



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

FIRST SECTION

CASE OF TRAPEZNIKOVA v. RUSSIA

(Application no. 21539/02)

JUDGMENT

STRASBOURG

11 December 2008

FINAL

11/03/2009

This judgment may be subject to editorial revision.

In the case of Trapeznikova v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 20 November 2008,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 21539/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Ms Lyudmila Andreyevna Trapeznikova (“the applicant”), on 6 May 2002.

2. The applicant was represented by Mr V. Tretyakov, a lawyer practising in Stavropol. The Russian Government (“the Government”) were represented first by Mr P. Laptev and then by Ms V. Milinchuk, both former Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that the State had failed to discharge its positive obligation to secure her husband’s life and that the investigation into his death had been ineffective. She also complained about the destruction of her property during the military actions in the Chechen Republic, the unfairness of the proceedings for compensation and the delayed enforcement of her court award. The applicant relied on Articles 2 and 6 of the Convention and Article 1 of Protocol No. 1.

4. On 5 October 2006 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1940 and lives in Stavropol.

6. At the material time the applicant and her husband lived in a three-room apartment in a block of flats at 4 Prospekt Revolyutsii in the city of Grozny, the Chechen Republic. The applicant submitted a housing warrant (*opðep*) confirming her right to live in the apartment. She did not submit any documents proving that she had a title to the flat.

A. The facts

7. In early October 1999 a military operation was launched in the territory of the Chechen Republic.

1. Events of January 2000

8. According to the applicant, on 4 January 2000 the block of flats at 4 Prospekt Revolyutsii was hit by a missile fired by the Russian armed forces during an attack on Grozny. The applicant's flat and all her belongings were destroyed. It does not appear that the applicant witnessed the destruction.

9. On 6 January 2000 the applicant, her husband and other residents were sheltering from a bombardment in the basement of their block of flats. At around 10 p.m. an intoxicated man armed with a machine gun came down to the basement and started shooting, with the result that the applicant's husband and three other persons were killed. The applicant managed to escape. According to her, the name of the man who shot her husband was Khalid. He had lived for some time in their block of flats and during the bombings she had met him in the basement on several previous occasions.

10. On the next day the applicant buried her husband's body and the bodies of the others killed in the shooting in the courtyard. It does not appear that an autopsy was performed or any photographs taken.

11. On 21 June 2000 a local registry office certified the death of the applicant's husband. On the same date a housing authority issued the applicant with a certificate confirming that her flat "was destroyed and burnt completely during the military actions on 4 January 2000". The certificate contained no other information relating to the destruction. The applicant did not submit any documents which would indicate the cause of the destruction of the block of flats at 4 Prospekt Revolyutsii, or any photographs of the site of the destruction.

2. Investigation into the death of the applicant's husband

12. According to the Government, the applicant's written complaint concerning her husband's murder was received by the Zavodskoy District Department of the Interior of Grozny on 17 February 2000. On 27 February 2000 the acting prosecutor of Grozny opened an investigation into the case under Article 105 (2) (aggravated murder) of the Russian Criminal Code. The case file was assigned the number 12005.

13. On the same day the applicant was granted the status of victim of a crime and questioned. She reiterated her account of the events of 6 January 2000 and described the appearance of the alleged murderer.

14. In the Government's submission, on 27 February 2000 the investigation authorities also inspected the scene of the incident in the applicant's presence. The Government did not produce any report on that inspection.

15. On 23 April 2000 the proceedings in case no. 12005 were suspended for failure to establish the identity of the alleged perpetrator. The applicant was informed in writing that the proceedings had been adjourned on 27 [rather than 23] April 2000.

16. On 7 June 2000 the criminal proceedings were reopened. According to the Government, on the same date, upon the applicant's request of 31 May 2000, the investigator in charge ordered the exhumation of the corpses of those killed on 6 January 2000, including the applicant's husband. The exhumation and forensic examination were carried out on the next day.

17. On 7 July 2000 the investigation was stayed as it was impossible to establish those responsible. It does not appear that there was any investigative activity between 7 July 2000 and 10 December 2001.

18. On the latter date the decision of 7 July 2000 was set aside and the proceedings in criminal case no. 12005 were resumed, the applicant being notified in a letter of 12 December 2001.

19. On 14 January 2002 the investigation into the killing of the applicant's husband was again suspended in the absence of information concerning those responsible. It appears that the applicant was not informed of that decision until 14 October 2002, when the Grozny prosecutor's office stated in their letter that the criminal proceedings instituted on 27 February 2000 in connection with the killing of the applicant's husband had been suspended on 14 January 2002 for failure to find the alleged perpetrators, and that the search for those responsible was under way.

20. In a letter of 13 May 2002 the Department of the Ministry of the Interior for the Southern Federal Circuit notified the applicant that the investigation in connection with her husband's murder had been commenced on 17 [rather than 27] February 2000, that the case had been given the number 12005 and that the suspect in the case, Ismailov Kh. S., had been an officer of the Ministry of the Shariat State Security [a security

service established when the former President of Chechnya, Aslan Maskhadov, had been in power]. The letter stated that the suspect was presently on the federal wanted list.

21. It does not appear that any investigative activity took place between 14 January 2002 and 21 April 2005.

22. On the latter date the criminal proceedings in case no. 12005 were re-opened. The applicant was informed of this decision on the same date.

23. On 22 May 2005 the investigating authorities stayed the criminal proceedings on account of their inability to establish the alleged perpetrator and apprised the applicant of their decision on the same date.

24. It does not appear that any investigative activity took place between 22 May 2005 and 8 December 2006.

25. On the latter date the investigation was resumed. The investigating authorities informed the applicant of that decision in a letter of 8 December 2006. According to the Government, the conduct of the investigation was being supervised by the Prosecutor General's Office.

26. In the Government's submission, apart from the applicant, the investigating authorities also questioned seven witnesses. One of them, the applicant's neighbour who had helped her to bury the bodies, gave oral evidence similar to the applicant's account, whereas the others did not provide any relevant information. According to the Government, the investigating authorities also sent a number of queries to "competent bodies". In particular, such queries were sent on 28 February, 17 April and 11 July 2000, 10 January 2002 and 4 May 2005.

27. The Government also submitted that the investigation had obtained information that the murder of the applicant's husband and other victims had been committed by Khalid (Khazir) Ismailov, who had been an officer of a security service established when the former President of Chechnya, Aslan Maskhadov, had been in power. During the investigation, an address of Khalid's acquaintance had been established, but the house at that address had proved to be deserted. The investigators also verified the possible involvement of a number of persons with the surname "Ismailov" in the killing of 6 January 2000, but that had brought no positive result.

3. Proceedings for compensation

28. On 20 July 2001 the applicant issued civil proceedings against a number of Federal Ministries before the Leninskiy District Court of Stavropol ("the District Court"). In her written submissions to the court the applicant sought damages in respect of her husband's death. She also stated that the block of flats in which she lived had been destroyed by a missile and asked the court to award her compensation for the destroyed flat and belongings that had been in the flat. As can be ascertained from a copy of her written submissions, the applicant enclosed copies of her passport, the

marriage certificate, the death certificate, the housing warrant, a letter from a local authority, and certificates from the housing authority.

29. By a default judgment of 3 December 2001 the District Court allowed in part the applicant's compensation claim for her husband's death and awarded her 20,000 Russian roubles (RUB).

30. As regards the applicant's compensation claim concerning the destruction of her property, the court noted that under Article 1069 of the Civil Code of Russia the State was liable only for damages caused by its agents' actions which were unlawful. It further found that the actions of the Russian federal troops in Chechnya had been lawful, as the military operation in Chechnya had been launched under Presidential Decree no. 2166 of 30 November 1994 and Governmental Decree no. 1360 of 9 December 1994, both of which had been found to be constitutional by the Constitutional Court of Russia on 31 July 1995.

31. The court further stated that the applicant had submitted no evidence proving a causal link between the defendants' actions and the damage sustained by her, since the military actions had been carried out by both parties to the conflict. Therefore the destruction of the applicant's possessions could not be imputed to the defendants.

32. The court further held that under Article 1079 of the Civil Code of Russia damage inflicted by a "source of increased danger" (*источник повышенной опасности*) was to be compensated for by the person or entity using that source, unless it was proven that the damage had been caused by *force majeure* or through the fault of the affected person. However, in the court's view, the applicant's reference to the above Article was unfounded, as weapons and military equipment, in the circumstances of the present case, could not be regarded as a "source of increased danger", since they had been used strictly for the purposes they were designed for and under the firm control of the relevant personnel. Moreover, the applicant had not adduced any evidence which would enable the court to establish the type and ownership of the weapon which had destroyed the applicant's housing.

33. The court also noted that the applicant had submitted no documents confirming the value of her lost property. It noted in this respect that witness statements obtained during the hearing only enabled it to establish the existence of the possessions in the applicant's flat prior to the destruction and the fact that those possessions had been new. The court made no findings regarding the applicant's property rights in respect of the destroyed flat.

34. The applicant's claims for compensation for non-pecuniary damage could not be granted either, in the absence of any fault or unlawful actions on the part of the defendants. In view of the above, the court concluded that there were no grounds for granting the first applicant's compensation claim for the destroyed property.

35. It does not appear that the applicant ever sought the first-instance court's assistance in obtaining evidence relating to the weapon that had destroyed her housing. In her appeal against the judgment of 3 December 2001 the applicant did not complain of her inability to obtain the evidence in question.

36. On 30 January 2002 the Stavropol Regional Court upheld the first-instance judgment on appeal.

4. Enforcement proceedings

37. On 30 January 2002, following the decision of the Stavropol Regional Court, the judgment of 3 December 2001 became final and binding.

38. According to the applicant, at some point the District Court issued a writ of execution and sent it to the Ministry of Finance for execution on 30 April 2002.

39. In the Government's submission, the writ of execution was received by the Ministry of Finance on 24 November 2004.

40. On 16 March 2006 the Ministry of Finance sent the applicant a letter inviting her to indicate the details of her bank account to enable the said Ministry to transfer the judgment debt to her.

41. The applicant provided the necessary information on 5 May 2006.

42. On 30 October 2006 the full amount due pursuant to the judgment of 3 December 2001 was transferred to the applicant's bank account.

B. Documents submitted by the Government

1. Documents relating to the criminal investigation

43. In October 2006, at the communication stage, the Government were invited to produce a copy of the investigation file of case no. 12005 instituted in connection with the killing of the applicant's husband and other persons on 6 January 2000. Relying on the information obtained from the Prosecutor General's Office, the Government refused to submit a copy of the entire file, stating that the disclosure of the documents would be in violation of Article 161 of the Russian Code of Criminal Procedure since the file contained personal data concerning the witnesses. They, however, produced a number of documents from the file, which can be summarised as follows.

(a) Documents relating to the conduct of the investigation and informing the applicant of its results.

44. By decisions of 27 February 2000 the Grozny prosecutor ordered that criminal proceedings be instituted in connection with the killing of the

applicant's husband and three other persons by a man named Khalid using a machine gun on 6 January 2000 and that an investigative group be organised for the investigation.

45. By a decision of 27 February 2000 the investigator in charge declared the applicant the victim of a crime.

46. By a decision of 15 March 2000 an investigator of the Grozny prosecutor's office took up the case.

47. By a decision of 23 April 2000 the investigator in charge suspended the proceedings in case no. 21005. The decision stated that the term established for the preliminary investigation had expired, that all possible investigative actions had been carried out, but that it was impossible to establish the identity of the alleged perpetrator. The decision did not list the actions that had been taken during the investigation.

48. In a letter of 23 or 28 [the hand-written date is unclear] April 2000 the applicant was informed that the investigation in case no. 12005 had been stayed, as it was impossible to establish the identity of the person responsible.

49. On 7 June 2000 the Grozny prosecutor ordered that the investigation be resumed, citing "the necessity of carrying out investigative actions". He did not indicate which particular actions should be taken. By a decision of the same date an investigator of the Grozny prosecutor's office took up the case.

50. A decision of 10 December 2001 of the first deputy prosecutor of Grozny ordered that the investigation in criminal case no. 12005 be resumed. It stated, in particular, that "...the investigation ... [had been] extremely superficial and was limited to carrying out several investigative actions and to including in the materials of the case file reports of investigating officers on the performed work and the results". It went on to say that the decision of 7 July 2000 by which the investigation had been suspended for failure to establish the alleged perpetrator had been premature, before all investigative steps had been taken, and should be quashed. The decision of 10 December 2001 further listed a number of investigative steps that should be taken during an additional investigation.

51. In a letter of 12 December 2001 the Grozny prosecutor's office informed the applicant in reply to her query that the criminal proceedings had been suspended on 7 July 2001 [apparently a misprint, the correct date is 2000] in the absence of any persons identifiable as the perpetrators. The letter went on to say that a study of the case file had shown the preliminary investigation into the circumstances of the death of the applicant's husband to have been superficial, and that the proceedings had therefore been resumed on 10 December 2001 and the investigator in charge had been instructed to carry out an additional investigation.

52. By decisions of 14 December 2001 an investigator of the Grozny prosecutor's office took up case no. 12005 and requested that 14 January 2002 be fixed as the term of the preliminary investigation.

53. On 14 January 2002 the investigator in charge ordered that the proceedings be stayed, as "during the additional investigation it [had been] impossible to establish those responsible". The decision did not specify whether any investigative steps had been taken, or if so, what they were.

54. By a decision of 21 April 2005 a deputy prosecutor of the Zavodskoy District prosecutor's office set aside the decision of 14 January 2002 and ordered that the investigation in case no. 12005 be reopened. The decision stated that "the investigation [had been] carried out superficially, haphazardly and unprofessionally" and that "the decision [of 14 January 2002] suspending the preliminary investigation [had been] premature and unfounded, without all the circumstances of the serious crime committed having been studied". The prosecutor thus ordered that the decision of 14 January 2002 be set aside, given, in particular, the fact that the prosecutor's instructions of 10 December 2001 had not been complied with. The decision did not list any particular investigative actions to be performed.

55. On 22 April 2005 an investigator of the Zavodskoy District prosecutor's office took up the case, and on the same date informed the applicant of the reopening of the investigation.

56. By a decision of 22 May 2005 the investigator in charge stayed the investigation on account of the failure to establish the alleged perpetrator. The decision stated that during the additional investigation a query had been sent to the Ministry of the Interior of the Chechen Republic with a view to establishing the alleged perpetrator's whereabouts, and that, upon receipt of a reply to that query, a request was sent to the Shali district prosecutor's office with a view to organising interviews with persons having personal details similar to those of the alleged perpetrator. The decision did not indicate whether any other steps had been taken. A letter of the same date informed the applicant of this decision.

57. By a decision of 8 December 2006 a deputy prosecutor of the Zavodskoy district prosecutor's office ordered that the decision of 22 May 2005 be set aside and the proceedings in case no. 12005 reopened. The decision stated, in particular, that the decision to suspend the investigation had been unfounded and that the investigator in charge had failed to take all measures which could be taken in the absence of a person identifiable as a perpetrator. The decision further listed investigative measures that should be taken during an additional investigation. On the same date an investigator of the Zavodskoy district prosecutor's office took up the case and informed the applicant of the reopening of the proceedings.

(b) Documents relating to investigative actions

58. A report on the exhumation dated 8 June 2000 contains a detailed description of the site of the burial and the exhumed bodies.

59. In June 2000 (the date is unclear) forensic medical experts drew up reports on the results of the examination. The report drawn up in respect of the body of the applicant's husband attested the presence of gunshot wounds to the head and neck.

60. On 19 June 2000 the investigator in charge sent a query to the Prosecutor General's Office in an attempt to find out whether any criminal proceedings had ever been brought against Khazir (Khamed) Ismailov, aged 43, who had been an officer of the security services established by rebel fighters, and if so, to obtain his full personal details and photographs, or in the absence of photographs to have people who might have known him questioned.

(c) Transcripts of witness interviews

61. During an interview of 27 February 2000 the applicant re-stated the circumstances of the incident of 6 January 2000. She described in detail the appearance of Khalid, the man who, according to her, had shot her husband and three other persons. She stated that he was of Chechen origin and, since December 1999, had shared a flat in their block of flats with another man of Chechen origin, who had been their neighbour. Both of them had been armed with machine guns. She further stated that on the night of the incident Khalid had come down to their basement in a drunken state and shot her husband and three others with his machine gun. She had managed to hide in a dark corner of the basement. Immediately after the incident the applicant ran to a neighbouring block of flats where rebel fighters had been quartered and told them about the killing. According to her, they had taken Khalid out of the basement and started beating him with the butts of their machine guns and had promised her that they would commit him for trial. On the following day, with the assistance of her two neighbours, the applicant had buried those killed near their block of flats. On the same day in the courtyard she had seen Khalid armed with a machine gun.

62. One of the neighbours who had helped the applicant with the burial stated in her witness interview of 27 February 2000 that she had learnt about the killing of the applicant's husband and three others from the applicant. She gave oral evidence similar to that of the applicant and added that during the burial a man who had described himself as the former head of a security service established by rebel fighters had said that he knew Khalid and indicated the approximate vicinity of Khalid's residence.

63. Transcripts of witness interviews held on 20 and 21 May 2005 reveal that the investigating authorities questioned three persons who were born in 1966, 1971 and 1983 and had the surname Ismailov and the first names of Khalid or Khazir. All of them stated that they had not been in Grozny

during the period in question, did not know the man described by the applicant, and had no information regarding the incident of 6 January 2000.

64. Transcripts of witness interviews on 8 and 9 December 2006 reveal that the investigating authorities questioned six persons, apparently the applicant's neighbours. They all stated that they did not know, and had no information about, the man described by the investigators.

2. A document relating to the civil proceedings

65. The Government also adduced the transcript of a hearing held by the Leninskiy District Court of Stavropol on 3 December 2001. According to this document, both the applicant and her legal counsel, Mr V. Tretyakov, attended the hearing. It is clear from this document that both parties to the proceedings received explanations in respect of their rights and obligations, in particular, those established by Article 50 of the Code of Civil Procedure (see paragraph 67 below). The transcript further reveals that the court heard both parties, the applicant having made statements similar to her written submissions to the court, and then four witnesses, who described the belongings that had been in the applicant's flat prior to the destruction. The witnesses did not indicate the value of that property. As can be seen from the document, neither the applicant nor her representative had any questions, nor filed any motions. It is also clear that the court examined the following pieces of evidence: a copy of the marriage certificate, a copy of the passport, a housing warrant, a copy of the death certificate, an extract from a medical history card, two certificates, two letters, a copy of an identity document, parties' written submissions, and summons.

II. RELEVANT DOMESTIC LAW

A. Criminal proceedings

66. Article 109 of the Code of Criminal Procedure of 1960 in force at the relevant time provided that the competent authorities were under an obligation to take a decision in respect of any written or oral complaint concerning a criminal offence within three days, or in exceptional cases ten days, from the date on which the complaint was received.

B. Civil proceedings

67. Article 50 of the Code of Civil Procedure of 1964 in force at the relevant time stated that each party to proceedings must prove those circumstances to which it refers in support of its submissions. A court decides what circumstances are relevant for the case and which party must

prove them and proposes those circumstances for discussion even if some of them have not been referred to by any of the parties. Evidence is submitted by the parties and other persons involved in the proceedings. A court may propose that the parties or other persons involved in the proceedings submit additional evidence. If it is complicated for the parties or other persons involved in the proceedings to submit additional evidence, the court, on their request, assists them in obtaining that evidence.

C. Enforcement proceedings

68. Section 9 of the Law on Enforcement Proceedings of 21 July 1997 provides that a bailiff's order on the institution of enforcement proceedings must fix a time-limit for the defendant's voluntary compliance with a writ of execution. The time-limit may not exceed five days. The bailiff must also warn the defendant that coercive action will follow, should the defendant fail to comply with the time-limit.

69. Under Section 13, enforcement proceedings should be completed within two months following receipt of the writ of enforcement by the bailiff.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

70. The applicant complained that the State had failed to discharge its positive obligation to secure her husband's life and that the investigation into his death had been ineffective. She relied on Article 2 of the Convention, which reads as follows:

“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.”

A. Admissibility

1. *Alleged failure to protect the right to life*

71. The applicant argued that the State had not taken any steps to prevent the murder of her husband from being committed.

72. The Government contended that the applicant's complaint under this head should be declared inadmissible for non-exhaustion of domestic remedies, since the investigation into the killing of her husband was still pending. They further denied their responsibility for the death of the applicant's husband, stating that he had been murdered by a private individual and that the authorities had never been notified of the existence of any danger to the life of the applicant's husband.

73. The Court observes firstly that it is not in dispute between the parties that the applicant's husband was murdered by a private individual rather than by a State agent. It is true that in certain circumstances Article 2 of the Convention may imply a positive obligation on the authorities to take measures to protect an individual whose life is at risk from the criminal acts of another individual, where the authorities know or ought to have known of the existence of that risk (see *Osman v. UK*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, §§ 115-116). However, that obligation cannot be interpreted as imposing a duty on the State to prevent every possibility of violence (see *Dujardin v. France*, no. 16734/90, Commission decision of 2 September 1991, *Decisions and Reports* 72, p. 236).

74. In the present case, the Court has not been furnished with any evidence that the alleged offender ever threatened the applicant's husband or that the authorities were duly notified of any danger to the latter's life, but failed to take any steps to avoid it. In such circumstances, the Court is unable to conclude that this complaint raises any issues under the Convention, as holding otherwise would impose an impossible or disproportionate burden on the authorities (see *Osman*, cited above, § 116).

75. Accordingly, the Court does not consider it necessary to answer the Government's objection concerning the non-exhaustion of domestic remedies, as the present complaint is in any event manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. *Alleged inadequacy of the investigation*

76. The applicant insisted that the investigation into her husband's death had not been adequate, and fell short of the Convention standards.

77. The Government argued firstly that the investigation into the murder of the applicant's husband was still ongoing, and that therefore the domestic remedies had not been exhausted. They further claimed that the

investigation in the present case had met the requirements of effectiveness, enshrined in Article 2 of the Convention. In particular, the applicant's complaint concerning the incident of 6 January 2000 had been received by the authorities on 17 February 2000, and the criminal proceedings had been instituted on 27 February 2000, which had been in full compliance with the time-limit established by Article 109 of the Code of Criminal Procedure of 1960 then in force. Also, in the Government's submission, all measures envisaged in national law were being taken to identify the alleged perpetrator.

78. The Court considers that the Government's objection as to the exhaustion of domestic remedies raises issues which are closely linked to the question of the effectiveness of the investigation. It therefore decides to join this objection to the merits of the present complaint. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

79. 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. The investigation must be effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances (see *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, p. 324, § 87) and to the identification and punishment of those responsible (see *Oğur*, cited above, § 88).

80. In particular, the authorities must take the reasonable steps available to them to secure the evidence concerning the incident, including *inter alia* eye witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death (see concerning autopsies, for example, *Salman v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000-VII; concerning witnesses, for example, *Tanrikulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 109; and concerning forensic evidence, for example, *Gül v. Turkey*, no. 22676/93, [Section 4], § 89). Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible may risk falling foul of this standard.

81. Also, there must be an implicit requirement of promptness and reasonable expedition (see *Yaşa*, cited above, §§ 102-04, and *Mahmut Kaya*,

cited above, §§ 106-07). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating the use of lethal force may generally be regarded as essential in maintaining public confidence in the maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.

82. In the instant case, the Court observes that some degree of investigation was carried out into the killing of the applicant's husband. It must assess whether that investigation met the requirements of Article 2 of the Convention. In this respect the Court notes that its knowledge of the criminal proceedings at issue is limited to the materials from the investigation file selected by the respondent Government (see paragraphs 43-64 above). Drawing inferences from the respondent Government's conduct when evidence is being obtained (see *Ireland v. the United Kingdom*, cited above, pp. 64-65, § 161), the Court assumes that the materials made available to it have been selected so as to demonstrate to the maximum extent possible the effectiveness of the investigation in question. It will therefore assess the merits of this complaint on the basis of the existing elements in the file and in the light of these inferences.

83. The Court observes that the applicant notified the authorities of the incident of 6 January 2000 on 17 February 2000 and the criminal proceedings in this connection were commenced on 27 February 2000, that is ten days after the applicant had lodged her complaint. There is no evidence that this delay was detrimental to the conduct of the investigation, and therefore the Court does not consider it to be excessive in the circumstances of the present case.

84. The Court further notes that immediately after the investigation was opened, and notably on 27 February 2000, the applicant was granted the status of the victim of a crime and questioned. On the same day the authorities also questioned the applicant's neighbour who had assisted her in burying the remains of those killed. It does not appear, however, and the Government did not provide any relevant information or documents in this respect, that any other investigative actions were taken before the proceedings were suspended on 23 or 27 April 2000. In particular, the Court is sceptical about the Government's assertion that the scene of the incident was inspected on 27 February 2000, as the Government did not produce any reports on the results of such an inspection. Also, the exhumation of the bodies and their forensic examination were only performed on 8 June 2000, after the reopening of the investigation. It is unclear, and the Government did not provide any explanation on the point, why such an important investigative step could not have been, and was not, taken earlier.

85. Moreover, although during their witness interviews of 27 February 2000 the applicant had already described in detail the appearance of the presumed murderer (see paragraph 61 above) and her neighbour had already

indicated, at least approximately, the possible place where he might be living and his possible connection with rebel fighters (see paragraph 62 above), and it was also during the very early stages that the authorities seem to have identified the alleged perpetrator (see paragraph 60 above), there is no indication that any meaningful efforts were made to organise a search for that person. It was not until May 2002 that the authorities informed the applicant of the presumable identity of the alleged perpetrator and the fact that he had been put on the federal wanted list (see paragraph 20 above), and it was not until three years later, in May 2005, that the authorities questioned people having the same names and surnames as the alleged perpetrator (see paragraph 63 above). The Government provided no explanations why those actions could not have been, and were not, taken earlier. It also does not appear that any witnesses other than the applicant and her neighbour were questioned before 2005, and it is unclear whether any attempts to identify witnesses in the present case were made during the previous years.

86. The Court also notes that the investigation was ongoing from February 2000 until at least December 2006, during which period it was suspended and reopened on at least four occasions. When resuming the proceedings, the prosecutors clearly stated that the investigation was deficient, “superficial and unprofessional” and ordered that certain steps be taken, but there is no evidence that those instructions were complied with (see paragraphs 49, 50, 54 and 57 above). The investigation remained suspended between 7 July 2000 and 10 December 2001, then between 14 January 2002 and 21 April 2005, and then between 22 May 2005 and 8 December 2006. The Government gave no explanations for such considerable periods of inactivity.

87. In the light of the foregoing, and with regard to the inferences drawn from the respondent Government’s submission of evidence, the Court is bound to conclude that the authorities failed to carry out a thorough and effective investigation into the circumstances surrounding the death of the applicant’s husband. It accordingly rejects the Government’s objection as regards the applicant’s failure to exhaust domestic remedies within the context of the criminal proceedings, and holds that there has been a violation of Article 2 of the Convention on that account.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

88. The applicant complained about the delayed enforcement of the final judgment in her favour. She also complained of the unfairness of the proceedings for compensation, stating that in the absence of any specific knowledge regarding military equipment or access to any information about the details of the military operation in Chechnya, apart from that made

public in the mass media, she was not in a position to obtain any evidence as to what type of weapon destroyed her property or to what unit of the federal forces it had belonged. Lastly, the applicant complained that her housing and other belongings had been destroyed during the attack of 4 January 2000 but that no compensation had been awarded to her for their loss. She relied on Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention, which, in so far as relevant provide as follows:

Article 6

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

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Delayed enforcement of the final judgment

89. The applicant maintained her complaint.

90. The Government acknowledged a violation of Article 6 of the Convention in that the judgment in the applicant’s favour had been enforced with some delay.

1. Admissibility

91. The Court observes at the outset that the Government acknowledged a violation of Article 6 on account of the delayed enforcement of the applicant’s judgment debt, but made no acknowledgement as regards the alleged violation of Article 1 of Protocol No. 1, nor indicated whether any redress had been afforded to the applicant in the above connection. In such circumstances, the Court is satisfied that the applicant may still claim to be a “victim” of the alleged violation of her rights under Article 6 of the Convention and Article 1 of Protocol No. 1, in so far as the delayed enforcement of the judgment in her favour is concerned.

92. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

93. The Court observes that the judgment of 3 December 2001 was upheld on appeal on 30 January 2002, following which it became final and enforceable. It further notes the Government's allegation that the writ of execution was only received by the respondent Ministry on 24 November 2004. In this respect, the Court reiterates that as soon as the judgment in the applicant's favour becomes enforceable, it is incumbent on the State to comply with it (see *Reynbakh v. Russia*, no. 23405/03, § 24, 29 September 2005). Furthermore, a person who has obtained an enforceable judgment against the State as a result of successful litigation cannot be required to resort to enforcement proceedings in order to have it executed (see *Koltsov v. Russia*, no. 41304/02, § 16, 24 February 2005; *Petrushko v. Russia*, no. 36494/02, § 18, 24 February 2005; and *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). Having regard to these principles, the Court therefore rejects the Government's argument and finds that in the present case the delay of execution should be calculated from 30 January 2002.

94. The Court observes that the judgment in the applicant's favour remained inoperative until 30 October 2006, that is for four years and nine months. No justification was advanced by the Government for this delay.

95. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the ones in the present case (see, among many other authorities, *Burdov v. Russia*, no. 59498/00, ECHR 2002-III, or *Poznakhirina v. Russia*, no. 25964/02, 24 February 2005).

96. Having examined the material submitted to it, the Court notes that the Government did not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court finds that by failing for years to comply with the enforceable judgment in the applicant's favour the domestic authorities prevented her from receiving the money she could reasonably have expected to receive.

97. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

B. Alleged unfairness of the proceedings for compensation

98. The applicant submitted that the domestic courts had unjustifiably rejected her arguments that the block of flats in which she lived, and in particular her flat and her belongings, had been destroyed by the federal

armed forces, and that the weapons used by the armed forces should be regarded as a “source of increased danger” with the result that the armed forces should be liable for compensation for damage caused by such a “source”. The applicant contended that her claims had been based on generally known facts concerning the use of heavy force and indiscriminate shelling by the federal armed forces in Chechnya which had been available in the mass media, and therefore she had been under no obligation to prove those facts. She claimed that the court’s requirement for her to submit evidence as to the type of weapon which had destroyed her property; and which party to the conflict had used it had been unjustified, as she had clearly been unable to identify that weapon, or to find out which party had used it.

99. The Government argued that the principles of fairness and equality of arms, as secured by Article 6 § 1 of the Convention, were not breached in the applicant’s case. They pointed out that under relevant national legislation the applicant was under an obligation to submit evidence in support of her claims, and, in particular, to prove that she had sustained damage, that it had been caused by the defendant, and that there was a causal link between the defendant’s actions and the infliction of damage. The Government also submitted that under relevant national law the court explained to the parties to the proceedings their procedural obligations and rights, including their right to seek the court’s assistance in collecting and obtaining evidence. They further argued with reference to the transcript of the hearing of 3 December 2001 (see paragraph 65 above) that the applicant had received explanations concerning her procedural rights, and that neither she nor her legal counsel had filed any motions to request the court’s assistance in obtaining evidence. The Government thus argued that the applicant could not be said to have been placed under an excessive burden of proof in the proceedings for compensation.

100. The Court, bearing in mind that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see, for example, *Airey v. Ireland*, 9 October 1979, § 24, Series A no. 32), would not exclude the possibility that in certain circumstances Article 6 § 1 of the Convention might require the domestic courts to assist the most vulnerable party to the proceedings in collecting evidence in order to enable that party to submit argument properly and satisfactorily so that the principle of fairness is respected.

101. The Court is not convinced, however, that there were any deficiencies in the proceedings in the present case that could bring Article 6 § 1 into play. Assuming that the applicant was, indeed, effectively prevented from obtaining the necessary evidence in support of her claims, the Court cannot but agree with the Government’s argument that it was open to her to seek a domestic court’s assistance in that respect. It is clear that the national law then in force provided the applicant with this opportunity (see

paragraph 67 above). The transcript of the court hearing of 3 December 2001 reveals that the applicant, who was represented by a lawyer, received explanations concerning this procedural right, but that neither she nor her representative ever attempted to avail themselves of that opportunity. Moreover, the applicant never raised the issue of her alleged inability to obtain evidence, or the alleged lack of assistance on the part of the first-instance court, in her appeal to a higher court.

102. The Court further observes that the domestic courts duly addressed all the arguments raised by the applicant in her written submissions and orally during the hearing of 3 December 2001 and provided reasons for rejecting them. The fact that the applicant disagreed with the courts' finding does not raise any issues under the Convention in the circumstances of the present case. Overall, having regard to the materials in its possession, the Court can find no indication that the applicant was not fully able to state her case and to present her arguments as she wished, or that the judicial authorities did not give them due consideration. It therefore sees no reason to believe that the proceedings in question did not comply with the fairness requirement of Article 6 § 1 of the Convention.

103. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

C. Alleged destruction of the applicant's property

104. The applicant insisted that the block of flats in which she lived had been destroyed as a result of a missile strike, and argued that the missiles had presumably been in the exclusive possession of the federal armed forces. According to her, she had submitted photographs of the destroyed block of flats and a hole left by a missile in its walls to the domestic courts. She also argued that the information concerning the use of heavy weapons and indiscriminate shelling by the federal troops in Chechnya had been generally known and accessible in the mass media. The applicant thus contended that by destroying her property and refusing to award her any compensation in that connection, the State had breached her rights secured by Article 1 of Protocol No. 1.

105. The Government made no particular submissions on the issue.

106. The Court reiterates at the outset that it is for the applicant complaining of an interference with his rights under the Convention to provide *prima facie* evidence to this effect (see, among others, *Z.M. and K.P. v. Slovakia* (dec.), no. 50232/99, 18 November 2003). In assessing evidence, the Court adopts the standard of proof "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. The Court is sensitive to the subsidiary nature of its role and 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. Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and as a general rule it is for those courts to assess the evidence before them. Though the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Matyar v. Turkey*, no. 23423/94, §§ 107-108, 21 February 2002).

107. Turning to the present case, the Court notes first of all that the applicant has not furnished it with any document proving that she had a property right in the destroyed flat. The only relevant document she has submitted is the housing warrant (see paragraph 6 above), from which it can be ascertained that she had the right to live in that flat, but it is unclear whether she was the flat's tenant or its owner. Moreover, the first instance court did not make any findings in this respect either, having only established, with reference to eye witness statements, the existence of certain property inside the destroyed flat (see paragraph 33 above). The Court, however, does not consider it necessary to establish the scope of the applicant's property in the present case for the following reasons.

108. It observes that similar complaints concerning the destruction of property during the conflict in Chechnya were examined in the case of *Umarov v. Russia* and found inadmissible on the ground that the applicant had failed to substantiate them (see *Umarov v. Russia* (dec.), no. 30788/02, 18 May 2006). Likewise, in the instant case the applicant has not produced any evidence in support of her complaints made to the Court that the destruction of her possessions was imputable to the State which could enable the Court to depart from the findings of the domestic courts. The only relevant document submitted by the applicant is a certificate issued by a housing authority on 21 June 2000 stating that the applicant's flat had been destroyed during the military actions on 4 January 2000 (see paragraph 11 above). This document gives no indication as to the cause of the destruction. Apart from this certificate, the applicant has not furnished the Court with any documents, such as witness statements, plans, photographs or a video recording of the scene of the incident, documents from public bodies, or any other evidence confirming the involvement of the State agents in inflicting damage on her property (see, by contrast, *Khamidov v. Russia*, no. 72118/01, §§ 63-72, 136 and 138, ECHR 2007-... (extracts)). The Court is sceptical about the applicant's allegation that she had adduced photographs showing a missile hole in the walls of the destroyed block of flats to the domestic courts, as the enclosures listed in the applicant's written submissions to the District Court (see paragraph 28 above), or the materials listed in the transcript of the court hearing of 3 December 2001 (see paragraph 65 above) do not mention any photographs among the adduced documents. Also, the applicant has not submitted any

such photographs, if they exist, to the Court, or given any reasons preventing her from submitting this evidence. Nor has she relied on any independent sources to confirm that on the date in question there was an attack by federal forces resulting in the damage alleged (see, by contrast, *Isayeva v. Russia*, no. 57950/00, §§ 28 and 111-115, 24 February 2005).

109. Having regard to the general situation prevailing in the region at the material time, the Court notes that violent confrontations took place between the federal armed forces and rebel fighters particularly in late 1999 – early 2000, this two-sided violence ensuing from the acts of both parties to the conflict and resulting in destruction of the property of many residents of Chechnya. It is not convinced that in such circumstances the State may or should be presumed responsible for any damage inflicted during the military operation, and that the State's responsibility is engaged by the mere fact that the applicant's property was destroyed.

110. In the light of the foregoing, and bearing in mind its above finding that the principle of fairness was respected during the examination of the applicant's civil case (see paragraph 102 above), the Court is unable to depart from the findings of the domestic courts and reach the conclusion that the applicant's possessions were destroyed, as alleged, by the Russian troops. The Court therefore finds that the applicant's complaints as to the State's responsibility for the damage to her property, and the claims for compensation, have not been substantiated.

111. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

112. 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.”

113. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award her any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Joins to the merits* the Government's objection concerning the exhaustion of domestic remedies and *rejects* it;

2. *Declares* the applicant's complaint under Article 2 of the Convention concerning the alleged ineffectiveness of the investigation into her husband's death and her complaint under Article 6 of the Convention and Article 1 of Protocol No. 1 concerning the delayed enforcement of the judgment in her favour admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 2 of the Convention on account of the authorities' failure to carry out an adequate and effective investigation into the circumstances surrounding the death of the applicant's husband;
4. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention on account of the delayed enforcement of the judgment in the applicant's favour.

Done in English, and notified in writing on 11 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President