



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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Applications nos. 57953/00 and 37392/03  
by Zura Sharaniyevna BITIYEVA  
and X.  
against Russia

The European Court of Human Rights (First Section), sitting on 20 October 2005 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above applications lodged on 25 April 2000 and 21 November 2003,

Having regard to the decision of 1 July 2004 to join the proceedings in these applications,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

## THE FACTS

The first applicant, Zura Bitiyeva, was born in 1948 and lived in the village of Kalinovskaya, Naurskiy District, Chechnya. She was killed on 21 May 2003 in her house, along with three other members of her family. The second applicant is X., the first applicant's daughter. She was born in 1976 and currently resides in Germany where she sought asylum. The applicants are Russian nationals. They are represented before the Court by lawyers working for the NGO EHRAC/Memorial. The respondent Government are represented by Mr P.A. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

### A. The circumstances of the case

The facts of the case are partially disputed by the parties. Their submissions may be summarised as follows.

#### *1. The first applicant's detention in January - February 2000*

The first applicant lived in the village of Kalinovskaya in the Naurskiy district in Chechnya, together with her husband Ramzan Iduyev and her children, Idris Iduyev and X. (the second applicant).

The first applicant was an active political figure in the Republic and participated in anti-war protests. In 1994 – 1996 she worked with the Committee of Soldiers' Mothers, an important Russian NGO.

The applicants submit that on 24 January 2000 Russian soldiers entered the first applicant's house to conduct a passport check. The first applicant and her son Idris Iduyev explained that their passports had been submitted for renewal to the local authority. This explanation was apparently accepted and the soldiers left.

On 25 January 2000 at about 6 a.m. about 20 men in military uniforms, some wearing balaclava masks, surrounded the applicant's house. They jumped into the courtyard over the fence and started knocking on the door with rifle butts. The first applicant's husband opened the door and asked for the reasons for the visit. Four men, apparently the same as had been in the house on the previous day, replied that it was a passport check. They spread in the house and ordered the first applicant, whom they had addressed by name, to go with them to the local police department to find out about her passport. They apparently threatened to use force if the applicant refused to go with them. The first applicant's son Idris Iduyev was also ordered to go.

The first applicant and her son were put into a UAZ-52 vehicle. They were brought to the Naurskiy District Temporary Department of the Interior (VOVD). There they spent about two hours, after that they were brought to the Chernokozovo detention facility. There the first applicant and her son were separated.

The first applicant submits that upon arrival to Chernokozovo she was forced by soldiers to watch ill-treatment of other detainees. About 60 men were made to run naked, with their clothes folded in their arms, along a corridor about 50 metres long while the soldiers beat them.

The first applicant was forced to stand with her face to the wall, with her hands raised against the wall until the evening. The hall was unheated, with broken windows and it was very cold. She was not allowed to sit down or to lie. In the evening she was taken to a cell.

The cell no. 2 where the first applicant spent about one month was very small. It contained four metal beds and a toilet. Three to ten women were kept there at different times, and sometimes the detainees had to sleep in turns. The cell was very dirty and the stench from the toilet was unbearable. Once a day the detainees were given four litres of water per cell and one cup of meal for three persons in dirty dishes.

During her detention the first applicant was humiliated constantly as a woman and as a person of Chechen origin. The guards told her that she would not leave this place alive, that she would go insane or kill herself. The applicant was pushed and hit with rifle butts on many occasions. On one occasion, around 3 February, the guards sprayed gas into each cell, causing detainees to cough.

Other inmates in the cell, according to her submissions, included sick people and children. The applicant witnessed other detainees being beaten and humiliated by the guards. Sometimes she could hear her son's screams when he was beaten in the corridor in front of her cell.

The first applicant was called for interrogation about four times during her stay in Chernokozovo. The interrogator did not state his name or rank and asked her questions of a general character. The applicant was asked about her name and where she was from, to which clan she belonged, if she was Muslim and if she prayed. She was also asked questions about the "peace march" to Moscow in which she had participated and who had financed it.

The first applicant, who suffered from cholecystitis and failing heart, was denied professional medical help while in detention. Her medical condition deteriorated rapidly. On one occasion she fainted in the corridor and the guards only allowed other women inmates to carry her into the cell after half an hour.

The second applicant submitted that she brought food and medicines to her mother and brother in detention in Chernokozovo, but only a small part of it was reaching the first applicant, as the soldiers were taking most of it.

In support of the first applicant's submissions on conditions of detention in Chernokozovo the applicants submitted a testimony by Sh., who had been detained in the same cell as the first applicant in January – February 2000. She confirmed the applicant's submissions concerning the conditions of

detention, the beatings of other detainees and about the first applicant's health problems.

In addition, the first applicant submitted numerous press and NGO reports about the situation in the Chernokozovo detention facility in the end of 1999 – beginning of 2000, speaking about intolerable conditions of detention and wide-spread torture and ill-treatment of detainees, as well as relevant Council of Europe documents.

The Government submitted in their observations filed on 26 August 2004 that the first applicant and her son Idris Iduyev had been detained on 25 January 2000 on the basis of the President's Decree of 2 November 1993 no. 1815 “On measures aimed at prevention of vagrancy” and placed in the reception and identification centre (*приемник-распределитель*) in Chernokozovo, which had functioned in November 1999 – February 2000. The first applicant remained there until 17 February 2000, when her identity was established. No records were preserved which could be relevant to the lawfulness of the first applicant's or her son's detention.

## *2. The first applicant's release and subsequent events*

The first applicant submits that she spent 24 days in Chernokozovo. She did not indicate the exact date when she was transferred to a hospital in Naurskaya. According to the second applicant's statement, her mother was unconscious and the doctors insisted that she should be taken to the hospital for intensive care. According to the second applicant, the prison authorities were reluctant to allow her mother to be transferred to a hospital and it was only after the intervention of a prison doctor that they gave their permission. The first applicant submitted that in the hospital she was guarded by the military for another few weeks. She also submitted that the military tried to take her back after three days, but the doctors did not allow them to do so.

The first applicant submitted that in mid-March 2000 she was visited in the hospital by the Naurskiy District Prosecutor who told her she had been cleared of the charges.

The first applicant was issued a certificate by the head of the Naurskiy VOVD, dated 2 March 2000, which stated that “from 25 January to 26 February 2000 the criminal police of the Naurskiy VOVD verified on the basis of incriminating materials [the first applicant's] participation and involvement with illegal armed groups in Chechnya. No incriminating material was found”.

The second applicant submits that her mother spent one month in the hospital and after release she remained very weak and spent another month in bed. She had significantly lost in weight, her arms and head trembled. No medical documents have been submitted by the parties.

The first applicant's son, Idris Iduyev, was released from Chernokozovo several days later, having spent one month and two days in detention. The

second applicant submits that Idris Iduyev also suffered from beatings and ill-treatment received in detention.

Neither the first applicant nor her son Idris Iduyev have been charged with committing a crime in relation to their detention.

The Government submitted that the first applicant was placed in the Naurskiy district hospital on 17 February 2000 and diagnosed with “double-sided bronchopneumonia and neuroculatory dystonic of cardial type with asthmatic syndrome”. They also submit that Idris Iduyev was released on 26 February 2000. After release neither of them filed complaints with the prosecutor's office about alleged ill-treatment while in detention.

On 24 March 2000 the NGO Memorial addressed the General Prosecutor following a publication in the Itogi magazine about “filtration points” for persons whom the federal authorities suspected of being linked to the illegal armed groups. The article and accompanying pictures described harsh conditions of detention in a filtration point in Tolstoy-Yurt near Grozny. It also spoke of abuse and ill-treatment in Chernokozovo. On 24 March 2000 the prosecutor of the Grozny district responded to Memorial, confirming that on 2 – 12 February 2000 a “filtration point” had indeed been organised in the village of Tolstoy-Yurt. He stated that in the period in question 356 persons were detained there. Of them 141 persons were charged with committing a crime of participation in illegal armed groups, detained on the basis of a prosecutor's order and transferred to the Chernokozovo pre-trial detention centre (SIZO). All others were released. The legality of detention was supervised by the relevant prosecutors and the detainees have been provided with sleeping facilities, food and medical assistance.

The applicants submitted a number of NGO and media reports referring to the situation in Chernokozovo at the material time. In particular, they invoked the Human Rights Watch Report of October 2000 “Welcome To Hell: Arbitrary Detention, Torture and Extortion in Chechnya”. The report contained a special section on the Chernokozovo detention centre in January – early February 2000 based on interviews with former inmates. The report presented a picture of systematic abuse and ill-treatment of detainees, compounded with sordid conditions of detention. It called upon the Russian authorities to investigate fully the events in Chernokozovo in January and February 2000 to ensure prosecution of the responsible for the abuses and to grant compensation to the victims.

### *3. The killing of the first applicant on 21 May 2003*

The second applicant submitted three statements by witnesses of the events: her brother, I., who had survived the attack and two neighbours, M. and G. According to these statements, on 21 May 2003 the first applicant, her husband Ramzan Iduyev (the second applicant's father), their son Idris Iduyev (the second applicant's brother) and the first applicant's brother Abubakar Bitiyev (the second applicant's uncle) spent the night at the first

applicant's house at 7 Filatova Street in Kalinovskaya. The first applicant's other son, I., was sleeping in a separate house in the same household, and his one-year old son was in the house with the first applicant, his grandmother.

At around 3.00 a.m. two UAZ-45 cars without registration plates, equipped with large antennas, arrived at the house neighbouring with the first applicant's. Several men entered the house very quietly, so the owner of the house, D., did not hear them enter. They woke D. up and taped her mouth with adhesive tape. Then they demanded her passport. One of them looked at the photograph and told the others in Russian "This is not her". They then left, having warned the inhabitants to be quiet for ten minutes. They took the passport along. D. later found her passport in the first applicant's house.

The group arrived at the first applicant's house at about 3.30 a.m. Eleven persons entered the first applicant's house, a few others, armed with grenade-launchers and machine guns spread in the street around the house. They were all tall and well-built and were wearing camouflage which the witnesses identified as the uniform of the special forces. Four of them were masked, others were wearing black helmets covering neck and ears. The men who entered the house were armed with AK-7,62 guns. In a few minutes a neighbour heard six or seven muffled blow sounds, which he at first mistook for knocking at the gates. He then realised it had been the sounds of shooting.

I., the first applicant's son, testified that he had heard noise and a scream at the neighbours' at about 3.30 a.m. He thought that something could have happened, probably a special operation by the Russian forces, something that had happened regularly in the village. He dressed up very quickly and looked outside. He noticed several men in camouflage and "special forces helmets" jumping into the courtyard across the fence. The witness guessed that they would not immediately break into the house and noted that they first took up combat positions around the door. He rushed into the room and covered his bed with a blanket, then hid behind an armchair. As soon as he did so he heard the pounding of boots and several men ran into the house and spread in the rooms. One of them said "There is no one here", and another one said "Take the video". They spoke Russian and did not mention any names or ranks when addressing each other. In two or three minutes they left, having taken the video player. The first applicant's son heard the dog barking and some noise outside. Then he heard about 10 shots fired very rapidly. About five minutes later he heard them shouting "Come on, let's leave, quick", and then the sound of the cars leaving.

The neighbours saw two UAZ cars leave towards the main road to Grozny.

I. waited a few more minutes until the dog stopped barking and went outside. He saw three women in the street and was very surprised that his

mother had not come out, because usually she was very active and intervened when someone had been detained in the village. He noticed that the door of his parents' house was ajar and thought that his whole family had been taken away. When he entered the house he heard his one-year old son crying. He noted his mother lying on the floor and the baby crying in the bed. A woman neighbour entered and he gave her the baby and asked her to take him out.

He then returned to the room and turned on the light. He found the first applicant on the floor, lying on her back. Her mouth was covered with adhesive tape and her hands were scotched together with the same tape. She had been shot in the face and in the hands. I. later counted three bullet holes in the floor, from an AK-7,62 gun.

Then he went into the corridor and found the body of his uncle, Abubakar Bitiyev. Neighbour M. submitted that there was a black hood with strings on his head, used by the military when they detained persons. His hands and feet were taped together. He had been shot three times in the back of his head. I. testified that his uncle was sleeping that night in a separate house in the same household and that the killers must have brought him to the first applicant's house by force because the furniture in that house had been smashed.

In the living room they found the body of the first applicant's husband, Ramzan Iduyev. He was lying on the floor near the sofa, his hands and legs were scotched together. He had been shot in the back of his head. A roll of adhesive tape was lying near his body. In the bedroom on the floor they found the body of the first applicant's son, Idris Iduyev, with hands taped behind his back and legs taped. He was also shot three times in the back of his head.

In the morning the villagers learnt that on the same night two other men had been killed in the village, apparently by the same group. A. G.'s house at Oktyabrskaya Street was raided at about 2 a.m., his wife who opened the door was gagged and her hands and feet taped. Once she managed to free herself, she found her husband's body with bullet wounds to the head. At about 3 a.m. the group raided the house of T. I. at Kooperativnaya Street. His wife and mother were tied with adhesive tape and the owner of the house was taken out by the men identified by the witnesses as "military". T. I.'s body, with hands tied in front of his body with adhesive tape, was found by his relatives later that night in the vegetable patch of the house with four or five bullet holes to the head and shoulder.

#### *4. Investigation into the killings*

Once I. discovered the bodies of his family he ran into the courtyard screaming for help. In response to his cries neighbours came and one of them went to call the local police. The police came in the morning, at least two hours later. At about 11 a.m. criminal experts from the district centre

Naurskaya arrived, who photographed the bodies and collected the cartridges.

On 21 May 2003 the relatives of the first applicant washed the bodies and buried them on the same day. The second applicant submits that the experts did not ask them to postpone the burials or to permit an autopsy.

The witnesses submit that some villagers asked the military at the roadblocks surrounding the village who had come that night and why they had been allowed to pass to Kalinovskaya and back. They were apparently told that this had been a military group which had arrived with a “special mission” permit. They also alleged that similar information had been given to the local police and that was why they had not interfered.

On 21 May 2003 the Naurskaya District Prosecutor's Office opened criminal investigation no. 48023 under Article 105 part 2 (a), (g) of the Criminal Code – killing of two or more persons in aggravating circumstances.

On 26 May 2003 the NGO Memorial issued a press-release “Political Crime in the Kalinovskaya settlement”. It reported the killing of the first applicant and her family and linked the killings to the first applicant's complaint to the European Court of Human Rights, mentioning that it had been the second case of killing of an applicant to the European Court of Human Rights after the case of Imakayeva v. Russia (no. 7615/02). The document also reported pending criminal proceedings against the first applicant's brother and son, Abubakar Bitiyev and Idris Iduyev, for possession of illegal drugs without commercial purposes. The document reported that the first applicant insisted that the proceedings had been forged in retribution for her active position in relation to the crimes committed by the military, including a demand to investigate a mass burial discovered in Kapustino, Naurskiy District, in February 2003.

On 12 August 2003 the NGO Memorial addressed the Prosecutor General with an inquiry about the killing of six villagers in Kalinovskaya. In October 2003 the Prosecutor's General Office replied that their letter, along with their other letters, had been forwarded to the Chechnya Republican Prosecutor. No answer was received from that office.

In November 2003 the second applicant addressed the Naurskaya District Prosecutor's Office with a request to grant her victim status in the criminal case no. 48023. She received no answer to this letter.

The Government in their observations referred to the investigation into the killings opened on 21 May 2003. According to them, the investigation established that on 21 May 2003 between 3.30 and 4 a.m. a group of unidentified men wearing camouflage and masks and armed with automatic weapons entered three houses in the village of Kalinovskaya and killed six persons, including the first applicant and three members of her family. The investigation established no link between the servicemen of the federal

forces and the killings. On 22 July 2004 the investigation was suspended because the perpetrators of the killings have not been identified.

*5. Information submitted to the Russian Government*

On 31 July 2003 the Court, acting under Rule 40 of the Rules of Court, informed the Russian Government about the application lodged by the first applicant and about the killing of her and her family, on the basis of information received from the applicants' representatives.

*6. Harassment of the second applicant*

The second applicant submits that she and her brother I. were threatened and harassed by the military and law-enforcement bodies after the killing of the first applicant and her family. She submits that about two months after the killings her brother was detained by the military for some time, and that while in detention he was beaten and ill-treated. Soon afterwards he left without any notice and she now has no information about his whereabouts.

She also submits that on an unspecified date in April 2004 her aunt (the first applicant's sister) was visited in Grozny by officers of the Naurskiy District Prosecutor's Office who told her they were looking for the second applicant. The woman told them that she did not know where the second applicant lived, because the latter had no permanent address. The prosecutors asked the second applicant's aunt questions about the complaint to the European Court of Human Rights, why and who had applied and why the prosecutor's office was not informed of this complaint. The second applicant submits that her aunt was not aware of the complaint and that she had replied that they had never applied to the European Court. The prosecutors asked her to sign some papers without disclosing their contents or blank papers, but she refused.

On 17 May 2004 the second applicant, while in the village of Kalinovskaya, was approached by a local policeman, an officer of the district prosecutor's office and their three guards. They demanded the applicant to produce her internal passport and took it away. They then asked her if she was aware of Article 222 of the Criminal Code (illegal possession of arms), where she kept her weapons, what she was doing in Grozny and in Kalinovskaya and what was the price of arms. The second applicant replied that she had nothing to do with weapons, that she did not have any and did not know the prices. The second applicant submits that when they noticed her relative, a member of the security service, they returned her the passport and said that they "just wanted to talk" and left.

The second applicant submitted that her husband divorced her because he and his relatives were afraid that they could have problems being associated with her. She felt intimidated and feared for her safety, security and life.

On 24 June 2004 the European Court of Human Rights, acting under Rule 39 of the Rules of Court, requested the Russian Government to take all measures to ensure that there is no hindrance in any way of the effective exercise of the second applicant's right to individual petition as provided by Article 34 of the Convention. On 24 March 2005 the Court prolonged the application of Rule 39 until further notice.

The Russian Government submitted that following the communication of the applicant's complaint about intimidation, on 14 July 2004 the Naurskiy District Prosecutor's Office refused to open criminal proceedings. This decision was reversed by the Chechnya Prosecutor's Office which carried out an additional verification, and on 27 July 2004 rendered a decision not to initiate criminal investigation due to absence of *corpus delicti*. The General Prosecutor's Office reversed the decision of 27 July 2004 and the verification started anew. The Government submitted no further information and no documents relevant to these proceedings.

The second applicant submitted that on 14 July and on 2 September 2004 investigators of the district prosecutor's service questioned her and collected written explanations about the intimidation. In July 2004 the questioning took place at the Naurskiy District Prosecutor's Office and on 2 September 2004 the investigator visited her at her job in a hospital in Grozny.

The applicant submitted to the Court her own statement and a copy of the "explanation" collected on 14 July 2004. The applicant submits that the investigator assured her that she would be protected from further threats and that no one would bother her in the future. The applicant stated, however, that the questioning concerned not only the incidents of harassment, but also her complaint to the Court, when was it lodged, who was the lawyer who helped her to write it, what it was about and the like. The investigator warned her that she should submit correct information otherwise she could be prosecuted for giving false testimonies. The applicant submits that the questioning was an intimidating experience, because of the nature of the questions, because she was pregnant at the time and had to take care of her two year old child and because her elder relatives, who were present, were not happy to learn that she had applied to Strasbourg, fearing for their lives and security. The applicant also referred to the overall poor security situation when each contact with the representatives of the law-enforcement bodies was perceived by her and her family as a threat.

## **B. Relevant Council of Europe reports**

The Chernokozovo SIZO, where the first applicant was detained, received extensive attention from various human rights institutions, including the European Committee for the Prevention of Torture (CPT), for allegations of severe ill-treatment of detainees. On 4 March 2000 the Head

of the CPT delegation Mr Hajek issued a statement to the Russian officials at the end of the visit of the CPT to the North Caucasian region of the Russian Federation. The statement said, *inter alia*, in relation to the visit to Chernokozovo:

“... the information gathered by the delegation strongly indicates that many persons detained at Chernokozovo were physically ill-treated in the establishment during the period December 1999 to early February 2000. In different locations, the delegation has interviewed individually and in private a considerable number of persons who were held at Chernokozovo during that period. A clear pattern of physical ill-treatment of prisoners by custodial staff emerged. The ill-treatment alleged consisted essentially of kicks, punches and truncheon blows to various parts of the body (excluding the face). The ill-treatment was said to have been inflicted principally in the central corridor of the detention facility, usually when prisoners were taken to an investigator's room for questioning or when they were returned to their cells after such questioning; apparently, prisoners were also on occasion physically ill-treated in the investigators' rooms. Investigators were said to have been fully aware of the ill treatment being inflicted, and some prisoners affirmed that it was inflicted at their instigation. In certain cases, the delegation has gathered medical evidence which is consistent with the allegations of ill-treatment made by the prisoners concerned.”

On 10 July 2001 the CPT issued a public statement concerning the Chechen Republic, under Article 10 § 2 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. This step was prompted by the Russian authorities' failure to cooperate with the CPT in relation to two issues: i) the carrying out of a thorough and independent inquiry into the events in a detention facility at Chernokozovo during the period December 1999 to early February 2000; ii) action taken to uncover and prosecute cases of ill-treatment of persons deprived of their liberty in the Chechen Republic in the course of the current conflict. The statement said, in particular:

“I. The information gathered by the CPT during its visits to the North Caucasian region in late February/early March and in April 2000 strongly indicated that many persons were physically ill-treated in a detention facility at Chernokozovo during the period December 1999 to early February 2000. Ever since the beginning of March 2000, **the CPT has been urging the Russian authorities to carry out a thorough and independent inquiry into events at this detention facility during that period.** To date, an inquiry of the kind requested by the CPT has not been carried out and the Russian authorities have now made it clear that they have no intention of organising such an inquiry. A particularly disturbing aspect of the Russian authorities' current position is their contention that no facilities intended for accommodating detainees were established by public authorities in the area of Chernokozovo during the period referred to by the CPT.

It is an indisputable fact that a detention facility operated at Chernokozovo during the period December 1999 to early February 2000, prior to the formal setting up in that village of a pre-trial establishment (SIZO N° 2) by a Ministry of Justice Order dated 8 February 2000. The CPT's delegation interviewed many persons who stated that they had been held in a detention facility at Chernokozovo during that period. Numerous Russian officials (prosecutors, investigators, custodial staff) met by the delegation confirmed that the establishment designated as from 8 February 2000 as

SIZO N° 2 had prior to that date been used as a detention facility. The CPT is in possession of a copy of the medical journal of the establishment covering the period 8 November 1999 to 12 February 2000, in which the day by day arrival of detainees (and any injuries they bore) was recorded; the staff who completed that journal referred to the establishment first as an "IVS" (temporary detention facility) and at a later stage as a "temporary reception and distribution centre". The Russian authorities have themselves, in earlier correspondence, provided to the CPT written statements signed by officers attesting to the fact that they worked in the detention facility during the period December 1999 to early February 2000 as well as written statements signed by persons who certified that they were held at Chernokozovo during that period.

The Russian authorities' contention that no detention facilities were established by public authorities at Chernokozovo during the period in question (and that, as a result, an inquiry of the kind requested can serve no purpose) is clearly untenable and constitutes **a failure to cooperate with the CPT.**"

On 10 July 2003 the CPT issued a second public statement in relation to Chechnya. It was prompted by allegations of continued resort to torture and other forms of ill-treatment by members of the law enforcement agencies and federal forces operating in the Chechen Republic. It also referred to the action taken to bring to justice those responsible for ill-treatment as slow and ultimately ineffective.

### C. Relevant domestic law

The President's Decree no. 1815 of 2 November 1993 "On measures aimed at prevention of vagrancy and beggary"<sup>1</sup> provided for reorganisation of the system of "reception and distribution centres" for persons detained by the bodies of the interior for vagrancy and beggary into centres of social rehabilitation for such persons. According to the Decree, persons could be placed in those centres upon a prosecutor's order for a period up to ten days.

## COMPLAINTS

1. The first applicant complained that she had been subjected to inhuman and degrading treatment and torture, in violation of Article 3 of the Convention. She also complained that the relevant authorities had failed to effectively investigate the allegations of ill-treatment in Chernokozovo at the relevant period.

2. The first applicant complained that her detention in January – February 2000 had been illegal and was not in accordance with the guarantees of detention, contrary to Article 5 of the Convention.

3. The second applicant alleges a violation of Article 2 on account of the killing of the first applicant and three other members of her family. She also

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<sup>1</sup> Repealed in February 2004.

alleges that no effective investigation has been carried out into the killing by the relevant authorities.

4. The second applicant submits that the feelings of fear, anguish and distress she suffered as a result of killing of virtually her whole family amount to treatment contrary to Article 3 of the Convention.

5. The second applicant submits that she has no effective domestic remedies on the national level against the above violations, contrary to Article 13 of the Convention.

6. The second applicant submits that the killing of the first applicant and her family, as well as continued harassment of her and her brother, constitute a breach of Russia's obligation under Article 34 not to interfere with the right of individual petition.

## THE LAW

The first applicant submitted complaints under Articles 3 and 5 of the Convention. The second applicant invokes Articles 2, 3, 13 and 34 of the Convention.

### *1. The Government*

As to the first applicant's complaints, the Government state that the first applicant and her son submitted no complaints about the alleged ill-treatment upon their release from Chernokozovo. They argue that her detention there was lawful and based on the provisions of the President's Decree aimed at combating vagrancy, but that no records have been preserved to verify the details and to advance an opinion on the issue.

As to the second applicant's complaint relating to the killing of Zura Bitiyeva and three members of her family, the Government note that the investigation failed to identify the persons responsible for the crime. Search actions are continuing in this respect, despite the adjournment of the proceedings. The investigation has not established any link between the federal servicemen and the crime committed and therefore the applicant's allegation of the State responsibility for the violation of her mother's right to life is unfounded.

In response to the second applicant's allegations of hindrance of the right to individual petition under Article 34 the Government refer to a pending verification of her complaints carried out by the prosecutor's office.

### *2. The applicants*

The second applicant maintains the complaints.

In relation to the first applicant's complaints under Articles 3 and 5, she submits that the Government has had enough information about the ill-

treatment in Chernokozovo, but failed to conduct an investigation. She refers to the medical documents cited by the Government in their observations, to the reports that deplored the conditions at Chernokozovo and spoke of wide-spread torture and ill-treatment of prisoners. As to the legality of the first applicant's detention, she rejects the Government's assertion that the first applicant had been detained within the framework of combating vagrancy. She stresses that she had been detained at her own house, her name and occupation had been known to the soldiers, her detention had been longer than the maximum period of ten days permitted by the Decree and, most notably, the document issued to her on 2 March 2000 by the Naurskiy VOVD specifically referred to the verification of the involvement with the illegal armed groups. The second applicant notes that the Government failed to specify the legal status of the facility in Chernokozovo while the first applicant was detained there and that such detention could not be considered compatible with the provisions of Article 5.

As to the killings of 21 May 2003, the second applicant alleges that there was a violation of Article 2 in respect of her mother and three other relatives. The applicant refers to the undisputed witness' statements which describe the perpetrators wearing camouflage uniforms, speaking Russian and travelling in military vehicles through roadblocks during curfew hours. She also notes that the Government failed to produce any proof of the effective investigation into the killings and to substantiate the conclusion that the State authorities had no responsibility for the killings. She furthermore complains that she herself was subjected to treatment proscribed by Article 3.

The second applicant submits that she has no effective remedies against the above violations, in violation of Article 13 of the Convention.

Finally, the second applicant submits that Russia has breached its obligations under Article 34 of the Convention not to hinder the right of individual petition by killing the first applicant, by intimidating her and further by questioning her about the details of her complaint to Strasbourg and her representative, despite her vulnerable situation. She submits that the collecting of "explanations" from her and putting questions about the complaint to the European Court of Human Rights served no purpose within the criminal proceedings aimed at the investigation of her complaints of harassment.

### *3. The Court's assessment*

The Government have not formally contended that the application should be declared inadmissible for non-exhaustion of domestic remedies or on the ground that the application is premature. They do, however, note that the first applicant failed to complain about the alleged ill-treatment upon release and that criminal proceedings into the first applicant's killing are pending.

They also submit that the second applicant's allegation about the responsibility of the State authorities for the murder and lack of efficient investigation are groundless. The Court considers that these comments are to be considered as observations on the merits of the case, and not as an objection as to the admissibility of the application.

The Court considers, in the light of the parties' submissions, that the case raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits of the application. Consequently, the Court concludes that the application cannot be declared manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court unanimously

*Declares* the application admissible, without prejudging the merits of the case.

Søren NIELSEN  
Registrar

Christos ROZAKIS  
President