



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

FORMER FIRST SECTION

CASE OF ISAYEVA v. RUSSIA

(Application no. 57950/00)

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 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 an application (no. 57950/00) 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 a Russian national, Ms Zara Adamovna Isayeva (“the applicant”), on 27 April 2000.

2. The applicant, who had been granted legal aid, was represented by Mr Kirill Koroteyev, a lawyer of Memorial, a Russian Human Rights NGO based in Moscow, and Mr William Bowring, a lawyer practising 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 applicant alleged that she was a victim of indiscriminate bombing by the Russian military of her native village of Katyr-Yurt on 4 February 2000. As a result of the bombing, the applicant's son and three nieces were killed. She alleged a violation of Articles 2 and 13 of the Convention.

4. The application was 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. By a decision of 19 December 2002, the Court declared the application admissible.

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

8. 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*

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| Mr P. LAPTEV, Representative of the Russian Federation at the European Court of Human Rights, Mr Y. BERESTNEV, Mrs A. SAPRYKINA, | <i>Agent, Counsel, Adviser;</i> |
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(b) *for the applicants*

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| Mr B. BOWRING, Professor, Mr P. LEACH, Mr K. KOROTEEV, Mr D. ITSLAEV, | <i>Counsel, Advisers.</i> |
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The Court heard addresses by Mr Laptev, Mr Bowring, Mr Leach and Mr Koroteev.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1954 and is a resident of Katyr-Yurt, Achkhoy-Martan district, Chechnya.

A. The facts

10. The facts surrounding the bombardment of Katyr-Yurt and the ensuing investigation were partially disputed. The Court therefore asked the Government to produce copies of the entire investigation file in relation to the bombardment and the civilian casualties. The Court also asked the applicant to produce additional documentary evidence in support of her allegations.

11. The parties' submissions on the facts concerning the circumstances of the attack 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 Katyr-Yurt

12. In autumn 1999 Russian federal military forces launched operations in Chechnya. In December 1999 rebel fighters (“*boyeviki*”) were blocked by the advancing federal forces in Grozny, where fierce fighting took place.

13. The applicant submits that at the end of January 2000 a special operation was planned and executed by the federal military commanders in order to entice the rebel forces from Grozny. Within that plan, the fighters were led to believe that a safe exit would be possible out of Grozny towards the mountains in the south of the republic. Money was paid by the fighters to the military for information about the exit and for the safe passage. Late at night on 29 January 2000 the fighters left the besieged city and moved south. They were allowed to leave the city. However, once they had left the city they were caught in minefields and the artillery and air force bombarded them along the route.

14. The applicant referred to the published memoirs of Major-General Viktor Barsukov and to the interview with Major-General Shamanov, the commanders of the operation, concerning its details (see §§ 111-112 below).

15. A significant group of Chechen fighters – ranging from several hundred to four thousand persons - entered the village of Katyr-Yurt early on the morning of 4 February 2000. According to the applicant, the arrival of the fighters in the village was totally unexpected and the villagers were not warned in advance of the ensuing fighting or about safe exit routes.

16. The applicant submitted that the population of Katyr-Yurt at the relevant time was about 25,000 persons, including local residents and internally displaced persons (IDPs) from elsewhere in Chechnya. She also submitted that their village had been declared a “safe zone”, which attracted people fleeing from fighting taking place in other districts of Chechnya.

17. The applicant submitted that the bombing started suddenly in the early hours of 4 February 2000. The applicant and her family hid in the cellar of their house. When the shelling subsided at about 3 p.m. the applicant and her family went outside and saw that other residents of the village were packing their belongings and leaving, because the military had apparently granted safe passage to the village's residents. The applicant and her family, together with their neighbours, entered a Gazel minibus and drove along Ordzhonikidze road, heading out of the village. While they were on the road, the planes reappeared, descended and bombed cars on the road. This occurred at about 3.30 p.m.

18. The applicant's son, Zelimkhan Isayev (aged 23) was hit by shrapnel and died within a few minutes. Three other persons in the vehicle were also wounded. During the same attack the applicant's three nieces were killed: Zarema Batayeva (aged 15), Kheda Batayeva (aged 13) and Marem (also spelled Maryem) Batayeva (aged 6). The applicant also submitted that her nephew, Zaur Batayev, was wounded on that day and became handicapped as a result.

19. The applicant submitted that the bombardment was indiscriminate and that the military used heavy and indiscriminate weapons, such as heavy aviation bombs and multiple rocket launchers. In total, the applicant submits that over 150 people were killed in the village during the bombing, many of whom were displaced persons from elsewhere in Chechnya.

20. The applicant and the wounded members of her family were later taken by a relative to the town of Achkhoy-Martan. They were afraid to return to Katyr-Yurt, and had to bury the applicant's son in Achkhoy-Martan.

21. The applicant claims that when they were allowed to return to the village some time later, she found her house looted and destroyed. Their car was burnt in the garage.

22. The applicant stated that no safe exit routes had been provided for the village residents before or after the bombardment started. Those who managed to get out under fire and reach the military road-block were detained there for some time.

23. According to the Government, at the beginning of February 2000 a large group of Chechen fighters, headed by the field commander Gelayev and numbering over 1,000 persons forced their way south after leaving Grozny. On the night of 4 February 2000 they captured Katyr-Yurt. The fighters were well-trained and equipped with various large-calibre firearms, grenade- and mine-launchers, snipers' guns and armoured vehicles. Some of the population of Katyr-Yurt had already left by that time, whilst others were hiding in their houses. The fighters seized stone and brick houses in the village and converted them into fortified defence points. The fighters used the population of Katyr-Yurt as a human shield.

24. Early in the morning of 4 February 2000 a detachment of special forces from the Ministry of the Interior was ordered to enter Katyr-Yurt because information had been received about the fighters' presence in the village. The detachment entered the village, but after passing the second line of houses they were attacked by the fighters, who offered fierce resistance using all kinds of weapons. The unit sustained casualties and had to return to its positions.

25. The federal troops gave the fighters an opportunity to surrender, which they rejected. A safe passage was offered to the residents of Katyr-Yurt. In order to convey the information about safe exit routes, the military authorities informed the head of the village administration. They also used a mobile broadcasting station which entered the village and a Mi-8 helicopter equipped with loudspeakers. In order to ensure order amongst the civilians leaving the village, two roadblocks were established at the exits from the village. However, the fighters prevented many people from leaving the village.

26. Once the residents had left, the federal forces called on the air force and the artillery to strike at the village. The designation of targets was based on incoming intelligence information. The military operation lasted until 6 February 2000. The Government submitted that some residents remained

in Katyr-Yurt because the fighters did not allow them to leave. This led to significant civilian casualties - 46 civilians were killed, including Zelimkhan Isayeb, Zarema Batayeva, Kheda Batayeva and Marem Batayeva, and 53 were wounded.

27. According to the Government's observations on the admissibility of the complaint, 53 federal servicemen were killed and over 200 were wounded during the assault on Katyr-Yurt. The Government also submitted that, as a result of the military operation, over 180 fighters were killed and over 240 injured. No information about combatant casualties on either side was contained in their observations on the merits. The criminal investigation file reviewed by the Court similarly contains no information on non-civilian casualties.

28. The events at the beginning of February 2000 were reported in the Russian and international media and in NGO reports. Some of the reports spoke of serious civilian casualties in Katyr-Yurt and other villages during the military operation at the end of January - beginning of February 2000.

2. The investigation of the attack

29. On 5 April 2000 the civil registration office in Achkhoy-Martan, Chechnya, issued death certificate no. 273 certifying the death of Zelimkhan Isayev, aged 23, on 4 February 2000 in Achkhoy-Martan from numerous shrapnel wounds to the chest and heart area. On 12 April 2000 the registration office issued the following death certificates: no. 312, for Zarema Batayeva, who had died on 4 February 2000 in Achkhoy-Martan from shrapnel wounds to the body, face and right hip; no. 314, for Kheda Batayeva, who had died on 4 February 2000 in Achkhoy-Martan from shrapnel wounds to the body, face and right hip; no. 315 for Maryem Batayeva, who had died on 4 February 2000 in Achkhoy-Martan from numerous shrapnel wounds to the head and body.

30. On 24 August 2002 the military prosecutor of military unit no. 20102 replied to the NGO Memorial's enquiry about a criminal investigation. The letter stated that a prosecutor's review had been conducted following the publication on 21 February 2000 in the Novaya Gazeta newspaper of article entitled "167 Civilians Dead in Chechen Village of Katyr-Yurt". The review established that between 3 and 7 February 2000 a special military operation aimed at the destruction of illegal armed groups had taken place in Katyr-Yurt. The Western Alignment of the army and the interior troops had performed the operation according to a previously prepared plan: the village had been blocked and civilians had been allowed to leave through a corridor. The command corps of the operation had assisted the villagers to leave the village and to remove their possessions. Once the commanders were certain that the civilians had left the village, missiles had been deployed against Katyr-Yurt. Other means had also been employed to destroy the fighters. No civilians had been harmed as a result of the operation, as confirmed by the commandant of the

security area of the Urus-Martan district¹. On the basis of the above, on 1 April 2000 the prosecutors refused to open an investigation into the alleged deaths of civilians due to the absence of *corpus delicti*. The criminal investigation file reviewed by the Court contained no reference to this set of proceedings.

31. The Government submitted initially that the Russian law-enforcement bodies were not aware of the events described in the applicant's submissions to the Court prior to the communication of the complaint in June 2000. After that communication, the prosecutor's office in the Achkhoy-Martan District, Chechnya, carried out a preliminary investigation and on 14 September 2000 instituted criminal proceedings under Article 105 (2) (a) and (f) of the Criminal Code, i.e. the murder of two or more persons by a generally dangerous method.

32. In their further submissions the Government informed the Court that on 16 September 2000 a local prosecutor's office in Katyr-Yurt, acting on complaints from individuals, had opened criminal case no. 14/00/0003-01 to investigate the deaths of several persons from a rocket strike in the vicinity of the village. The case concerned the attack on the Gazel minibus on 4 February 2000, as a result of which three civilians died and two others were wounded. In December 2000 the case file was forwarded to the office of the military prosecutor in military unit no. 20102. Later in 2001 the case-file was transferred for investigation to the military prosecutor of the Northern Caucasus Military Circuit in Rostov-on-Don.

33. The investigation confirmed the fact of the bombing of the village and the attack on the Gazel minivan, which led to the deaths of the applicant's son and three nieces and the wounding of her relatives. It identified and questioned several dozen witnesses and other victims of the assault on the village. The investigation identified 46 civilians who had died as a result of the strikes and 53 who had been wounded. In relation to this, several dozen persons were granted victim status and recognized as civil plaintiffs. The investigators also questioned military officers of various ranks, including the commanders of the operation, about the details of the operation and the use of combat weapons. The servicemen who were questioned as witnesses gave evidence about the details of the operation's planning and conduct. No charges were brought (see Part B below for a description of the documents in the investigation file).

34. The investigation also checked whether the victims had been among the insurgents or if members of the unlawful armed groups had been implicated in the killings.

35. On 13 March 2002 the investigation was closed due to a lack of *corpus delicti*. On the same day the military prosecutor in charge of the case informed the Head of the Government of Chechnya about the closure of the procedure, appended a list of victims (including the applicant) and asked the Government to take appropriate steps to locate the applicant and other

¹ Katyr-Yurt is in the Achkhoy-Martan district

victims and to inform them about the closure of the case and of the possibility to appeal. The list consisted only of the victims' names and contained no other data relevant to their identification and location. The letter also stated that the victims could pursue separate civil remedies.

36. On 12 December 2002 Major-General Yakov Nedobitko, the commander of the operation in the Katyr-Yurt, appealed the decision of 13 March 2002. He contested the reasons for closing the investigation. On 6 March 2003 the Bataysk Garrison Military Court rejected his appeal and confirmed the decision of 13 March 2002.

B. Documents submitted

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

1. Documents from the investigation file

38. The Government submitted a copy of the investigation file in criminal case no. 14/00/004-01, comprising six volumes. On the basis of the documents submitted, it appears that the investigation made substantial efforts during 2001 to put together an account of the attack complained of by the applicant. The applicant and her relatives were questioned and granted victim status. The investigators questioned several dozen local residents and granted victim status to 62 of them. Civilian and military witnesses were asked to indicate on the map of Katyr-Yurt the locations to which they referred. Considerable data were obtained from the servicemen involved in the planning and conduct of the operation. The investigators questioned the commanders of the operation and servicemen of lower ranks.

39. Certain documents obtained from the military and the evidence of some servicemen were not disclosed to the Court. In the second volume, which consisted of 89 documents, 49 were not disclosed. In the fifth volume, which contained 105 documents, 56 were not disclosed. In the sixth volume, 20 out of 213 documents were not disclosed. The Government produced a list of documents that were exempted from the case file submitted to the Court and explained their non-disclosure on the grounds of national security.

40. The principal documents contained in the file are as follows:

a) Opening of the investigation

41. On 16 September 2000 an investigator of the Achkhoy-Martan District Prosecutor's Office opened a criminal investigation into the killing of the applicant's relatives. On 23 November 2000 the criminal case was forwarded to military unit no. 20102 for investigation. On 15 December 2000 a military investigator accepted the case for investigation and on 6 January 2001 he issued a decision to close the investigation on the ground

of a lack of *corpus delicti* in the actions of the military pilots. On 30 January 2001 this decision was quashed by a military prosecutor of military unit no. 20102. On 19 February 2001 the case was accepted for investigation by an investigator of the North Caucasus Military Prosecutor's Office in Rostov-on-Don, who conducted a further investigation.

b) Questioning of the applicant and her relatives

42. In October and November 2000 the investigators of the Achkhoy-Martan District Prosecutor's Office questioned the applicant, her husband and several other passengers of the Gazel minibus. The applicant, questioned on 15 November 2000, testified that on 4 February 2000 the village came under attack from federal aviation from early morning. In the afternoon the applicant and her family learnt of a "humanitarian corridor" that would be opened for civilians. At around 4 p.m. she left the house at 15 Oktyabrskaya Street with her son Zelimkhan and daughter Leyla. They took their seats in a blue Gazel minibus, driven by its owner, their relative Dzhabrail Bitiyev. There were about 28 people in the bus, including her husband's sister Petimat Batayeva and her three daughters Zarema (born in 1984), Kheda (born in 1987) and Marem (born in 1993). The applicant recalled that the bus was driving along the street towards Achkhoy-Martan. As they were leaving the village and approaching the military roadblock, an aviation bomb exploded nearby. The blast deafened the applicant and threw most of the passengers out of the bus, but she remained inside. All the windows of the Gazel were shattered and the back and side doors were torn away. The applicant did not remember subsequent events very clearly, except that she was taken in the same minibus to the Achkhoy-Martan hospital, where she learnt that her son Zelimkhan Isayev, Kheda Batayeva and Marem Batayeva had been killed on the spot. Zarema Batayeva died in the Achkhoy-Martan hospital the next morning. Several of the Gazel's other passengers were wounded. On 2 October 2000 the applicant was granted victim status in the criminal proceedings.

43. At an additional interview on 3 March 2001, conducted by an investigator from the North Caucasus Military Prosecutor's Office, the applicant specified that there had been 26 adults and two babies in the minibus. She indicated the sitting plan within the vehicle. She further specified that the explosion occurred when the bus had been driving along Ordzhonikidze Street towards the exit of the village, about 500 metres before the roadblock. The applicant submitted that she was looking up through a sunroof and saw two planes, which had dropped bombs on parachutes. The applicant called them "flare bombs". She could not determine where exactly the explosions had occurred. She described her son's wounds and indicated them on a body scheme. The investigators collected the sweater which her son had been wearing on the day of the attack.

44. The applicant's husband, who was travelling in another car, confirmed in an interview that his wife and daughter had been wounded as a

result of the explosion near the minibus and that his son Zelimkhan had been killed. They returned to Katyr-Yurt only three months later and found their house destroyed, and all property and household items gone. Their son's car, a Renault 19, was found burnt in the garage. On 20 February 2000 the administration of Katyr-Yurt issued a certificate to the applicant that their house at Oktyabrskaya Street had been destroyed beyond repair.

45. The other passengers in the minibus gave evidence about the circumstances of the attack. Zura B. testified that on 4 February 2000 she saw military planes over the village at about 9 a.m. and heard explosions near the mosque. She ran into her neighbours' cellar, where some people were already hiding. At about 3 p.m. her nephew Zelimkhan Isayev ran into the house and said that the military had opened a corridor for villagers and that many cars had already lined up in Ordzhonikidze Street to leave for Achkhoy-Martan. With other people, she got into the minibus in the courtyard of the house at 15 Oktyabrskaya Street at about 3.30 p.m. While the vehicle was travelling along Melnichnaya Street, she saw a bomb dropped from a plane on a parachute. The explosion was somewhere near the bus, and she was thrown out of the vehicle. At first she lost consciousness, and when she regained consciousness she went into a nearby house. A male relative brought in Zelimkhan, who was bleeding. Then there was another explosion, and they decided to leave with the bus. When they came out to the road, they found Zarema Batayeva who was wounded but still alive. At that stage they did not find Kheda and Maren Batayeva, whose bodies were identified later. Zura B. was admitted to the Achkhoy-Martan hospital with light shrapnel wounds. In the morning on 5 February 2000 Zarema Batayeva died in the hospital. Zaur Batayev was also treated there for a wound in the abdomen area. Four other passengers received shrapnel wounds and burns. On the following day she saw the dead in the mosque, and identified the bodies of Kheda and Maren Batayeva by the remains of their clothing. Their bodies were so badly burned and disfigured that they were not shown to the parents. When asked if she had seen the fighters, she said that at about 2 p.m. on 4 February she was running from one cellar to another and saw a group of 8-10 armed men with beards and headbands in the gardens in Pervomayskaya Street.

46. Akhmadi I. testified that that when the minibus was driving along Melnichnaya Street, nearing the crossroads with Ordzhonikidze Street, he saw a fireball flying towards the vehicle from the sky. At that moment Dzhabrail Bitiyev, the driver, braked because the car behind had started to hoot, and he opened the door to look back. Akhmadi shouted to him to move forward, but at that moment three explosions occurred. He could not say on which side of the bus they occurred. When he got out of the bus he saw Zelimkhan Isayev lying on the ground and took him into a nearby house. When they brought him to the hospital in Achkhoy-Martan, the doctor looked at him and said that he was dead.

47. Yakhita B. testified that the attack on the village started at about 8 a.m. on 4 February 2000. She hid in her neighbours' cellar, because her own family's was not solid enough. Only women and children were in the cellar, the men remained outside. At about 2 p.m. there was a lull in the bombardment and they ran to another cellar because cracks had appeared in the walls of their initial hiding place. The bombardment resumed. Then the door opened and Zelimkhan Isayev told them to get out and leave quickly, because the military had opened a "humanitarian corridor". She recalled the circumstances of the attack and that there were two explosions within three or four minutes of each other.

48. Elza I., the applicant's niece, testified that early in the morning of 4 February 2000 she looked outside and saw a lot of armed men in the street. Her family was hiding in a cellar. At about 3 p.m. her cousin Zelimkhan came in and told them to leave, because the military had provided a corridor for exit to Achkhoy-Martan. They got into the Gazel bus, which was full to bursting point. She was in the centre of the bus. After the first explosion she ran away with her brother towards the roadblock and did not return to the vehicle. She confirmed Zelimkhan Isayev's death. Her brother Murat, who was also questioned, confirmed her statement.

c) Examination of the site

49. In March 2001 the investigators, together with one passenger from the Gazel minibus, examined the site of the explosion and took photographs. The place was identified as being on Melnichnaya Street, approximately 150 metres before the crossing with Ordzhonikidze Street.

d) Statement by the head of the village administration

50. On 10 October 2000 the investigator of the Achkhoy-Martan District Prosecutor's Office questioned the head of administration of Katyr-Yurt. He testified that early in the morning on 4 February 2000 a large group of fighters, numbering several hundred persons, entered the village. The elders asked them to leave in order to save the village, but they proceeded to fortify their defence positions. At about 11 a.m. on 4 February the federal aviation forces started to bomb the village. The strikes continued until 7 February 2000. Many civilians and fighters were killed as a result.

e) Identification and questioning of other victims

51. The investigators questioned over 50 local residents, who gave evidence about the fighters' arrival in the village, hiding in the cellars from the bombardment, the circumstances of the attacks, the death and injury of family members and destruction of their houses. The investigators also collected copies of the witnesses' personal documents, medical documents and death certificates. 62 persons were granted victim status.

52. Tamara D. testified that on 4 February 2000 she, along with her four children, was hiding in a cellar from the bombardment. In the morning she

came out briefly and saw a helicopter near the school, about 300 metres from her home. She heard something being said through loudspeakers, but could not make out the words because it was too far and there were explosions around. At about 4.30 p.m. a neighbour ran into her cellar and said that women and children would be allowed to leave the village. She grabbed the smaller children and ran towards Achkhoy-Martan. When she was near Ordzhonikidze Street she saw planes and then there was an explosion. Her elder son, who had been about 50 metres behind, was killed by shrapnel.

53. Alkha D., who lived in the centre of the village not far from the mosque, testified that at 6 a.m. on 4 February 2000 he was woken up by a knock on the gates. He went outside and saw the whole street filled with armed people. A group entered his house, and he had no choice but to allow them in. The fighters told him that they belonged to groups headed by field commanders Gelayev and Abu Mowsayev. They also told him that there were about 4,000 of them and that they had passed from Shaami-Yurt along the riverbed into Katyr-Yurt. They said that they would stay for one day and then leave. Once the aviation strikes started, they all went into the cellar of the witness's home, together with about 12 of his relatives. The attacks continued all day. Early next day a truck came to the neighbours' house and the residents all got inside, with the exception of the witness's brother, for whom there was no room. As their car was leaving the village, there were a lot of people in front of them at the roadblock. Mr D. saw a helicopter landing about 300 metres away and some officers in camouflage got out. Later he was told that it was General Shamanov and that he had scolded his subordinates for allowing the people out of the village. He found his brother's body, with shrapnel wounds, after they were allowed to return to the village.

54. Eysa T. testified that as of 2 February 2000 the military encircled the village and allowed people to enter, but not to leave. The roadblock on the road towards Achkhoy-Martan prevented movement and was fortified with army armoured personnel carriers (APCs). He knew that General Shamanov, who was the commander of the operation, came to the village on 4 or 5 February in a helicopter, and that apparently he gave an order "not to let anyone out of the village". The witness left the village, on foot and under fire, on the afternoon of 4 February. His son was wounded by shrapnel and died four days later in a hospital in Ingushetia. He testified to having seen large bombs, about three metres long, dropped on parachutes from planes.

55. Khasi V. testified that on 4 February 2000 their neighbourhood at the edge of the village was shelled. The witness and his family went into the cellar of his cousin's house. It was a new house with a big cellar, and about 100 people gathered there. At about midday a bomb broke through the ceiling and exploded, killing nine people and wounding others. The witness's brother was among those killed. They crossed to another cellar and waited there until 5 February. On that day they went on foot to Achkhoy-

Martan. When passing the building of the school at the edge of the village the witness saw General Shamanov, who arrived in a helicopter and ordered that people should not be allowed to leave. The Interior Ministry forces did not, however, close the roadblock. Several other witnesses who had been hiding in the same big cellar at 4 Chkalova Lane confirmed his statements as to the bombardment and the killing of nine people.

56. Suleyman D. submitted that early in the morning of 4 February 2000 he had heard noise from outside. When he looked out he saw many armed fighters walking along the street. At about 9 a.m. the bombing started and his part of the village, which was near the centre, came under heavy fire. The witness and his family went into the cellar, while his father remained outside to look after the cattle. At about 9.30 a.m. a bomb with a parachute exploded in the courtyard. It left a crater about four metres wide. His father, who was in the stables, was killed by shrapnel. The village was shelled throughout the day by aviation, helicopters, tanks and mine-launchers. The witness also identified Grad multiple rocket-launcher systems¹ because of the sound they make. On 5 February 2000 the witness and his family went to Achkhoy-Martan. He saw a helicopter landing near school no. 2 on the edge of the village and heard General Shamanov saying that they had themselves to blame and that there should have been no corridor. He returned to the village on 8 February and buried his father in the village cemetery.

57. Tumisha A. stated that early in the morning of 4 February she had gone outside to get some water and saw armed people in the centre of the village. They were wearing camouflage and military gear and the men were bearded. There were also a few women. They asked her the name of the village. She asked them why they had come, and they said that they would leave, but not before daybreak. They looked exhausted and had wet feet. About 15 IDPs from other places were staying in the witness's home. Once the bombing started, they went into the cellar. The assault continued all day without a break. At about 4 p.m. they decided to leave, and drove along the road towards Achkhoy-Martan. They were not aware of the humanitarian corridor. When they were nearing the edge of the village, a rocket fired from a plane hit the Volga car in front of theirs and killed six people inside – these were IDPs from Zakan-Yurt who had spent the night in her house. She did not know their names. The witness managed to reach Achkhoy-Martan that day. When she returned to Katyr-Yurt on 8 February 2000 she discovered that a rocket had entered the cellar of their house and killed her husband.

58. Marusa A. testified that on 4 February 2000 she was in a cellar with her neighbours. At about 1 a.m. on 5 February her son went upstairs to fetch them some food from the house. At that moment several explosions occurred in the courtyard, and in the morning they found her son's body

¹ The “Grad” is a mobile multiple-rocket launcher, 122 mm (320 missiles), with 40 launch-tubes.

with numerous shrapnel wounds. On 5 February they went toward the exit from the village, leading to the village of Valerik, but were not allowed to pass through the roadblock. The shelling was too heavy to return home, and they remained in a cellar in a house on the edge of Katyr-Yurt for three days. She had not been aware of a humanitarian corridor.

59. Roza D. testified that their house on the edge of the village was bombed on the morning of 4 February 2000. The first explosion occurred in her courtyard and wounded her two year old son, who died of his wounds early in the morning on 6 February. She remained in a cellar until 6 February, when she, with some other people, attempted to leave for Valerik. However, the roadblock was closed and the soldiers told them that they had an order from General Shamanov not to let anyone out. They remained in the cellar of an unfinished house on the edge of the village, near the exit to Valerik, for one more day, and on 8 February she returned home.

60. Makhmud S. testified that on 5 February 2000 he talked to four fighters. He asked them how they had been able to get into the village when it was blocked by the military on all sides. They replied that they had entered without any problems and were planning to leave. He did not see any dead fighters and presumed that they had escaped into the mountains.

61. Yelizaveta T. testified that her house was on the southern edge of Katyr-Yurt. On 4 February 2000 bombing suddenly started. She went into the cellar with her family. The next day at about 9 a.m., a group of around 100 federal soldiers dressed in green camouflage entered their courtyard. They checked the family's documents and left. Then other members of the military came, wearing grey camouflage with black berets. They also checked the family's documents. The whole family was brought by soldiers to a house at the edge of the village, near the tanks. There were already six families in that house. They were kept there for five days, then the military left and they returned home. The witness stated that they had been kept as hostages and that the military threatened to shoot her two nephews.

62. All the residents questioned refused to allow their relatives' bodies to be exhumed. They also stated that they and their relatives had nothing to do with the fighters.

f) Medical documents

63. The investigation requested information from the Achkhoy-Martan hospital about the wounded who had been treated on 4 February 2000 and over the following days. In November 2000 the hospital confirmed that on 4 February 2000 three passengers from the Gazel minibus were treated in the hospital for shrapnel wounds. No detailed records had been kept for that period because of a massive influx of patients. A nurse at the hospital, who was questioned on 23 November 2000, stated that on 4 February 2000 a large number of wounded were brought to the hospital, most of them with shrapnel wounds. They told her that they were from Katyr-Yurt and that

they had been attacked by aviation bombs. There were so many wounded that the hospital personnel were unable to keep records.

64. The hospital authorities also submitted to the investigators copies of the medical death certificates issued to the residents of Katyr-Yurt in relation to the attack.

65. In February 2002 a military forensic laboratory, at the investigator's request, produced eight reports based on the medical files from the Achkhoy-Martan district hospital. The reports concluded that the wounds – shrapnel wounds and concussion – could have been received in the circumstances described by the victims, i.e. during an attack at the village.

g) Statement by Major-General Shamanov

66. On 8 October 2001 the investigation questioned Major-General Vladimir Shamanov, who at the material time had headed the operations centre (OC) of the Western Zone Alignment in Chechnya, which had included the Achkhoy-Martan district. He stated that his main aim had been to restore constitutional order in the western districts of Chechnya by disarming the illegal armed groups and, if they offered resistance, by eliminating them, i.e. conducting the military stage of the counter-terrorist operation. Units of the Ministry of Defence, Ministry of the Interior, Ministry of Justice and the Federal Security Service were under his operational command. The OC issued operation orders. The special operation for the liberation of Katyr-Yurt was part of a broader action, based on the operation order issued by the OC in the last ten days of January 2000.

67. The situation in his zone of responsibility was very difficult in February 2000, because large groups of bandits had escaped from Grozny and were breaking southward. They were occupying villages along the way and fiercely opposing federal troops. Among the fighters were many mercenaries, including Arabs and Africans.

68. In January – February 2000 the federal forces were conducting identity checks in the villages of the Western Zone, including Alkhan-Kala, Shaami-Yurt and others. The command corps warned the heads of local administrations about the need to inform the federal forces of the arrival of fighters and of the need to prevent their entry. This information was also conveyed to the head of the Katyr-Yurt administration, who had personally assured the military commandant of the Achkhoy-Martan district that there had been no fighters in the village. However, reconnaissance information was received to the effect that groups under Gelayev's command, numbering 500-600 persons, were slipping into the village. In order to prevent their concentration in the village, Katyr-Yurt was blocked by a division of interior troops under the command of Major-General Nedobitko and other units. Nedobitko was ordered to conduct a special operation – an identity check - in Katyr-Yurt, and to locate and disarm members of illegal armed groups. The head of administration was informed that a special operation

would be conducted, but he asked that it be postponed, and in the end it was postponed for one day.

69. On the morning of the day on which the operation started (Mr Shamanov could not recall the exact date) the fighters had attacked the federal forces. They were well-equipped and armed with automatic weapons, grenade-launchers and fire-launchers, and used trucks armoured with metal sheets. He stated:

“Realising that the identity check in the village could not be conducted by conventional means without entailing heavy losses among the contingent, Nedobitko, absolutely correctly from a military point of view, decided to employ army aviation and ground attack air forces, artillery and mine-launchers against the fortified positions of the fighters entrenched in the village. Failure to employ these firm and drastic measures in respect of the fighters would have entailed unreasonably high losses among the federal forces in conducting the special operation and a failure to accomplish the operative task in the present case. All this would have demonstrated impotence on the part of the federal authorities, would have called into question the successful completion of the counter-terrorist operation and the reinstatement of constitutional order in Chechnya. Failure to accomplish these tasks would threaten the security of the Russian Federation. Besides, our indecisiveness would have attracted new supporters to the illegal armed groups, who had adopted a wait-and-see attitude at the relevant time. This would have indefinitely extended the duration of the counter-terrorist operation and would have entailed further losses among the federal forces and even higher civilian casualties.”

70. He stated that the fire-power employed had been directed at the fighters' positions “on the edges of the village and in its centre, near the mosque”. Civilians were allowed to leave the village. The fighters were offered surrender, with a guarantee of personal safety, which they refused. They thus used the villagers as a human shield, entailing high civilian casualties.

71. In his opinion, the population of Katyr-Yurt should have prevented the fighters' entry into the village. Had they done so, as had happened earlier in the village of Shalazhi, there would have been no need to conduct such a “severe mopping-up operation” and to deploy aviation and artillery, and thus the unfortunate civilian losses could have been avoided. The losses among fighters, in his estimation, were about 150 persons. The rest escaped from the village at night, under cover of thick fog.

72. He was asked what measures were taken to ensure maximum security of the civilians during the operation in Katyr-Yurt. In response, Mr Shamanov responded that Nedobitko used a Mi-8 helicopter equipped with loudspeakers to inform civilians about the safe exit routes he had established.

73. He was also asked, with reference to the statements by local residents, if, when he had arrived by helicopter at the roadblock near Katyr-Yurt, he had ordered soldiers to prevent civilians leaving the village. Mr Shamanov responded that he had given no such orders, and that the exit was in fact organised by the federal troops under his command. He stated that during his visit he berated the head of the village administration for

allowing the situation to deteriorate to such an extent that it had become necessary to involve aviation and artillery. That dialogue could have been understood by those present in a perverse way.

h) Statement by Major-General Nedobitko

74. On 26 October 2001 the investigator questioned Major-General Yakov Nedobitko, who had headed the operation in Katyr-Yurt. He testified that at the relevant time he had headed a division of Interior Ministry troops which belonged to the Western Zone Alignment, headed by Major-General Vladimir Shamanov. The situation in the zone of their responsibility in early February 2000 was very difficult, because large groups of fighters were trying to break through from Grozny, via the plain, to mountains in the south of Chechnya. At the end of January 2000 the OC of the Western Zone Alignment issued an operation order to destroy these groups before they joined up with their supporters in the mountains. He further stated:

“From Shamanov I learnt that a large group of fighters, having escaped from Lermontov-Yurt, had entered Katyr-Yurt. Shamanov ordered me to conduct a special operation in Katyr-Yurt in order to detect and destroy the fighters.

I drew up a plan of the special operation, which defined units of isolation, units of search, rules of fire in case of enemy fire, positions of ... roadblocks... Two roadblocks were envisaged – one at the exit towards Achkhoy-Martan, another – towards Valerik. ... The involvement of aviation was foreseen should the situation deteriorate. The artillery actions were planned ... in advance in order to target the possible bandit groups' retreat routes and the lines of arrival of reserves to assist the besieged groups. The artillery were only to be involved in the event of enemy fire against the search groups.

This plan was drawn up the night before the operation. On the evening of the same day Shamanov called me to the command headquarters of the Western Zone to discuss the details of the operation. We foresaw the presence of refugees and fighters, and planned to check documents. Early in the morning on the following day I was returning to our position with two APCs. On the eastern side of the village, towards Valerik, there had been an exchange of fire. An Ural truck was on fire, three dead bodies lay on the ground and there were a few wounded. These were OMON [special police force units] from Udmurtia. We were also attacked from the village. We descended and fired back. Then, under cover of the APCs, we moved south toward our command point. I immediately informed Shamanov about the deterioration in the situation. He authorised me to conduct the special operation in accordance with my plan.

Colonel R., commander of ... regiment, informed me that he had met with the head of administration of Katyr-Yurt, who stated that there were no fighters in the village, just a small 'stray' group who had had a skirmish with OMON forces. I did not know the number of fighters in the village, so I ordered that the search be carried out by previously determined groups of special forces from the interior troops, without artillery or aviation support. If there were few fighters, they could be destroyed by the search groups. If their number was substantial, they could be destroyed by tanks shooting directly at specific points, i.e. by pinpoint attacks. And if it was a very big bandit grouping, then it would be impossible to avoid the use of artillery and aviation, because otherwise the personnel losses would be too high.

The search groups moved out ... they were attacked... and I ordered them to retreat. One group could not withdraw... Realising that the use of artillery and aviation could not be avoided, I ordered colonel R. to organise evacuation of the civilians from the village, which he did through the head of the village administration. For that purpose colonel R. used a vehicle equipped with loudspeakers, through which he was able to inform the population of the houses on the edge of the village about the need to leave. The civilians were leaving the village through the pre-established roadblocks.”

75. Major-General Nedobitko then proceeded to describe in detail the fighting on the first and second day of the operation. On the first day the army used artillery, tanks and a mine-launcher. The aviation attack was coordinated by a forward air-controller, who was positioned at the command centre and took directions from Mr Nedobitko, who relied on information received from the special forces of the interior troops. When asked if his troops had prevented civilians from leaving through the eastern roadblock, he replied that he did not prevent it, but that the main exit route was through the checkpoint at the western side, i.e. towards Achkhoy-Martan. At that checkpoint, servicemen from the Federal Security Service and the Ministry of Interior checked those leaving the village for possible involvement in the illegal armed groups.

76. The investigator asked what might have been different had the village administration informed the federal forces that the group of fighters in the village was very large. The Major-General responded that he would have allowed the civilians to leave through both roadblocks, as had been done in Shaami-Yurt. But once one of his search groups was trapped in the village and had sustained casualties, he could not abandon them and had to do everything possible to save them. Civilian victims were unavoidable. Mr Nedobitko was not aware of the exact number of casualties sustained by the federal forces or by the fighters during the operation.

i) Testimony by servicemen in the ground forces

77. On 23 November 2001 the investigators questioned colonel R., who at the material time had headed a regiment of the internal troops involved in the operation. He stated that in early February 2000 his regiment was stationed outside Katyr-Yurt. At about 8 a.m. on 4 February 2000 OMON servicemen from Udmurtia, who had been stationed in the village school, arrived at his unit and reported fighting in Katyr-Yurt. They brought with them several wounded and explained that their vehicle, carrying a change of personnel to man a roadblock, had been attacked by fighters in Katyr-Yurt and that more fighters, allegedly over 1,000 in number, had attacked their base in the school and forced them to withdraw. The colonel reported this information to the commander of the division, Major-General Nedobitko. The latter contacted the head of the village administration who conceded that about 1,000 fighters had entered the village and that they would stay there for a couple of days and then leave. At about 6 p.m. on the same day additional army units arrived in Katyr-Yurt. On that first day no aviation or artillery strikes were carried out. On the second day the village was blocked

and a reconnaissance group was sent into the village, but it was attacked. Then the civilians started to leave *en masse*. A vehicle equipped with loudspeakers was installed at one of the roadblocks and information about the safe exit was given to the head of the village administration. Most people left the village along the road towards Achkhoy-Martan. Colonel R. also stated that, in his opinion, the village administration could have either prevented the entry of the fighters into the village, or could at least have notified the military of their arrival at an early stage. This would have allowed the military to be more precise in their attacks and would have prevented civilian casualties.

78. On 29 October 2001 the investigation questioned colonel S., head of a unit of the internal troops who reported directly to Major-General Nedobitko. He testified that the illegal armed groups led by field commanders Gelayev, Basayev, Khattab and others, had left Grozny on 30 January 2000. On 3 February 2000 he received an order from Nedobitko to search the village of Katyr-Yurt for fighters, disarm them, and in the event of resistance, to destroy them. He further submitted that he had had information that a group of about 1,500 fighters was supposed to have entered Katyr-Yurt after escaping from Shaami-Yurt. However, the OMON unit from Udmurtia, stationed in Katyr-Yurt, refuted this information. Early in the morning of 4 February 2000 his unit entered the village from the south-western side. They encountered two civilian families, whom they evacuated from their homes towards the rear, and did not meet any other civilians after that. At about 7.20 a.m. one of their groups was attacked. They immediately informed Nedobitko, who at 8 a.m. ordered them to retreat. They captured one fighter who told them that there were over 2,000 fighters in the village, headed by Gelayev, Khattab and Basayev. At 9 a.m. fighter jets arrived and started bombing the village. Soon they were joined by artillery. On that day they did not attempt to enter the village again. On 5 February there was some heavy fighting, and on 6 February they conducted the “mopping-up” operation without meeting any resistance. When asked about casualties, colonel S. responded that his unit had lost seven men and 15 had been wounded. He could not specify the overall losses among the fighters, but his unit had found about 80 bodies, and his overall estimation of the number of fighters destroyed by his unit was 386. He submitted that he did not see any civilian bodies among the dead, all of whom had been dressed in military and camouflage gear.

79. Several of the OMON servicemen from Udmurtia were questioned. They testified that from December 1999 – March 2000 their unit of about 30 servicemen was deployed in Katyr-Yurt and in the village of Valerik, situated about 1.5 kilometres to the south-east of Katyr-Yurt. They were stationed in the school building in Katyr-Yurt. Serviceman N. estimated the population of Katyr-Yurt at the beginning of February 2000 at about 18,000 people. He stated that he had been on duty at the roadblock in Valerik from the morning of 3 February 2000. He and his colleagues were informed by a senior police officer that they could expect some southbound movement of

fighters from Grozny and that the fighters might pass through Valerik or Katyr-Yurt. On the morning on 4 February 2000 no replacement personnel came to the roadblock because the fighters had attacked Katyr-Yurt and the servicemen who were supposed to replace his team had been attacked.

80. Serviceman G. from the same unit testified that between 7 and 8 a.m. on 4 February 2000 their car was shot at as they were going to replace their colleagues at the roadblock in Valerik. Three servicemen were killed and four were wounded. He immediately informed his superiors of the incident by radio. About one and a half hours later the air force and artillery attacks began. He was not aware of any measures to inform the population about the safe exit routes, but stated that this period – one and a half hours - was available for them to leave. He further confirmed the arrival of Major-General Shamanov to visit the positions of the federal forces early in the morning of 6 February 2000. The latter did not prevent civilians from leaving; on the contrary, he ordered the soldiers to establish check-points at the exits from the village and to let out women, children and the elderly. On his orders, the OMON forces organised a “filtration point” where they checked young men leaving of the village.

81. Colonel V. from the Rostov-on-Don interior troops testified about his participation in the operation in Katyr-Yurt. He stated that he was on mission in Chechnya at the relevant time. He did not recall the details of the operation, except that there had been some fierce fighting. The investigator quoted to him the operation record book, where the officer on duty recorded Colonel V.'s report, made at 12.15 p.m. on 4 February 2000, stating that he had seen people with a white flag in his sector of responsibility. Colonel V. stated that his memory was impaired by head traumas and concussions and that he could not recall any such episodes.

82. On 26 November 2001 the investigators questioned Lieutenant-Colonel Z., who had been heading a detachment of the Ulyanovsk OMON unit on mission in Chechnya. He testified that they were deployed in Katyr-Yurt on the night of 3 February 2000, and on the morning of the next day they entered the village from the south-west at about 10 a.m. They were attacked and retreated. In the afternoon the village was attacked by aircraft, helicopters, artillery and mine-launchers. He had heard something about a “humanitarian corridor” for civilians, but was not involved in its organisation. His detachment did not encounter any civilians, only fighters, when it was in the village on 4 February and later.

83. Serviceman K. from the Rostov-on-Don OMON testified that his unit was on mission in Chechnya in December 1999 – March 2000. In early February 2000 the unit was sent to Katyr-Yurt. They entered the village for the “mopping-up” operation in a group of about 40 servicemen from the OMON and the Interior Ministry troops, but were then ordered to take cover because aviation and artillery had been called in. They hid in a house near the edge of the village and stayed there until evening, then retreated. Next day they again entered the village. After driving about 150 metres into the

village, they saw civilians coming out of the houses; these were elderly men and women. He did not see any children or younger people. They checked the houses for fighters and firearms until evening, but he did not personally see any fighters, dead bodies or firearms. Another serviceman from the same OMON unit confirmed the submissions almost word-for-word.

84. Servicemen from the special forces of the Samara interior troops gave evidence about their participation in the Katyr-Yurt operation. One of two testimonies was disclosed by the Government. Serviceman B. testified that his unit was on mission in Chechnya in January – March 2000. On some date at the beginning of February they were deployed to Katyr-Yurt. Their unit was attacked near the river. He understood that civilians had been given three days to leave the village. From their positions they could clearly distinguish fighters from civilians, based on the presence of firearms and beards.

85. Serviceman T. testified that at the relevant time he had headed the commandatura in Achkhoy-Martan district. Once the military operation in Katyr-Yurt was over, he organised the “mopping-up” of the village and collection of the fighters' bodies. He was not aware of the exact number of bodies collected, but believed that two or three fighters had been detained alive.

86. Servicemen from the Tula OMON forces were also questioned. Only one testimony out of four was disclosed to the Court. Serviceman Gr. testified that their unit arrived at Katyr-Yurt to conduct a “mopping-up” operation after the military stage was over. They were searching for fighters, or for their dead bodies. He did not see any civilians in the village, dead or alive. He presumed that they had been allowed to leave before the assault started. He also testified that after two days of the “mopping-up” operation, civilians started to return to the village. He saw the body of one fighter. The fighters' bodies were collected by two trucks belonging to the army commandatura, and both were loaded full. He did not know exactly how many bodies there were.

j) Testimony by servicemen from the air force, helicopters and tank battalion

87. Two pilots from the army air force were questioned in relation to the attack on Katyr-Yurt. They were identified by the Government as pilot no. 1 and pilot no. 2. Both pilots stated that their unit took part in the bombardment of Katyr-Yurt on 4 February 2000. The mission sortie was between 12 and 2 p.m. on two SU-25 planes, each carrying six FAB-250¹ bombs. They dropped the bombs from a height of about 600 metres. The weather conditions were quite bad, and normally in such conditions they would not fly, but on that day the ground troops were in serious need of support. The targeting was done by a ground air controller who was positioned at the operation centre near the village. He indicated the targets and later reported to them that the bombing had been successful. In response

¹ FAB-250 is a large free-falling high-explosion aviation bomb, weight 250 kilograms.

to the question of whether they had seen any civilians or civilian vehicles in the streets of the village, the pilots either responded that the visibility was so bad - because of clouds and the smoke from burning houses - that they could not see anything, or that they did not see civilians or civilian transport.

88. Two air-ground controllers were questioned. One of them, whose identity was not disclosed by the Government, testified that he was employed as a forward air-controller for fighter jets. His mission was to direct visually the planes to targets identified by the command corps of the operation. On the day preceding the operation in Katyr-Yurt, the exact date of which he could not remember, he was deployed to positions located between the villages of Valerik and Katyr-Yurt. His operational commander was Major-General Nedobitko, who told him to be on standby in case there was a need to call in the air force. The witness was not aware of the details of the operation, but from the discussions around him he realised that a large group of fighters had broken through from Grozny and captured Katyr-Yurt. On the next day between 7 and 8 a.m. information came in that three OMON servicemen had been killed in a skirmish with fighters. Approximately 30 minutes later Nedobitko ordered him to call in fighter jets with bombs, without specifying the type of bomb. Once the planes arrived, Nedobitko named the first target – about 500 metres west of the village mosque, which had been the tallest building and served as a good orientation point. The pilots were informed of the target and confirmed seeing armed people below. The planes successfully dropped a full load of FAB-250 bombs. They also used FAB-500 bombs¹, which were dropped by parachute in order to permit the plane to leave the area of the explosion. Once they had disposed of their ammunition round, Nedobitko requested another pair of planes. They arrived in 20 minutes with the same load. This time the target was set at 300 metres south of the mosque. The air-controller received the targets from Nedobitko, who was receiving continuous operational information by radio. At about 2 p.m. the planes left because the weather conditions had worsened, and then army and interior troops' helicopters arrived, which the witness did not direct.

89. On the second day Major-General Shamanov and Major-General Barsukov arrived in Katyr-Yurt and, together with Nedobitko, headed the operation. The weather was too bad to employ fighter jets, but he was kept at the commanding point in case the conditions improved. The village was bombarded by artillery and mine-launchers and from helicopters. On the third day he was relocated back to his base.

90. When asked if he was aware of a plan to evacuate civilians, the air-controller responded that on the first day of his arrival Nedobitko mentioned that his initial plan had been to offer the fighters a chance to surrender or for

¹ The FAB-500 is a large free-falling high-explosion aviation bomb, 3 metres in length, weight 500 kilograms.

the civilians to leave, but once the OMON forces had been attacked he had called in fighter jets.

91. Several helicopter pilots were questioned. They testified about taking part in the Katyr-Yurt operation. They employed non-guided missiles against the area targets indicated to them by forward air-controllers. They did not see any civilians or civilian vehicles in the village, only fighters who attacked them with machine-guns.

92. The investigation also questioned servicemen from a tank battalion which arrived at Katyr-Yurt on the night of 4 February 2000. They testified that they were stationed south of the village with the task of preventing the fighters from breaking towards the mountains. They fired about 80 shots from tank guns at the village, on the orders of the operational headquarters and in response to enemy fire. They did not enter the village during or after the combat and were not aware of the humanitarian corridor.

k) Other documents from the military

93. Numerous other documents were requested and obtained by the investigation from the military, the majority of which were not disclosed to the Court. These concerned the operation plan, operational orders from the various levels of command, the log-books of different units involved in the operation, personnel lists for these units, records of casualties sustained etc.

94. The military aerodrome submitted information to the effect that the horizontal fragment dispersion of a high explosion aviation bomb FAB-250 was 1,170 metres.

l) Military experts' report

95. On 26 November 2001 the investigator requested an expert opinion from the Combined Armed Services Military Academy in Moscow. Six questions were posed to the experts, who were given access to the investigation file. The questions concerned the accuracy of planning and conducting of the operation, the kind of documents and orders that should have been issued and the question of compliance of the operation in Katyr-Yurt with internal military rules. The experts were also asked to evaluate the propriety of Major-General Nedobitko's decision to deploy aviation and artillery against the fighters' positions; another question was to evaluate whether all necessary measures had been taken by the command corps of the OC of the Western Zone Alignment to minimize civilian victims in Katyr-Yurt.

96. On 11 February 2002 six of the Academy's professors, with military ranks from lieutenant-colonel to major-general, produced their report. They had had access to military documents, such as the operational orders of the United Group Alignment, of the OC of the Western Zone Alignment, log-books etc. They also used six legal acts as a basis for their report, the titles of which were not disclosed to the Court. The report found as a fact that the decision to employ aviation and artillery was taken by Major-General

Nedobitko after the forces under his command had been attacked when they tried to enter the village. Aviation and artillery fire power was involved from 8.30 a.m. on 4 February until 6 February 2000.

97. The expert report concluded that the actions of the officers of the internal troops involved in the special operation to eliminate illegal armed groups in Katyr-Yurt on 4-6 February 2000 were in conformity with the Army Field Manual and the Internal Troops Field Manual. Analysis of the operative and tactical situation, as well as a videotape reviewed, permitted the experts to conclude that the decision to involve aviation and artillery had been a correct and well founded one. This conclusion was further reinforced by reference to article 19 of the Army Field Manual, which states: "The commanding officer's resolve to defeat the enemy should be firm and should be accomplished without hesitation. Shame on the commander who, fearing responsibility, fails to act and does not involve all forces, measures and possibilities for achieving victory in a battle".

98. As to minimising civilian losses, the report concluded that certain measures were taken to that effect: the commanding officers organised and carried out an exodus of the population from the village, and chose a localised method of fire. The administration and the population of the village were informed about the need to leave the area of the operation and the necessary time was provided for this. A roadblock was established at the village's western exit, equipped with a filtration point and manned by servicemen from the Ministry of the Interior and the Federal Security Service, located away from the area of the combat operations. The report further suggested that the losses could have been further minimised if additional time had been allocated for the civilians' departure. However, that same time could have been used by the fighters to prepare more thoroughly for defence of the village, which could have entailed additional losses among federal forces. Finally, the experts reported that it was not possible to reach any definite conclusions about what had prevented the village's entire population from leaving safely, but that it was probably the fighters.

m) Decision to close the criminal proceedings and its challenge

99. On 30 October 2001 the investigator of the Military Prosecutor's Office for the Northern Caucasus, acting on orders from the Circuit Military Prosecutor, transferred the case to another military prosecutor. On 13 March 2002 the latter issued a decision to close criminal proceedings due to the absence of *corpus delicti* in the military's actions.

100. The investigation found it established that on the night of 3 to 4 February 2000 a group of more than 1,000 well-equipped and well-trained fighters under the command of field commander Gelayev occupied the village of Katyr-Yurt. These fighters were part of a larger group of insurgent forces, escaping south from Grozny to the mountains. By that time most people had already left Katyr-Yurt, whilst others, unwilling to leave the village, hid in their homes. The fighters occupied stone and brick

buildings, turned them into fortified defence points and used the local residents as a “human shield”.

101. On 4 February 2000 Major-General Nedobitko, who was unaware of the exact number of fighters in the village, ordered search groups to enter the village, but they met fierce resistance, sustained casualties and were forced to withdraw. Once the fighters' numerical superiority became clear, Nedobitko decided to evacuate the civilian population and to proceed with the deployment of artillery and aviation. Information was conveyed to the population through the head of administration and by a mobile broadcasting unit which moved around the village. Two roadblocks were established to control the exit. At around 9 a.m. the artillery proceeded with pinpoint strikes at the clusters of enemy resistance, namely at the edges of the village and in the centre near the mosque. Army aviation was then deployed. Targeting and guidance was based on information obtained from reconnaissance and units of the special forces. By their combat actions, the fighters prevented federal forces from organising evacuation of the civilians.

102. Heavy fighting between the insurgents and federal forces, together with aviation and missile strikes, forced the local population to flee the village despite active combat. By midday on 4 February 2000 the flow of civilians had intensified.

103. The special operation in Katyr-Yurt lasted for three days. On the third night a group of fighters, numbering about 800 persons, left Katyr-Yurt and escaped south towards the mountains under cover of thick fog. The rest were destroyed. In the course of the special operation 43 civilians were killed and 53 wounded; these were people who, by the time the bombardment commenced, had not wished or had had no time to leave.

104. The document then summarised statements by Major-General Shamanov, Major-General Nedobitko, Colonel R., Colonel S. and other servicemen. It referred to the operational orders and operations log-book, which confirmed the deployment of combat means and the fighters' resistance. It referred to the statements by the head of administration of Katyr-Yurt and local residents, confirming that the village was seized by fighters on 4 February 2000 and that aviation and artillery strikes took place. It listed 43 civilians killed and 53 wounded as a result of the strikes. The decision referred to testimony by four local residents regarding the provision of a humanitarian corridor (two of these witnesses were wounded and were listed as such). It finally recalled the conclusions of the military experts' report.

105. Against this background, the investigation came to the following conclusions. The majority of civilian injuries were sustained on 4 February 2000 in the centre of the village, where the fiercest fighting between federal forces and fighters occurred. The command corps of the operation took all possible measures to organise the local population's departure, which had been disrupted by the actions of fighters who stormed and occupied houses, using civilians as “human shields”. The fighters' fierce resistance and

numerical superiority, as well as a real danger that they would break through the federal forces' lines toward the mountains, forced the command corps to use aviation and artillery. The strikes were directed at the fighters' positions. Aviation and artillery were heavily used at the initial stage of the operation on 4 February 2000, which caused a massive departure of the local population. Thus, civilians were caught in cross-fire between fighters and federal forces, which explained the heavy losses. As a result of the federal forces' dynamic action, the majority of the group was destroyed, the village was liberated and the remaining members of the group were dispersed.

106. Under such circumstances the investigation concluded that the command corps' actions were absolutely necessary to eliminate the danger to society, the state, and to the lives of servicemen and civilians. This danger could not have been eliminated by other means, and the command corps' actions were proportionate to the resistance put up by the fighters.

107. The criminal case opened on charges of abuse of power and manslaughter was closed for the absence of *corpus delicti*. 62 decisions to grant victim status were quashed by the same decision. The persons in question were to be informed of the possibility of seeking redress through civil proceedings.

108. On 12 December 2002 Major-General Nedobitko appealed against the decision of 13 March 2002. He considered that it should have been closed on the ground that no crime had been committed. On 6 March 2003 the Bataysk Garrison Military Court rejected his appeal and upheld the decision of 13 March 2002.

2. Additional witness statements submitted by the applicant

109. The applicant submitted an additional statement about the attack. She submitted that she witnessed the death of her son and of her three nieces, was wounded and saw her relatives wounded. They could not bury their dead in the village cemetery according to their traditions and were obliged to bury them in the cemetery of Achkhoy-Martan. Her house and all her property were destroyed. This caused her shock and irreparable moral suffering.

110. The applicant submitted five additional testimonies by witnesses and victims about the attack on Katyr-Yurt. Witness A. testified that by the beginning of February 2000 the village was under the firm control of the federal forces and that there were about eight to ten thousand IDPs, because people thought there would be no fighting in Katyr-Yurt. There were military roadblocks around the village and a commandatura in its centre. The aviation strike at 9 a.m. on 4 February 2000 was totally unexpected. The witness tried to leave the village between 4 and 5 p.m. on 4 February, but the car he was travelling in was shot at from a helicopter and he and his relatives were wounded. He escaped on 5 February, having lost two relatives. On the road he saw many dead people and burnt cars. The road

was covered with debris from destroyed houses. The road towards Achkhoy-Martan was filled with people trying to leave, and the soldiers would not allow anyone through, even the wounded. The witness received no assistance from the State. He stated that when he went to the head of the village administration to report the deaths of his relatives he saw a list with the names of 272 civilians who had been killed. Witnesses B., C. and D. gave evidence about heavy bombing on 4 and 5 February 2000, which involved aviation, helicopters, artillery and Grad multiple missile-launchers. They also testified about General Shamanov's arrival at the roadblock, when he allegedly ordered the soldiers not to let people out of the village. They cited his orders to "filter out" all men, but these orders were not enforced by the interior troops. They also testified about a Volga car with six refugees from Zakan-Yurt, which was destroyed on the road by a direct hit. Witness E., who left the village on 5 February 2000 for Achkhoy-Martan, spoke of the confusion and panic, repeated bombardment and crowds at the roadblock to Achkhoy-Martan. He described the situation as "every man for himself". The witnesses were either not aware of a humanitarian corridor, or stated that they had heard something about it but that their exit was not in any way safe.

3. *Interviews with the military commanders, submitted by the applicant*

111. The applicant submitted an extract from the book "Troops of the Ministry of the Interior: The Caucasus Cross-2" (*Карпов Б.В. Внутренние войска: Кавказский Крест-2. - М.: Деловой экспресс, 2000. – 281 с.*). The book contains an interview with Major-General Barsukov, Deputy Commander of the Ministry of the Interior Troops in the Northern Caucasus, who was among the commanders of the operation in Katyr-Yurt. His interview, contained in the book, includes the following passage on pp. 112-113:

"Some of the bandits ... broke through our positions and reappeared in Lermontov-Yurt. We conducted a special operation there. But in planning and conducting this operation, we also blocked the nearby Shaami-Yurt. For two days we conducted a special operation there...

Their remaining forces were breaking through towards Katyr-Yurt. By that time it was also blocked. We let them enter Katyr-Yurt and conducted a special operation there with the forces of the 7th and the 12th special units. Again we met fierce resistance. The 7th unit sustained substantial casualties. We had to withdraw it... Again we used fire power – 'Grad', 'Uragan', 'Buratino'¹, artillery of the 47th regiment,

¹"Uragan" is a 16-round 220 mm multiple launch rocket system, firing two missiles per second, each missile fitted with high explosive fragmentation warhead, weight 280 kg, length 4.8 m and calibre 220 mm. It carries an explosive charge of 51.7 kg and is armed with a 100 kg warhead. TOS-1 "Buratino" is a thermobaric multiple launcher system, using 220 mm "flame rocket", or a thermobaric warhead. The zone of assured destruction is 200 x 400 metres. When the warhead explodes, the combustible liquid inside is vaporized, creating an aerosol cloud which detonates when mixed with oxygen, first creating a high

cannons of the 46th regiment, mine-launchers. Fighter jets were also involved. But... the bandits broke through... and went towards the village of Gekhi-Chu...

Near Gekhi-Chu we were able to draw conclusions from the operation started in Alkhan-Kala. Over 150 bandits were detained, 548 dead bodies were seized. The rest the Chechens buried hastily in Alkhan-Kala... A large number of bodies were dumped or buried in shallow graves. In Shaami-Yurt and Katyr-Yurt we did not even take the bodies out, we did not have the resources to do that. Usually, after we had left, police units together with the forces of the Ministry of Justice came in... In the army we simply don't have enough trucks to take out so many bodies... According to our estimates, and this is supported by interception of radio communications, during this 'death raid' in the 'valley of death' (these are their expressions) they lost in total over one and a half thousand men."

112. The applicant submitted a transcript of an interview from the RTR TV channel's programme "Zerkalo", broadcast on 5 February 2000, where Major-General Vladimir Shamanov, the commander of the Western Zone Alignment in Chechnya, said:

"Well, let's give some good news to the Russians. The Western Zone Alignment has been entrusted with participation in a big operation. It's called 'wolf hunt'. The idea of the plan was to create an illusion of an existing exit corridor from Grozny along the route used by Arbi Barayev's groups. In cooperation with the Federal Security Service and other bodies, one of the officers was given the task of contacting the fighters and for a large sum, we can now say about 100,000 US dollars, to promise a corridor. Honestly, we did not even expect that the bandits would swallow the bait, especially their leaders. Even less did we think there would be so many of them. The planned scheme of artillery fire combined with reactive obstacles showed not only how correct we had been, but also basically solved the Grozny problem. ... The operation is continuing. The Western Alignment has built a corridor, so that any step to the left or to the right equals execution. We are chasing them along this corridor, we already chased them to the second line, and in two or three days we will destroy them all."

4. Human Rights Watch report, submitted by the applicant

113. The applicant 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 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 frequency of the attacks on fleeing civilians left many civilians trapped in areas of active conflict, contributing indirectly to the high death toll of the conflict."

temperature cloud of flame followed by a crushing overpressure. It is also known as a "vacuum bomb".

114. 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...”

115. The report describes the bombardment of Katyr-Yurt on 4-6 February 2000 as one of the examples of attacks on civilians escaping from fighting. Referring to information from humanitarian NGOs, the report estimates the population of Katyr-Yurt at the relevant time at about 25,000 people, including some 15,000 IDPs. Early on 4 February 2000 several thousand fighters, having escaped from Grozny, which is about 30 kilometres away, entered the village. A few hours later the strikes against the village began. Villagers' testimonies, collected by HRW, described the great difficulties they experienced in leaving the village and the numerous casualties sustained while people were hiding in cellars and shot at on the road.

II. RELEVANT DOMESTIC LAW AND PRACTICE

a) The Constitutional provisions

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

117. 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.

118. 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.

119. 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.

120. 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

121. Section 25 of the Law on Defence of 1996 (*Федеральный закон от 31 мая 1996 г. N 61-ФЗ "Об обороне"*) provides that "supervision of adherence to the law 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

122. The 1998 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 the purposes of the present Federal Law the following basic concepts shall be applied:

... '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 land 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

123. 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.

124. 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.

125. 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

126. 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.

127. 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 was to have full access to the case-file.

128. 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.

129. 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.

130. 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.

131. 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.

132. 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

133. 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

134. 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 serious crimes such as murder.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

A. Arguments of the parties

1. The Government

135. The Government asked the Court to declare the application inadmissible on the grounds that the applicant had failed to exhaust the domestic remedies available to her. They submitted that the relevant authorities had conducted and continued to conduct criminal investigations into civilian deaths and injuries and the destruction of property in Chechnya, in accordance with the domestic legislation. The applicant had failed to make use of the procedural rights available to her as a victim in the criminal case and had not appealed against the decisions reached by the investigation.

136. 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

137. 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

138. The possibility of applying to a court outside Chechnya was supported by the fact that applicants in other similar cases had successfully applied to the district court in Ingushetia for certification of their relatives' deaths. The Government referred to cases nos. 57942/00 and 57945/00

(Khashiyev v. Russia and Akayeva v. Russia) and nos. 57947/00, 57948/00 and 57949/00 (Isayeva v. Russia, Yusupova v. Russia and Bazayeva v. Russia).

139. 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 (in circumstances 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 applicant's.

2. The applicant

140. The applicant submitted that she 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 applicant based this assertion on the following arguments.

a) The violations were carried out by State agents

141. The applicant 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.

142. The applicant 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 no remedies for the victims of violations. Nor did it contain provisions regarding officials' responsibility for possible abuses of power. The applicant 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. She 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.

143. She 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. She 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.

144. The applicant alleged that there was a long-standing practice of failure to comply with the requirement to investigate abuses committed by servicemen and members of the police effectively, both in peacetime and during conflict. She 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.

145. As to the current situation in Chechnya, the applicant cited reports by human rights groups, NGOs and the media regarding violations of civilians' rights by federal forces. She also referred to a number of Council of Europe documents deploring a 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 applicant's case

146. The applicant further considered that the domestic remedies to which the Government referred were ineffective due to the failure of the legal system to provide redress. In this connection, she relied on the Court's judgment in the case of *Akdivar and Others v. Turkey*, from which she drew the conclusion that it was incumbent on the respondent Government to convince the Court that those remedies which were not used were effective and available, in theory as well as in practice at the relevant time, that they were capable of providing redress in respect of the applicant's complaint and that they 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).

147. The applicant considered that 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 were capable of providing redress or that they offered any reasonable prospects of success. She challenged the effectiveness of each of the two remedies mentioned by the Government.

148. So far as civil proceedings were concerned, the applicant submitted that she did not have effective access to the remedies suggested by the Government. An application to the Supreme Court would be plainly useless, because that court had only limited jurisdiction as a court of first instance, e.g. in reviewing 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 applicant 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 applicant submitted that this would have been impractical and inefficient.

149. In respect of a civil claim, the applicant 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. She further argued that civil proceedings could only lead to compensation for pecuniary and non-pecuniary damages, while her principal objective was to see the perpetrators brought to justice. Finally, she 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.

150. The applicant submitted that criminal proceedings alone were capable of providing adequate effective remedies, and that compensation could be awarded to her in the course of criminal proceedings as a victim of the crimes. The applicant questioned the effectiveness of the investigation in her case.

B. The Court's evaluation

151. In the present case the Court made no decision about the 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 is obliged to evaluate the arguments of the parties in view of the Convention provisions and the relevant practice.

152. 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* judgment cited above, p. 1210, §§ 65-67).

153. 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).

154. 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.

155. 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 that of lodging a complaint with the Supreme Court or of lodging a complaint with other courts (see §§ 135-139 above). The Court notes that at the date on which the present application was declared admissible, no decision had been submitted 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.

156. 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 military's actions.

157. 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, without the benefit of the conclusions of a criminal investigation, a civil action is not capable of making any findings as to the identity of the perpetrators of fatal assaults, and still less of establishing 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).

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

159. In the light of the above the Court finds that the applicant was 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.

160. As regards criminal law remedies, the Court observes that a criminal investigation was instituted into the attack on the village, albeit only after a considerable delay, namely in September 2000, despite the fact that the authorities were likely to have been aware of the consequences of the attack immediately after it had happened. Information about civilian casualties on such a scale should have alerted the relevant authorities to the need to proceed with an investigation at an earlier stage. Despite this, according to a letter of 24 August 2002 addressed to Memorial, the military prosecutors conducted a check in March 2000 and refused to start an investigation. The Court further notes that the applicant was not properly informed of progress in the investigation and that no charges were brought against any individuals.

161. 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 applicant complains. These issues are closely linked to the merits of the applicant's complaints. Thus, it considers that these matters fall to be examined under the substantive provisions of the Convention invoked by the applicant. In view of the above, it is not necessary for the Court to decide whether there was indeed a long-standing practice of non-investigation of crimes committed by police or military officials, as claimed by the applicant.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

162. The applicant alleged that her right to life and the right to life of her son and other relatives was violated by the actions of the military. She also submitted that the authorities had failed to carry out an effective and adequate investigation into the attack and to bring those responsible to justice. She 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 applicant

163. The applicant submitted that the way in which the military operation in Katyr-Yurt had been planned, controlled and executed constituted a violation of Article 2. She submitted that the use of force which resulted in the death of her son and nieces and the wounding of herself and her relatives was neither absolutely necessary nor strictly proportionate.

164. The applicant stated that the commanders of the Russian federal forces must have been aware of the route taken by the rebel forces out of Grozny and could have reasonably expected their arrival at Katyr-Yurt, and either prevented it or warned the civilian population. Moreover, there is evidence to suggest that they had knowingly and intentionally organised a passage for the rebels which drew them into villages, including Katyr-Yurt, where they were attacked.

165. Once the rebels were in the village, the military used indiscriminate weapons such as “Grad” multiple missile-launchers, FAB-250 and FAB-500 heavy aviation bombs with a destruction radius exceeding 1,000 metres and “Buratino” thermobaric, or vacuum, bombs. In the applicant's view, the latter are prohibited by international law on conventional weapons. These weapons cannot be regarded as discriminate, nor as appropriate for the declared aim of “identity checks”. No safe passage was provided for the civilians. Civilians who left the village did so under fire and were detained at the roadblock. As to the military advantage gained by the operation, the applicant referred to the absence of any specific data to that effect in the investigation file. It was not disputed that most of the rebels, together with their commanders, had escaped the village despite the heavy bombardment. There was no exact information about the number or descriptions of the fighters killed or captured during the operation, a description or list of weapons seized etc.

166. The applicant submitted that the military experts based their conclusion about the appropriateness of the attack on legal acts which permitted or even incited the use of indiscriminate weapons, such as Article 19 of the Army Field Manual, which ordered commanding officers to make use of any available weapons in order to achieve victory.

167. The applicant also referred to the third party submissions made in the cases of *Isayeva v. Russia*, *Yusupova v. Russia* and *Bazayeva v. Russia* (nos. 57947/00, 57948/00 and 57949/00), in which Rights International, a USA-based NGO, summarised for the Court the relevant rules of international humanitarian law governing the use of force during attacks on mixed combatant/civilian targets during a non-international armed conflict.

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

b) The Government

169. The Government did not dispute the fact of the attack or the fact that the applicant's son and her three nieces had been killed and that the applicant and her other relatives had been wounded.

170. The Government argued that 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 for protection of a person from unlawful violence. The use of lethal force was necessary and proportionate to suppress the active resistance of the illegal armed groups, whose actions were a real threat to the life and health of the servicemen and civilians, as well as to the general interests of society and the state. This threat could not have been eliminated by other means and the actions by the operation's command corps had been proportionate. The combat weapons were specifically directed against previously-designated targets.

171. The Government further submitted that the applicant and other civilians were properly informed about the ensuing assault and the need to leave the village, for which purpose the military used a helicopter and a mobile broadcasting station equipped with loudspeakers. Military checkpoints were placed at the two exits from Katyr-Yurt. However, the federal forces' attempts to organise a safe exit for the population were sabotaged by the actions of the fighters, who prevented the residents from leaving and provoked fire from the federal forces, using them as a "human shield". The documents of the criminal investigation file demonstrated, in the Government's opinion, that the majority of the civilian casualties had been sustained at the initial stage of the special operation, i.e. on 4 February 2000, and in the centre of the village, where the most severe fighting between the federal troops and the insurgents occurred.

2. *The Court's evaluation*

a) **General principles**

172. Article 2, which safeguards the right to life and sets out the circumstances when 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.

173. Article 2 covers not only intentional killing but also the situations in which it is permitted to “use force” which may result, as an unintended outcome, in the deprivation of life. However, the deliberate or intended use of lethal force is 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 subparagraphs (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 paragraph 2 of Articles 8 to 11 of the Convention. Consequently, the force used must be strictly proportionate to the achievement of the permitted aims.

174. 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.

175. 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).

176. Similarly, the State's responsibility is not confined to circumstances where there is significant evidence that misdirected fire from agents of the state has killed a civilian. It may also be engaged where they fail to take all feasible precautions in the choice of means and methods of a security operation mounted against an opposing group with a view to avoiding and, in any event, minimising, incidental loss of civilian life (see *Ergi v. Turkey*, judgment of 28 July 1998, *Reports* 1998-IV, p. 1778, § 79).

177. 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).

178. 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* cited above, § 283) even if certain domestic proceedings and investigations have already taken place.

b) Application in the present case

179. It is undisputed that the applicant and her relatives were attacked when trying to leave the village of Katyr-Yurt through what they had perceived as safe exit from heavy fighting. It is established that an aviation bomb dropped from a Russian military plane exploded near their minivan, as a result of which the applicant's son and three nieces were killed and the applicant and her other relatives were wounded. This brings the complaint within the ambit of Article 2. The Government suggested that the use of force was justified in the present case under paragraph 2 (a) of Article 2 of the Convention being absolutely necessary due to the situation in Katyr-Yurt at the time.

180. The Court accepts that the situation that existed in Chechnya at the relevant time called for exceptional measures by the State in order to regain control over the Republic and to suppress the illegal armed insurgency. Given the context of the conflict in Chechnya at the relevant time, those measures could presumably include the deployment of army units equipped with combat weapons, including military aviation and artillery. The presence of a very large group of armed fighters in Katyr-Yurt, and their active resistance to the law-enforcement bodies, which are not disputed by

the parties, may have justified use of lethal force by the agents of the State, thus bringing the situation within paragraph 2 of Article 2.

181. Accepting that the use of force may have been justified in the present case, it goes without saying that a balance must be achieved between the aim pursued and the means employed to achieve it. The Court will now consider whether the actions in the present case were no more than absolutely necessary for achieving the declared purpose. In order to do so the Court will examine, on the basis of the information submitted by the parties and in view of the above enumerated principles (see §§ 172-178 above), whether the planning and conduct of the operation were consistent with Article 2 of the Convention.

182. At the outset it has to be stated that the Court's ability to make an assessment of how the operation was planned and executed is hampered by the lack of information before it. The Government did not disclose most of the documents related to the military action. No plan of the operation, no copies of orders, records, log-book entries or evaluation of the results of the military operation have been submitted and, in particular, no information has been submitted to explain what was done to assess and prevent possible harm to civilians in Katyr-Yurt in the event of deployment of heavy combat weapons.

183. 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, harm to civilians, as is required by Article 2 of the Convention.

184. The applicant submits that the military must have known in advance about the very real possibility of the arrival of a large group of fighters in Katyr-Yurt, and further submits that they even incited such an arrival. The Court notes a substantial amount of evidence which seems to suggest that the fighters' arrival was not so unexpected for the military that they had no time to take measures to protect the villagers from being caught up in the conflict.

185. The interview of General Shamanov, given on 5 February 2000, referred to a successful plan to incite the armed rebels from Grozny and to prevent their breaking through to the mountains by creating a "corridor" which would be tightly controlled by the federal forces in the area under the responsibility of the Western Zone Alignment (see § 112 above). In his statement to the investigation Mr Shamanov stated that the division commanded by Major-General Nedobitko was deployed to block Katyr-Yurt, as reconnaissance information had been received to the effect that groups of fighters were slipping through (see § 68). The statement by an OMON serviceman stationed in Katyr-Yurt referred to a warning received from his superiors on 3 February 2000 that fighters could be expected to arrive in Katyr-Yurt or Valerik (see § 79 above). At least two civilian witnesses spoke of military roadblocks at the exits from the village which exercised tight control over movements into and out of Katyr-Yurt at least a

few days before 4 February 2000 (see §§ 54 and 110 above). Thus, it is difficult to suppose that the fighters' arrival in Katyr-Yurt early in the morning of 4 February 2000, and their number, were a surprise for the commanders of the operation.

186. In contrast, the applicant and other villagers questioned stated that they had felt safe from fighting due to the substantial military presence in the district, roadblocks around the village and the apparent proclamation of the village as a “safety zone”. An OMON detachment was stationed directly in Katyr-Yurt. The villagers' statements describe the arrival of fighters and the ensuing attack as something unexpected and not foreseen (see §§ 15, 59, 110 above).

187. The Court has been given no evidence to indicate that anything was done to ensure that information about these events was conveyed to the population before 4 February 2000, either directly or through the head of administration. However, the fact that the fighters could have reasonably been expected, or even incited, to enter Katyr-Yurt clearly exposed its population to all kinds of dangers. Given the availability of the above information, the relevant authorities should have foreseen these dangers and, if they could not have prevented the fighters' entry into the village, it was at least open to them to warn the residents in advance. The head of the village administration, whose role in communicating between the military and the residents of the village appears to have been perceived as a key one, was questioned only once and no questions were put to him about the circumstances of the fighters' arrival or about the organisation of a safe exit for residents.

188. Taking into account the above elements and the reviewed documents, the Court concludes that the military operation in Katyr-Yurt was not spontaneous. The operation, aimed at either disarmament or destruction of the fighters, was planned some time in advance. In his testimony Major-General Nedobitko stated that the use of artillery and aviation was foreseen as an option and discussed with General Shamanov (see § 74 above). The forward air controller stated that he had been deployed to the command centre near Katyr-Yurt a day before the beginning of the operation (see § 88 above).

189. The Court regards it as evident that when the military considered the deployment of aviation equipped with heavy combat weapons within the boundaries of a populated area, they also should have considered the dangers that such methods invariably entail. There is however no evidence to conclude that such considerations played a significant place in the planning. In his statement Major-General Nedobitko mentioned that the operational plan, reviewed with Major-General Vladimir Shamanov in the evening on 3 February 2000, referred to the presence of refugees. This mere reference cannot substitute for comprehensive evaluation of the limits of and constraints on the use of indiscriminate weapons within a populated area. According to various estimates, the population of Katyr-Yurt at the

material time constituted between 18,000 and 25,000 persons. There is no evidence that at the planning stage of the operation any serious calculations were made about the evacuation of civilians, such as ensuring that they were informed of the attack beforehand, how long such an evacuation would take, what routes evacuees were supposed to take, what kind of precautions were in place to ensure safety, what steps were to be taken to assist the vulnerable and infirm etc.

190. Once the fighters' presence and significant number had become apparent to the authorities, the operation's commanders proceeded with the variant of the plan which involved a bomb and missile strike at Katyr-Yurt. Between 8 and 9 a.m. on 4 February 2000 Major-General Nedobitko called in fighter jets, without specifying what load they should carry. The planes, apparently by default, carried heavy free-falling high-explosion aviation bombs FAB-250 and FAB-500 with a damage radius exceeding 1,000 metres. According to the servicemen's statements, bombs and other non-guided heavy combat weapons were used against targets both in the centre and on the edges of the village (see §§ 70, 91 above).

191. The Court considers that using this kind of weapon in a populated area, outside wartime and without prior evacuation of the civilians, is impossible to reconcile with the degree of caution expected from a law-enforcement body in a democratic society. No martial law and no state of emergency has been declared in Chechnya, and no derogation has been made under Article 15 of the Convention (see § 133). The operation in question therefore has to be judged against a normal legal background. Even when faced with a situation where, as the Government submit, the population of the village had been held hostage by a large group of well-equipped and well-trained fighters, the primary aim of the operation should be to protect lives from unlawful violence. The massive use of indiscriminate weapons stands in flagrant contrast with this aim and cannot be considered compatible with the standard of care prerequisite to an operation of this kind involving the use of lethal force by State agents.

192. During the investigation, the commanders of the operation submitted that a safe passage had been declared for the population of Katyr-Yurt; that the population has been properly informed of the exit through the head of administration and by means of a mobile broadcasting station and a helicopter equipped with loudspeakers; and that two roadblocks were opened in order to facilitate departure.

193. The documents reviewed by the Court confirm that a measure of information about a safe passage had indeed been conveyed to the villagers. Several servicemen gave evidence about the steps taken, although these submissions are not entirely consistent. One resident confirmed having seen a helicopter equipped with loudspeakers in the morning of 4 February 2000, although she could not make out the words because of the fighting around (see § 52 above). The applicant and numerous other witnesses stated that they had learnt, mostly from their neighbours, that the military would permit civilians to exit through a humanitarian corridor. Although no document

submitted by the military and reviewed by the Court indicated the timing of this pronouncement, the villagers indicated the timing at about 3 p.m. on 4 February 2000. It thus appears that the declaration of the corridor became known to the residents only after several hours of bombardment by the military using heavy and indiscriminate weapons, which had already put the residents' lives at great risk.

194. The Court further notes that the reference to the establishment of military roadblocks at the exits from the village demonstrates the military's intention to control the exodus in order to separate fighters from civilians, but does not in any way serve to facilitate the exit. It appears from the documents reviewed that whilst it was possible to leave Katyr-Yurt by two routes - one towards Achkhoy-Martan and the other towards Valerik - the villagers were in fact permitted to exit only through the former. Witness statements refer to the information initially received about the road to Achkhoy-Martan being opened by the military. The applicant and other villagers who left the village on 4 and 5 February 2000 all did so through the exit towards Achkhoy-Martan. Some witnesses stated that they were not allowed to leave through the roadblock towards Valerik, and that the soldiers had referred to an order from General Shamanov (see §§ 58-59 above). The commander of the operation, Major-General Nedobitko, when asked by the investigator what might have been different had the villagers resisted the fighters' entry into the village or informed the military about their arrival sooner, replied that the military "would have allowed" them to leave through two roadblocks (see § 76 above). It can therefore be concluded that, at least for a certain period during the three days of fighting, the second roadblock towards Valerik was not open for civilians to exit and they were thus prevented from leaving the scene of fighting on the order of the operation's commanders.

195. Once the information about the corridor had spread, the villagers started to leave, taking advantage of a lull in the bombardments. The presence of civilians and civilian cars on the road leading to Achkhoy-Martan in the afternoon of 4 February 2000 must have been fairly substantial. One of the witnesses submitted that many cars were lined up in Ordzhonikidze Street when they were leaving (see § 45 above). The applicant stated that their neighbours were leaving with them at the same time (see § 17 above). Colonel R. stated that on the first day of bombing the villagers left Katyr-Yurt *en masse* by the road to Achkhoy-Martan (see § 77 above). The soldiers manning the roadblock leading to Achkhoy-Martan must have seen people escaping from the fighting. This must have been known to the commanders of the operation and should have led them to ensure the safety of the passage.

196. However, no document or statement by the military refers to an order to stop the attack or to reduce its intensity. While there are numerous references in the servicemen's statements to the declaration of a humanitarian corridor, there is not a single statement which refers to the

observance of any such corridor. The statements by the air-controllers and military pilots reviewed by the Court do not contain any reference to information about a humanitarian corridor or an obligation to respect it. Nor does it appear that they were at any moment alerted by the servicemen manning the roadblock leading to Achkhoy-Martan, or by the operation's commanders, to the presence of departing civilians in the streets. Their own evaluation of the targets seems to have been impaired by poor visibility and the pilots denied in their statements having seen any civilians or civilian vehicles.

197. 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 may have been significantly higher than the figures, already striking, 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 those incidents and the situation of the applicant and her relatives in view of the level of danger to which they were exposed.

198. The military experts' report of 11 February 2002 concluded that the actions of the operational command corps were legitimate and proportionate to the situation (see § 95 above). As regards minimising civilian casualties, the report based this conclusion on two principal grounds: that the commanding officers organised and carried out the exodus of the population and that they chose a localised method of fire. The Court, in view of the above paragraphs, does not consider that the documents contained in the case file and reviewed by it can give rise to such a conclusion. The report also concluded that the evacuation had probably been prevented by the fighters. Equally, nothing in the reviewed documents supports the conclusion that the fighters were holding back the villagers or preventing them from leaving.

199. The applicant submitted that the existing domestic legal framework in itself failed to ensure proper protection of civilian lives. She made reference to the only disclosed legal act on which the conclusions of the military experts based their report, namely, the Army Field Manual. The Court agrees with the applicant that the Government's failure to invoke the provisions of any domestic legislation governing the use of force by the army or security forces in situations such as the present one, whilst not in itself sufficient to decide on a violation of the State's positive obligation to protect the right to life, is, in the circumstances of the present case, also directly relevant to the Court's considerations with regard to the proportionality of the response to the attack (see, *mutatis mutandis*, the above-mentioned *McCann* judgment, § 156).

200. To sum up, accepting that the operation in Katyr-Yurt on 4-7 February 2000 was pursuing a legitimate aim, the Court does not accept that it was planned and executed with the requisite care for the lives of the civilian population.

201. 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 applicant, her son Zelimkhan Isayev and her three nieces, Zarema Batayeva, Kheda Batayeva and Marem Batayeva.

B. Concerning the adequacy of the investigation

1. Arguments of the parties

a) The applicant

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

203. In this respect the applicant 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. She referred to press and NGO reports which, in her view, demonstrated that there were serious obstacles to the proper functioning of the system for the administration of justice and cast serious doubt on the effectiveness of the prosecutors' work. She 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 evidence that any investigation into abuses against civilians was effective and adequate.

204. The applicant further submitted that she had good reason not to apply to the prosecutors immediately after the attack, because she felt vulnerable, powerless and apprehensive of the State representatives. She 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 rapidly about the attack and the numerous civilian deaths from the relevant military and civil authorities and from NGO and press reports. The high number of casualties reported should have prompted the prosecutors to act with special expediency and diligence. She further referred to the fact that she and her relatives, as well many other residents of Katyr-Yurt applied for medical help in hospitals in Chechnya and 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. Employees of the civil registration office, who had issued death certificates for the applicant's relatives in April 2000, were also under an obligation to disclose relevant information to the prosecutor.

205. The applicant considered that, in spite of all the above elements, the prosecutors had failed to act quickly to investigate the attack. In April 2000 the military investigators refused to open a criminal investigation on the basis of a simple check. No criminal case was instituted until September 2000. The investigation was finally closed in March 2002 due to a lack of

corpus delicti. No one was charged or indicted. This decision was appealed by Major-General Nedobitko, who had been questioned as a witness, and on 6 March 2003 the Bataysk Garrison Military Court upheld the decision. The applicant noted that although Major-General Nedobitko had no procedural status which would have allowed him to apply to a court, the Garrison Court's decision confirmed the outcome of the investigation. Had she applied to a court herself, it would have reached the same conclusion.

206. Finally, the applicant submitted that the investigation into the attack has been inadequate and incomplete and could not be regarded as effective. She referred to shortcomings in the investigation. The applicant submitted that even she was not properly informed of the proceedings and could not have effectively participated in them.

b) The Government

207. The Government denied any shortcomings in the investigation and stated that the investigation was in strict accordance with the domestic legislation. They referred to the large amount of work carried out by the investigation, which included the collection of dozens of witness statements in Chechnya and in Ingushetia, as well as in other regions where the servicemen who had participated in the operation had been relocated, the collection of considerable data from the military related to the planning and execution of the operation, medical data etc. An expert report was drawn up on the basis of the evidence collected. The investigation came to the conclusion that the military's actions were absolutely necessary in the circumstances and that no crime had therefore been committed.

208. As to the applicant's participation, the Government recalled that the applicant had been granted victim status in the proceedings on 2 October 2000, and could therefore use her procedural rights, such as an appeal to a court against the investigators' decisions.

2. The Court's assessment

a) General considerations

209. 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).

210. The essential purpose of such 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).

211. 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, pp. 1778-79, §§ 83-84, and the recent Northern Irish cases, for example, *McKerr v. the United Kingdom*, no. 28883/95, § 128, *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 120, and *Kelly and Others v. the United Kingdom*, no. 30054/96, § 114, ECHR 2001-III).

212. 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 the evidence concerning the incident, including *inter alia* eye-witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death (see, 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*, no. 22676/93, § 89, 14 December 2000). 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 recent Northern Irish cases concerning the inability of inquests to require the attendance of security force witnesses directly involved in the use of lethal force, for example, *McKerr v. the United Kingdom*, cited above, § 144, and *Hugh Jordan v. the United Kingdom*, cited above, § 127).

213 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).

214. 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

215. An investigation was carried out into the attack of 4-7 February 2000. The Court must assess whether the investigation met the requirements of Article 2 of the Convention.

216. The application to the military prosecutors brought by NGO Memorial on behalf of the applicant in March 2000 contained detailed and well-founded allegations of heavy casualties caused to civilians during the assault on Katyr-Yurt. However, despite these very serious allegations supported by substantial evidence, their complaint was rejected in April 2000 as containing no elements of a crime (see § 30 above).

217. An investigation was opened only upon communication of the complaint by the Court to the respondent Government in September 2000. There was thus a considerable delay of at least seven months before a criminal investigation was opened into credible allegations of dozens of civilian deaths. No explanation was put forward to explain this delay.

218. The Court notes several elements in the documents submitted in the investigation file which, put together, produce an impression of a number of serious flaws once the investigation had commenced. This being said, the Court also notes that during 2001 a significant amount of work was indeed carried out by the military investigators both in Chechnya and in other regions in an attempt to put together an account of the assault.

219. The Court is particularly struck by the lack of reliable information about the declaration of the “safe passage” for civilians prior to or during the military operation in Katyr-Yurt. No persons were identified among the military or civil authorities as responsible for the declaration of the corridor and for the safety of those using it. No information has been provided to clarify an apparently total absence of coordination between the announcements of a “safe exit” for civilians and the very limited, if any, consideration given to this by the military in planning and executing their mission.

220. Several witness statements and admissions by the senior military commanders strongly suggest that the residents of Katyr-Yurt were “punished” for their apparent lack of cooperation with the military authorities. Several witnesses stated that on 5 or 6 February 2000 they had seen General Shamanov ordering that civilians should not be let out of the village (see §§ 53-57, 59, 110 above). In his own statement to the investigation Mr Shamanov conceded that he blamed the head of the Katyr-Yurt administration for the deterioration of the situation (see § 71 above). There is evidence to conclude that the second exit from Katyr-Yurt towards Valerik remained closed to civilians for at least some time during the fighting for the same reasons. Major-General Nedobitko admitted that had the villagers been more “cooperative”, it would have been possible to open both exits (see § 76 above).

221. The investigation made surprisingly few attempts to find an explanation for these serious and credible allegations. In the investigation file reviewed the Court has found no evidence from the servicemen who manned the roadblocks at the two exits from the village about the circumstances of the exit and the nature of the orders they had received. Most importantly, the head of the Katyr-Yurt administration, to whom the military witnesses constantly referred as their interlocutor, was questioned only once. No questions were put to him concerning his contacts with the military.

222. Other elements of the investigation also call for comment. The investigation clearly failed to identify other victims and witnesses of the attack. Information about the decision of 13 March 2002, by which the proceedings were closed and the decisions to grant victim status were quashed, was not communicated to the applicant and other victims directly as the domestic relevant legislation prescribes. Instead, a letter was sent to the Head of Government of Chechnya asking them to take steps to locate and inform the victims accordingly. The list of names appended to the letter contained no personal details of the victims, such as their permanent or temporary addresses, dates of birth or any other relevant data. There is no indication that the Government of Chechnya complied with the request and informed the applicant and other victims of this development in the proceedings. The Court does not accept the Government's assertion that the applicant had been properly informed of the proceedings and could have challenged its results.

223. The decision to close the investigation was based on the conclusions of the military experts' report of February 2002. As the Court has stated above, the conclusions of this report about the lawfulness and proportionality of the military action do not appear to tally with the documents contained in the case-file (see § 198 above). The absence of any realistic possibility for the applicant to challenge the conclusions of the report and, ultimately, those of the investigation, cannot be said to be in conformity with the principles enumerated above concerning whether the

force used was justified in the circumstances and the identification and punishment of those responsible.

224. In the light of the foregoing the Court finds that the authorities failed to carry out an effective investigation into the circumstances of the assault on Katyr-Yurt on 4-7 February 2000. This rendered recourse to the civil remedies equally ineffective in the circumstances of the case. The Court accordingly dismisses the Government's preliminary objection and holds that there has been a violation of Article 2 in this respect.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

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

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

1. General principles

226. 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 conform to 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).

227. 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 than 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*

228. In view of the Court's findings above on Article 2, this complaint is 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 applicant should have been able to avail herself of effective and practical remedy capable of leading to the identification and punishment of those responsible and to an award of compensation, for the purposes of Article 13.

229. 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 §§ 215-224 above), and where 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 not met its obligations under Article 13 of the Convention.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

231. 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**

232. The applicant claimed a total of 18,710 euros (EUR) under this heading.

233. The applicant alleged that as a result of the attack at the village her house and a family car were destroyed. She claimed that the value of the car was EUR 11,000 and the value of the house and household items was EUR 1,500.

234. Under the same head the applicant also claimed the loss of earning of her deceased son, Zelimkhan Isayev. She submitted that he was earning about EUR 100 per month as a car mechanic. The applicant, who was born in 1954, is due to retire in 2009 under Russian law. Taking the average life expectancy for women in Russia to be 70 years, the applicant assumed that she could be financially dependant on her son for about 15 years. His earnings for that period, taking into account an average 15 % inflation rate for Russia, would constitute EUR 20,700. The applicant could count on an average of 30 % of that sum, which would constitute EUR 6,210.

235. The Government found the amount claimed to be exaggerated.

236. The Court recalls that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention, and that this may, in the appropriate case, include compensation in respect of loss of earnings (see, among other authorities, *Çakıcı v. Turkey* [GC], no. 23657/94, § 127, ECHR 1999-IV). Having regard to its conclusions as to compliance with Article 2 of the Convention, there is indeed a direct causal link between the violation of Article 2 in respect of the applicant's son and the loss by the applicant of the financial support which he could have provided for her. The Court notes that the Government have not questioned in any details the amounts claimed by the applicant, having made a general statement that the claims were "exaggerated". Having regard to the applicant's submissions and the additional materials detailing her claim, the Court awards EUR 18,710 to the applicant as pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

237. The applicant lost her son and her three nieces, all of whom were very young. She herself was wounded. She was deeply shocked by the attack. She asked the Court to award her EUR 25,000 by way of non-pecuniary damages.

238. The Government found the amount claimed to be exaggerated.

239. The Court considers that an award 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 and 13 of the Convention.

240. The Court awards EUR 25,000 to the applicant as non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

241. The applicant claimed EUR 10,760 and 1,500 pounds sterling (GBP) for fees and costs involved in bringing the applications. This included GBP 1,500 for the work of the London-based lawyers from the European Human Rights Advocacy Centre; EUR 5,050 for the work of the Moscow-based lawyers from the Human Rights Centre Memorial and EUR 5,210 for the work of the human rights field staff in Moscow and in the Northern Caucasus and for other expenses incurred.

242. In addition, the applicant 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.

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

244. 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 applicant claims in respect of her 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 applicant in the course of the preparation for the hearing in view of the extensive written submissions already submitted by parties.

245. 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 applicant, it awards her 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

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

FOR THESE REASONS, THE COURT

1. *Dismisses* unanimously the Government's preliminary objection;
2. *Holds* unanimously that there has been a violation of Article 2 of the Convention in respect of the respondent State's obligation to protect the right to life of the applicant, her son and three nieces;
3. *Holds* unanimously that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation;
4. *Holds* by six votes to one that there has been a violation of Article 13 of the Convention;
5. *Holds* unanimously
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to

Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

- (i) EUR 18,710 (eighteen thousand seven hundred ten euros) in respect of pecuniary damage;
 - (ii) EUR 25,000 (twenty-five thousand euros) in respect of non-pecuniary damage;
 - (iii) EUR 10,926 (ten thousand nine hundred twenty-six euros) in respect of costs and expenses;
 - (iv) 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