EUROPEAN COURT OF HUMAN RIGHTS

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Press release issued by the Registrar

Three Chamber judgments concerning Chechnya

The European Court of Human Rights has today notified in writing three Chamber judgments[1] – available only in English – in the cases of:

Goncharuk v. Russia (application no. 58643/00);
Goygova v. Russia (no. 74240/01); and
Makhauri v. Russia (no. 58701/00).

The cases concern life-threatening attacks and extra-judicial executions of unarmed civilians by Russian servicemen in the Staropromyslovskiy district of Grozny, Chechnya, in January 2000. The applicants Yelena Goncharuk and Kheyedi Makhauri were shot and left for dead and Petimat Goygova's mother and brother were shot and killed.

The Court held unanimously that there had been:

- a **violation of Article 2** (right to life) of the European Convention on Human Rights concerning the attacks on Ms Goncharuk and Ms Makhauri and the killing of Ms Goygova's mother and brother;
- a **violation of Article 2** of the Convention in all three cases concerning the failure to conduct an effective investigation into the attacks or killings;
- a **violation of Article 13** (right to an effective remedy) in all three cases;
- **no violation of Article 3** (prohibition of torture) in respect of the failure to protect Ms Goygova's mother and brother from torture; and
- **no violation of Article 34** (individual applications) in the case ***Goncharuk***.

Under Article 41 (just satisfaction), the Court awarded Mrs Makhauri 5,000 euros (EUR) in respect of pecuniary damage. In respect of non-pecuniary damage the Court awarded EUR 50,000 to Mrs Goncharuk and Mrs Makhauri, and EUR 40,000 to Ms Goygova. For costs and expenses, the Court awarded EUR 7,299 to Ms Goygova, the equivalent of EUR 4,400 to Mrs Goncharuk and the equivalent of EUR 12,550 to Mrs Makhauri.

1. Principal facts

[1] Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

The applicants were all residents of Grozny (Chechnya). Ms Goncharuk was born in 1962 and now lives in Norway, Ms Goygova was born in 1966 and now lives in Belgium and Ms Makhauri was born in 1959 and now lives in Ingushetia (Russia).

On 19 January 2000 Ms **Goncharuk** was in Staropromyslovskiy and was caught up in heavy shelling by the Russian forces. She was injured and hid with others in a cellar. She claimed that soldiers threw tear gas into the cellar, ordered everyone to come out and shot them. Five people died. The applicant, the only survivor, was wounded in the chest and lost consciousness. She left the area that night and was taken to hospital in Ingushetia with gunshot and shrapnel wounds to the knee joints and chest, concussion and neurotic asthenia. Her wounds were operated on. Ms Goncharuk claimed that she and her family and friends were subjected to intimidation and that she was afraid to contact the authorities to lodge an official complaint.

On 19 January 2000 Ms **Goygova** tried unsuccessfully to pass through a checkpoint in Grozny to see her brother, Said-Magomed Goygov (aged 31), and her mother, Maryam Goygova (aged 59). The applicant claimed that, the following day, she was told that an old lady (her mother) had been wounded by shrapnel the previous day. Three men (including her brother) had tried to take her mother out of Grozny in a handcart but had been stopped by soldiers, who beat the men and then shot them and the old lady. She later found and identified her mother's body, which had a shrapnel wound in the abdomen and a gunshot wound in the head. On 10 February 2000 her brother's body, with at least a dozen gunshot wounds, was discovered in a garage near to where her mother's body had been found. His right ear had been severed.

Ms **Makhauri**, who had left her home during the bombardment of Staropromyslovskiy, returned to Grozny on 22 January 2000 to find that her home had been destroyed. She spotted soldiers looting buildings and tried to hide, but was seen by them. She was taken to a courtyard where the soldiers shot at her and two other women. She was wounded and lost consciousness, waking when a soldier tore a gold earring from her ear. She fainted again and awoke with a diesel-soaked mattress on her legs. Her leg was burnt. She eventually managed to reach another house where she was given first aid. Relatives later took her to Ingushetia where she spent two months in hospital. Her left arm was left partially paralysed and, in 2002, she was officially recognised as disabled.

The events of 19 and 21 January were made known to the authorities by non-governmental organisations (NGOs) and through media and NGO reports. Human Rights Watch issued a report, including the applicants' cases, accusing Russian forces of murdering 38 civilians in Staropromyslovskiy between December 1999 and January 2000.

On 3 May 2000 Grozny Prosecutor's Office opened a criminal investigation into "mass murder by the '205th brigade' of the civilian population in the Novaya Katayama settlement of Grozny on 19 January 2000". Ms Goygova's relatives were named. The Russian Government submitted that the investigation had established that, in January and February 2000, a detachment of the federal forces had conducted a counterterrorist operation in Staropromyslovskiy and that, during the same period, several people living in the district had been killed by unknown persons using firearms.

On 26 April 2005 – after Ms Goncharuk's case before the European Court of Human Rights was communicated to the Russian Government – a criminal investigation was opened into her case, confirming that she had been shot and injured.

The investigations in the first two cases are still pending. Those responsible have not been identified.

The Russian Government submitted that the attack on Ms Makhauri had been the subject of two criminal investigations, opened in May 2000 and in September 2003, which had established that unidentified persons wearing masks and camouflage uniforms and armed with automatic weapons were responsible for her detention and shooting. The investigation failed to identify the culprits. It did not establish the involvement of servicemen of the Ministry of the Interior, the Federal Security Service (FSB) or the army in the crime.

2. Procedure and composition of the Court

The applications were lodged with the European Court of Human Rights on 3 February 2000 (***Goncharuk***), 5 January 2001 (***Goygova***) and 20 June 2000 (***Makhauri***). All three cases were declared admissible on 18 May 2006.

3. Summary of the judgments[1]

Complaints

The applicants in ***Goncharuk*** and ***Makhauri*** alleged that they were subjected to life-threatening attacks by Russian servicemen. The applicant in ***Goygova*** alleged that her mother and brother were the victims of extra-judicial killings by Russian servicemen. They all relied on Articles 2, 3 and 13.

Ms Goygova also relied on Article 5 (right to liberty and security) in respect of her relatives' unlawful detention prior to their deaths, and Article 6 § 1 (right to a fair hearing) concerning a civil claim she had made for damages. Relying on Article 34 (right of individual petition) Mrs Goncharuk complained of harassment following her application to the Court.

Decision of the Court

Article 2

Effective investigation

Goncharuk and Makhauri

In ***Goncharuk*** the Court observed that the authorities were well aware of the applicant's allegations that she had been shot and injured at a sufficiently early stage and conducted several investigations into the matter. Yet no investigation specifically dealt with the attack on her until the complaint was communicated to the Russian Government in July 2004. There was therefore an unacceptable delay of several years in the investigation of a serious crime,

[1] This summary by the Registry does not bind the Court.

which could not be explained solely by the applicant's failure to lodge a formal complaint with the public prosecutor.

In ***Makhauri*** the Court noted that, while the information about the attack on the applicant and other similar crimes committed in Staropromyslovskiy had been available to the authorities no later than early February 2000, it was not until May 2000 that a criminal investigation began. No explanation had been put forward for that delay.

In reviewing the submitted investigation file in ***Goncharuk***, ***Makhauri*** and also in previous cases, the Court was under the impression that the authorities – whether consciously or otherwise – did not attempt to establish a comprehensive picture of the events in Staropromyslovskiy at the relevant time. The investigation of various episodes was spread between different prosecutors' offices, which were sometimes not even aware of each others' work. It appeared that no attempt was made to check credible allegations that a number of attacks committed in the district at the same time had followed the same pattern and could have been committed by the same people. There was no map or plan of the district which might show the locations of the bodies and important evidence, and no attempt seemed to have been made to draw up a list of the local residents who remained in the district in the winter of 1999 - 2000.

It appeared that the investigation failed to identify any military units or to obtain a general plan of the military operations conducted in Staropromyslovskiy, despite strong evidence that such an operation took place.

The Court concluded that the authorities failed to carry out an effective criminal investigation into the attacks on the two applicants, in violation of Article 2.

Goygova
The Court reiterated that it had already found the investigation of the murders of the inhabitants of the Staropromyslovskiy district, including the applicant's two relatives, to be ineffective and in violation of Article 2 in its Chamber judgment in the case of ***Khashiyev and Akayeva v. Russia*** (24 February 2005).

Considering whether the steps taken by the authorities after that judgment could have rectified initial failings in the investigation, the Court observed that the investigation into the deaths was never completed and the individuals responsible were not identified or indicted. The Court noted with surprise that the prosecutors' orders submitted by the Government did not show any visible progress in the task of solving the killings of the applicant's two family members over a period of almost three years. The decision to grant the applicant victim status was taken only in March 2003 and the only information communicated to the victims, it appeared, concerned the decisions to adjourn and to reopen the investigation, and those letters did not refer to any progress in solving the crime.

The Court concluded that Russia had failed in its obligation to conduct an effective, prompt and thorough investigation into the killing of the applicant's mother and brother, in violation of Article 2.

<u>Right to life</u>

In its ***Khashiyev and Akayeva*** judgment, the Court had established that the applicants' relatives had been last seen alive in the hands of armed persons being followed by a military vehicle, or that they had been killed during an identity check on 19 and 20 January 2000. In that judgment the Court also referred to the conclusions of the domestic court which had found that by 19 January 2000 Staropromyslovskiy was under the control of Russian forces, such that only they could have conducted security operations in it. The Court found no reasons to question those conclusions and found that they too supported the applicants' accounts in all three cases.

In addition, as only the authorities had full knowledge of the events in issue, strong presumptions of fact arose in respect of the applicants' relatives' deaths.

The applicants' allegations in all three cases that servicemen were responsible were not disputed by the Government or contradicted by the documents in the investigation file. The Government did not present any alternative account of the attacks or killings.

As regards Ms Goygova's brother, Said-Magomed Goygov, the Court observed that his body was one of those identified in ***Khashiyev and Akayeva***. The Court therefore concluded that the applicant's brother was killed on 19 January 2000 by agents of the State.

In ***Goncharuk*** and ***Makhauri***, given the circumstances of the attack on the applicants and their injuries, as supported by the medical documents and witness statements, the Court concluded that the degree and type of force used meant that the attacks on the applicants could be considered under Article 2.

The Court found that the applicants had made a prima facie case that they (Ms Goncharuk and Ms Makhauri) were victims of a life-threatening attack and that Ms Goygova's mother and brother were killed by servicemen during a security operation on 19 January 2000 in Staropromyslovskiy district, and that the Government had failed to provide any other satisfactory and convincing explanation of the events.

The attacks and killings could therefore be attributed to the State. In the absence of any justification in respect of the use of lethal force by Russian agents, the Court found that there had been a violation of Article 2 concerning the life-threatening attacks on two of the applicants and the killings of Ms Goygova's relatives.

Article 3

Ill-treatment

In ***Goncharuk*** and ***Makhauri*** the Court observed that no separate issue arose under Article 3.

In ***Goygova*** the Court noted that the applicant did not contact the authorities or doctors, nor did she take photographs of her mother's body before burial. She submitted that her mother's body had shrapnel and firearm wounds. The documents relating to the description of the body of Magomed Goygov referred to firearm wounds and contained no reference to injuries that could have been inflicted as a result of proscribed ill-treatment. An additional statement by a pathologist also referred only to injuries caused by bullets fired from a high-velocity rifle. In those circumstances, the Court was unable to find beyond all reasonable doubt that Maryam

Goygova or Said-Magomed Goygov were subjected to ill-treatment. It accordingly could not conclude that there had been a violation of Article 3.

Article 13

In all three cases, the Court found that, as the criminal investigations were ineffective and the effectiveness of any other remedy that might have existed, including the civil remedies suggested by the Government, was consequently undermined, the State had failed in its obligations, in violation of Article 13.

Article 34

The Court noted that Ms Goncharuk had not submitted any evidence to corroborate her allegations of intimidation other than her own rather vague statements. She did not indicate any details of the alleged harassment, such as the dates and circumstances of the alleged intimidation, or statements by the person allegedly involved. The Court also noted that the authorities had no direct contact with the applicant, either in respect of the initial attack on her, or in relation to the complaint lodged by her to the Court and the ensuing criminal investigation. The Court did not therefore have sufficient material before it to find that Russia had violated its obligation under Article 34.

Other Articles of the Convention

In ***Goygova*** the Court found that no separate issues arose under Articles 5 and 6.

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The Court's judgments are accessible on its Internet site (http://www.echr.coe.int).

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The European Court of Human Rights *was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.*