



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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Applications no. 57947/00
by Medka Chuchuyevna ISAYEVA
against Russia

no.57948/00
by Zina Abdulayevna YUSUPOVA
against Russia

no. 57949/00
by Libkan BAZAYEVA
against Russia

The European Court of Human Rights (First Section), sitting on
19 December 2002 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mr E. LEVITS,
Mr A. KOVLER,
Mr V. ZAGREBELSKY, *judges*,
and Mr S. NIELSEN, *Deputy Section Registrar*,

Having regard to the above applications lodged on 25, 27 and 26 April
2000,

Having regard to the Court's decision of 11 July 2000 to join the
applications,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,
Having deliberated, decides as follows:

THE FACTS

The first applicant, Medka Chuchuyevna Isayeva, was born in 1953. The second applicant, Zina Abdulayevna Yusupova, was born in 1955. The third applicant, Libkan Bazayeva, was born in 1949. All three are Russian nationals and residents of Grozny. Presently they are staying in Ingushetia. They are represented before the Court by Mr Kirill Korotayev, a lawyer of Memorial, a Russian Human Rights NGO based in Moscow, and Mr William Bowring, Professor at the University of North London.

A. The circumstances of the case

Some of the facts of the case are disputed by the parties. From the parties' submissions, they may be summarised as follows.

The attack on the civilian convoy

The first and third applicant lived in the city of Grozny, and the second applicant in Staraya Sunzha, which is a suburb of Grozny. In the autumn of 1999 hostilities started in Chechnya between the Russian military forces and Chechen fighters. The city and its suburbs were the targets of wide-scale attacks by the Russian military. Because of the attacks the third applicant and her family left Grozny on 26 October 1999 and went to stay with their relatives in the village of Gekhi. The first applicant and her relatives travelled on the road from Grozny to Nazran, the capital of Ingushetia, on 28 October, but were told by the Russian military at a roadblock that the corridor for civilians would be open the next day.

The applicants allege that they learned from the radio and television announcements, including the all-Russian channels RTR and ORT, that on 29 October 1999 a "humanitarian corridor" would be arranged for civilians to escape from the fighting in Grozny.

On 29 October early in the morning the first applicant and her relatives - 14 persons in a RAF mini-van - were travelling along the road towards Nazran. Between 6 a.m. and 6.30 a.m. they reached the Russian military roadblock "Kavkaz-1" on the border between Chechnya and Ingushetia. There was already a line of cars about one kilometre long. The applicant and some relatives walked to the roadblock and the military informed them that they were expecting an order from their superiors to open the road, and that

the order should arrive at about 9 a.m. The weather was bad at that time, it was cloudy and raining.

The second applicant left Grozny on 29 October 1999 in a convoy of cars. There were 12 persons in the same mini-van. Around 8 a.m. they reached the roadblock near the border with Ingushetia. She recalls that there were about 10 cars in front of their car.

The family of the third applicant left the village of Gekhi on 29 October 1999 at about 5 a.m. in two cars, a white Zhiguli and a blue UAZ, and went along the road to Nazran. When they reached the queue in front of the roadblock, they were 384-th and 385-th in line. Very quickly the line of cars grew, and there were 3-4 times as many cars behind them as in front. The third applicant estimates that there were over 1,000 cars in the column, including trucks, vans and buses.

People started asking the military about the opening of the border. They were at first told that it should be opened after 9 a.m., and that the soldiers were expecting a relevant order. The first applicant estimates that about 11 a.m. one of the officers came out and told the people that the "corridor" would not be opened that day and that he had no information when it would be opened. According to the applicants, he also ordered everyone to clear the space in front of the roadblock and to return to Grozny. The column started to turn around, but progress was very slow because there were several lanes of cars and little space.

The applicants turned around and were slowly moving with the column away from the roadblock. According to the second applicant, there were a lot of cars, and the column stretched over about 12 kilometres. Sometime later the clouds cleared and they saw two planes in the sky. The planes turned over the column and dropped bombs.

The driver of the first applicant's car stopped and the passengers started to get out. Her children, Ilona (also spelled Elona) Isayeva (born in 1983) and Said-Magomed Isayev (born in 1990) and daughter-in-law Magomedova Asma (born in 1954) were the first to get out. The first applicant saw them thrown to the side of the road by a blast. She recalls that the planes circled around the convoy and dropped bombs several times. The first applicant's right arm was hit by a shell and she fainted. When she regained consciousness and ran to her relatives, all three were dead from shell-wounds. After the attacks were over, the first applicant was taken by a car with other wounded to a hospital in Atagi. The doctors treated the wounds and sent her home, because there was no place in the hospital. One week later the first applicant travelled to Nazran, Ingushetia.

The second applicant recalls that as their mini-van was nearing Shaami-Yurt, they saw two planes in the sky launching rockets. In a few minutes a rocket hit a car immediately in front of theirs. The second applicant thought the driver was hit, because the car abruptly turned round. The second applicant and her relatives started to jump out of the car, and she was

thrown over by a blast. She fainted, and when she regained consciousness, she realised that two children of the first applicant, Ilona Isayeva and Said-Magomed Isayev, were dead. The second applicant believes that there were eight explosions after the first one. She was dragged to the side of the road by others, but later she returned to the road to help the first applicant to collect the bodies. Said-Magomed had a wound to the abdomen and Ilona's head had been torn away, and one leg was crushed. The second applicant was wounded by shells in the neck, arm and hip. Their mini-van was not hit, and they used it to leave the scene afterwards.

The third applicant was in a Zhiguli car with her husband and his friend. In the UAZ car behind them there were her son and two of her husband's nephews, one with his wife. She recalls that the rain stopped and the sky cleared when they passed the village of Khambirzi and were nearing the village of Shaami-Yurt. Then there was a powerful blast, and their car was thrown to the left side of the road. All its windows were broken. The third applicant realised that there was a blast behind, and she ran over to see if her son and his cousins were alive. She believes that in the 100 metres she ran along the road to find her son's car, she saw several destroyed cars, vans and trucks and 40-50 dead bodies, many of which were disfigured and mutilated.

The third applicant, her husband and their friend picked up some people who needed help. Their Zhiguli car had flat tyres, but they reached Shaami-Yurt, where they changed tyres. They then travelled back to Gekhi. The applicant's son, in the meantime, picked up the wounded and took them to a hospital in Achkhoy-Martan. He later returned to the place of the bombing, as he was not sure if the third applicant had been able to leave it. The planes were still flying over the remains of the convoy and struck again. Their UAZ car with all the family possessions was destroyed by a direct hit. The applicant's son and his cousins ran on foot via neighbouring villages, and in the evening reached Gekhi. They later fled to Ingushetia.

The applicants are not certain about the exact timing of the attack, as they were in a state of shock. They accept the timing of the attack given by the Government. They submit that Human Rights Watch and Memorial are in possession of videotapes with interviews of other witnesses, collected at different times after the incident. The applicants submitted transcripts of the interviews to the Court. In their testimonies the witnesses describe the bombing of a convoy of refugees from Grozny near the village of Shaami-Yurt on 29 October 1999, confirming that after the strikes they saw numerous burned and damaged cars, including at least one KAMAZ truck filled with civilians, buses and mini-vans. They also confirm that there were dozens of victims, killed and wounded. Several testimonies concern the deaths of the first applicant's relatives. Some of the witnesses are named, others are only identified by their first names.

The applicants submit that they saw only civilians in the convoy, and that they did not see anyone from the convoy attempting to attack the planes.

According to the Government, on 29 October 2000 the representative of the Chechnya Committee of the Red Cross decided to move the office to Ingushetia. As he did not co-ordinate the move with the military authorities, when he and a convoy of vehicles reached the check-point "Kavkaz-1" on the border with Ingushetia, they had to turn back as the check-point was closed. On the way back to Grozny they were joined by a KAMAZ truck carrying some Chechen fighters.

According to the Government, at the same time two military SU-25 aeroplanes were on a reconnaissance mission. At around 2 p.m., when flying over the village of Shaami-Yurt, they saw a convoy of vehicles moving towards Grozny. The planes were attacked by a KAMAZ truck with large-calibre infantry fire-arms. The pilots reported the attack to the command headquarters and were granted permission to use combat weapons. At 2.05-2.20 p.m. and at 3.30-3.35 p.m. they fired rockets at the KAMAZ, which they estimated carried at least 20 fighters, and destroyed it.

The Government concede that apart from the KAMAZ, six other vehicles were destroyed or damaged. Among the destroyed vehicles was a car of the local Red Cross, which, according to the Government, was not properly marked. Two employees of the local Red Cross Committee were killed, along with eight other civilians. Among those eight were the first applicant's three relatives. Three other civilians were wounded, including the first and the second applicant.

In connection with the incident, the International Committee of the Red Cross (ICRC) in Geneva issued a communication to the press on 30 October 1999. It stated that, according to the local branch of the Red Cross, on 29 October a convoy of vehicles, among them five vehicles of the Chechnya Committee of the Red Cross, had tried to cross the border with Ingushetia but were turned back at the check-point and were returning to Grozny. All five cars were clearly marked with the red cross sign, and the truck displayed a red cross on its roof. They were attacked by rockets from aeroplanes, as a result of which two Red Cross workers were killed and the third one was wounded. A number of other vehicles were also hit, resulting in some 25 civilian deaths and over 70 injured.

The press service of the Russian military air force issued a press release which stated that on 29 October 1999 at 2 p.m. a column of trucks with fighters and ammunition was moving along the road from Nazran towards Grozny. A SU-25 plane flying over the convoy was shot at with automatic weapons and called a second plane for support. The planes hit the convoy with rockets at an interval of five minutes, as a result of which two trucks full of fighters were destroyed. The press service denied that civilians could have been hit by the air strikes.

On 2 December 1999 the Committee to Protect Journalists (CPJ), New-York, stated that on 29 October 1999 two TV journalists, one working for a Moscow-based company, and the other for a local station in Grozny, were killed during a Russian military attack on a convoy of refugees fleeing Grozny near the village of Shaami-Yurt. According to the statement, the two journalists were covering the movement of a convoy, and when the first rocket hit a bus with refugees, they went out to film the scene. As another rocket hit a nearby vehicle, both were fatally injured.

The attack on the convoy was widely reported in the Russian and international media.

The investigation of the attack

On 20 December 1999, at the first applicant's request, the Nazran District Court of Ingushetia certified the deaths of Isayeva Ilona Romanovna, born on 29 May 1983 and Isayev Said-Magomed Romanovich, born on 30 October 1990, "due to shell-wounds received as a result of bombing of a convoy of refugees from Grozny by fighter planes of the Russian military air force on the "Kavkaz" road between the villages of Shaami-Yurt and Achkhoy-Martan on 29 October 1999, around 12 in the afternoon".

It follows from further submissions that sometime in 2001 the decision of the Nazran District Court of 20 December 1999 was quashed by the Presidium of the Supreme Court of Ingushetia, following a request for supervisory review by a prosecutor. The case has been remitted to the District Court for fresh consideration.

The Government submit that on 3 May 2000 the military prosecutor of the Northern Caucasus military circuit (*военная прокуратура Северо-Кавказского военного округа*), military unit no. 20102, opened a criminal investigation no. 1433/0205-00 concerning the aerial bombardment of a refugee convoy near the village of Shaami-Yurt on 29 October 1999. The investigation confirmed the fact of the bombardment, and witness Vakhobov confirmed the deaths of the first applicant's relatives and the wounding of the second applicant.

The Government further informed the Court that a number of investigative steps had been taken, including examination of the site of the attack, the questioning of over 30 witnesses and the collection of relevant documents. A search for further witnesses involved the local authorities and the media. Medical personnel and hospital registration documents were reviewed, which allowed the authorities to identify 17 persons who had applied for medical help in connection with the attack. Ten forensic examinations have been ordered. However, the Government submit that the performance of forensic examinations is hampered by objections of the relatives to exhumation of the bodies, based on national traditions.

The Government further suggested that the criminal investigation was also focusing on the actions of the members of the illegal fighting groups who were present in the KAMAZ truck.

On 17 June 2002 the Government informed the Court that on 7 September 2001 the investigation was closed due to lack of *corpus delicti* in the acts of the pilots. According to the Government, the pilots followed due procedure in a situation where they had been attacked, and returned fire with permission. However, “after weapons were fired [at the KAMAZ truck] a column of civilians showed up from the turn and got into the defeat zone. The investigation established that the aircraft pilots have not had an intent to kill civilians; they have not foreseen and could not have foreseen their deaths”. It appears that a Red Cross employee who was injured in the attack challenged that decision before a Rostov-on-Don military court.

The applicants state in their submissions that they are not aware of any adequate steps taken by the authorities to conduct an efficient and meaningful investigation. The first applicant submits that some time after her complaint had been communicated to the Russian Government, her elder brother, Mr Vakhabov Aslanbek, was twice visited at his house in Chechnya by the military prosecutors, who were looking for her. After the second visit the prosecutors left a note for the second applicant, instructing her to appear at the Khankala military base for questioning. The second applicant failed to do so. She submits that Khankala is the main military base of the Russian forces in Chechnya, is not freely accessible to civilians and is heavily guarded and surrounded by numerous check-points. It would be very difficult and unsafe for her to attempt to get there on her own, and she believes that the prosecutors could have found her either in Ingushetia, where she is staying, or in Chechnya, where she travels.

The first applicant further submits that when the military prosecutors failed to find her in Chechnya, they asked her brother, Mr. Vakhabov, several questions about the events in an informal conversation, of which no official record has been made. These questions also concerned the applicant’s application to the European Court of Human Rights in Strasbourg. The applicant and her brother were surprised to find reference to “witness Vakhabov’s testimonies” in the observations submitted by the Government.

The first applicant is also aware that prosecutors from the Chechen town of Achkhoy-Martan were once looking for her in Ingushetia, while she was in Grozny.

The second and third applicants have not been called for questioning at all. They have not been given any official information in relation to the incident. None of the applicants was officially informed that they had been granted the status of crime victims (*nomepneeuvue*), as provided by Article 53 of the Code of Criminal Procedure. Nor are they aware about such status being accorded to other people who were in the convoy.

In April 2000 the Main Military Prosecutor's office requested Memorial to forward them all information related to the bombing of civilians on 29 October 1999 near the village of Shaami-Yurt. The letter referred to the humanitarian corridor organised by the Human Rights Centre Memorial and stated that the information was sought in relation to the request about civilians' deaths made by the UN High Commissioner on Human Rights, Mrs Mary Robinson.

B. Relevant domestic law and practice

Article 20 of the Constitution of the Russian Federation protects the right to life.

Article 46 of the Constitution guarantees the protection of rights and liberties in a court of law by providing that the decisions and actions of any public authority can be appealed to a court of law. Section 3 of the same Article guarantees the right to apply to international bodies for the protection of human rights after domestic legal remedies have been exhausted.

Articles 52 and 53 provide that the rights of victims of crimes and abuse of power are protected by law. They are guaranteed access to justice and compensation by the State for damage caused by the unlawful actions of a public authority.

Article 55 (3) provides for the restriction of rights and liberties by a federal law, but only to the extent required for the protection of the fundamental principles of the constitutional system, morality, health, rights and lawful interests of other persons, the defence of the country and the security of the state.

Article 56 of the Constitution provides that a state of emergency can be declared in accordance with federal law. Certain rights, including the right to life and freedom from torture, can not be restricted.

Section 25 of the Law on Defence (*Федеральный закон от 31 мая 1996 г. N 61-ФЗ "Об обороне"*) provides that "supervision of adherence of laws and investigations of crimes committed in the Armed Forces of the Russian Federation, other Forces, military formations and authorities shall be effected by the General Prosecutor of the Russian Federation and subordinate prosecutors. Civil and criminal cases in the Armed Forces of the Russian Federation, other forces, military formations and authorities shall be examined by courts in accordance with the legislation of the Russian Federation."

The Law on Suppression of Terrorism (*Федеральный закон от 25 июля 1998 г. N 130-ФЗ «О борьбе с терроризмом»*) provides as follows:

"Section 3. Basic concepts

For purposes of the present Federal Law the following basic concepts are applied:

... "the suppression of terrorism" means activities aimed at the prevention, detection, suppression and minimisation of consequences of terrorist activities;

"counter terrorist operation" means special activities aimed at the prevention of terrorist acts, ensuring security of individuals, neutralising terrorists and minimising consequences of terrorist acts;

"zone of a counter-terrorist operation" means a separate terrain or water surface, means of transport, building, structure or premises with adjacent territory where a counter-terrorist operation is conducted; ...

Section 13. Legal regime in the zone of an antiterrorist operation

1. In the zone of an antiterrorist operation, persons conducting the operation shall be entitled:

1) to take measures, if necessary, to restrict or prohibit, on a temporary basis, the traffic of vehicles and pedestrians on streets and roads, to ban the access of vehicles, including those of diplomatic missions and consular offices, as well as individuals, to certain areas and facilities, or to evacuate individuals and vehicles from certain areas or facilities;

2) to check identity documents of private persons and officials and, if they have no identity documents, to detain them for identification;

3) to detain persons who have committed or are committing offences or other acts defying the lawful demands of persons engaged in an antiterrorist operation, including acts of unauthorised entry or attempted entry to the zone of the antiterrorist operation, and to convey them to the local bodies of the Ministry of the Interior of the Russian Federation;

4) to penetrate private residential or other premises ... and means of transport while suppressing a terrorist act or pursuing persons suspected of committing such an act, when a delay can jeopardise human life or health;

5) to search persons, their belongings and vehicles entering or exiting the zone of an antiterrorist operation, including with the use of technical means; ...

Section 21. Exemption from liability for damage

In accordance with and within the limits established by the legislation, in carrying out an antiterrorist operation damage may be caused to the life, health and property of terrorists, as well as to other law-protected interests. However, servicemen, experts and other persons engaged in the suppression of terrorism shall be exempted from the liability for such damage, in accordance with the legislation of the Russian Federation."

Article 225 of the Code of Civil Procedure (*Гражданский процессуальный Кодекс РФ*) provides that if a court, in the course of reviewing a complaint against the actions of an official or a civil claim, comes across information indicating that a crime has been committed, it should inform the prosecutor about it.

Chapter 24-1 establishes that a citizen can apply to a court for redress for unlawful actions of a state body or an official. Such complaints can be

submitted to a court either at the location of the state body or of the plaintiff, at the discretion of the plaintiff. Within the same procedure the courts may also rule on an award of damages, including non-pecuniary damages, if they conclude that a violation has occurred.

Articles 126-127 of the Code contain general formal requirements governing an application to a court, which should include, *inter alia*, the name and address of the defendant, the exact circumstances on which the claim is based and any documents supporting the claim.

The Code of Criminal Procedure (*Уголовно-процессуальный Кодекс РСФСР 1960г. с изменениями и дополнениями*), as in force at the relevant time, contained provisions relating to the criminal investigation.

Article 53 stated that where the victim had died as a result of the crime, his or her close relatives should be granted victim status. During the investigation the victim could submit evidence and bring motions, and once the investigation was complete the victim had full access to the case-file.

Article 108 provided that criminal proceedings could be instituted on the basis of letters and complaints from citizens, public or private bodies, articles in the press or discovery by an investigating body, prosecutor or court of evidence that a crime had been committed.

Article 109 provided that the investigating body should take one of the following decisions within a maximum period of ten days after being notified of a crime: open or refuse to open a criminal investigation, or transmit the information to an appropriate body. The informants should be informed about any decision.

Article 113 provided that if the investigating body refused to open a criminal investigation, a reasoned decision should be provided. The informant should be made aware of the decision and could appeal to a higher-ranking prosecutor or to a court.

Articles 208 and 209 contained information relating to the closure of a criminal investigation. Reasons for closing a criminal case included absence of *corpus delicti*. Such decisions could be appealed to a higher-ranking prosecutor or to a court.

No state of emergency or martial law has been declared in Chechnya. No federal law has been enacted to restrict the rights of the population of the area. No derogation under Article 15 of the Convention has been made.

COMPLAINTS

1. The applicants complain under Article 2 § 1 of the Convention that their right to life and the right to life of their relatives were violated by the actions of the Russian army. The first and second applicant also complain

that they were subjected to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

2. The applicants complain, under Article 13 of the Convention, that they had no access to effective national remedies because no law-enforcement structures were functioning in the territory of Chechnya. They are not aware of any way to bring to justice those responsible for the deaths and injuries of their relatives.

3. The third applicant complains that the destruction of her family's car with the family's possessions constituted a violation of Article 1 of Protocol No. 1.

THE LAW

1. The applicants complain under Article 2 of the Convention that their and their relatives' right to life was violated by the attacks of the Russian military planes on the convoy. The first and second applicants also submit that, as a result of the attack, their right to freedom from inhuman and degrading treatment within the meaning of Article 3 was violated. They also complain that they had no effective remedies concerning those violations, contrary to Article 13. These Articles provide:

Article 2

"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."

Article 3

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

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

The Government raise a number of objections to the admissibility of the applications.

1. Validity of the powers of attorney

First, they dispute the validity of the powers of attorney issued by the applicants to their representatives, Memorial Human Rights Centre. They submit that the powers of attorney contain no reference to the place where they were issued. Further, in accordance with domestic law, they should have been verified by a notary and a separate power of attorney should have been issued by Memorial to their lawyer acting as a representative. They also submit that, in accordance with the 1961 Hague Convention Abolishing the Requirement for Legalisation of Foreign Public Documents, to which Russia is a party, these powers of attorney should bear an apostille. The Government also contest the validity of the applicants' observations in reply to those of the Government because the text of the observations has not been signed.

The Court notes that the Government have not contested the applicants' status as victims of the alleged violations of the Convention, and have not challenged the validity of the signatures which have been submitted. The objection to the powers of attorney is based on the assertion that they should have been drawn up in accordance with the national legislation. However, under Rule 45(3) of the Rules of Court, a written authority is valid for the purposes of proceedings before the Court. The Rules of Court contain no requirement for powers of attorney to be drawn up in accordance with the national legislation. As to the validity of the applicants' observations, the Court notes that the applicants' representative signed the postal airway bills to send the observations, and that the observations were forwarded to the Government for information only. The Court has no reason to doubt their authenticity. In these circumstances, the Court accepts, on the basis of the available material, that the applicants are validly represented before the Court and that their submissions to the Court are valid.

2. Exhaustion of domestic remedies

The Government request the Court to declare the applications inadmissible as the applicants have failed to exhaust the domestic remedies available to them. They submit that the relevant authorities were conducting, in accordance with the domestic legislation, investigations into civilians' deaths and injuries and into the destruction of property in Chechnya.

In particular, the Government submit that although the courts in Chechnya indeed ceased to function in 1996, legal remedies were still

available to those who moved out of Chechnya. An established practice allows them to apply to the Supreme Court or directly to the courts at their new place of residence, which would then consider their applications. The availability of such a remedy is supported by the fact that the first applicant applied to the Nazran District Court in Ingushetia for verification of her relatives' deaths.

The Government also submit that the applicants could have applied to the Chief Department of the Office of the General Prosecutor supervising the enforcement of legislation on federal security and inter-ethnic relations in the Northern Caucasus (*Главное управление Генеральной прокуратуры Российской Федерации по надзору за исполнением законов о федеральной безопасности и межнациональных отношениях на Северном Кавказе*), located in Yessentuki in the Stavropol Region. This body was set up to receive information concerning crimes and to open criminal investigations into each submission.

The applicants submit that the formal remedies are not effective, so they were not obliged to exhaust them. The applicants base this assertion on three points.

First, they submit that the anti-terrorist operation in Chechnya, run by agents of the state, is based on the provisions of the Law on Suppression of Terrorism, and was officially sanctioned at the highest level of state power.

The applicants refer to the text of the Law on Suppression of Terrorism, which allows anti-terrorist units to interfere with a number of rights, including the right to freedom of movement, liberty, privacy of home and correspondence, etc. The Law sets no clear limit on the extent to which such rights can be restricted and provides for no remedies for the victims of violations. Nor does it contain provisions regarding responsibility of officials for possible abuses of power. The applicants refer to correspondence between the Secretary General of the Council of Europe and the Russian Government in 2000 under Article 52 of the European Convention on Human Rights. They point out that the Consolidated Report, commissioned by the Secretary General to analyse the correspondence, identified those deficiencies in the very Law to which the Russian Government refer as a legal basis for its actions in Chechnya.

They also submit that even though the officials who mounted the anti-terrorist operations in Chechnya should have been aware of the possibility of wide-scale human rights abuses, no meaningful steps have been taken to stop or prevent them. They submit press-cuttings containing praise of the military and police operations in Chechnya by the President of the Russian Federation, and suggest that the prosecutors would be unwilling to contradict the "official line" by prosecuting agents of the law-enforcement bodies or the military.

Secondly, the applicants submit that there is an administrative practice of non-compliance with the requirement to investigate effectively abuses

committed by Russian servicemen and members of the police, both in times of peace and war. The applicants point to a) impunity for crimes committed during the current period of hostilities (since 1999), b) impunity for the crimes committed in 1994-1996, c) impunity for police torture and ill-treatment all over Russia, and d) impunity for torture and ill-treatment that occur in army units in general.

a) As to the current situation in Chechnya, the applicants cite human rights groups, NGO and media reports on violations of civilians' rights committed by the federal forces. They also submit that Russian official bodies receive numerous such complaints, both in Chechnya and outside. They cite the report of the Special Representative of the President of the Russian Federation for Human rights in Chechnya, Mr. Kalamonov, where he gives the figure of more than 4,000 applications made to his office in the first six months of his work. Despite so many indications of violations, the number of criminal investigations opened in such cases remains very low, and an even lower number of them are referred to the courts. They refer to the presentation at the State Duma in September 2000, where it was said that 19 criminal cases had been brought in Chechnya against federal servicemen. They therefore conclude that the majority of crimes committed in Chechnya by the state agents are not properly investigated and the perpetrators are not brought to justice. Among such crimes the applicants name indiscriminate or disproportionate use of force, summary executions, arbitrary detentions and disappearances, torture and ill-treatment, and looting of property.

Even where an investigation is opened, the applicants submit that it is not effective. In particular, they refer to the investigation of the massacre in the Staropromyslovskiy district of Grozny and to similar events in the Novye Aldy district of Grozny in February 2000. They point to the unexplained delays in the investigations, to the lack of clarity as to which body is working on the case and the residents' distrust of officials.

The applicants suggest that an atmosphere of impunity reigns among the military and police units involved in the operations in Chechnya, and that, with one publicised exception, there are no known cases where a military commander has been suspended from his duties for crimes against civilians committed by himself or his subordinates. They also cite published interviews with servicemen, which suggest that no clear distinction is drawn for them between military and civilian targets.

b) The applicants further refer to the events of the previous military campaign in Chechnya, of 1994-1996. They claim that wide-scale human rights abuses were documented by Memorial, and that the investigation and prosecution of perpetrators were totally inadequate. They point out that not one of the high-ranking military or police officers responsible for the operation was brought to justice, and that no one has ever been held

responsible for the large numbers of deaths and injuries of the civil population and the destruction of civilian objects.

The applicants further base their assertion of the existence of an administrative practice of non-investigation on c) the impunity for police torture and ill-treatment of detainees and d) the impunity for various forms of ill-treatment in the Russian army, such as brutal “hazing” of new recruits. The applicants attach NGO reports on the subjects, press articles and a report of the Ombudsman. The applicants submit that in the majority of such cases the investigation is inadequate, slow and the perpetrators rarely brought to justice.

Thirdly, the applicants argue that whether or not an administrative practice as such exists, the domestic remedies to which the Government refer are ineffective due to the failure of the legal system to provide redress. They rely on the Court judgment in the case of *Akdivar and others v. Turkey* and argue that the Russian Federation has failed to satisfy the requirement that the remedy was “an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant’s complaint and offered reasonable prospects of success” (see the *Akdivar and Others v. Turkey* judgment of 30 August 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1210, § 68).

The applicants challenge each of the two remedies mentioned by the Government. In respect of a civil claim, they argue that it could not have provided an effective remedy within the meaning of the Convention. A civil claim would be ultimately unsuccessful in the absence of a meaningful investigation and prosecution by the prosecutors, and a civil court would be forced to suspend consideration of such a claim pending the investigation under Article 214 (4) of the Code of Civil Procedure. They further argue that civil proceedings can lead only to compensation for pecuniary and non-pecuniary damages, while their principal objective is to see the perpetrators brought to justice. Finally, they point out that although numerous civil claims were submitted to the courts after the military campaign of 1994 - 1996, almost none was successful.

As regards a criminal prosecution by the prosecutor’s office, they submit that it does not provide them with a real chance of pursuing an effective remedy. In their opinion, the Law on Suppression of Terrorism sanctions the commission of abuses and exempts officials from liability for them. The prosecutors cannot provide an effective remedy, as is shown by the low number of successful investigations into this sort of abuse. They also submit that the prosecutor’s office is not an independent organ of investigation, referring to close political affiliation and hierarchical dependency between the prosecutors and the President. They also argue that neither military prosecutors nor military courts can be regarded as independent bodies, as

they are comprised of servicemen with a military rank, who are dependent on the army for their career, pay and other benefits.

With regard to the effectiveness of the investigation, the applicants also submit that the situation that has existed in Chechnya since 1999 is characterised by significant civil strife due to the confrontation between the federal forces and the Chechen armed groups. They refer to press cuttings and NGO reports that demonstrate, in their view, that there are serious obstacles to the proper functioning of the system of administration of justice that cast serious doubt on the effectiveness of the prosecutors' work. They note, in particular, that due to a general situation of insecurity, prosecutors often travel around with a military escort and are often armed themselves, which causes distrust and intimidates local residents if they wish to complain about servicemen. They also refer to poor working conditions of the prosecutors, the fact that the service is understaffed and to a large turnover of staff due to the rotation policy in the prosecution service in Chechnya. They submit that the difficult circumstances in the Republic do not dispense the Russian Government from their obligations under Article 13 and that the Government have failed to provide any evidence that any investigation into abuses against civilians has been effective and adequate.

The applicants also question the effectiveness of the practice whereby criminal cases for crimes committed in Chechnya are sent to the Supreme Court which later redistributes them to regional courts elsewhere in Russia. They note that the courts in Russia are already overburdened, and that the witnesses and victims of the crimes coming out of Chechnya are not able to travel around Russia for financial and security reasons.

The applicants further submit that they had good reason not to apply to the prosecutors immediately after the attack, because they felt vulnerable, powerless and apprehensive of the State representatives. They refer to the fact that they had to leave their homes due to the bombardment, that they lived as internally displaced persons in Ingushetia, being dependant for their basic needs on the Government bodies and international aid organisations, and to the general climate of persecution and discrimination of Chechens in Russia.

The applicants claim that the Russian procuracy inexplicably failed to act with sufficient expedience on receiving news of the attack. The prosecutor's office knew or should have known about the attack and about the deaths of numerous civilians as early as 30 October 1999, when the ICRC issued a press release concerning the incident. In the applicants' opinion, the information of the Red Cross and of the media concerning the destruction of medical vehicles, which enjoy special protection under international humanitarian law, and the high number of casualties reported should have prompted the prosecutors to act with special expedience and diligence.

They further recall that the Nazran District Court, which certified on 20 December 1999 the deaths of the first applicant's children, should have

made the information available to the prosecutors in accordance with Article 225 of the Code of Civil Procedure. They also point out that the first and second applicants received medical assistance in Ingushetia, and that the medical workers are under an obligation to inform the law-enforcement bodies of injuries that might be related to a crime.

The applicants find that, despite all the above, the prosecutors failed to take steps quickly to investigate the attack. No criminal proceedings were instituted until 3 May 2000. Moreover, a number of press statements issued by the high-ranking Russian officials, including the press centre of the air force, denied that the attack that took place on 29 October 1999 had led to any civilian casualties.

Finally, the applicants submit that the investigation of the crimes was inadequate and incomplete and cannot be regarded as an effective remedy under Article 13. The first applicant accepts that there were several unsuccessful attempts by the prosecutors to contact her, but only after communication of the complaint to the Russian Government by the Court. As she failed to appear at the main Russian military base in Khankala for questioning because of fear and security considerations, she believes that the investigators should have made more of an effort to contact her at her places of residence in Ingushetia or in Chechnya. She also believes that the inadequacy of the investigation is illustrated by the fact that an informal discussion of the prosecutors with her brother, while they were looking for her, gave rise to him being mentioned in the Government's observation as a "witness" confirming the deaths of her relatives.

The second and third applicants were never questioned by any authority in respect of the incident. None of the applicants was afforded the status of victims of a crime in accordance with domestic law.

The Court considers that in the particular circumstances of the present case it does not have sufficient information to enable it to make a ruling on the question of exhaustion of domestic remedies. Furthermore, this question is so closely linked to the merits of the case that it is inappropriate to determine it at the present stage of the proceedings.

The Court therefore decides to join this objection to the merits.

3. As to the merits of the applicants' complaints

The Government do not dispute the attack on the convoy of refugees on 29 October 1999, which resulted in the deaths of the first applicant's three relatives, the injuries of the first and second applicants and the destruction of the third applicant's family car containing her belongings. However, they submit that the investigation was closed because the pilots acted in self-defence after being attacked from the ground, and that they had no intent to kill or damage the civilians, and did not and could not have foreseen the impact of the use of force on the civilians.

The applicants submit that the authorities should have been aware of the movement of the civilian convoy on the road on 29 October 1999 and should have taken special care in conducting any military operations on that particular day on that stretch of the road. They submit that their right to life and the right to life of the first applicant's two children and daughter-in-law, as guaranteed by Article 2 of the Convention, has been violated. The first and second applicants also complain that they were subjected to inhuman and degrading treatment within the meaning of Article 3 of the Convention. They also submit that they had no recourse to effective remedies against the said violations, contrary to Article 13.

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 applications cannot be declared manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

2. The third applicant also submits that the destruction of the family's car containing her possessions by the air strike violated her rights under Article 1 of Protocol No. 1, which reads as follows:

"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."

The Government do not dispute that the applicant's family car containing her possessions was destroyed as a result of the attack by the military planes. They submit, however, that the third applicant has failed to exhaust domestic remedies as regards her claim about the destruction of property.

The Court finds that the same reasoning applies in respect of exhaustion of domestic remedies of this complaint as applied above to the complaints made under Articles 2 and 3.

The Court therefore decides to join this objection to the merits.

The Court further 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 applications cannot be declared manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

For these reasons, the Court unanimously

Joins to the merits the Government's objection concerning non-exhaustion of domestic remedies;

Declares the applications admissible, without prejudging the merits of the case.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President