



Russian military cannot be held responsible for death of civilian in exchange of fire in Chechen town; investigation was, however, inadequate

In today's Chamber judgment in the case **Estamirova v. Russia** (application no. 27365/07), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 2 (right to life) of the European Convention on Human Rights as concerned the death of Asradiy Estamirov;

a violation of Article 2 as concerned the authorities' failure to conduct an effective investigation into the circumstances in which Asradiy Estamirov died; and,

a violation of Article 13 (right to an effective remedy) in conjunction with Article 2.

Principal facts

The applicant, Sovman Estamirova, is a Russian national who was born in 1959. At the time of the events she lived in Argun; she currently lives in Noybera. Both towns are in the Chechen Republic. Her case concerned the killing of her husband, Asradiy Estamirov, born in 1957, on 5 January 2001 during an intense exchange of fire between a military convoy and unidentified people, while he happened to be standing at a street corner in Argun. The investigation into his death, still in progress, has so far failed to identify those responsible.

Complaints, procedure and composition of the Court

Relying in particular on Articles 2 (right to life) and 13 (right to an effective remedy), Ms Estemirova alleged that her husband had been killed by Russian servicemen and that the authorities had failed to carry out an effective investigation into her allegation.

The application was lodged with the European Court of Human Rights on 8 June 2007.

Judgment was given by a Chamber of seven, composed as follows:

Nina **Vajić** (Croatia), *President*,
Anatoly **Kovler** (Russia),
Elisabeth **Steiner** (Austria),
Mirjana **Lazarova Trajkovska** ("the Former Yugoslav Republic of Macedonia"),
Julia **Laffranque** (Estonia),
Linos-Alexandre **Sicilianos** (Greece),
Erik **Møse** (Norway), *Judges*,

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

and also André **Wampach**, *Deputy Section Registrar*.

Decision of the Court

Article 2

The Russian Government had cooperated with the Court and provided a copy of the investigation file. According to that file, Ms Estemirova's husband had been shot as a result of an exchange of fire between a military convoy and unidentified people. There had been no direct witnesses to the incident. Nor was there material evidence to prove whether the bullet which had caused her husband's death had been fired from a weapon belonging to the military or to the unidentified group. The Court could not therefore conclude "beyond reasonable doubt" that Asrادی Estamirov had been shot by the Russian military. There had therefore been no violation of Article 2 as concerned the killing of Asrادی Estamirov.

The Court found, however, that there had been a violation of Article 2 concerning the authorities' failure to conduct an effective investigation into the circumstances in which Asrادی Estamirov had died. Notably, numerous essential steps had not been taken such as questioning the head of the military convoy, the senior drivers and other servicemen. There had also been a delay of more than eight years in carrying out a ballistic expert examination to identify the firearms used during the incident. Moreover, the investigation had been suspended and resumed on a number of occasions with lengthy periods of inactivity and, although Ms Estemirova had been told of those procedural steps, she had not been informed of any significant developments.

Article 13

The Court reiterated that where, as in the applicant's case, the criminal investigation into her husband's killing had been ineffective, and the effectiveness of any other remedy that might have existed had consequently been undermined, the State had failed in its obligation under Article 13. As a result, there had been a violation of Article 13 in conjunction with Article 2.

Article 41 (just satisfaction)

The Court held that Russia was to pay Ms Estemirova 30,000 euros (EUR) in respect of non pecuniary damage and EUR 2,500 for costs and expenses.

The judgment is available only in English.

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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.