itself cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention (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.

68. As regards criminal-law remedies, the Court observes that the applicant complained to the relevant authorities about her injuries and that an investigation has been pending since 2002. The applicant and the Government dispute the effectiveness of this investigation.

69. 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

70. The applicant alleged a breach of Article 2, 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. ...”

## **A. Alleged failure to protect the right to life**

### *1. Arguments of the parties*

71. The applicant submitted that in view of the lethal force involved and the degree of her injuries, the actions of the Russian military on 23 January 2000 amounted to a violation of the right to life, protected by Article 2.

72. The Government disputed the applicant’s allegations. They noted that the establishment of the exact circumstances of the events within the domestic criminal proceedings had turned out to be impossible in view of the applicant’s application to the law-enforcement bodies more than two years after the events in question. They stressed that even if regard was had to the applicant’s injuries and medical treatment, the lapse of time between her injuries and the beginning of the criminal investigation had been too long to allow an effective investigation. They further noted that some of the applicant’s statements were not supported by the materials in the case file or by other sources. In particular, they found no support for the applicant’s assertion that a “humanitarian corridor” had been announced on 23 January 2000 or that any route had been designated for it. The Government referred to other cases reviewed by the Court concerning events in the Staropromyslovskiy district of Grozny in January 2000, in which the applicants had not mentioned such information. They also noted that despite the applicant’s submissions, no other victims of the same attack could be identified. Finally, the Government reminded the Court that until early February 2000 Grozny had been the scene of fierce fighting between the Russian federal troops and illegal armed groups, and that the wounding of the applicant could not be unilaterally attributed to the State without further proof.

### *2. The Court’s assessment*

73. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances where deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which in peacetime no derogation is permitted under Article 15. The situations where deprivation of life may be justified are exhaustive and must be narrowly interpreted. The use of force which may result in the deprivation of life must be no more than “absolutely necessary” for the achievement of one of the purposes set out in Article 2 § 2 (a), (b) and (c). This term indicates that a stricter and more compelling test of necessity

must be employed than that normally applicable when determining whether State action is “necessary in a democratic society” under paragraphs 2 of Articles 8 to 11 of the Convention. Consequently, the force used must be strictly proportionate to the achievement of the permitted aims. 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, particularly where deliberate lethal force is used, taking into consideration not only the actions of State agents who actually administer the force but also all the surrounding circumstances including such matters as the planning and control of the actions under examination (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-150, Series A no. 324; *Andronicou and Constantinou v. Cyprus*, 9 October 1997, § 171, *Reports of Judgments and Decisions* 1997-VI; and *Oğur v. Turkey* [GC], no. 21594/93, § 78, ECHR 1999-III). The same applies to an attack where the victim survives but which, because of the lethal force used, amounted to attempted murder (see *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, § 171, 24 February 2005, with further references).

74. In the present case the Court notes that the scope of the applicant’s injuries and the level of the lethal force employed in the attack of which she complained bring her complaint within the ambit of Article 2.

75. As to the facts of the case, the Court notes that in order to be able to assess the merits of the applicant’s complaints and in view of the nature of the allegations, it requested the Government to submit a copy of the complete criminal investigation file in the present case. The Government submitted most of the file (see paragraph 37 above). No explanation was provided for the failure to produce the remaining documents, and their quantity and contents were not specified. Accordingly, the Court finds that it can draw inferences from the Government’s conduct in this respect. It will examine the issue of compliance with Article 38 below.

76. Turning to the facts in dispute, the Government acknowledged that the applicant was wounded. They denied the State’s responsibility for it, because it was impossible to establish the exact circumstances of the injuries. It must therefore first be determined whether the State’s responsibility is engaged.

77. The Court notes in this connection that the applicant insisted that by 23 January 2003 she and other residents of the district had been informed of a safe exit route from the fighting and had followed it, having taken steps to identify themselves as civilians. In her statements to the Court and to the domestic investigation she consistently submitted that the shelling and shooting had come from the direction of the Russian troops, as well as from helicopters. In support of her allegations she submitted a sketch map of the scene of the incident, indicating the place where she had been wounded and the direction from which the attack had come. The applicant also adduced four witness statements to the effect that she had been wounded as a result

of the attacks from helicopters and from the premises of the canning factory and that the Russian troops had been stationed in the factory at the material time (see paragraphs 11-13 and 43 above). Two eyewitnesses gave similar statements to the investigation (see paragraph 49 above).

78. Moreover, it should be noted that the domestic investigation accepted the applicant's submissions. The decision to open an investigation referred to the wounding of the applicant by military servicemen (see paragraph 48 above). On 6 August 2002 the investigator confirmed that the applicant had been wounded while using the humanitarian corridor to exit from Grozny (see paragraph 26 above). The investigators also attempted, albeit unsuccessfully, to identify the military units that had been stationed in Zhukovskogo Street at the relevant time. Finally, the forensic report of 24 July 2004 concluded that the injuries could have been received in the circumstances indicated by the applicant.

79. The Government argued that at the material time fighting in Grozny was continuing, that the Russian authorities had not had complete control over the city, that the investigation had failed to identify the relevant military units and that the State's responsibility could not therefore be presumed. They also disputed the information about the announcement of a humanitarian corridor. The Court observes in this connection that in other cases concerning the events in the Staropromyslovskiy district of Grozny in January 2000 it has reviewed documents attesting that by 19 January 2000 the district was already under the firm control of the Russian federal forces and describing this information as "common knowledge" (see the judgment of the Nazran District Court in Ingushetia of 26 February 2003, cited in *Khashiyev and Akayeva*, cited above, § 41).

80. Furthermore, the Government did not deny that Russian troops had been stationed at the place in question at the material time, but rather suggested with reference to the replies from the military authorities that it had been impossible to establish which particular military units had been there on 23 January 1999 (see paragraph 27 above). The statements by the eyewitnesses to the events support the applicant's version, whereas the majority of persons who were questioned by the investigation in July and August 2002 were not in Grozny at the material time and therefore could not provide any useful information on the applicant's claim. It does not appear that the investigation made further attempts to identify other eyewitnesses to the attack on the applicant, but this cannot be held against her. As to the question of whether a "humanitarian corridor" was indeed announced for the residents at the time, the Court finds nothing in the evidence before it to contradict the applicant's submissions.

81. In such circumstances, the Court cannot but accept the applicant's argument that she was attacked in the circumstances described by her, while she and a group of other civilians were trying to leave the fighting through what they perceived as a safe passage. In this connection it also notes the

domestic investigative authorities' acceptance of these circumstances. The Court therefore finds it established that the applicant was wounded as a result of the employment of lethal force by State agents.

82. The Court must next ascertain whether the use of lethal force by the federal forces which resulted in the applicant's wounding could be said to have been absolutely necessary and therefore strictly proportionate to the achievement of one of the aims set out in paragraph 2 of Article 2. It notes in this connection the lack of any explanations on the part of the Government as to whether the use of lethal force was justified under paragraph 2 of Article 2 of the Convention.

83. Accordingly, there has been a violation of Article 2 of the Convention in this regard.

### **B. Alleged ineffectiveness of the investigation**

84. The applicant argued that the positive aspect of Article 2 had been breached in that no proper investigation had taken place.

85. The Government stressed that the investigation of the applicant's complaint within the criminal-law procedure had been carried out in accordance with the national legislation. The applicant had been made fully aware of the investigation's progress and had not appealed against the actions of the law-enforcement agents. The applicant could have appealed against any decision on the basis of Article 46 of the Constitution and Article 125 of the Code of Criminal Procedure, but had failed to do so. In any event, the effectiveness of the investigation was largely undermined by the applicant's inexplicably late submission to the law-enforcement bodies – more than two years after the attack had occurred – by which time the establishment of facts had become impossible.

86. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see *McCann and Others*, cited above, § 161, and *Kaya v. Turkey*, 19 February 1998, § 86, *Reports* 1998-I). Relevant principles developed by the Court on this subject may be found in *Isayeva and Others* (cited above, §§ 209-213).

87. In the present case an investigation was carried out into the applicant's complaint by the Leninskiy ROVD of Grozny. The parties disputed the effectiveness of these proceedings.

88. The Court observes, first of all, that the applicant applied to the domestic law-enforcement bodies in March 2002, two years and one month after the attack had taken place. The applicant submitted that she had

undergone extensive treatment for her injuries, lasting until October 2001 (see paragraphs 16-17 above), which could explain a significant part of that delay. The Court notes that this delay was not regarded as excessive by the domestic authorities, which on 26 June 2002 opened a criminal investigation into the causing of bodily harm of medium gravity. The applicant's explanations about the reasons for not applying before were thus considered reasonable by the domestic investigation and were never doubted in the course of those proceedings. The Court also considers that the feelings of vulnerability and insecurity which the applicant must have felt are also of some relevance in this connection (see, *mutatis mutandis*, *Menteş and Others v. Turkey*, 28 November 1997, § 59, *Reports* 1997-VIII).

89. The Court accepts that the effectiveness of the investigation into the attack could have been hindered by the delay to a certain extent. However, despite these difficulties a number of important investigative steps were taken within the following months. The applicant and two eyewitnesses gave concurrent submissions on the circumstances of the attack, and a forensic expert report was ordered, was carried out and confirmed the applicant's statements about the time and nature of her injuries. The applicant was granted the status of a victim in the proceedings on 3 August 2002. The investigation also made some unsuccessful attempts to find other witnesses to the attack. It also on two occasions requested information from the military authorities about the military units stationed in Zhukovskogo Street on the day in question.

90. The Court notes with great regret that although the applicant brought forward an extremely serious complaint – that of an attack on a group of civilians using what they had perceived as a safe route away from the fighting – a number of elements in the documents submitted from the investigation file, taken together, produce the strong impression of a series of serious and unexplained failures to act.

91. Thus, it does not appear that the investigation attempted to obtain general information about the operations, commanders and military units involved in the Staropromyslovskiy district on the given date, or to identify and question those who could potentially have been aware of the circumstances of the attack on the applicant. It does not appear, furthermore, that the investigation contacted Emercom – whose field hospital, where the applicant and other residents received first aid, was situated very near to the fighting – in order to obtain additional information about the incident.

92. Finally, and probably most importantly, no efforts were made to collect information about the announcement of the “safe passage” for civilians on 23 January 2000, or to identify anyone among the military or civil authorities who had been responsible for the safety of the exit. Nothing has been done to explain the witnesses' statements criticising the absence of coordination between the public announcements of a “safe exit” for civilians

and the apparent lack of consideration given to this matter by the military in planning and executing their mission.

93. The Court also finds it necessary to address the manner in which the proceedings were conducted. The investigation was adjourned on 26 August 2002. It was resumed in December 2005, adjourned on 3 February 2006, resumed again on 9 February 2006 and adjourned on 9 March 2006. It was finally reopened and then adjourned again on 4 January 2007. It remains utterly unclear what steps were taken by the investigation during these brief periods of activity, what the reasons were for the reopening and adjournments and whether the decisions of the supervising prosecutors contained any directions as to the actions by the investigators.

94. It should also be noted that the applicant, notwithstanding her status as a victim, was not properly informed of important developments, having received only perfunctory notifications of the suspensions and adjournments of the investigation.

95. The Court notes in this connection that the Government submitted an incomplete investigation file and that its analysis of the effectiveness of the investigation is limited to the documents available.

96. The Court finds that the investigation, having being repeatedly suspended and resumed and plagued by inexplicable delays, has been pending for many years, having produced no tangible results. The applicant, having had no access to the case file and having not been properly informed of the progress of the investigation, could not have effectively challenged any actions or omissions of the investigating authorities before a court. Furthermore, the investigation was resumed by the prosecuting authorities themselves a number of times owing to the need to take additional investigative steps. However, they still failed to investigate her allegations properly. Moreover, owing to the time that had elapsed since the events complained of, certain investigative measures that ought to have been taken much earlier could no longer usefully be carried out. Therefore, it is highly doubtful that the remedy relied on would have had any prospects of success. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and dismisses their preliminary objection as regards the applicant's failure to exhaust domestic remedies within the context of the criminal investigation.

97. In view of the above, the Court concludes that the authorities failed to carry out an effective investigation into the circumstances of the attack on the applicant on 23 January 2000. The Court accordingly holds that there has been a violation of Article 2 in this respect as well.

### III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

98. The applicant argued that the situation disclosed a violation of Article 3, in view of the suffering caused to her and also in view of the

Government's failure to carry out a proper investigation into her complaints. Article 3 provides:

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

99. The Government disputed this complaint.

100. The Court considers that the consequences described by the applicant were a result of the use of lethal force by the State agents in breach of Article 2 of the Convention. Having regard to its above findings about the danger to the applicant's life, the Court does not find that any separate issues arise under Article 3 of the Convention (see *Isayeva and Others*, cited above, § 229).

#### IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

101. The applicant submitted that she had no effective remedies in respect of the above violations, contrary to Article 13 of the Convention. This Article reads:

"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."

102. The Government disputed this complaint and argued that the applicant had failed to use the domestic remedies available to her.

103. The Court would point out that in circumstances where – as here – the criminal investigation into the circumstances of a potentially lethal attack was ineffective in that it lacked sufficient objectivity and thoroughness, and the effectiveness of any other remedy that may have existed, including the civil remedies suggested by the Government, was consequently undermined, it has found that the State has failed in its obligation under Article 13 of the Convention, which are broader than those under Article 2 (see *Isayeva and Others*, cited above, § 239).

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

#### V. OBSERVANCE OF ARTICLE 34 AND ARTICLE 38 § 1 (a) OF THE CONVENTION

105. The applicant argued that the Government's failure to submit the documents requested by the Court at the communication stage disclosed a failure to comply with their obligations under Article 34 and Article 38 § 1 (a) of the Convention. The relevant parts of those Articles provide:

**Article 34**

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

**Article 38**

“1. If the Court declares the application admissible, it shall

(a) pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities;

...”

106. The applicant invited the Court to conclude that the Government had failed in their obligations under Article 38 § 1 (a) on account of their refusal to submit all the documents from the investigation file in response to the Court’s requests. In her view, through their handling of the Court’s request for documents, the Government had additionally failed to comply with their obligations under Article 34.

107. The Government submitted 120 pages from the investigation file, but not a list of documents contained within the file (see paragraph 37 above). As to the remaining documents, they argued, referring to Article 161 of the CCP, that their disclosure was impossible because they contained information about the location and actions of military and special units and personal information about the participants in the proceedings.

108. The Court would first remark that it has already found in a number of previous cases 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).

109. The Court notes that, as it appears, the Government submitted most of the file in question, including witness statements, decisions of the investigating authorities, a forensic expert’s report, and replies from various bodies. The submission of the documents in question considerably facilitated the examination of the present case by the Court. While it is true that there are reasons to believe that some documents were not submitted by the Government, the Court has already drawn inferences in this connection and found violations of the relevant Convention provisions. Overall, the Court does not consider that the Government’s conduct in the present case was contrary to Article 38 § 1 (a).

110. As to Article 34 of the Convention, its main objective is to ensure the effective operation of the right of individual petition. The Court is of the opinion that no separate issues arise under Article 34.

## 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

#### 1. *Pecuniary damage*

112. The applicant claimed compensation for lost wages during the period when she had been recovering from her injuries. She alleged that her salary at the university in Chechnya had amounted to RUB 8,000 per month. In support of this claim, she submitted two undated notes. One stated:

“[This is] issued to confirm that [the applicant] indeed worked as a teacher of the following subjects:

1. Russian language – 160 hours x 20 = RUB 3,200
2. Chechen language – 140 hours x 20 = RUB 2,800

[Her] monthly salary constituted RUB 6,000.”

The second note stated:

“[This is] issued to confirm that [the applicant] indeed worked at the International Business and Administration University in Chechnya as a resource teacher, with a salary of RUB 2,000, during the period between 1 November 1996 and 10 October 1999.”

Both notes were signed by the rector of the university and stamped with its stamp. The applicant relied on these figures and on the Ogden actuarial tables in order to calculate the damage resulting from her loss of salary. She assumed that her annual income of RUB 96,000 should be adjusted by inflation and take into account the period from January 2000 to February 2008 and then beyond. The applicant claimed a total of RUB 3,081,617 (85,043 euros (EUR)) in lost wages.

113. In addition, she claimed compensation for the medical expenses incurred between 31 January 2000 and 1 August 2000, in the sum of

RUB 69,020 (EUR 1,905) (see paragraph 44 above), which, adjusted by yearly inflation rates published by the Russian Central Bank, should amount by 2008 to RUB 172,859 (EUR 4,736).

114. The Government were of the opinion that the applicant's claims under this head were unfounded. They doubted the relevance and accuracy of the information contained in the two undated notes and stressed that the notes could not be regarded as proof that at the time the applicant had been injured she had been working at the university. Furthermore, they noted that the applicant's disability certificate indicated that she should "avoid long periods of walking or standing", and that that could not prevent her from continuing to take teaching jobs. Therefore they contested the relevance of the applicant's submissions on this matter. As to the applicant's medical claim, they stressed that she had received urgent medical help at the hospital which was in any event free of charge. As to the additional expenses, they should be covered through a system of compulsory medical insurance.

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

116. As to the applicant's claim for lost wages, the Court notes that the documents she submitted indicate that she worked at the university until October 1999 as a resource teacher, and do not indicate the dates when she worked there as a teacher of languages. In the absence of any indications to the contrary and in view of the hostilities that broke out in Grozny after October 1999, the Court finds it reasonable to assume that the applicant held both jobs simultaneously. Therefore, she was not employed after October 1999 and received no salary at the time of the injury. The Court furthermore finds that the applicant's claim that she was unable to work as a teacher in the following years is unsubstantiated, as it was never alleged that she was disabled to a degree which would make her unfit for work. It therefore dismisses the applicant's claim in respect of lost wages as having no direct causal connection with the violation found.

117. As to the medical expenses, the Court notes that the applicant submitted a note from the Gudermes hospital attesting to the sum paid by her for medicines and treatment. The Government did not dispute the validity of the note or the method of calculation. The Court agrees that there is a clear causal connection between the medical treatment for the injuries sustained by her and the violation of Article 2 found above.

118. In such circumstances, the Court awards an amount of EUR 4,736 to the applicant as compensation for the pecuniary losses sustained.

## 2. *Non-pecuniary damage*

119. As to non-pecuniary damage, the applicant stressed that she had been wounded as a result of an attack by State servicemen. This had caused her feelings of pain, anguish, distress and anxiety. She claimed EUR 100,000 under this head.

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

121. The Court observes that it has found a violation of the procedural and substantive limbs of Article 2 and a violation of Article 13. The Court accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the applicant EUR 30,000, plus any tax that may be chargeable on that amount.

## **B. The applicant's request for an investigation and other measures**

122. The applicant also requested, referring to Article 41 of the Convention, that an investigation in line with Convention standards be conducted into her wounding. She relied in this connection on the cases of *Assanidze v. Georgia* ([GC], no. 71503/01, §§ 202-203, ECHR 2004-II) and *Tahsin Acar v. Turkey* ((preliminary objection) [GC], no. 26307/95, § 84, ECHR 2003-VI).

123. The Court notes that the present case is distinguishable from the ones referred to by the applicant. In particular, in the *Assanidze* judgment the Court held that the respondent State was to secure the applicant's release so as to put an end to the violations of Article 5 § 1 and Article 6 § 1, whereas in the *Tahsin Acar* judgment the effective investigation was mentioned in the context of the Court's examination of the respondent Government's request for the application to be struck out on the basis of their unilateral declaration.

124. In such circumstances, having regard to its established principles (see, among other authorities, *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2001-I; and *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 34, Series A no. 330-B), the Court finds it most appropriate to leave it to the respondent Government to choose the means to be used in the domestic legal order to discharge their legal obligation under Article 46 of the Convention.

## **C. Costs and expenses**

125. The applicant was represented by lawyers from the NGO EHRAC/Memorial Human Rights Centre. She claimed 1,783 pounds

sterling (GBP) under this heading. She submitted a detailed breakdown of these costs and four invoices from interpreters.

126. The Government disputed the reasonableness and the justification of the amounts claimed under this heading.

127. In view of the supporting documents submitted, the Court is satisfied that the sum set out above is reasonable and reflects the necessary expenses actually incurred by the applicant's representatives.

128. In these circumstances, the Court awards the applicant the amount claimed, namely GBP 1,783, exclusive of any value-added tax that may be chargeable to her, the net award to be paid in pounds sterling into the representatives' bank account in the United Kingdom as identified by the applicant.

#### **D. Default interest**

129. 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 violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances of the attack on the applicant;
3. *Holds* unanimously that there has been a violation of Article 2 of the Convention in respect of the attack on the applicant;
4. *Holds* unanimously that no separate issues arise under Article 3 of the Convention;
5. *Holds* unanimously that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
6. *Holds* that there is no need to examine separately the applicant's complaints under Article 34 and Article 38 § 1 (a) of the Convention;
7. *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 4,736 (four thousand seven hundred and thirty-six euros) in respect of pecuniary damage, to be converted into Russian roubles at the date of settlement;

(ii) EUR 30,000 (thirty thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the date of settlement;

(iii) GBP 1,783 (one thousand seven hundred and eighty-three pounds sterling), the net award to be paid into the representatives' bank account in the United Kingdom;

(iv) any tax that may be chargeable to the applicant on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

8. *Dismisses* by 6 votes to 1 the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Christos Rozakis  
President

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

C.L.R.  
S.N.

## PARTLY DISSENTING OPINION OF JUDGE SPIELMANN

I voted against point 8 of the operative part because I am of the opinion that the applicant's request for an investigation in line with Convention standards (see paragraph 122) should have been granted by the Court under Article 41 of the Convention.

This request concerns an investigation into the circumstances of the applicant's wounding. In paragraph 90 of the judgment, the Court notes with great regret that although the applicant made an extremely serious complaint – about an attack on a group of civilians using what they had perceived as a safe route away from the fighting – a number of elements in the documents submitted from the investigation file, taken together, produce a strong impression of a series of serious and unexplained failures to act.

In paragraphs 91 to 95, the Court identifies multiple shortcomings in the investigation, leading to the conclusion that the authorities failed to carry out an effective investigation into the circumstances of the attack on the applicant on 23 January 2000 (see paragraph 97).

I am of the opinion that many of these shortcomings (for example those which concern the insufficient gathering of information about the operations and the persons involved or about the announcement of the "safe passage" (see paragraphs 91 and 92)) might still be redressed in the particular circumstances of this case if an investigation were conducted even after so many years.

Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate.

It would therefore have been preferable to grant the applicant's request.