CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 57952/00
by Aminat Madarovna ELSANOVA
against Russia

The European Court of Human Rights (Fourth Section), sitting on 15 November 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr M. PELLONPÄÄ,
Mr K. TRAJA,
Mr A. KOVLER,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 27 April 2000,

Having deliberated, decides as follows:

THE FACTS

The applicant, Aminat Madarovna Elsanova, is a Russian national, who was born in 1955. She currently lives in Samashki, Achkhoy-Martan District, Chechnya. Before March 2000 she used to live in Grozny. She is represented before the Court by William Bowring and Kirill Koroteyev, lawyers of the Human Rights Centre Memorial (Moscow) and the European Human Rights Advocacy Centre - EHRAC (London). The respondent Government are represented by Mr P.A. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

The facts of the case are partially disputed by the parties. They may be summarised as follows.

In summer 1999 the applicant, who used to live in Grozny, set up a farm in the village of Nizhaloy, Shatoy District. In April 1997 – July 1999 she, together with her sister Marem, bought 100 cows at a collective farm in Dagestan, which she brought to Nizhaloy. The applicant submits that in Nizhaloy she owned a house of two rooms and a summer and a winter cow-shed. She also owned a Belarus tractor, a caterpillar tractor and a Niva car.

The applicant's brother Mayrbek Elsanov and neighbour G. permanently lived in Nizhaloy with their families and took care of the applicant's cattle, for which she paid them a monthly salary.

In September 1999 hostilities started in Chechnya between the Russian military and the armed groups of the Chechen rebel fighters. Grozny and other towns and villages came under attack from the Russian military forces, which were trying to regain control over the Republic.

In March 2000 the applicant left Grozny because of the hostilities and went to Nizhaloy.

The applicant submits that on 16 March 2000 the village unexpectedly came under attack from the air. As a result of a blast the applicant's brother Mayrbek Elsanov received a splinter wound in the back and bled heavily. The applicant's niece Laura Shakhgiriyeva, aged four, was also wounded by a blast. They both died within a few hours without receiving medical help. Their neighbour G. was also killed by a blast on the same day.

The strikes continued all day long and the applicant and her family members had to hide in a cave. During the night the applicant and her relatives brought the bodies of her brother and niece to the family cemetery and hastily buried them.

According to the applicant, the attack on the village continued until 26 March 2000. All her property and her father's house, situated nearby, were destroyed. Her cattle were killed and the vehicles owned by her were destroyed.

When the attack was over the applicant and her relatives walked from their village to Mekhety. From there the applicant arrived at the village of Samashki, Achkhoy-Martan District, where she currently resides.

In October 2000 the Civil Registration office of the Shatoy District issued death certificates in respect of Laura Shakhgiriyeva - born on 12 January 1996, died on 16 May 2000 in Nizhaloy (the applicant submits that there was a mistake in the recorded date of death) - and in respect of Mayrbek Elsanov - born on 27 October 1963, died on 16 March 2000 in Nizhaloy.

On 11 April 2001 the military commissariat of the Achkhoy-Martan District confirmed that, for pension purposes, the applicant's brother

Mayrbek Elsanov had been taken off the military draft register as of April 2000 because of his death.

The applicant submits that she applied to the prosecutor's office and to the court of the Shatoy district on unspecified dates in 2001 and 2002. The applicant is not aware of the results. She submits that an officer at the prosecutor's service told her to stop complaining or she would "disappear". At some date a group of soldiers on armoured personnel carriers (APC) came to her house, produced a copy of her application to the Shatoy District Court and tore it up. They threatened her with revenge if she continued to complain. The applicant did not pursue any domestic remedies afterwards, fearing for her life.

The Government submit in their Memorandum of 1 September 2004 that the information contained in the applicant's complaint, namely the attack on Nizhaloy, the death and wounding of its residents, including the applicant's relatives, and the destruction of her property was not brought to the attention of the competent authorities. There is no record of her alleged complaints to the prosecutor's office or to the court. Following the communication of the complaint the local prosecutor's office has been carrying out a verification of the complaints.

The Government further state that the courts in Chechnya started functioning in November 2000. There is no record of the applicant's application to any district court in Chechnya. On 3 August 2004 the applicant was questioned by a judge of a district court and stated that she had never applied to a court with a complaint.

The applicant submits that as a result of the sustained shock she became ill and was operated on. In 2003 she was classified as disabled due to her illness.

B. Documents submitted by the parties

1. Documents submitted by the applicant

The applicant submitted the following documents to support her claims.

First, she submitted two application forms: a brief one dated 27 April 2000, and a more detailed one dated 7 January 2004. In her application form of 27 April 2000 the applicant alleged a violation of Article 1 of Protocol No. 1 concerning the damage to her property and of Article 13 and did not mention the death of her relatives. Her complaints under Articles 2, 3 and 8 of the Convention are set out in the second application form.

The applicant submitted her own statements of facts, dated December 2003 and January 2004. She also submitted a statement by her sister Marem Elsanova, who was not herself a witness of the events in Nizhaloy. The applicant also submitted a statement by Raisa K., who was in Nizhaloy on 16 March 2000, which corroborated the applicant's account.

The statement does not indicate the witness's address or identity document. It is dated December 2003.

The applicant submitted medical documents indicating that in 2001 she underwent an operation for cancer and that in 2003 she received post-operational treatment.

As a proof of her ownership of the property in Nizhaloy and its destruction the applicant submitted a letter issued in March 2001 by an enterprise in Dagestan which stated that in the period April 1997 – July 1999 the applicant had purchased there a hundred head of cattle for the sum of roubles (RUR) 97,000.

In March 2001 the administration of the village of Samashki issued a note to confirm that in the period 1997 – 2000 the applicant had regularly travelled to the Shatoy District to take care of the cattle and her farm there, which was destroyed in March 2000.

2. Documents submitted by the Government

The Government submitted a letter from the Chechnya Supreme Court which stated that the applicant had never applied to a court in Chechnya with a claim for compensation by way of damages.

They also submitted a copy of the applicant's written explanations addressed to the chairman of the Achkhoy-Martan District Court, dated August 2004 and collected by a judge of that court. The applicant stated that on 19-26 March 2000 she had been subjected to an air attack in Nizhaloy, Shatoy District. As a result of the attack the applicant's house and farm, one hundred cows, two tractors and a "Niva" car were destroyed. Eight persons had been killed as a result of the attack. The applicant further stated that she had applied to the Shatoy District Prosecutor's Office which had failed to react. The applicant had not applied to the law-enforcement bodies in the Achkhoy-Martan district, because they were not functionning in early 2000. In June 2000 the applicant talked to a representative of the NGO Memorial and decided to apply to the international court.

COMPLAINTS

1. The applicant complains under Article 2 of the Convention on account of her relatives' killing and on account of the failure of the authorities to conduct an effective investigation.

2. The applicant complains under Article 3 of the Convention that the attack on 16 - 26 March 2000 constituted inhuman treatment in the meaning of Article 3, from the consequences of which she continues to suffer.

3. The applicant complains about destruction of her house and property under Article 8 of the Convention and Article 1 of Protocol No. 1.

4. The applicant complains under Article 13 that she has no effective remedies on the domestic level.

5. The applicant submits that the explanations collected from her in August 2004 by a judge of the Achkhoy-Martan District Court constituted an undue interference with the right of individual petition guaranteed by Article 34 of the Convention.

THE LAW

The applicant complains that her brother and niece were killed unlawfully by State agents and that no effective investigation was carried out into their deaths, in violation of Article 2. She complains that she herself was subjected to treatment in violation of Article 3. The applicant invokes Article 8 of the Convention and Article 1 of Protocol No. 1 to complain about the destruction of her home and property. She contends that no effective remedies existed in respect of the above violations. The applicant also submits that Russia has breached its obligation under Article 34 not to hinder the right of individual petition.

1. As to the applicant's complaints under Article 2 about the deaths of her close relatives, the Government argue that the complaint is manifestly ill-founded and that, in any event, the applicant has failed to exhaust domestic remedies.

The applicant deems that the complaint is well-founded and should be declared admissible.

The Court considers that it should first examine whether the applicant has complied with the six-months time limit under Article 35 of the Convention.

The Court recalls in the first place that the purpose of the six-month rule is to promote security of law and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. Furthermore, it ought also to protect the authorities and other persons concerned from being under any uncertainty for a prolonged period of time (see *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002, and *Bayram and Yıldırım v. Turkey* (dec.), no. 38587/97, ECHR 2002-III).

The Court further recalls that if no remedies are available or if they are judged to be ineffective, the six-month time-limit in principle runs from the date of the act complained of (see *Hazar and others v. Turkey* (dec.), no. 62566/00, 10 January 2002).

However, special considerations could apply in exceptional cases where an applicant avails himself of or relies on an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective; in such a case it is appropriate to take as the start of the six-month period the date when he first became aware or ought to have become aware of those circumstances (see *Paul and Audrey Edwards*

v. the United Kingdom (dec.), no. 46477/99, 7 June 2001; *Bulut and Yavuz v. Turkey* cited above).

In the present case when the applicant applied to the Court in April 2000, she failed to mention the death of her relatives in her application form, either in the statement of facts, in the complaints under specific Articles of the Convention or in the supporting documents. Her complaints at that stage were confined to the destruction of her property. It was only in January 2004 when the applicant submitted a new application form that raised issues under Article 2 for the first time.

The applicant argues that she complied with the six months requirement because she complained to the Court in April 2000 about the attack on Nizhaloy. She did not have any effective domestic remedies to exhaust and in any event the violations alleged are of a lasting character. She also states that in any event she applied to a prosecutor's office but it did not take any steps to investigate.

The Court observes that under Article 2 the applicant makes a complaint about the death of her brother and niece. As a close relative she may be expected to display due diligence and to take the requisite initiative in pursuing the avenues of redress which she considers effective. The first time she mentioned the deaths of her relatives and the violation alleged under Article 2 was in January 2004. She has submitted no explanation for the delay of almost four years in making such a serious complaint.

In so far as the applicant may be understood to say that she was pursuing the domestic remedies which were later found to be ineffective, the Court notes that, despite a specific request, she failed to indicate when she had applied to the prosecutor's office and submitted no copies of her applications. In any event, she states that she applied to the prosecutor in 2001 or 2002, and did not petition that office after that. Therefore it may be concluded that the applicant became aware of the ineffectiveness of that remedy at latest in 2002, which still does not bring the applicant's complaint under Article 2 within the six-months limit.

The Court finds, therefore, that this part of the application has been introduced out of time and is inadmissible under Article 35 §§ 3 and 4 of the Convention.

2. As to the applicant's complaints under Articles 3, 8 and Article 1 of Protocol No. 1, the Government first argue that the applicant failed to exhaust domestic remedies because she did not address them to the competent national authorities, such as courts. The Government object to the applicant's complaints, noting that she failed to substantiate them by any relevant documents and, in the absence of any evidence supporting the applicant's allegations, ask the Court to declare her complaints manifestly ill-founded within the meaning of Article 35 § 3.

The applicant maintains her complaints. She contends that she has exhausted domestic remedies because she applied to a public prosecutor and to a court, but no result ensued from these applications except that she was

subjected to intimidation by the security forces. In any event, the existing remedies should be regarded as ineffective due to the special circumstances existing in Chechnya in 2000, the applicant's personal vulnerability and the practice of non-investigation of complaints of crimes committed by the military in Chechnya. She argues that the Government's position should be interpreted to say that they do not dispute the essential facts as stated by her and that she has submitted sufficient proof of her allegations. The failure of the domestic investigation to react to her complaints can not be attributed to her.

The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first 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 not that 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 Akdıvar and Others v. Turkey judgment of 16 September 1996, *Reports of Judgments and Decisions*, 1996-IV, p. 1210, §§ 65-67). It is also established that a mere doubt as to the prospect of success is not sufficient to exempt an applicant from submitting a complaint to the competent authority (see the Whiteside v. the United Kingdom decision of 7 March 1994, application no. 20357/92, DR 76, p. 80).

The Court, however, finds that in the present case it is not obliged to determine whether the applicant has exhausted domestic remedies since, in the Court's opinion, the evidence produced by the applicant do not provide sufficient *prima facie* evidence of her complaints.

First, the Court cannot agree with the interpretation of the Government's position suggested by the applicant. It is clear from the Memorandum submitted by Government and the appended documents that the Government disagree with the applicant's allegations, find them unsubstantiated and request the rejection of the complaint as manifestly ill-founded.

Turning to the particular circumstances of the case, the Court observes that the applicant's complaints about the attack are not corroborated by concrete evidence, apart from her own statements. The applicant submitted no documents relevant to her claims of ownership of property in the village of Nizhaloy, such as land or property titles, extracts from land or tax registers, documents from the local administration, plans, photographs or any other relevant evidence. Similarly, the applicant submitted no documents whatsoever which would confirm her claims of destruction or

damage to this property. The applicant failed to submit any details about the vehicles allegedly owned by her and destroyed, for example registration numbers and documents. Her own statements are rather brief and do not allow the Court to draw a conclusive picture of the extent of her property or losses. The statement produced by the applicant's sister and a neighbour are not helpful either, because they are also very brief and for the most part repeat the applicant's submissions almost word for word. In any event, the applicant's sister was not herself a witness to the events of March 2000 and the identity of the neighbour K. would be difficult to establish in the absence of her address or details of the identity documents.

The Court notes that the document issued by the Samashki village administration in 2001 states that in the period 1997 – 2000 she had regularly travelled to the Shatoy District to take care of a farm. However, according to the applicant's own submissions, she lived in Grozny before 1999, then moved to Nizhaloy and only arrived in Samashki in April 2000. The evidential value of this document is therefore uncertain.

The applicant does not claim that any relevant documents have been lost, or, assuming that this can be deduced from her statement of facts, that she has ever taken any steps to recover them.

The applicant does not rely on any independent sources to confirm her allegations of the attack and losses (see, *a contrario*, *Isayeva v. Russia*, no. 57950/00, § 28, 111-115, 24 February 2005). She has been unable to indicate any additional witnesses who could confirm her statements, such as the family of her brother or of her neighbour G.

In this context it is also relevant that the applicant failed to submit to the Court a copy of any complaint to the national authorities concerning the issues of which she complains to the Court. Moreover, the applicant is unable to indicate the time of her application to the prosecutor's office or to give any other details of such application. The Government submit that there exists no reference to the applicant's complaints in the registry of the prosecutor's office in Chechnya. The Court considers that the apparent failure to apply to any domestic authority is an additional important factor relevant for the evaluation of well-foundedness of her complaint.

In so far as the applicant suggests that she continues to suffer from the consequences of the attack and refers to the medical documents, these indicate that in 2001 and 2003 the applicant received treatment in relation to cancer. There was no suggestion made that this illness is a result of the actions by State agents, as the applicant alleges. In the absence of any independent evaluation of this claim, the Court is unable to reach the conclusion that the situation falls within the ambit of Article 3.

The Court observes that since April 2000 the applicant has been represented by an NGO, the Human Rights Centre Memorial, and that there is no sign in the materials before it of their attempt to intervene on the applicant's behalf in front of the national authorities, either in respect of her substantive complaints or in respect of the supposed intimidation.

Bearing in mind the fact that the applicant has failed to corroborate her allegations of violations under Articles 3, 8 and 13 of the Convention and Article 1 of Protocol No. 1, the Court considers that she has failed to lay the basis of an arguable claim that she was subjected to an attack in March 2000 in the circumstances she alleges and lost her house and property there.

It follows that these complaints must be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

3. The applicant argues that the explanations collected from her in August 2004 by a judge of the Achkhoy-Martan District Court constituted a breach of Russia's obligation under Article 34 of the Convention not to hinder in any way the right of individual petition, in so far as it concerned her application to the European Court of Human Rights.

Turning to the contents of the document in question, the Court notes that central to it were the applicant's allegations about the events of March 2000. The questions about the application to the Court clearly were not essential to the interviews, and the applicant was not requested, for example, to certify the authenticity of her complaints or to give details about its contents (see, *a contrario*, *Dulaş v. Turkey*, no. 25801/94, § 81, 30 January 2001). The applicant does not allege that there was an interference with her representation before the Court or that she perceived the interview as otherwise intimidating. In such circumstances the Court has no grounds to conclude that there was an undue interference with the applicant's right to petition to the Convention organ.

For these reasons, the Court unanimously

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President