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

FORMER FIRST SECTION

CASE OF ISAYEVA, YUSUPOVA and BAZAYEVA v. RUSSIA

(Applications nos. 57947/00, 57948/00 and 57949/00)

JUDGMENT

STRASBOURG

24 February 2005

FINAL

06/07/2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Isayeva, Yusupova and Bazayeva v. Russia

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

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

Having deliberated in private on 14 October 2004 and 27 January 2005,

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

PROCEDURE

1. The case originated in three applications (nos. 57947/00, 57948/00 and 57949/00) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Russian nationals, Medka Chuchuyevna Isayeva, Zina Abdulayevna Yusupova and Libkan Bazayeva ("the applicants"), on 25, 27 and 26 April 2000 respectively.

2. The applicants, who had been granted legal aid, were represented by Mr Kirill Koroteyev, a lawyer of Memorial, a Russian Human Rights NGO based in Moscow, and Mr William Bowring, a lawyer practicing in London. The Russian Government ("the Government") were represented by Mr P. A. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged, in particular, that they were victims of indiscriminate bombing by Russian military planes of a civilian convoy on 29 October 1999 near Grozny. As a result of the bombing, two children of the first applicant were killed and the first and the second applicants were wounded. The third applicant's cars and possessions were destroyed. The applicants alleged a violation of Articles 2, 3 and 13 of the Convention and of Article 1 of Protocol No. 1.

4. The applications were allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

6. The Chamber decided to join the proceedings in the applications (Rule 42 § 1).

7. By a decision of 19 December 2002, the Court declared the applications admissible.

8. The applicants and the Government each filed observations on the merits (Rule 59 § 1).

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 14 October 2004 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Mr P. LAPTEV, Representative of the Russian Federation at the European Court of Human Rights, *Agent*,
Mr Y. BERESTNEV, *Counsel*,
Mrs A. SAPRYKINA, *Adviser*;

(b) *for the applicants*
Mr B. BOWRING, Professor, *Counsel*,
Mr P. LEACH,
Mr K. KOROTEYEV,
Mr D. ITSLAEV, *Advisers*.

The Court heard addresses by Mr Laptev, Mr Bowring, Mr. Leach and Mr. Koroteev.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The first applicant was born in 1953, the second applicant was born in 1955 and the third applicant was born in 1945. The first two applicants are residents of Chechnya. The third applicant currently lives in Germany.

A. The facts

11. The facts surrounding the bombing of the civilian convoy and the ensuing investigation were partially disputed. In view of this fact, the Court requested the Government to produce copies of the entire investigation files opened in relation to the bombing. The Court also asked the applicants to produce additional documentary evidence in support of their allegations.

12. The submissions of the parties on the facts concerning the circumstances of the attack on the convoy and the ensuing investigation are

set out in Sections 1 and 2 below. A description of the materials submitted to the Court is contained in Part B.

1. The attack on the civilian convoy

13. 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 began in Chechnya between the federal military forces and Chechen fighters. The city and its suburbs were the targets of wide-scale attacks by the military. The applicants allege that at some date after 25 October 1999 they learned from radio and television announcements, including on 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.

14. Because of the attacks the third applicant and her family left Grozny on 26 October 1999 and went to stay with relatives in the village of Gekhi. The first applicant and her relatives tried to cross the border with Ingushetia on 28 October, but were told by the military at a roadblock that the corridor for civilians would be open the next day.

15. Early in the morning of 29 October 1999 the first and the second applicants and their relatives – about a dozen persons in a RAF mini-van – left Grozny along the road towards Nazran, also known as the Rostov – Baku highway, or the "Kavkaz" highway. Around 8 a.m. they reached the military roadblock "Kavkaz-1" on the administrative border between Chechnya and Ingushetia. There was already a line of cars about one kilometre long. The first 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.

16. The family of the third applicant left the village of Gekhi at about 5 a.m. on 29 October 1999 in three cars, a Zhiguli, a Niva and a blue GAZ-53, and travelled along the road to Nazran. When they reached the queue in front of the roadblock, they were assigned numbers 384 and 385 in the line. The line of cars grew very quickly, and there were three or four times as many cars behind them as in front. The third applicant estimated that there were over 1,000 cars in the column, including trucks, vans and buses.

17. People started asking the servicemen about the opening of the border. At first they were told that it should be opened after 9 a.m., and that the soldiers were expecting an order to that effect. The first applicant estimated that about 11 a.m. a senior officer came out and told the people that the "corridor" would not be opened that day and that he had no information as to 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.

18. The applicants turned around and were slowly moving with the convoy away from the roadblock. According to the second applicant, there was a large number of cars, and the column stretched over about 12 kilometres. Sometime later the clouds cleared and the applicants saw two planes in the sky. The planes turned over the column and fired missiles.

19. The driver of the first and the second applicants' minivan stopped and the passengers started to get out. The first applicant's children, Ilona (also spelled Elona) Isayeva (born in 1983) and Said-Magomed Isayev (born in 1990) and her sister-in-law Asma Magomedova (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 recalled that the planes circled around the convoy and dropped bombs several times. The first applicant's right arm was hit by a fragment of a shell and she fainted. When she regained consciousness and ran to her relatives, all three were dead from shell-wounds. Another woman, Kisa Asiyeva, who was in the minivan, was also killed. After the attacks were over, the first applicant was taken by car with other wounded person to a hospital in Atagi. The doctors treated the wounds and sent her home, because there was no room in the hospital. One week later the first applicant travelled to Nazran, Ingushetia, where she had an operation on her right arm. She needs another operation on her arm.

20. 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 turned around abruptly. When they saw this, everyone started to jump out of the minivan, and then the second applicant was thrown over by another blast. She fainted, and when she regained consciousness, she realised that two of the first applicant's children, 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 minivan was not hit, and they used it to leave the scene afterwards. On 7 November 1999 she was taken to Ingushetia by ambulance for further treatment.

21. The third applicant was in a Zhiguli car with her husband and his friend. Her son and two of her husband's nephews, one with his wife, were in the GAZ car behind them. She recalled 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 had been a blast behind, and she ran over to see if her son and his cousins were alive. She believes that in the 50-60 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, disfigured and mutilated, some of

them in vehicles, some thrown around by the blasts. She recalled a bus with the rear side totally destroyed and a Kamaz truck with human and cattle bodies inside.

22. 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 where their relatives lived. In the meantime, the applicant's son picked up the wounded and took them to a hospital in Achkhoy-Martan, the district centre. 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 GAZ car with all the family possessions was destroyed by a direct hit, as well as their Niva car. The applicant's son and his cousins ran on foot through neighbouring villages, and in the evening reached Gekhi. They later fled to Ingushetia.

23. The applicants are not certain about the exact timing of the attack, as they were in a state of shock. They accepted the timing of the attack given by the Government. They submitted transcripts to the Court of interviews with other witnesses of the attack. In their testimonies these witnesses described 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 and at least one bus. They also confirmed that there were dozens of victims, killed and wounded. Several testimonies concerned the deaths of the first applicant's relatives (see Part B below for a description of the testimonies).

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

25. According to the Government, on 29 October 1999 the representative of the Chechen Committee of the Red Cross decided to evacuate 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 administrative border with Ingushetia, they had to turn back as the check-point was closed.

26. The Red Cross could have used the opportunity to inform the security and military authorities in advance about their travel, which would have made it possible for them to ensure a safe evacuation route. The checkpoint was closed because it could not supervise the passage of a “fair quantity of refugees”. On the way back to Grozny the convoy was joined by a Kamaz truck carrying rebel Chechen fighters.

27. At that time the military authorities were planning and conducting counter-terrorist operations in the Achkhoy-Martan district, aimed at preventing supplies and personnel of the rebel fighters being brought to Grozny by heavy transport, as well as identification and suppression of any other persons, supporting networks or command centres offering armed resistance to the authorities.

28. As part of that mission, on 29 October 1999 two military SU-25 aeroplanes, flown by military pilots identified for security reasons as "Ivanov" and "Petrov", were on a mission to conduct reconnaissance and to suppress such movements. At around 2 p.m., when flying over the village of Shaami-Yurt, they saw vehicles moving towards Grozny. The planes were attacked from a Kamaz truck with large-calibre infantry fire-arms. The pilots reported the attack to an air-traffic controller identified as "Sidorov" at the command headquarters, and were granted permission to use combat weapons. At about 2.15 p.m. the planes fired four rockets each from a height of about 800 metres at the Kamaz, which they estimated carried at least 20 fighters, and destroyed it. They then located a second Kamaz truck on the same road on an intersection with a road to the village of Kulary, from which they were also attacked. The pilots retorted by launching two missiles each at the target. They then returned to their deployment aerodrome. In their submissions on the admissibility of the applications, the Government indicated the timing of the attack as 2.05 – 2.20 p.m. and 3.30 – 3.35 p.m.

29. The Government conceded that apart from the two Kamaz trucks targeted, other vehicles were destroyed or damaged. From the observations on the merits submitted by the Government, it appears that 14 civilian vehicles were damaged. This resulted in 16 civilians being killed and 11 wounded. Among the killed were two employees of the local Red Cross Committee and the first applicant's three relatives. Among the wounded were the first and the second applicant. The Government did not submit any information about the number or names of wounded or killed fighters in the Kamaz trucks.

30. At the same time, the Government submitted that the pilots had not foreseen and could not have foreseen the harm to the civilian vehicles, which appeared on the road only after the rockets had been fired. In the Government's view, the fighters were deliberately using the convoy, which had been moving without authorisation, as a human shield. The radius of damage of the rockets is 600 – 800 metres, which explained the casualties.

31. In connection with the incident, the International Committee of the Red Cross (ICRC) in Geneva issued a press release on 30 October 1999. It stated that, according to the local branch of the Red Cross, on 29 October 1999 a convoy of vehicles, among them five vehicles of the Chechen Committee of the Red Cross, had tried to cross the border into Ingushetia but had been 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 missiles from aeroplanes, as a result of which two Red Cross workers were killed and a third was wounded. A number of other vehicles were also hit, resulting in some 25 civilian deaths and over 70 injured.

32. 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 missiles 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.

33. 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 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.

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

2. The investigation of the attack

35. On 20 December 1999, at the first applicant's request, the Nazran District Court of Ingushetia certified the deaths of Ilona Isayeva, born on 29 May 1983, and Said-Magomed Isayev, 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 noon".

36. In September 2000 the Ingushetia Republican Prosecutor introduced a request for supervisory review to the Presidium of the Supreme Court of Ingushetia, by which he sought to quash the decision of 20 December 1999. On 17 November 2000 the request was granted, and the decision was quashed. The case was remitted to the District Court. The Government submitted that the first applicant failed to appear at the District Court for a new consideration and that her place of residence was unknown. On 18 March 2002 the Nazran District Court adjourned the case due to the first applicant's failure to appear on summonses.

37. On 3 May 2000 the military prosecutor of the Northern Caucasus military circuit (*военная прокуратура Северо- Кавказского военного округа*), military unit no. 20102, located in Khankala, the Russian federal military headquarters in Chechnya, opened a criminal investigation, no. 14/33/0205-00, concerning the aerial bombardment of a refugee convoy near the village of Shaami-Yurt on 29 October 1999.

38. The investigation confirmed the fact of the bombardment, the deaths of the first applicant's relatives and the wounding of the second applicant. It also identified several witnesses and relatives of other victims of the bombardments, who were questioned. Some of them were granted victim status and recognised as civil plaintiffs. The investigation identified a number of individuals who had died as a result of the strikes and who were

wounded. It also identified two pilots who had fired at the convoy and the control tower operator who had given permission to use combat weapons. The pilots, who were questioned as witnesses, stated that their targets had been two solitary Kamaz trucks with armed men, who fired at the planes. In response, the pilots used eight S-24 air-to-ground missiles[1] against the first truck and four such missiles against the second truck. No one was charged with having committed a crime (see Part B below for a description of the documents in the investigation file).

39. On 7 September 2001 the criminal investigation was closed due to lack of *corpus delicti* in the acts of the pilots. This decision was appealed to the military court by a victim of the attack, Ms Burdynyuk. Following her complaint of 6 June 2002, the Bataysk Garrison Military Court quashed the investigator's decision on 14 March 2003 and remitted the case for a new investigation to the military prosecutor of the Northern Caucasus military circuit (see § 88 below).

40. After the hearing of 14 October 2004 the Government submitted a document of 5 May 2004 issued by a military prosecutor of the Northern Caucasus military circuit. By this decision the criminal investigation was again closed due to the absence of *corpus delicti* in the acts of the pilots (see §§ 90-97 below).

41. The applicants stated in their submissions that they were not aware of any adequate steps taken by the authorities to conduct an efficient and meaningful investigation and to ensure their participation in it. The first applicant submitted that some time after her complaint to the Court had been communicated to the Russian Government, her elder brother, Aslanbek Vakhabov, 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 first applicant, instructing her to appear at the Khankala military base for questioning. The first applicant failed to do so. She submitted that Khankala was the main military base of the federal forces in Chechnya, was not freely accessible to civilians and was 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 believed that the prosecutors could have found her either in Ingushetia, where she was staying, or in Chechnya, where she travelled. The first applicant was also aware that prosecutors from the Chechen town of Achkhoy-Martan were once looking for her in Ingushetia, while she was in Grozny.

42. The second and third applicants were never called for questioning. They were not given any official information in relation to the incident. None of the applicants was officially informed that they had been granted

[1] S-24s are heavy, non-guided air-to-ground missiles, with a weight of over 230 kg and length of over 2,3 metres. On exploding, they create about 4000 splinters over a damage radius exceeding 300 metres.

the status of crime victims (*потерпевшие*), as provided by Article 53 of the Code of Criminal Procedure.

B. Documents submitted

43. The parties submitted numerous documents concerning the investigation into the killings. The main documents of relevance are as follows:

1. Documents from the investigation file

44. The Government submitted a copy of the investigation file in the criminal case, divided into two volumes. No list of documents was provided, but it is apparent from the numbering of the pages that there were initially at least three volumes and that a certain part of the file is missing. According to the documents submitted, the investigation made some attempts to locate the first applicant and, to a lesser extent, the second applicant. Although some of their relatives were questioned and granted victim status (it is not clear whether they were informed of this), the investigators did not contact the first and the second applicant directly. It does not appear that the third applicant was ever sought. The documents contained in the case-file present a coherent and detailed account of the attack of which the applicants complain.

45. The most important documents contained in the file are as follows:

a) Documents from the Red Cross

46. The Moscow Office of the International Committee of Red Cross (ICRC) addressed the Main Military Prosecutor's Office in Moscow in relation to the attack on the convoy on 29 October 1999. On 29 October 1999 the ICRC urgently informed the Ministry of Internal Affairs that, due to a rapid deterioration of the security situation in Grozny, the local personal of the ICRC and of the Chechen Committee of the Red Cross were being evacuated from Grozny by a convoy of five trucks and six passenger vehicles. The letter stated that the vehicles would not be marked by any emblem.

47. Later on 29 October 1999 the ICRC again urgently informed the Ministry of the Interior that the Red Cross personnel were unable to cross the border with Ingushetia. The road between Ingushetia and Grozny was under fire and one of the Red Cross trucks had been damaged.

48. On 16 November 1999, in reply to a request from the Main Military Prosecutor's Office of 9 November 1999, Mr Ruslan Isayev, chairman of the Chechen Committee of the Red Cross and Red Crescent, submitted his account of the attack. He submitted the following:

> "I have been the Chairman of the Chechen Committee of the Red Cross since January 1995. We worked together with the ICRC, taking care of 15,000 elderly and disabled persons in Chechnya... From 1 October 1999 we had to close the food centres

since electricity and gas had been cut off, but we continued to bake bread using diesel fuel and to distribute it to 12,000 elderly persons... Starting from 20 October 1999 Grozny came under heavy air bombardment, and on 27 October we stopped all programmes, because it was impossible not just to work, but to stay there. We started to prepare to evacuate, and I informed the ICRC Office in Nalchik [Kabardino-Balkaria] of this fact.

Because all public media were declaring that an exit route to Ingushetia would be opened for refugees on 29 October 1999, we decided to evacuate on 29 October 1999, together with the ICRC staff. In order to evacuate we needed special permission, and on 29 October we brought all our transport to the [rebel] *commandatura*, which issued a permit to travel. I went ahead of the convoy to check the road, and saw several craters from explosions on the road, so I personally ensured that we had flags with red crosses on the roofs of our three trucks.

Our cars travelled in a convoy, and at about 8.30 a.m. we were in a line of cars on the Rostov- Baku highway. The line extended for about 3 kilometres from the check-point [at the border with Ingushetia]. About 10 a.m. at the check-point, where about 3000 people were waiting and no one was let through, a general appeared ... and said that no one would be allowed to cross, because the check point was not prepared. He said that it would open five days later, that everyone should go back, and that he guaranteed that the road would not be attacked. Until about 11.30 a.m. we could not turn around, because of a line of cars about seven kilometres long behind us. At noon we started to move towards Grozny. I was heading the convoy in a Zhiguli car, the others were behind me. Other refugees followed our convoy, having seen our red cross symbols; they were also flying white flags.

About two kilometres before Shaami-Yurt I saw two military planes launching rockets. As cars were also approaching from opposite direction, I thought that they had been shooting at something by the side of the road. In order to verify, I accelerated and went ahead of the convoy. When I reached the bridge, I saw the road turning to the left and the planes bombing the road. When I reached the spot, two trucks were lying on the left side of the road, both on their sides, on the right side a Zhiguli car was burning after a direct hit and nearby a woman covered in blood was trying to take out of the car a man's beheaded body. I stopped to help, but at that moment passengers in my car whom I had picked up on the road to Grozny started to scream and pointed to the skies. I saw two military planes coming towards us. I got back into the car and drove forward. After about 100 metres the car jolted and the back windscreen was broken. The car slowed down because one of the back wheels had been punctured. After 600 metres I reached Shaami-Yurt, where I let the passengers out, changed the tyre and returned to the convoy. When I approached the bridge I saw a horrible site. In front, on the bridge, was our Mercedes truck. Its cabin was almost entirely gone. Other cars were behind it. I ran to the truck and saw that the bodies of two drivers, Aslanbek Barzayev and Ruslan Betelgeriyev, were torn apart. Then I started to look for the others. To the right under the road I found Ramzan Musliyev, who was wounded in the back. Then I found other colleagues who were assisting the wounded from a PAZ bus, which had taken a direct hit by a rocket; 12 people had been killed on the spot. We took the wounded and two cars with broken windows which could drive and went to the village of Khambirzi. I told the staff to unload the trucks and take away the dead after things had calmed down. In the meantime I drove the wounded to the village of Alkhan-Yurt. At 4 p.m. I returned to my colleagues in Khambirzi. They told me that the planes had returned and attacked the convoy twice more, and that they had descended to a very low height and shot at the cars with machine-guns.

> To sum up, on 29 October 1999 between 12 and 4 p.m. on the bridge near the village of Shaami-Yurt, military planes attacked a civilian convoy containing refugees five times; consequently, dozens of cars were destroyed, about 25 persons were killed and about 75 were wounded. I believe that many victims were hurt because numerous refugees followed our convoy, having noticed the Red Cross sign.
>
> I and my colleagues categorically deny that the planes were allegedly shot at from the convoy. Starting from the cross-roads with the road to Urus-Martan, not only we did not see any cars with an anti-aircraft gun, but we did not see not a single armed person. While in Chechnya we ourselves suffered from the [Chechen] fighters, who accused us on many occasions of working for the Russians, and our office and staff had been attacked, so we were very cautious. I cannot state that the pilots deliberately aimed at the Red Cross convoy, but they could not have failed to see our trucks with the crosses on the ill-fated bridge, and afterwards they were striking at the civilian convoy for four hours."

49. To this statement were appended copies of the identity documents of the two drivers who had been killed, Aslanbek Barzayev and Ramzan Bitilgiriyev. There was also a travel permit for six vehicles, issued by an "independent Chechen authority" – the Aldy *commandatura* – on 29 October 1999.

50. Three other testimonies were collected from the Red Cross workers in April 2000. They confirmed Isayev's statements as regards the timing and the circumstances of the attack and the identity of the victims who had been Red Cross employees.

b) Decision to start the criminal investigation

51. On 27 April 2000 a military prosecutor from military unit no. 20102 in Khankala issued a decision not to open a criminal investigation into the complaint by the Red Cross Committee. The decision said that a review of the complaint established that the Red Cross convoy was travelling on 29 October 1999 to Ingushetia, and that it could not cross the administrative border because the check-point had not been prepared. The convoy movements were not coordinated with the headquarters of the United Group Alignment (UGA). When returning to Grozny, the convoy, together with other vehicles, was attacked at the bridge near the village of Shaami-Yurt by "unidentified airborne devices". The decision further referred to information from the headquarters of the UGA that, according to the operations record book, on 29 October 1999 the UGA aviation forces had not conducted flights in the vicinity of Shaami-Yurt. The investigator concluded that there was no proof that the servicemen from federal forces had been involved in the air bombardment of the Red Cross convoy and refused to open a criminal investigation because of the absence of a *corpus delicti* in the actions of servicemen of the armed forces.

52. On 3 May 2000 a prosecutor of the Military Prosecutor's Office for the Northern Caucasus in Rostov-on-Don quashed the decision of 27 April 2000 and ordered an investigation. On 10 May 2000 the military prosecutor of military unit no. 20102 accepted the case no. 14/33/0205-00 for

investigation. On 28 June 2000 the case-file was transferred to another investigator within the same military unit.

53. After communication of the case by the Court to the Russian Government in June 2000, the Prosecutor's Office for the Northern Caucasus requested information about the case from the Chechnya Republican Prosecutor's Office. On 13 September 2000 the Achkhoy-Martan District Prosecutor's Office opened criminal investigation no. 26045 into the killing of the first applicant's three relatives and the wounding of the first and the second applicants. In November 2000 the criminal case was forwarded for investigation to military unit no. 20102. On 4 December 2000 a military prosecutor in the same military unit joined it with the investigation no. 14/33/0205-00.

54. It appears that at some point in 2001 the criminal case was transferred for further investigation to the North Caucasus Military Prosecutor's Office in Rostov-on-Don.

c) Documents related to the Burdynyuk family

55. Among the victims of the attack were Nina and Boris Burdynyuk, residents of Grozny. The husband was killed in the attack, and the wife was wounded. On 6 December 1999 Nina Burdynyuk wrote to the local military prosecutor in Anapa, Krasnodar Region, where she was staying. She stated that on 29 October 1999 she and her husband travelled along the "humanitarian corridor" that had been declared for Grozny residents. Through a local transport agency, they had arranged in advance for a truck to collect them and their movable property. As the roadblock was closed, they had to go back to Grozny. At 1.10 p.m. near the village of Shaami-Yurt they were attacked by military planes. Their car was thrown to the side by a blast, which killed her husband, and wounded her and the driver. Ms Burdynyuk was taken away by passers-by for first aid, but returned for her husband's body, which had in the meantime been taken to a village mosque. With the assistance of a local resident, she took her husband's body to a roadblock near Achkhoy-Martan and buried it in a shallow grave. On 4 November she reached Anapa, where her daughter lived. She was treated in hospital for head trauma and concussion. Upon release from the hospital, on 2 December 1999, she returned to Chechnya to collect her husband's body. On 5 December 1999 she placed it in the Anapa town morgue. She requested the military prosecutor of the Novorossiysk Garrison to open a criminal investigation into the attack and to order a forensic expert report on her husband's body.

56. On 8 December 1999 a forensic report on the body of Boris Burdynyuk concluded that he had died of a shell wound to the chest, possibly in the circumstances indicated in his wife's statement. On 8 December 1999 the Anapa civil registration office issued a death certificate for Boris Burdynyuk, who had died on 29 October 1999 in the village of Shaami-Yurt, Chechnya.

57. The documents pertaining to the case were forwarded to the military prosecutor of military unit no. 20102, who on 7 February 2000 issued a decision not to start criminal investigation because no crime has been committed. There were no grounds to conclude that military pilots could have been involved in the death of Boris Burdynyuk.

58. On 23 October 2000 that decision was quashed by a military prosecutor of military unit no. 20102. The investigation was joined to investigation of criminal case no. 14/33/0205-00, which concerned the attack on the Red Cross convoy.

59. On 1 September 2000 Ms Burdynyuk was questioned as a witness. On the same day an investigator of the Anapa Prosecutor's Office, acting upon directions from the military prosecutors, issued a decision to recognise her as a victim and as a civil plaintiff in the case.

d) Questioning of the first applicant's relatives

60. On 11 August 2000 two of the first applicant's relatives – her brother Aslanbek Vakhabov and nephew Alikhan Vakhabov - were questioned as witnesses. Aslanbek testified that his wife and son, the first and the second applicants and other relatives (he named 12 persons) had left Grozny on the morning of 29 October 1999 for Ingushetia. The witness had remained at home, and at about 5 p.m. his relatives had returned with the same minibus. Four of the people inside had been killed and the rest were wounded, as a result of an air strike at the convoy. The first applicant's two children, Ilona Isayeva and Said-Magomed Isayev, were buried in the Chernorechye cemetery near Grozny. Alikhan Vakhabov, a teenager who was in the minibus, testified about the circumstances of the attack and about his splinter wound in the left shoulder. He was treated in the Atagi hospital immediately after the incident, and then stayed for some time in the Nazran hospital in Ingushetia.

61. On 18 October 2000 the investigators questioned Zhalavdi Magomadov, a relative of the Vakhabovs, who was in the minivan on 29 October 1999 and who gave a detailed account of the events. He submitted that there were 15 passengers in the minibus, himself included, plus the driver. He estimated the timing of the attack between 12 and 1 p.m., because some people had stopped by the road for the midday prayer (*namaz*). He recalled that first he heard an explosion in front of their car, where a Mercedes truck had been travelling. Their minivan stopped and everyone started to get out of the car and ran towards the shoulder of the road. At that point a second explosion occurred on the right side of the road. The witness was wounded by shrapnel in both legs, one arm and his back and he was in a state of shock, but he recalled two other explosions somewhere nearby. He further recalled being brought by his relatives to the hospital in Staraya Sunzha, where he was operated on and shrapnel were extracted from his body. Six passengers in the van were killed: the witness's mother (Asma Magomedova) and two sisters, the first applicant's two children and another woman. The witness submitted that no forensic

examinations were performed on the bodies before burial and that he objected to exhumation of the bodies of his mother and two sisters. Seven passengers in the minivan, including himself and the driver, received shrapnel wounds of varying severity. When asked if he had heard anyone shooting from the convoy at the planes, the witness denied it and said that he did not see any armed men in the convoy. He also produced a detailed drawing of the site, with an indication of the placement of the cars on the road and the explosions.

62. The investigators attempted to find the first and the second applicants. In September 2001 they questioned a resident of Nazran, who stated that in September 1999 – autumn 2000 two families of refugees, the Yusupovs and Isayevs had lived in his house. He did not know anything of the attack in October 1999 and did not know where they had gone afterwards.

e) Examination of the site

63. On 15 August 2000 the investigators of military unit no. 20102, together with two employees of the Red Cross who had witnessed the attack, travelled to the site. They found the damaged carcass of the Mercedes truck about 30 metres from the bridge and photographed it and the fresh asphalt patch on the road where the witnesses stated the crater had been. The Red Cross submitted their own photographs of the destroyed truck and of the explosion craters on the road.

f) Documents related to identification of other victims

64. The investigation attempted to identify and question other victims of the attack or their relatives and to collect medical records and death certificates. Requests were sent to the local departments of the interior in Chechnya, to the district prosecutors' offices and to the five largest refugee camps in Ingushetia.

65. On several occasions in 2000 and 2001 six workers from the Chechen Committee of the Red Cross were questioned about the circumstances of the attack. They gave detailed explanations, accompanied by drawings of the site. Relatives of the two deceased Red Cross drivers were questioned. They testified about the deaths and identified the graves. An order for exhumation and a forensic report was issued, but the relatives objected and the order was not carried out. The father of one driver was granted victim status in the proceedings in July 2001.

66. In addition to the relatives of the first and the second applicants, Ms Burdynyuk and Red Cross staff, the investigators identified other victims. Two correspondents of local TV stations, Ramzan Mezhidov and Shamil Gegayev, were killed during the attack. The investigators questioned Mezhidov's mother and widow, who objected to his exhumation. They submitted his death certificate and medical documents about his wounds. It does not appear that Gegayev's relatives were questioned.

67. The relatives of Sadik Guchigov, driver of the truck in which the Burdynyuk family had been travelling, testified that he had died from his wounds one month after the events. His widow was questioned and granted victim status in the proceedings. She also produced her husband's medical documents and death certificate and objected to his exhumation.

68. Five other persons who were killed during the attack on the convoy were identified, their relatives were questioned and some were granted victim status. In addition, one local resident from the village Valerik was killed not far from the road when he was washing his car by a pond, apparently by the same air strikes. His brother was also granted victim status.

69. The investigation established a total of 18 deaths.

70. The witnesses also consistently referred to a PAZ bus (a 25-seater), which received a direct hit and where at least 12 persons were killed. They also referred to a Kamaz truck containing refugees – mostly women and children – and cattle which was directly hit and burned down, apparently with no survivors. It does not appear that the passengers of these two vehicles or their relatives were ever established.

71. On 6 September 2001 the investigators questioned a woman, whose name was not submitted to the Court, identified as "Raisa". She testified that on 29 October 1999, together with three other persons, she tried to leave in their car for Ingushetia through the "humanitarian corridor". After they were refused permission to cross at the checkpoint, they turned back at about noon and reached Grozny safely. Later she learned that the refugees had been attacked from the air, and that many people were killed and wounded. She submitted that on the road back she had seen a group of four or five men on the edge of the Samashki forest, dressed in camouflage and with machine-guns. Their car, a mud-splattered all-terrain UAZ vehicle, was nearby. The witness presumed that these were Chechen fighters, who could have provoked the military planes, circling in the skies, to strike at the refugees on the road. When asked, the witness said that she did not see a Kamaz or any other trucks with fighters.

72. Through witnesses testimonies and medical documents the investigators also identified several persons who had been wounded, among them the first and second applicants.

73. In summer 2001 ten medical records of the wounded on 29 October 1999 were sent from the Urus-Martan hospital for forensic reports. The reports concluded that the injuries –shrapnel wounds, traumatic amputations of limbs, concussion, head traumas – could have been received in the circumstances described by the victims, i.e. during an air strike. Two of the wounded died later and their relatives were granted victim status in the proceedings. One was Ramzan Mezhidov, a local TV reporter. It appears that other wounded persons or their relatives were not found by the investigators, despite certain attempts to that effect.

74. On 27 August 2001 the investigator issued nine decisions to grant victim status to persons whose relatives had been killed or wounded, among

them the first and second applicants. These decisions were not countersigned by the victims, as prescribed by the Code of Criminal Procedure, and there is no indication that they were sent to the applicants or to their relatives whose addresses had been established.

j) Testimonies of local residents and medical personnel

75. The investigators questioned eight residents of Shaami-Yurt. They testified that there were air-strikes on the road and that dead bodies had been brought to the village mosque on 29 October 1999. They also testified about giving first aid to the victims.

76. In 2000 and 2001 the investigators questioned medical personnel from the hospitals in Achkhoy-Martan, Staraya Sunzha (Grozny), Urus-Martan and Nazran (Ingushetia). They testified about the wounded who had been brought to the hospitals on 29 October 1999. It appears that the majority of the victims were brought to the Achkhoy-Martan hospital, which was the closest to the site. However, no records were made that day because the large number of victims meant that all the staff was busy providing first aid for the heavy wounds. At least ten wounded persons were brought to the Urus-Martan hospital and six to the Staraya Sunzha hospital, where a nurse recalled treating the second applicant and Zhalaudi Magomadov for shrapnel wounds.

k) Information from the military

77. In November 2000 in the course of the investigation into the applicants' complaints, the District Prosecutor's Office in Achkhoy-Martan requested the commander of the UGA and the military commandant of Chechnya to submit information about flights on 29 October 1999 in the vicinity of Achkhoy-Martan and Shaami-Yurt. It is unclear if any answers were submitted, and ten days later the criminal investigation was transferred to the military prosecutor of military unit no. 20102.

78. In October 2000 the military investigators questioned two military pilots and an air controller. They were questioned as witnesses and their real names were not disclosed to the Court.

79. The air controller identified as “Sidorov” submitted that on the evening on 28 October 1999 he was informed, in accordance with procedure, about an aviation mission for the following day. The mission was to prevent the movement along the road towards Grozny of heavy vehicles, possibly carrying weapons, fighters and other supply equipment for the “illegal armed groups” defending the city. On the same evening he informed two pilots of the mission. Neither on 28-29 October 1999, nor later, until the questioning, had he been informed of a “humanitarian corridor” for civilians, about the movement of a Red Cross convoy on the road or about civilian casualties. He was not aware whether the “Kavkaz-1” roadblock was functioning or not and received no information from that roadblock.

80. The witness further submitted that on 29 October 1999 the pilots left for the mission without airborne forward controllers, because the mission was not perceived to be taking place close enough to the federal troops. The forward air controllers remained on the ground in the control tower. At about 2 p.m. one air-crew reported a solitary Kamaz truck on the road near the village of Shaami-Yurt, not far from the Samashki forest, from which they were being fired at. The air controller, knowing from the reconnaissance information about the presence of fighters in the Samashki forest and in view of the mission's purpose, permitted them to open fire. The pilots did not report any other vehicles on the road or the Red Cross signs on the truck. Neither did they report any errors in hitting the targets.

81. On 10 October 2000 a pilot identified as "Ivanov" testified that on 29 October 1999 he was performing a mission to prevent the movement of heavy vehicles towards Grozny. On the road near Shaami-Yurt, about 100 metres from the bridge, he observed a dark-green Kamaz truck with a canvass cover. He descended from 1500 metres to 200 metres for a closer look. The pilot could see the truck very clearly, was certain of its mark and was sure that it did not bear any signs of the Red Cross. When asked, he responded that had he seen the Red Cross signs, he would not have fired at the vehicle. He was also certain that there were no other vehicles on the road at that time. The wingman reported fire from the truck, and the pilot requested the ground controller's permission to open fire. Permission was granted and the pilot made a loop, aimed at the truck and fired rockets from the height of 800 metres. By that time the truck had already crossed the bridge. The timing of the attack was about 2.05 – 2.10 p.m. He then climbed to 2000 metres. When flying over the site he noted that the truck had stopped. Then, at the crossroads near the village of Kulary he noted a second solitary Kamaz truck, also dark-green, and a group of armed persons dressed in camouflage near it, firing at the planes with sub-machine guns. The crew's attention was drawn to this new target and they no longer observed the first target. The visibility conditions were good and the sky was clear. No other cars were on the road at the time. The pilot submitted a drawing of the site with indications of the two solitary trucks on the road.

82. On 10 October 2000 a pilot identified as "Petrov" was questioned as a witness. His testimony begins with words "I confirm my previous submissions", however no other testimonies from him were submitted to the Court. He repeated, almost word for word, the first pilot's submissions about the circumstances of the attack on 29 October 1999. He added that he did not see "any refugee convoys" or cars marked with a Red Cross symbol.

83. On 8 December 2000 additional information was taken from the pilot identified as "Ivanov". The statement refers to two previous interviews, of which only one – dated 10 October 2000 – was submitted to the Court. The pilot was questioned about the number and type of missiles fired. He said that he fired two S-24 missiles at the first Kamaz truck.

84. As well as answering questions, the pilots were asked to indicate the coordinates of their targets on a detailed map of the district, which they did.

One target was marked on the road before the bridge leading to the village of Shaami-Yurt, the other – about 12 kilometres away along the same road, on an intersection near the village of Kulary.

85. The case-file also contains two photographs of planes, undated and without descriptions.

l) Decision to close the criminal proceedings and its challenge

86. On 7 September 2001 the criminal case was closed due to the absence of *corpus delicti* in the pilots' actions. It does not appear, however, that this decision was communicated in a timely manner to the victims or to the applicants. Nor was a copy of this decision submitted to the Court.

87. On 6 June 2002 Ms Burdynyuk wrote to the Rostov-on-Don Garrison Military Court asking for review of the decision not to open criminal proceedings. On 31 December 2002 the Military Prosecutor of the Northern Caucasus forwarded her complaint to the Military Circuit Court, along with the criminal case which comprised five volumes. On 4 February 2003 the North Caucasus Circuit Military Court established that the case should have been reviewed by the Grozny Garrison Court, but because the latter was not functioning, the case was transferred to the Bataysk Garrison Military Court.

88. On 14 March 2003 the Bataysk Garrison Military Court quashed the decision of 7 September 2001 and remitted the case for a new investigation. The court cited the decision of 7 September 2001, according to which the investigation had established that on 29 October 1999 the pilots “Ivanov” and “Petrov” struck at two solitary Kamaz trucks containing rebel fighters on the road between the border between Ingushetia and Grozny. Both vehicles were destroyed. However, besides the two vehicles, the rockets damaged the convoy of Red Cross vehicles and refugees. As a result of the attack, 14 vehicles were destroyed and 16 persons killed, including Ms Burdynyuk's husband; 11 persons were wounded. The investigation concluded that “the convoy was indeed damaged by the actions of the pilots 'Ivanov' and 'Petrov' from the Ministry of Defence, who were acting in accordance with their mission and aimed the missiles at the cluster of enemy personal and hardware. They did not intend to destroy the civilian population and the Red Cross convoy, because they did not and could not have foreseen such a possibility. Death and injuries were caused to the victims because they, on their own initiative, happened to be in the impact zone of the missiles, the extent of which exceeds 800 metres”.

The Garrison Court stated:

> “On 7 September 2001 the criminal case was closed by an investigator of the Circuit Military Prosecutor's Office for the Northern Caucasus under Article 5 § 2 of the Criminal Procedural Code, i.e. due to the absence of *corpus delicti* in the pilots' actions, because the vehicles of the Red Cross and of the refugees on their own entered into the impact zone of the missiles. The pilots did not and could have not foreseen such consequences.

> The court believes that the pilots were executing an assigned task, namely to 'locate and destroy fortified points and the enemy mobile forces and resources' in 'free chase' mode, i.e. the decision to employ combat means was based on their own appreciation of the observed situation. There is no doubt that such assessment should include not only an assessment of the targets, but also of the possible harm to other vehicles and persons who were in the vicinity. Observing the said targets (cars with 'fighters'), they could not have failed to notice other vehicles with people nearby, and they should have proportionated the weapons according to their characteristics, precision, damage radius etc. The court finds that the pilots did not take all this properly into account, which explains that 14 civilian vehicles were damaged, 16 persons killed and 11 persons were wounded as a result of the missile attack.
>
> ...taking into account that not all investigative measures were taken to the extent necessary to ascertain the pilots' guilt, an additional investigation is needed in this case".

89. On 26 March 2003 the North Caucasus Military Prosecutor's Office accepted the case for further investigation.

m) Decision of 5 May 2004

90. On 5 May 2004 a prosecutor of the North Caucasus Military Prosecutor's Office again closed the criminal case due to the absence of *corpus delicti* in the pilots' actions. A copy of this document was submitted by the Government after the hearings in Strasbourg on 14 October 2004. The Government did not submit new documents from the investigation file to which the decision refers. From this document it follows that at some point (presumably, after March 2003) the first and the second applicants were questioned as witnesses about the circumstances of the attack and granted victim status in the proceedings. Additional attempts were made to find and question the third applicant, but they were not successful.

91. The document also referred to some additional evidence obtained from the military. It mentioned a log book which noted the time of the missile strike on 29 October 1999 in the vicinity of Shaami-Yurt as 14.05 – 14.20 p.m.

92. The decision referred to undated statements of the two pilots identified as P. and B. (presumably the same ones as "Ivanov" and "Petrov", cited above in §§ 81-84). Pilot P. in his statement allegedly submitted that while on mission on 29 October 1999 they noted a Kamaz truck on the eastern edge of the Samashki forest, near the village of Shaami-Yurt. Some persons jumped out and ran towards the forest. At the same time the plane was shot at from the truck, probably with a large-calibre machine-gun. The pilot realised that the plane had been hit. He reported this to the leading pilot, who requested permission to use fire-power from the control centre. When the permission had been granted, they both fired at the truck two rockets each, twice, from the height of 1600-2000 metres. At that time they did not notice any other vehicles on the road in the vicinity of the truck. There were some vehicles further on the road, towards Grozny, but at a considerable distance. One or two seconds after the missiles were fired the pilot noted another truck coming out of the Samashki forest and heading

towards Grozny. The truck entered the impact zone. The pilot did not have time to verify what had happened to it or if there had been other vehicles on the road because of the danger of being shot at.

93. Pilot P. is further quoted as saying that they were informed that the road had been closed at the administrative border with Ingushetia. They therefore presumed that the trucks were coming out of the Samashki forest, where a considerable group of fighters ("*boyeviki*") had gathered. They did not see any transport moving out of Grozny at that time. Pilot B. is quoted as having added to these statements that the missiles could have changed the direction on their own, or because they had been shot at from the ground.

94. The document further cites undated statements of two unidentified airport technicians, who had on 29 October 1999 examined two SU-25 planes after their return from a mission. The pilots informed them that they had been shot at, probably with a large-calibre machine-gun. The examination of both planes, hull numbers 40 and 73 respectively, revealed two holes, 20 and 70-90 mm large, in the first plane and one hole, 20 mm large, in the second plane. One technician suggested that the holes resulted from large-calibre machine-gun bullets. The decision further referred to two undated protocols of inspection of planes nos. 40 and 73, which noted similar damage.

95. The decision further mentioned statements on unspecified dates by the commander of the military aviation unit and 12 of the pilots' colleagues, who apparently denied having heard anything about the attack on the civilian convoy on 29 October 1999.

96. In addition, the decision of 5 May 2004 referred to the results of an investigative experiment, which showed that the sign of the red cross on the flag of the Chechen Committee of the Red Cross was clearly distinguishable from the distance of 200 metres. The document also referred to information from the headquarters of the 4-th Army of the Air Force and Anti-Air Defence which defined the impact radius of the S-24 missiles at 300 metres.

97. The document concluded that harm to the civilians was caused by the actions of the pilots B. and P., who had acted in permissible self-defence and had tried to prevent damage to the legitimate interests of the society and state from members of illegal armed groups. Furthermore, the pilots did not intend to cause harm to the civilians because they did not see them until the missiles had been launched. The criminal investigation was closed for absence of *corpus delicti* in the pilots' actions. By the same decision the decisions to grant victim status in the civil proceedings were quashed, and the victims should have been informed of a possibility to seek redress from the Ministry of Defence through civil proceedings. It does not appear that the decision was sent to the victims, including the applicants.

2. Documents submitted by the applicants

98. The applicants submitted a number of additional documents relating to the circumstances of the attack and the investigation.

a) Additional statements by the applicants

99. The applicants submitted additional statements about the circumstances of the attack and its effects. The second applicant submitted that the shock of that day has stayed with her and her relatives. The third applicant submitted that "since that attack on the road I am plagued by nightmares... I am still sick every time I see a dummy in a shop window. It reminds me of the dead I saw on the Rostov-Baku highway. This effect is so strong that on several occasions I have fainted in shops. A month ago I walked into a phone company store in Nazran. They had a model of a hand in the shop window. That brought back the memory of a hand cut off and a woman's leg that I saw right in front of me on the road on 29 October 1999. I felt sick and fainted. I was sick for some days afterwards. Now I simply can't walk into a shop with dummies or with models of human bodies".

100. The third applicant also submitted a list of items which were inside the GAZ vehicle destroyed during the attack and documents for the three vehicles destroyed during the attack – a "Zhiguli" VAZ 21063, produced in 1992, a "Niva" VAZ 21213, produced in 1996 and a GAZ 53, produced in 1982. The list of items included cash in US dollars to the amount of 48,000, hi-fi and computer equipment to a value of 1,350 US dollars, household items and clothing to the value of 28,640 US dollars, jewellery to the value of 8,770 US dollars, and three cars to a value of 20,500 US dollars. The total value was indicated at 108,760 US dollars.

b) Statements of other witnesses and victims

101. The applicants submitted five additional testimonies from witnesses and victims, related to the circumstances of the attack. Witness A. testified that she was in the same car as Ramzan Mezhidov and Shamil Gigayev, TV reporters, both of whom were killed. After the first blast Mezhidov got out of the car and filmed the destruction around him; he was killed by a second blast. Afterwards, they attempted to retrieve his camera and the tape, but they were beyond repair. Gigayev's widow testified about her husband's death. Witness B. testified that their car was near Shaami-Yurt and returning to Grozny when the attack occurred. The witness and his brother were wounded and taken to the Urus-Martan hospital for treatment. On 22 November 1999 he was transferred to Ingushetia. Two other witnesses, employees of the Red Cross, also described the circumstances of the attack. All witnesses denied that there had been any shooting at the planes before or during the attack, or that there were armed men in the convoy.

c) Human Rights Watch Report

102. The applicants submitted a report prepared by the NGO Human Rights Watch in April 2003, entitled "A Summary of Human Rights Watch Research on Attacks on Fleeing Civilians and Civilian Convoys during the War in Chechnya, Russia, between October 1999 and February 2000". The submission, prepared for the European Court of Human Rights, is based on

eyewitness testimonies collected by the HRW researchers in Ingushetia between November 1999 and May 2000. The report described at least five independent incidents where civilians fleeing from fighting were attacked *en route*. The report stated that "the Russian forces appear to have deliberately bombed, shelled, or fired upon civilian convoys, causing significant civilian casualties. ... The most egregious attack occurred on October 29, 1999 when dozens of civilian vehicles taking a so-called safe route out of Grozny on the Baku-Rostov highway were attacked by Russian aircraft." The report invoked provisions of international humanitarian law, namely Common Article 3 to the Geneva Conventions of 1949, as well as Article 13 (2) of Protocol II Additional to the Geneva Conventions of August 1949. The report submitted that "where aircraft make multiple attack passes over a civilian convoy, or convoys are subject to prolonged attack by ground troops, the most plausible inference is that such attacks are intentional and with the likely knowledge of the predominantly civil character of the convoy. Customary international law requires that any attacks discriminate between the civilians and military objects and that foreseeable injury to civilians be proportionate to the direct and concrete military advantage to be gained by the attack. ... Each of the incidents described below raises concerns that civilians may have been targeted intentionally or that the force used was not proportionate to the military advantage pursued...".

103. The report proceeded to describe in detail the announcement of the safe route on 29 October 1999, the closing of the administrative border with Ingushetia and the attack itself. Based on interviews with witnesses, press articles and public statements, it presented information about the damaged vehicles. It referred to the van with 13 passengers in which the first and the second applicants with their families were travelling. The second applicant and another passenger who had been in the minivan were interviewed and gave details of the attack.

104. The report concluded that the exact number of victims of the attack is unknown and it is unlikely that it would ever be known, since many victims were never identified. The eyewitnesses gave accounts of the number of persons killed, varying between 40 and 70 people. They were buried in nearby villages.

3. Documents related to the establishment of facts in the domestic courts

105. Various documents related to the establishment of facts of the first applicant's children's deaths were submitted to the Court.

a) The first applicant's statement

106. In her statement of 15 December 1999 the first applicant asked the Nazran Town Court to certify the fact of her two children's deaths. She submitted that on 29 October 1999 a refugee convoy was attacked by fighter

planes on the "Kavkaz" highway, between Achkhoy-Martan and Shaami-Yurt. Many people were killed, among them her children Ilona Isayeva and Said-Magomed Isayev. Their bodies were taken back to Grozny and buried in Chernorechye, near Grozny. The applicant could not attend her children's funeral, because at that time she was being treated for her wounds by relatives in Grozny. She could not produce any documents about her children's deaths nor about her own wounds, because no hospital or state body was functioning in Chechnya due to the hostilities. The applicant could not even obtain a burial certificate from the local authority. She requested that the second applicant and Ruslan Vakhabov be called to testify about her children's deaths, to which they had been eyewitnesses. At that time they were all living in the Logovaz-1 refugee camp in Nazran. The court decision was required to obtain death certificates, which the civil registration body had refused to issue in the absence of medical certification of the deaths.

b) Transcript of the court proceedings

107. On 20 December 1999 the Nazran Town Court granted the first applicant's request. From the transcript of the proceedings it follows that the court heard the first applicant, who repeated her statement, and two witnesses as she had requested. Ruslan Vakhabov and the second applicant confirmed the deaths of Ilona Isayeva and Said-Magomed Isayev (see § 35 above).

II. RELEVANT DOMESTIC LAW AND PRACTICE

a) The Constitutional provisions

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

109. 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 may 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 once domestic legal remedies have been exhausted.

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

111. Article 55 (3) provides for the restriction of rights and liberties by 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.

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

b) The Law on Defence

113. Section 25 of the Law on Defence (*Федеральный закон от 31 мая 1996 г. N 61-ФЗ "Об обороне"*) provides that "supervision of adherence to laws and investigations of crimes committed in the Armed Forces of the Russian Federation, other Forces, military formations and authorities shall be exercised 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 the courts in accordance with the legislation of the Russian Federation."

c) The Law on the Suppression of Terrorism

114. The Law on the Suppression of Terrorism (*Федеральный закон от 25 июля 1998 г. № 130-ФЗ «О борьбе с терроризмом»*) provides as follows:

"Section 3. Basic Concepts

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

... 'the suppression of terrorism' shall refer to activities aimed at the prevention, detection, suppression and minimisation of the consequences of terrorist activities;

'counter terrorist operation' shall refer to special activities aimed at the prevention of terrorist acts, ensuring the security of individuals, neutralising terrorists and minimising the consequences of terrorist acts;

'zone of a counter-terrorist operation' shall refer to an individual 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 anti-terrorist operation

1. In the zone of an anti-terrorist operation, the persons conducting the operation shall be entitled:

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

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

4) to enter 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 may jeopardise human life or health;

5) to search persons, their belongings and vehicles entering or exiting the zone of an anti-terrorist 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, damage may be caused to the life, health and property of terrorists, as well as to other legally-protected interests, in the course of conducting an anti-terrorist operation. However, servicemen, experts and other persons engaged in the suppression of terrorism shall be exempted from liability for such damage, in accordance with the legislation of the Russian Federation."

d) The Code of Civil Procedure

115. Articles 126-127 of the Code of Civil Procedure (*Гражданский процессуальный Кодекс РСФСР*)), in force at the material time, contained general formal requirements governing an application to a court, including, *inter alia*, the defendant's name and address, the exact circumstances on which the claim was based and any documents supporting the claim.

Article 214 part 4 provided that the court had to suspend consideration of a case if it could not be considered until completion of another set of civil, criminal or administrative proceedings.

116. Article 225 of the Code provided that if in the course of reviewing a complaint against the actions of an official or a civil claim a court came across information indicating that a crime had been committed, it was required to inform the prosecutor.

117. Chapter 24-1 established that a citizen could apply to a court for redress in respect of unlawful actions by a state body or official. Such complaints could have been submitted to a court, either at the location of the state body or at the plaintiff's place of residence, at the latter's discretion. Under the same procedure, the courts could also rule on an award of damages, including non-pecuniary damages, where they concluded that a violation had occurred.

e) The Code of Criminal Procedure

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

119. Article 53 stated that where a victim had died as a result of a 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.

120. 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 a discovery by an investigating body, prosecutor or court of evidence that a crime had been committed.

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

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

123. Article 126 provided that military prosecutor's office was responsible for the investigation of crimes committed by military servicemen in relation to their official duties or within the boundaries of a military unit.

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

f) Situation in the Chechen Republic

125. 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.

g) Amnesty

126. On 6 June 2003 the State Duma adopted Decree no. 4124-III, by which an amnesty was granted in respect of criminal acts committed by the participants to the conflict on both sides in the period between December 1993 and June 2003. The amnesty does not apply to grievous crimes, such as murder.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

A. Arguments of the parties

1. The Government

127. The Government requested the Court to declare the applications inadmissible on the grounds that the applicants had failed to exhaust the

domestic remedies available to them. They submitted that the relevant authorities had conducted criminal investigations into civilian deaths and injuries and the destruction of property in Chechnya, in accordance with the domestic legislation.

128. The Government also submitted that, although the courts in Chechnya had indeed ceased to function in 1996, civil remedies were still available to those who moved out of Chechnya. Established practice allowed them to apply to the Supreme Court or directly to the courts at their new place of residence, which would then consider their applications. In 2001 the courts in Chechnya had resumed work and had reviewed a large number of civil and criminal cases.

a) The Supreme Court

129. The availability of the Supreme Court remedy was supported, in the Government's view, by the possibility for the Supreme Court to act as a court of first instance in civil cases. The Government referred to two Supreme Court decisions of 2002 and 2003, by which the provisions of two Government decrees were found null and void following individual complaints. They also referred to the case of K., at whose request his claim for non-pecuniary damages against a military unit was transferred from a district court in Chechnya to the Supreme Court of Dagestan because he insisted on the participation of lay assessors in the proceedings, and such assessors were not available in Chechnya.

b) Application to other courts

130. The possibility of applying to a court at their new places of residence was supported by the fact that the first applicant had successfully applied to the Nazran District Court in Ingushetia for certification of her children's deaths.

131. As further proof of the effectiveness of this avenue, the Government referred to the case of Khashiyev v. Russia (no. 57942/00). In this case, the applicant, whose relatives had been killed in Grozny in January 2000 by unknown perpetrators (but where there was strong evidence to conclude that the killings had been committed by federal servicemen), applied to the Nazran District Court in Ingushetia, which on 26 February 2003 awarded substantial pecuniary and non-pecuniary damages for the deaths of the applicant's relatives. This decision was upheld at final instance and executed, thereby proving that an application to a relevant district court was an effective remedy in cases such as the applicants'.

2. The applicants

132. The applicants submitted that they had complied with the obligation to exhaust domestic remedies, in that the remedies referred to by

the Government would be illusory, inadequate and ineffective. The applicants based this assertion on the following arguments.

a) The violations were carried out by State agents

133. The applicants submitted that the anti-terrorist operation in Chechnya, run by agents of the State, was based on the provisions of the Law on the Suppression of Terrorism, and was officially sanctioned at the highest level of State power.

134. The applicants referred to the text of the Law on the Suppression of Terrorism, which allowed 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 set no clear limit on the extent to which such rights could be restricted and provided for no remedies for the victims of violations. Nor did it contain provisions regarding officials' responsibility for possible abuses of power. The applicants referred 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 pointed out that the Consolidated Report, commissioned by the Secretary General to analyse the correspondence, had highlighted those deficiencies in the very Law to which the Russian Government referred as a legal basis for their actions in Chechnya.

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

136. The applicants alleged that there was a practice of non-respect of the requirement to investigate abuses committed by servicemen and members of the police effectively, both in peacetime and during conflict. The applicants based this assertion on four principal grounds: impunity for the crimes committed during the current period of hostilities (since 1999), impunity for the crimes committed in 1994-1996, impunity for police torture and ill-treatment all over Russia, and impunity for the torture and ill-treatment that occur in army units in general.

137. As to the current situation in Chechnya, the applicants cited human rights groups, NGO and media reports on violations of civilians' rights by federal forces. They also referred to a number of the Council of Europe documents deploring lack of progress in investigations into credible allegations of human rights abuses committed by the federal forces.

b) Ineffectiveness of the legal system in the applicants' case

138. The applicants further argued that the domestic remedies to which the Government referred were ineffective due to the failure of the legal system to provide redress. They invoked the Court judgment in the case of *Akdivar and Others v. Turkey* and argued that the Russian Federation had 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).

139. In the applicants' view, the Government had not satisfied the criteria set out in the *Akdivar* judgment, since they had provided no evidence that the remedies that existed in theory are or were capable of providing redress, or that they offered any reasonable prospects of success. The applicants challenged each of the two remedies mentioned by the Government.

140. So far as civil proceedings were concerned, the applicants submitted that they did not have effective access to the remedies suggested by the Government. An application to the Supreme Court would be plainly useless, because it had only limited jurisdiction as a court of first instance, e.g. to review the lawfulness of administrative acts. The Supreme Court's published case-law did not contain a single example of a civil case brought by a victim of the armed conflict in Chechnya against the state authorities. As to the possible transfer of cases by the Supreme Court, the applicants referred to a decision by the Constitutional Court of 16 March 1998, which found that certain provisions of the Code of Civil Procedure then in force, permitting higher courts to transfer cases from one court to another were unconstitutional. As to the possibility of applying to a district court in a neighbouring region or in Chechnya, the applicants submitted that this would have been impractical and inefficient.

141. In respect of a civil claim, the applicants argued that, in any event, it could not have provided an effective remedy within the meaning of the Convention. A civil claim would ultimately be unsuccessful in the absence of a meaningful investigation, 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 argued that civil proceedings could only lead to compensation for pecuniary and non-pecuniary damages, while their principal objective was to see the perpetrators brought to justice. Finally, they pointed out that although civil claims to obtain compensation for the military's illicit actions had been submitted to the courts, almost none had been successful.

142. The applicants submitted that criminal proceedings alone were capable of providing adequate effective remedies, and that compensation could be awarded to them in the course of criminal proceedings as victims

of the crimes. The applicants questioned the effectiveness of the investigation into their case.

B. The Court's assessment

143. In the present case the Court made no decision about exhaustion of domestic remedies at the admissibility stage, having found that this question was too closely linked to the merits. The same preliminary objection being raised by the Government at the stage of considerations on the merits, the Court should proceed to evaluate the arguments of the parties in view of the Convention provisions and its relevant practice.

144. The Court recalls that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants first to use the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law, but that no recourse should be had to remedies which are inadequate or ineffective (see the *Aksoy v. Turkey* judgment of 18 December 1996, *Reports* 1996-VI, pp. 2275-76, §§ 51-52, and the *Akdivar and Others v. Turkey* judgment cited above, p. 1210, §§ 65-67).

145. The Court emphasises that the application of the rule of exhaustion of domestic remedies must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting States have agreed to set up. Accordingly, it has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned but also of the general context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see the *Akdivar and Others* judgment cited above, p. 1211, § 69, and the *Aksoy* judgment cited above, p. 2276, §§ 53 and 54).

146. The Court observes that Russian law provides, in principle, two avenues of recourse for the victims of illegal and criminal acts attributable to the State or its agents, namely civil procedure and criminal remedies.

147. As regards a civil action to obtain redress for damage sustained through alleged illegal acts or unlawful conduct on the part of State agents, the Court recalls that the Government have relied on two possibilities, namely to lodge a complaint with the Supreme Court or to lodge a complaint with other courts (see §§ 127 -131 above). The Court notes that at the date on which the present application was declared admissible, no decision had been produced to it in which the Supreme Court or other courts were able, in the absence of any results from the criminal investigation, to consider the merits of a claim relating to alleged serious criminal actions. In the instant case, however, the applicants are not aware of the identity of the potential defendant, and so, being dependent for such information on the outcome of the criminal investigation, did not bring such an action.

148. As regards the case of Mr Khashiyev, who had brought a complaint to the Court (no. 57942/00), to which the Government refer, it is true that, after receiving the Government's claim that a civil remedy existed, he brought an action before the Nazran District Court in Ingushetia. That court was not able to, and did not, pursue any independent investigation as to the person or persons responsible for the fatal assaults, but it did make an award of damages to Mr Khashiyev on the basis of the common knowledge of the military superiority of the Russian federal forces in the district in question at the relevant time and the State's general liability for the actions by the military.

149. The Court does not consider that that decision affects the effectiveness of a civil action as regards exhaustion of domestic remedies. Despite a positive outcome for Mr Khashiyev in the form of a financial award, it confirms that a civil action is not capable, without the benefit of the conclusions of a criminal investigation, of making any findings as to the identity of the perpetrators of fatal assaults, and still less to establish their responsibility. Furthermore, a Contracting State's obligation under Articles 2 and 13 of the Convention to conduct an investigation capable of leading to the identification and punishment of those responsible in cases of fatal assault might be rendered illusory if, in respect of complaints under those Articles, an applicant would be required to exhaust an action leading only to an award of damages (see *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, p. 2431, § 74).

150. The Court also notes the practical difficulties cited by the applicants and the fact that the law-enforcement bodies were not functioning properly in Chechnya at the time. In this respect the Court is of the opinion that there existed special circumstances which affected their obligation to exhaust remedies that would otherwise be available under Article 35 § 1 of the Convention.

151. In the light of the above the Court finds that the applicants were not obliged to pursue the civil remedies suggested by the Government in order to exhaust domestic remedies, and the preliminary objection is in this respect unfounded.

152. As regards criminal law remedies, the Court observes that a criminal investigation was instituted into the attack on the refugee convoy, albeit only after a considerable delay - in May 2000, despite the fact that the authorities were aware of it immediately after the incident. The complaints to the authorities made by other victims of the attack, the Committee of the Red Cross and Ms Burdynyuk, in November and December 2000, did not lead to an investigation. The Court further notes that, at least for several years after the incident, the applicants were not questioned about the event, were not granted victim status, had no access to the investigation file and were never informed of its progress (see §§ 62, 74, 86, 90 above). No charges were brought against any individuals.

153. The Court considers that this limb of the Government's preliminary objection raises issues concerning the effectiveness of the criminal investigation in uncovering the facts and responsibility for the attack of which the applicants complain. These issues are closely linked to those raised in the applicant's complaints under Articles 2, 3 and 13 of the Convention. Thus, it considers that these matters fall to be examined under the substantive provisions of the Convention invoked by the applicants. In view of the above, it is not necessary for the Court to decide whether there was indeed a practice of non-investigation of crimes committed by police or military officials, as claimed by the applicants.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

154. The first applicant alleged that her two children were killed by agents of the State in violation of Article 2. The three applicants complained that their right to life was violated by the attacks against the convoy by military planes. They also submitted that the authorities had failed to carry out an effective and adequate investigation into these attacks. They relied on Article 2 of the Convention, which provides:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

A. The alleged failure to protect life

1. Arguments of the parties

a) The applicants

155. The applicants alleged that the way in which the operation had been planned, controlled and executed constituted a violation of their own right to life and the right to life of their relatives. In their opinion, this violation was intentional, because the authorities should have known of the massive civilian presence on that road on 29 October 1999 and because the aircraft flew for a relatively long time at low altitude above the convoy before firing at it.

156. The choice of means in the present case, namely that of the military aviation and S-24 missiles with a large radius of destruction, was not in conformity with the "strict proportionality" test, established in the Court's practice. They submitted that the degree of force used was manifestly disproportionate to whatever aim the military were trying to achieve, even had it been used in self-defence.

157. The applicants regarded the aerial bombardment as an indiscriminate attack on civilians, which could not be justified under international humanitarian law. They referred, in this respect, to the common Article 3 of the Geneva Conventions of 12 August 1949.

158. The applicants pointed to the Government's failure to produce all the documents contained in the case-file related to the investigation of the attack. In their opinion, this should lead the Court to draw inferences as to the well-foundedness of their allegations.

b) The Government

159. The Government did not dispute the fact of the attack, the fact that the first applicant's two children had been killed or the fact that the first and the second applicants had been wounded.

160. They submitted that the pilots had not intended to cause harm to the civilians, because they did not and could not have seen the convoy. In the Government's view, the attack and its consequences were legitimate under Article 2 § 2 (a), i.e. they had resulted from the use of force absolutely necessary in the circumstances of protection of a person from unlawful violence. Basing themselves on the results of the investigation, they submitted that the use of air power was justified by the heavy fire opened by members of illegal armed formations, which constituted a threat not only to the pilots, but also to the civilians who were in the vicinity. The pilots had to act in order to stop these illegal actions.

c) The third party submissions

161. Rights International, the Centre for International Human Rights Law, Inc., a USA based NGO, submitted written comments. They submitted, referring to the Court's decision in *Banković and Others v. Belgium and 16 Other Contracting States*, that the Court should take into account any relevant rules of international law in interpreting the Convention (see *Banković and Others v. Belgium and 16 Other Contracting States* (dec.) [GC], no. 52207/99, ECHR 2001-XII).

162. The submission addressed the relevant rules of international law governing armed attacks on mixed combatant/civilian targets during a non-international armed conflict.

163. Common Article 3 of the 1949 Geneva Conventions governs non-international conflicts. The relevant provisions state:

> "In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:
>
> (1) Persons taking no active part in the hostilities ... shall in all circumstances be treated humanely ... To this end the following acts are and shall be prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
>
> (a) violence to life and person ..."

164. Individuals are criminally responsible for violations of Common Article 3 under both the Geneva Conventions and the International Criminal Court (ICC) Statute.

165. The submission recognised the difficulty of differentiating between combatants and non-combatants in non-international military conflicts, where the irregular military forces are not clearly identified as such. In these circumstances it was essential that attacks on mixed combatant/civilian targets be undertaken in a manner calculated to reduce the probability of harm to civilians.

166. The norms of non-international armed conflict should be construed in conformity with international human rights law governing the right to life and to humane treatment. The right to life and to humane treatment required that when force is used, it could only cause the least amount of foreseeable physical and mental suffering. In this respect, they referred, among other authorities, to the Court's finding in *Güleç v. Turkey* that States should make non-lethal weapons available to their forces for use against mixed targets (see *Güleç v. Turkey* judgment of 27 July 1998, *Reports* 1998-IV).

167. The submission argued that the law of non-international armed conflicts as construed by international human rights law established a three-part test. First, armed attacks on mixed combatant/civilian targets were lawful only if there was no alternative to using force for obtaining a lawful objective. Second, if such use of force was absolutely necessary, the means or method of force employed could only cause the least amount of

foreseeable physical and mental suffering. Armed forces should be used for the neutralisation or deterrence of hostile force, which could take place by surrender, arrest, withdrawal or isolation of enemy combatants – not only by killing and wounding. This rule required that States made available non-lethal weapons technologies to their military personnel. Furthermore, the authorities should refrain from attacking until other non-lethal alternatives could be implemented. Third, if such a means or method of using force did not achieve any of its lawful objectives, then force could be incrementally escalated to achieve them.

2. The Court's assessment

a) General principles

168. Article 2, which safeguards the right to life and sets out the circumstances where deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which in peacetime no derogation is permitted under Article 15. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which deprivation of life may be justified must therefore be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective.

169. Article 2 covers not only intentional killing but also the situations where it is permitted to "use force" which may result, as an unintended outcome, in the deprivation of life. The deliberate or intended use of lethal force is, however, only one factor to be taken into account in assessing its necessity. Any use of force must be no more than "absolutely necessary" for the achievement of one or more of the purposes set out in sub-paragraphs (a) to (c). This term indicates that a stricter and more compelling test of necessity must be employed than that normally applicable when determining whether State action is "necessary in a democratic society" under paragraphs 2 of Articles 8 to 11 of the Convention. Consequently, the force used must be strictly proportionate to the achievement of the permitted aims.

170. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances.

171. In particular, it is necessary to examine whether the operation was planned and controlled by the authorities so as to minimise, to the greatest extent possible, recourse to lethal force. The authorities must take appropriate care to ensure that any risk to life is minimised. The Court must also examine whether the authorities were not negligent in their choice of action (see *McCann and Others v. the United Kingdom*, judgment of

27 September 1995, Series A no. 324, pp. 45-46, §§ 146-50 and p. 57, § 194, *Andronicou and Constantinou v. Cyprus*, judgment of 9 October 1997, *Reports* 1997-VI, pp. 2097-98, § 171, p. 2102, § 181, p. 2104, § 186, p. 2107, § 192 and p. 2108, § 193 and *Hugh Jordan v. the United Kingdom*, no. 24746/95, §§ 102 – 104, ECHR 2001-III). The same applies to an attack where the victim survives but which, because of the lethal force used, amounted to attempted murder (see, *mutatis mutandis*, *Yaşa v. Turkey*, cited above, p. 2431, § 100; *Makaratzis v. Greece* [GC], no. 50385/99, § 49-55, 20 December 2004).

172. As to the facts that are in dispute, the Court recalls its jurisprudence confirming the standard of proof "beyond reasonable doubt" in its assessment of evidence (*Avsar v. Turkey*, no. 25657/94, § 282, ECHR 2001). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (*Ireland v. the United Kingdom* judgment of 18 January 1978, Series A no. 25, p. 65, § 161).

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

b) Application in the present case

174. It is undisputed that the applicants were subjected to an aerial missile attack, during which the first applicant's two children were killed and the first and the second applicant were wounded. This brings the complaint, in respect of all three applicants, within the ambit of Article 2 (see § 171 above). The Government suggested that the use of force was justified in the present case under paragraph 2 (a) of Article 2 and that the harm done was not intentional.

175. At the outset it has to be stated that the Court's ability to make an assessment of the legitimacy of the attack, as well as of how the operation had been planned and executed, is severely hampered by the lack of information before it. No plan was submitted and no information was provided as to how the operation had been planned, what assessment of the perceived threats and constraints had been made, or what other weapons or tactics had been at the pilots' disposal when faced with the ground attack the Government refer to. Most notably, there was no reference to assessing and preventing possible harm to the civilians who might have been present on

the road or elsewhere in the vicinity of what the military could have perceived as legitimate targets.

176. The Court further notes that the document submitted by the Government in October 2004 refers to a number of new evidence, which have not been submitted to the Court (see §§ 90-97 above). Several undated documents on which the conclusions of that document are based appear inconsistent with other evidence present in the case-file. No explanation was submitted as to why such important evidence as the testimonies of the technicians and the examination of the planes have not been collected earlier, nor as to why the pilots' statements cited in it appear to be in contradiction with their other, presumably earlier, statements. It is not clear why this document, issued in May 2004, was only submitted to the Court and to the other party in October 2004. The Court will therefore rely on its contents with caution.

177. Bearing this in mind, the documents submitted by the parties and the investigation file nevertheless allow the Court to draw certain conclusions as to whether the operation was planned and conducted in such a way as to avoid or minimise, to the greatest extent possible, damage to civilians.

178. The Court accepts that the situation that existed in Chechnya at the relevant time called for exceptional measures on behalf of the State in order to regain control over the Republic and to suppress the illegal armed insurgency. These measures could presumably include employment of military aviation equipped with heavy combat weapons. The Court is also prepared to accept that if the planes were attacked by illegal armed groups, that could have justified use of lethal force, thus falling within paragraph 2 of Article 2.

179. However, in the present case, the Government failed to produce convincing evidence which would have supported such findings. The testimonies submitted by the two pilots and the air traffic controller are the only mention of such an attack (see §§ 79-85 above). These testimonies were collected in October and December 2000, i.e. over a year after the attack. They are incomplete and refer to other statements made by these witnesses during the course of the investigation, which the Government failed to disclose. They are made in almost identical terms and contain a very brief and incomplete account of the events. Their statements quoted in the document of 5 May 2004 submit a somewhat different account of the circumstances of the attack at the planes from the trucks, the height from which the pilots fired at the first truck and the presence of other vehicles on the road (see §§ 90-97). In the absence of all the pilots' statements and lack of explanation of the obvious inconsistencies contained in them the Court puts into question the credibility of their statements.

180. The Government failed to submit any other evidence that could be relevant to legitimise the attack, including the exact nature of the pilots' mission and evaluation of the perceived threats and constraints, an account of the pilots' debriefing upon return, mission reports or relevant

explanations which they presumably had to submit concerning the discharged missiles and the results of their attack, a description or names of the fighters presumably killed in the attack etc. The decision of 5 May 2004 refers to a description of the damage caused to the planes by the hostile fire and statements of the technicians. These documents were not submitted to the Court, and the Court retains doubts as to the credibility of evidence disclosed four and a half years after the events in question (see § 176 above). Further, none of the other witnesses whose statements were produced mentioned seeing the Kamaz trucks from which the planes would be attacked or the presence of armed persons in the convoy at all. An investigation of the site of the attack, conducted in August 2000, found remains of the Red Cross Mercedes truck. No remains of a Kamaz truck were reported (see § 63 above). The only non-military witness who reported seeing armed men on the road to Grozny on 29 October 1999 referred to a UAZ all-terrain vehicle in the Samashki forest, but not to a Kamaz truck (see § 71 above).

181. On the basis of the Government's submissions and admissions, the military were responsible for a military operation which resulted in the losses suffered by the applicants. The Government claim that the aim of the operation was to protect persons from unlawful violence within the meaning of Article 2 § 2 (a) of the Convention. In the absence of corroborated evidence that any unlawful violence was threatened or likely, the Court retains certain doubts as to whether the aim can at all be said to be applicable. However, given the context of the conflict in Chechnya at the relevant time, the Court will assume in the following paragraphs that the military reasonably considered that there was an attack or a risk of attack from illegal insurgents, and that the air strike was a legitimate response to that attack.

182. Thus, assuming that the use of force could be said to have pursued the purpose set out in paragraph 2 (a) of Article 2, the Court will consider whether such actions were no more than absolutely necessary for achieving that purpose. The Court will therefore proceed to examine, on the basis of the information submitted by the parties and in view of the above enumerated principles (see §§ 168-173 above), whether the planning and conduct of the operation were consistent with Article 2 of the Convention.

183. The applicants, Red Cross workers and other witnesses to the attack unanimously testified about being aware in advance of the “safe passage” or “humanitarian corridor” to Ingushetia for the Grozny residents on 29 October 1999. This exit was prepared and foreseen by the residents fleeing from heavy fighting. They collected their belongings and arranged for transportation in advance, and started early in the morning of 29 October 1999 in order to reach safety. The first and second applicants and their families arranged for a minivan with a driver. They submitted that on 28 October 1999 they attempted to cross the administrative border, but the military at the roadblock ordered them to return the next day. The third applicant and her family had been waiting since 26 October 1999 for the

announced "safe exit" in the village of Gekhi, because the shelling of Grozny had become too severe (see §§ 14-16 above). Ms Burdynyuk and her husband were aware of the "corridor" and ordered in advance a truck from a transport agency to take them and their household items out (see § 55 above). The Red Cross workers testified that they planned the evacuation of the offices for 29 October 1999 to benefit from the announced "safe passage", of which they had informed their headquarters in Nalchik and obtained a permit to travel from the local rebel commander (see §§ 46-48 above).

184. The presence of a substantial number of civilian cars and thousands of people on the road on that day is further confirmed by the statements of the applicants and the statements by the Red Cross workers and other witnesses, who testified that there had been a line of cars several kilometres long. The Government in their submission of 28 March 2003 explained that on 29 October 1999 the roadblock "Kavkaz-1" on the administrative border between Chechnya and Ingushetia had been closed, because it could not cope with the substantial amount of refugees wishing to cross (see § 26 above).

185. The applicants and the Red Cross workers refer to an order from a senior military officer at the roadblock to clear the road and to return to Grozny, which came at round 11 a.m. It appears that the civilians in the convoy were fearful for their safety on the return journey, and they referred to assurances of security given by that senior officer (see §§ 17 and 48 above). As the applicants and other witnesses submit, the order to return caused a traffic jam on the road, filled with cars, buses and trucks. Some had to wait as long as about an hour to be able to start moving and the progress was very slow, at least initially (see §§ 17, 18 and 48 above).

186. All this should have been known to the authorities who were planning military operations on 29 October 1999 anywhere near the Rostov-Baku highway and should have alerted them to the need for extreme caution as regards the use of lethal force.

187. It transpires from the testimony given by the air controller identified as "Sidorov" that he was given the mission order for 29 October 1999 on the previous evening. The mission was to prevent movement of heavy vehicles towards Grozny in order to cut supplies to the insurgents defending the city. Neither he, nor, apparently, the pilots had been informed of the announcements of a "safe passage" for that day, of which the civilians were keenly aware. Nor had they been alerted at any moment by the military manning the "Kavkaz-1" roadblock to the massive presence of refugees on the road, moving towards Grozny on their orders (see § 79-80 above).

188. It appears from the air controller's evidence that forward air controllers are normally taken on board when a mission is perceived as taking place close to federal positions. The absence of a forward air controller on the mission of 29 October 1999 meant that, in order to receive permission to use weapons, the pilots had to communicate with a controller

at the control centre, who could not see the road and could not be involved in any independent evaluation of the targets.

189. All this had placed the civilians on the road, including the applicants, at a very high risk of being perceived as suitable targets by the military pilots.

190. The pilots in their testimonies presented to the Court submitted that they had attacked two solitary Kamaz trucks on the stretch of road between Shaami-Yurt and Kulary villages, which are about 12 kilometres apart. They stated that at that time the road was empty save for these two trucks. No questions were put to them to explain the civilian casualties (see §§ 81-85 above). From the document dated 5 May 2004 it appears that at some point after March 2003 the pilots were questioned again, and submitted that after they had fired at the first truck another truck appeared out of the forest and drove into the impact radius of the missile (see §§ 92-93 above).

191. The air controller in his testimony stated that he had not been aware of any civilian casualties until the day of the interview, i.e. until a year after the incident (see § 79 above). The Court finds this difficult to accept, because the Red Cross immediately communicated information about the casualties to the relevant authorities, which had already in November 1999 started some form of investigation of the incident. The press release from the Russian military air force announced the destruction of a column of trucks with fighters and ammunition on the road towards Grozny on 29 October 1999 and denied the allegations that civilians could have been injured by the air strikes (see § 32 above).

192. The Court finds insurmountable the discrepancy between the two pilots' and the air controller's testimonies that the aircraft directed their missiles at isolated trucks and the victims' numerous submissions about the circumstances of the attack. The Government explained the casualties by submitting that in the very short time between firing of the missiles at the trucks and the moment they hit them, the convoy, previously unseen by the pilots, appeared on the road and was affected due to the wide impact radius of the missiles used. The Court does not accept this reasoning, which does not begin to explain the sudden appearance of such a large number of vehicles and persons on the road at the time. Moreover, the Government's contentions are contradicted by a substantial mass of other evidence presented to the Court.

193. First, it follows from the witnesses' accounts that several vehicles in the convoy were directly hit by the explosions – the Mercedes truck used by the Red Cross, the cabin of which had been destroyed, the PAZ bus and a Kamaz truck filled with refugees. The third applicant submits that her GAZ car with possessions was destroyed by a direct hit. This excludes accidental damage by shrapnel due to a large impact radius.

194. Second, the applicants, the Red Cross workers and other witnesses submitted that the attacks were not momentaneous, but lasted for several hours, possibly as many as four. The pilots and the air controller gave the timing of the first attack as about 2.05 - 2.15 p.m., but they failed to

indicate, even approximately, the timing of the second attack. In their submissions on the admissibility of the applications, the Government indicated the timing of the attack as 2.05 – 2.20 p.m. and 3.30 – 3.35 p.m. (see § 28). Assuming that the initial missile was fired about 2 p.m. at what the pilots had perceived as a "solitary" vehicle on an otherwise empty road, further launches, which took place at least an hour and a half later, could not have failed to take into account other vehicles. It is established that, during that quite significant stretch of time, the pilots made several passes over the road, descending and ascending from 200 to 2000 metres. They had the benefit of good visibility conditions and thus could not have failed to see the numerous cars on the road. The air force press release, issued soon after the events, spoke of a "column of trucks with fighters and ammunition" and not of two solitary vehicles (see § 32 above).

195. The military used an extremely powerful weapon for whatever aims they were trying to achieve. According to the conclusions of the domestic investigation, 12 S-24 non-guided air-to-ground missiles were fired, six by each plane, which is a full load. On explosion, each missile creates several thousand pieces of shrapnel and its impact radius exceeds 300 metres (or 600-800 metres, as suggested by some documents – see §§ 30 and 88 above). There were thus several explosions on a relatively short stretch of the road filled with vehicles. Anyone who had been on the road at that time would have been in mortal danger.

196. The question of the exact number of casualties remains open, but there is enough evidence before the Court to suggest that in these circumstances it could be significantly higher than the figures reached by the domestic investigation. The Court also bears in mind the report produced by Human Rights Watch concerning this and other incidents where civilians were attacked when fleeing from fighting. The Court does not find any difference between the situations of the three applicants in view of the level of danger to which they were exposed.

197. The question of the apparent disproportionality in the weapons used was also raised by the Bataysk Garrison Court in its decision of 14 March 2003, by which the decision to close the investigation was quashed and a new investigation ordered.

198. In addition, the fact that the Government failed to invoke the provisions of domestic legislation at any level which would govern the use of force by the army or security forces in situations such as the present one, while not in itself sufficient to decide on a violation of the positive obligation of the State to protect the right to life, in the circumstances of the present case is also directly relevant to the proportionality of the response to the alleged attack (see, *mutatis mutandis*, the above-mentioned *McCann* judgment, § 156).

199. To sum up, even assuming that that the military were pursuing a legitimate aim in launching 12 S-24 non-guided air-to-ground missiles on 29 October 1999, the Court does not accept that the operation near the

village of Shaami-Yurt was planned and executed with the requisite care for the lives of the civilian population.

200. The Court finds that there has been a violation of Article 2 of the Convention in respect of the responding State's obligation to protect the right to life of the three applicants and of the two children of the first applicant, Ilona Isayeva and Said-Magomed Isayev.

B. Concerning the inadequacy of the investigation

1. Arguments of the parties

a) The applicants

201. The applicants submitted that the authorities had failed to conduct an independent, effective and thorough investigation into the attack.

202. In this respect the applicants submitted that the situation which had existed in Chechnya since 1999 was characterised by significant civil strife due to the confrontation between the federal forces and the Chechen armed groups. They referred to press and NGO reports which, in their view, demonstrated that there were serious obstacles to the proper functioning of the system for the administration of justice and put the effectiveness of the prosecutors' work in serious doubt. They submitted that the difficult circumstances in the Republic did not dispense the Russian Government from their obligations under the Convention and that the Government had failed to provide any evidence that an investigation into abuses against civilians was effective and adequate.

203. The applicants further submitted 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 also stated that the prosecutor's office had inexplicably failed to act with sufficient expediency 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 communicated the news of the attack to the Ministry of Interior. In the applicants' opinion, the information from the Red Cross and in the media concerning the destruction of medical vehicles, which enjoy special protection under international humanitarian law and domestic law, and the high number of casualties reported should have prompted the prosecutors to act with special expediency and diligence.

204. They further noted that the Nazran District Court, which certified the deaths of the first applicant's children on 20 December 1999, should have made the information available to the prosecutors, in accordance with Article 225 of the Civil Procedural Code. They also pointed out that the first and second applicants had received medical assistance in Ingushetia, and

that the medical workers were under an obligation to inform the law-enforcement bodies of injuries that might have been related to a crime.

205. The applicants found that despite all of the above the prosecutors had failed to act quickly to investigate the attack. No criminal case had been instituted until May 2000. Moreover, a number of press statements issued by high-ranking Russian officials, including from the air force's press centre, denied that the attack that took place on 29 October 1999 had led to any civilian casualties. The investigation was closed in September 2001 for lack of *corpus delicti*. This decision had been appealed by another victim of the attack, Ms Burdynyuk.

206. Finally, the applicants submitted that the investigation of the crimes had been inadequate and incomplete and could not be regarded as effective. They referred to shortcomings in the investigation. The applicants referred to the failure of the authorities to contact them timely for questioning, to lack of information about the progress of the case and of their procedural status.

b) The Government

207. The Government denied any shortcomings in the investigation. They referred to the decision of the Bataysk Garrison Court of 14 March 2003, which had quashed the decision to terminate the investigation and sent the case for further investigation, and to the military prosecutor's decision of 5 May 2004 to close the criminal investigation for absence of *corpus delicti*, which had not been appealed by the applicants.

2. The Court's assessment

a) General considerations

208. The obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see *McCann and Others v. the United Kingdom*, cited above, p. 49, § 161, and *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, p. 324, § 86).

209. The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. What form of investigation will achieve those purposes may vary in different circumstances. However, whatever mode is employed, the authorities must act of their own motion once the matter has come to their attention. They cannot leave it to the initiative of the next of kin either to lodge a formal

complaint or to take responsibility for the conduct of any investigative procedures (see, for example, *mutatis mutandis*, *İlhan v. Turkey* [GC], no. 22277/93, § 63, ECHR 2000-VII).

210. For an investigation into alleged unlawful killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events (see, for example, *Güleç v. Turkey*, judgment of 27 July 1998, *Reports* 1998-IV, §§ 81-82; *Oğur v. Turkey* [GC], no. 21594/93, §§ 91-92, ECHR 1999-III). This means not only a lack of hierarchical or institutional connection but also a practical independence (see, for example, *Ergi v. Turkey,* judgment of 28 July 1998, *Reports* 1998-IV, §§ 83-84, and the Northern Irish cases, for example, *McKerr v. the United Kingdom*, no. 28883/95, § 128, *Hugh Jordan v. the United Kingdom*, cited above, § 120, and *Kelly and Others v. the United Kingdom*, no. 30054/96, § 114, ECHR 2001-III).

211. The investigation must also 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 (for example, *Kaya v. Turkey*, cited above, p. 324, § 87) and to the identification and punishment of those responsible (*Oğur v. Turkey*, cited above, § 88). This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure 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, for example, *Salman v. Turkey* [GC], no. 21986/93, ECHR 2000-VII, § 106; *Tanrikulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 109; *Gül v. Turkey*, 22676/93, § 89, 14 December 2000, unreported). Any deficiency in the investigation which undermines its ability to establish the cause of death or the person or persons responsible will risk falling foul of this standard (see the Northern Irish cases concerning the inability of inquests to compel security force witnesses directly involved in the use of lethal force to give evidence, for example, *McKerr v. the United Kingdom,* cited above, § 144, and *Hugh Jordan v. the United Kingdom*, cited above, § 127).

212. A requirement of promptness and reasonable expedition is implicit in this context (see *Yaşa v. Turkey,* cited above, §§ 102-104; *Çakıcı v. Turkey* [GC], no. 23657/94, §§ 80, 87 and 106, ECHR 1999-IV; *Tanrikulu v. Turkey*, cited above, § 109; *Mahmut Kaya v. Turkey*, no. 22535/93, ECHR 2000-III, §§ 106-107). While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities in investigating a use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see, for example, *Hugh Jordan v. the United Kingdom*, cited above, §§ 108, 136-140).

213. For the same reasons, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the victim's next-of-kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *Güleç v. Turkey*, cited above, p. 1733, § 82; *Oğur v. Turkey*, cited above, § 92; *Gül v. Turkey*, cited above, § 93; and Northern Irish cases, for example, *McKerr v. the United Kingdom*, cited above, § 148).

b) Application in the present case

214. An investigation was carried out into the attack of 29 October 1999. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

215. The applications to the military prosecutors made independently by the Red Cross and by Ms Burdynyuk in November and December 1999 constituted detailed and well-founded allegations of heavy casualties caused to civilians and an attack on cars marked with the Red Cross sign. However, despite these very serious allegations, supported by substantial evidence, both their complaints were initially rejected as unsubstantiated by the military prosecutors of military unit no. 20102 (see §§ 51 and 57 above).

216. The first applicant applied to the Nazran Town Court, which on 20 December 1999 certified the deaths of her two children as a result of an air strike by the Russian military. The court was obliged under domestic law to report this information to the prosecuting bodies.

217. Despite that, a proper investigation into the complaint submitted by the Red Cross was opened by a military prosecutor only in May 2000. The investigation into Ms Burdynyuk's complaint was opened and joined to the Red Cross complaint in October 2000. The criminal investigation into the deaths of the first applicant's children and the wounding of the first and second applicant was opened in September 2000 by the District Prosecutor's Office of Achkhoy-Martan, upon communication of the complaints by the Court to the Respondent Government. It was transferred in November 2000 to the military prosecutor's office of military unit no. 20102 and joined to the pending investigation.

218. There was thus a considerable delay – at least until May 2000 – before a criminal investigation was opened into credible allegations of a very serious crime. No explanation was put forward to explain this delay.

219. The Court notes a number of elements in the documents submitted in the investigation file which, together, produce the strong impression of a series of serious and unexplained failures to act once the investigation had commenced.

220. No plan of the operation of 29 October 1999 was produced, though it appears that it had been requested by the Achkhoy-Martan District Prosecutor's Office in November 2000 (see § 77 above). It also transpires from the documents contained in the case-file that the military initially

denied that any military aviation flights had taken place in the vicinity of Shaami-Yurt on 29 October 1999. This served as a basis to refuse to open a criminal investigation on 27 April 2000 (see § 51 above). Additional documents to clarify these contradictions were not requested by the investigation. It does not appear that an operations record book, mission reports and other relevant documents produced immediately before or after the incident were requested or reviewed.

221. There appear to have been no efforts to establish the identity and rank of the senior officer at the "Kavkaz-1" military roadblock who ordered the refugees to return to Grozny and allegedly promised them safety on the route, and to question him or other servicemen from that roadblock.

222. Finally, and probably most importantly, no efforts were made to collect information about the declaration of the "safe passage" for civilians for 29 October 1999, or to identify someone among the military or civil authorities who would be responsible for the safety of the exit. Nothing has been done to clarify the total absence of coordination between the public announcements of a "safe exit" for civilians and the apparent lack of any considerations to this effect by the military in planning and executing their mission.

223. In the light of these omissions alone it is difficult to imagine how the investigation could be described as efficient.

224. There are other elements of the investigation that call for comment. The investigation did not take sufficient steps to identify other victims and possible witnesses of the attack. While some attempts were made to locate the first and second applicants, it does not appear that such attempts were made in respect of the third applicant, at least until March 2003. Also, at least until March 2003, the applicants were not contacted directly by the investigation, no testimonies were collected from them and no victim status was awarded to them in accordance with the domestic legislation. As to the Government's assertion that the investigation was undermined by the applicants' failure to present themselves to the authorities or to leave an address, the Court notes that it is true that some attempts were made to locate the first and second applicants with a view to obtaining their statements with regard to their allegations. However, it should be borne in mind that the applicants fled Grozny in an attempt to escape wide-scale attacks on the city. They had no permanent address to submit to the authorities since they were moving from one place to another in order to find a shelter for themselves and their families. Their feelings of vulnerability and insecurity are also of some relevance in this connection (see, *mutatis mutandis*, *Mentes and Others v. Turkey,* judgment of 28 November 1997, *Reports* 1997-VIII, p. 2707, § 59). Accordingly, the Court considers that the personal circumstances of the applicants and the omissions and the defects in the domestic investigation outweigh their failure to make their addresses known to the authorities.

225. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective investigation into the circumstances of the

attack on the refugee convoy on 29 October 1999. This rendered recourse to the civil remedies equally ineffective in the circumstances. The Court accordingly dismisses the Government's preliminary objection and holds that there has been a violation of Article 2 in this respect as well.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

226. The first and the second applicants submitted that, as a result of the attack, their right to freedom from inhuman and degrading treatment within the meaning of Article 3 of the Convention had been violated. This Article provides:

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

227. The first and the second applicants submitted that they were wounded by shells and witnessed the deaths of many people around them, including their loved ones. This amounted to inhuman treatment in the meaning of the Court's definition given in the case of *Ireland v. the United Kingdom* (judgment cited above, § 167).

228. The Government did not submit any arguments on the merits of this complaint.

229. The Court considers that the consequences described by the applicants were a result of the use of lethal force by the State agents in breach of Article 2 of the Convention. Having regard to its above findings about the danger to the lives of the three applicants as a result of the missile attacks, the Court does not find that separate issues arise under Article 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

230. The third applicant submitted that her property had been destroyed in violation of the provisions of Article 1 of Protocol No. 1, which reads:

> "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."

231. The third applicant alleged that three cars belonging to her, one of them filled with family possessions, had been destroyed as a result of the air strike.

232. The Government did not contest the losses sustained by the third applicant, nor the amount. They argued that the deprivation of property was

in compliance with the second sentence of part 1 of Article 1 of Protocol No. 1, because it was done "in the public interest and subject to the conditions provided for by law". The criminal investigation into the attack concluded that no crime had been committed, and the applicant could have sought compensation in civil proceedings.

233. The Court has found it established that the third applicant was subjected to an aerial attack by the federal military forces when trying to use the announced "safe exit" for civilians fleeing heavy fighting. This attack resulted in destruction of the vehicles and household items belonging to the applicant and her family. There is no doubt that these acts, in addition to giving rise to a violation of Article 2, constituted grave and unjustified interferences with the third applicant's peaceful enjoyment of her possessions (see also *Bilgin v. Turkey*, no. 23819/94, § 108, 16 November 2000).

234. It follows that there has been a violation of Article 1 of Protocol No. 1 in respect of the third applicant.

V. ALLEGED VIOLATION OF ARTICLE 13

235. The applicants submitted that they had no effective remedies in respect of the above violations, contrary to Article 13 of the Convention. This Article reads:

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

1. General principles

236. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (*Aksoy* judgment cited above, § 95, and *Aydin v. Turkey* judgment of 25 September 1997, *Reports* 1997-VI, § 103).

237. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Given the fundamental importance of the rights guaranteed by Articles 2 and 3 of the

Convention, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and infliction of treatment contrary to Article 3, including effective access for the complainant to the investigation procedure (see *Avsar* cited above § 429; *Anguelova v. Bulgaria*, no. 38361/97, § 161, ECHR 2002-IV). The Court further recalls that the requirements of Article 13 are broader that a Contracting State's obligation under Article 2 to conduct an effective investigation (see *Orhan v. Turkey*, no. 25656/94, § 384, 18 June 2002, ECHR 2002).

2. The Court's assessment

238. In view of the Court's findings above on Article 2 and Article 1 of Protocol No. 1, these complaints are clearly "arguable" for the purposes of Article 13 (*Boyle and Rice v. the United Kingdom* judgment of 27 April 1988, Series A no. 131, § 52). In view of this, the applicants should accordingly have been able to avail themselves of effective and practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation, for the purposes of Article 13, at least as regards the claims under Article 2.

239. However, in circumstances where – as here – the criminal investigation into the circumstances of the attack was ineffective in that it lacked sufficient objectivity and thoroughness (see §§ 214-225 above); and since the effectiveness of any other remedy that may have existed, including the civil remedies suggested by the Government, was consequently undermined, the Court finds that the State has failed in its obligation under Article 13 of the Convention, which are broader then those under Article 2.

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

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

241. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Pecuniary Damage

242. The third applicant alleged that three cars belonging to her, one of them filled with family possessions, had been destroyed as a result of the air strike. This caused her a loss to a total value of 107,760 US dollars.

243. The Government did not submit any comments on the amount of the losses.

244. The Court recalls that it has been established that the property of the third applicant, namely the cars and household items were destroyed as a result of the air strikes. This would undoubtedly have entailed some considerable losses for the applicant.

245. The Court notes that in her initial submissions the applicant mentioned that two cars, a GAZ with family possessions and a Niva, had been destroyed. In her final submissions to the Court, she claimed that the third vehicle, a Zhiguli car, was also destroyed. The Court further remarks that the applicant did not initially mention the presence of a substantial amount of cash in US dollars (48,000), or jewellery to the value of 8,770 US dollars, purportedly contained in one of the cars. Nor did she submit any further explanations or evidence related to the alleged losses.

246. In the absence of any independent and conclusive evidence as to the applicant's claims for the lost property and on the basis of the principles of equity, the Court awards an amount of 12,000 euros (EUR) to the third applicant as compensation for the sustained pecuniary losses.

B. Non-pecuniary damage

247. The first applicant's son Said-Magomad and daughter Ilona were killed as result of the attack. Her other relatives were killed or wounded. She was wounded and received treatment. She claimed EUR 25,000 as non-pecuniary damages.

248. The second applicant was wounded and lost consciousness as a result of the attack. She was deeply traumatised by the experience. She asked the Court to award her EUR 15,000 as non-pecuniary damages.

249. The third applicant lost her property and suffered anguish and fear as a victim of the attack. She claimed EUR 5,000 as non-pecuniary damages.

250. The Government found the amounts claimed to be exaggerated.

251. The Court considers that awards should be made in respect of non-pecuniary damage bearing in mind the seriousness of the violations it has found in respect of Articles 2, 13 and Article 1 of Protocol No. 1.

252. The Court notes the modest nature of the requests for non-pecuniary damage made by the applicants and awards EUR 25,000 to the first applicant, EUR 15,000 to the second applicant and EUR 5,000 to the third applicant as non-pecuniary damage. The awards to the first and the second applicants are to be converted into Russian roubles at the rate applicable at the date of payment.

C. Costs and expenses

253. The applicants claimed EUR 8,960 and 1,605 pounds sterling (GBP) for fees and costs involved in bringing the applications. This included GBP 1,605 for the work of the London-based lawyers from the

European Human Rights Advocacy Centre; EUR 3,750 for the work of the Moscow-based lawyers from the Human Rights Centre Memorial and EUR 5,210 for the work by the Memorial human rights field staff in Moscow and in the Northern Caucasus connected with the case and for other expenses incurred.

254. In addition, the applicants claimed GBP 2,608 for costs and fees involved in respect of the preparation for, and conduct of the hearing on the merits. This included GBP 2,300 for the work of the London-based lawyers from the European Human Rights Advocacy Centre and GBP 308 for the work of the Moscow-based lawyer.

255. The Government did not submit any comments on the amount or substantiation of the claims under this heading.

256. The Court observes that only legal costs and expenses necessarily and actually incurred and which are reasonable as to quantum can be reimbursed pursuant to Article 41 of the Convention. It notes that this case involved complex issues of fact and law and gave rise to two sets of written observations and an adversarial hearing. However, it considers excessive the total amount which the applicants claim in respect of their legal costs and expenses and considers that it has not been demonstrated that all of them were necessarily and reasonably incurred. In particular, the Court finds excessive the amount of legal work claimed by the applicants in the course of the preparation for the hearing in view of the extensive written submissions already submitted by parties.

257. In these circumstances, the Court is unable to award the totality of the amount claimed; deciding on an equitable basis and having regard to the details of the claims submitted by the applicants, it awards them the sum of EUR 12,000, less the EUR 1,074 received by way of legal aid from the Council of Europe, together with any value-added tax that may be chargeable.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;

2. *Holds* that there has been a violation of Article 2 of the Convention in respect of the respondent State's obligation to protect the right to life of the three applicants and of the two children of the first applicant;

3. *Holds* that there has been a violation of Article 2 of the Convention in that the authorities failed to carry out an adequate and effective investigation into the circumstances of the attack of 29 October 1999;

4. *Holds* that no separate issue arises in respect of Article 3 of the Convention;

5. *Holds* that there has been a violation of Article 1 of Protocol No. 1 of the Convention in respect of the third applicant;

6. *Holds* that there has been a violation of Article 13 of the Convention;

7. *Holds*
(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
(i) EUR 12,000 (twelve thousand euros) to the third applicant in respect of pecuniary damage;
(ii) EUR 5,000 (five thousand euros) to the third applicant in respect of non-pecuniary damage;
(iii) EUR 25,000 (twenty-five thousand euros) to the first applicant and EUR 15,000 (fifteen thousand euros) to the second applicant in respect of non-pecuniary damage, both sums to be converted into Russian roubles at the rate applicable at the date of the settlement;
(iv) EUR 10,926 (ten thousand nine hundred twenty-six euros) in respect of costs and expenses, to be converted into Russian roubles at the rate applicable at the date of the settlement in respect of costs and expenses;
(v) any tax that may be chargeable on the above amounts;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 24 February 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President