



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

FIRST SECTION

CASE OF Inderbiyeva v. Russia

(Application no. 56765/08)

JUDGMENT

STRASBOURG

27 March 2012

FINAL

24/09/2012

*This judgment has become final under Article 44 § 2 (c) of the Convention.
It may be subject to editorial revision.*

In the case of Inderbiyeva v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyeu,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 6 March 2012,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 56765/08) 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 Deshi Inderbiyeva (“the applicant”), on 10 July 2008.

2. The applicant was represented by Mr D. Itslyayev, a lawyer practising in Grozny. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that two of her sisters had been killed by Russian servicemen in Grozny in January 2000. She alleged a violation of Articles 2, 3, 6 and 13 of the Convention.

4. On 11 September 2009 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application and to give notice of the application to the Government. Under the provisions of former Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. The Government objected to the joint examination of the admissibility and merits of the application. Having considered the Government’s objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1968. She lives in Grozny. She is the sister of Shema (also spelt Sheima) Inderbiyeva, who was born in 1963, and Shamani Inderbiyeva, who was born in 1966.

A. The killing of Shema and Shamani Inderbiyeva and subsequent events

1. The applicant's account

7. At some point in 1999 due to heavy hostilities between Russian forces and Chechen fighters the applicant moved to a refugee camp in Ingushetia. Two of her sisters, Shema Inderbiyeva and Shamani Inderbiyeva, and her mother Yakhita Inderbiyeva remained in their flat – no. 10 in the block of flats at 154B, Pugacheva Street in the Staropromyslovskiy District of Grozny. Most of the other residents of the district left for safer areas, but the applicant's relatives stayed to look after the family property. According to the applicant, Russian forces regained control over the Staropromyslovskiy District at the beginning of January 2000.

8. In December 1999 the applicant's mother and her sisters Shema and Shamani Inderbiyeva moved from their flat to the basement under the pavilion situated in the courtyard of their block of flats. On 1 January 2000, owing to the intensity of a fire, Shema and Shamani Inderbiyeva decided to hide in the basement of the applicant's block of flats at no. 285 (in the documents submitted the address is also stated as no. 287) in Derzhavina Street in the Staropromyslovskiy District of Grozny. Their mother, Yakhita, remained in the basement at 154B, Pugacheva Street as she was sick and could not walk. The applicant's sisters regularly visited their mother and brought her food.

9. On 8 February 2000 (in the submitted documents the date was also referred to as 12 February 2000) the applicant, together with an acquaintance, Ms F.A., went to visit her relatives in Grozny. She did not find anybody in her family's flat in Pugacheva Street and went to find out about her sisters and mother from the neighbours who lived in her block of flats in Derzhavina Street. In the basement of the house the applicant found her mother, who was in bed, in a state of shock and incoherent, and who kept saying: "Russian soldiers, smoke, fire".

10. Having spent the night with her mother in the basement, on the following day the applicant went to look for her sisters in Pugacheva Street.

In the basement located in the courtyard of her family's block of flats she found the two burnt corpses of Shema and Shamani Inderbiyeva. The applicant was able to identify her sisters by their personal belongings, pieces of hair, remaining facial features and teeth crowns.

11. The applicant collected the remains in pillow cases and returned with them to Derzhavina Street, where she met Ms M.Z., an elderly ethnic Russian. The woman told her that on 10 January 2000 she and her husband had been walking next to the basement at 154B, Pugacheva Street when they had seen three servicemen looking into the basement under the pavilion. One of the servicemen, a senior one, had said to someone in the basement: "Mother, come out and let's go to the military commander's office for an identity check". Then he had leaned over and pulled the applicant's mother out. He had walked her away from the pavilion by hand whereas two other servicemen had remained next to the basement. Next, one of the two soldiers had thrown something inside. A powerful explosion followed as a result of which the pavilion had been partially destroyed and smoke had been coming out from the basement. The applicant's mother had turned back and fainted; looking at her the soldiers had started laughing. Ms M.Z. and her husband had become scared and walked away.

12. On 10 February 2000 the applicant and Ms F.A. went to the Staropromyslovskiy District military commander's office to obtain permission to bury her sisters' remains in the cemetery of the village of Valerik in the Urus-Martan District. After she explained to the servicemen that her sisters had been killed by Russian soldiers, the servicemen wanted to detain her and even opened gunfire to stop her, but she managed to run away. Then she saw a group of Chechens in military uniforms and asked them for help. The servicemen from the military commander's office requested that the Chechens hand the applicant over to them, but they refused. Then the Chechen servicemen took her to the 36th District of Grozny (*36-й участок*); from there the applicant managed to get a lift to Valerik.

13. On the same date, 10 February 2000, the applicant buried her sisters' remains in the Valerik cemetery. After that, she returned to the refugee camp in Ingushetia.

14. According to the applicant, her mother Yakhita, after witnessing the murder of her daughters Shema and Shamani by the soldiers, suffered a severe psychological breakdown and became mentally ill.

15. In support of her statements, the applicant submitted her own statement dated 22 February 2010; a statement by Ms G.P. dated 29 January 2004; a statement by Mr S.Kh. dated 1 March 2010; a statement by Ms Z.T. dated 1 February 2004, a copy of the witness statement by the applicant's mother Yakhita Inderbiyeva dated 5 July 2000 and copies of other documents received from the authorities. The applicant also enclosed a Human Rights Watch report "Civilian Murders in the Staropromyslovskiy

District of Grozny” of February 2000 and a sketched map of the district indicating the place where the bodies of her sisters had been discovered. The applicant also referred to the Court’s judgments *Khashiyev and Akayeva v. Russia* (nos. 57942/00 and 57945/00, 24 February 2005), *Makhauri v. Russia* (no. 58701/00, 4 October 2007), *Tangiyeva v. Russia* (no. 57935/00, 29 November 2007), *Goncharuk v. Russia* (no. 58643/00, 4 October 2007), and *Goygova v. Russia* (no. 74240/01, 4 October 2007), and the witness statements contained therein, stating that the events she complained of had been examined by the Court in those judgements and that they concerned the same events which had taken place in the Staropromyslovskiy District of Grozny in January 2000.

2. Information submitted by the Government

16. The Government did not challenge the matter as presented by the applicant. They stated that the circumstances of the events were still under criminal investigation and that unidentified persons had killed the applicant’s sisters.

B. The official investigation of the murder

1. Information submitted by the applicant

17. The death of Shema and Shamani Inderbiyeva was initially investigated as part of criminal case no. 12038 opened on 3 May 2000 by the Grozny Town Prosecutor’s Office (the town prosecutor’s office). The criminal investigation was initiated after the publication in the newspaper *Novaya Gazeta* on 27 April 2000 of an article entitled “Freedom or death” concerning the mass murder of civilians by servicemen of the 205th brigade on 19 January 2000 (in the documents submitted the date was also referred to as 19 February 2000) in Grozny.

18. On 5 and 17 July 2000 the applicant’s other sister Mobarik Inderbiyeva (in the documents submitted also spelt Moberik) and her mother Yakhita Inderbiyeva were questioned by the investigators.

19. The applicant was neither kept informed of the progress in the investigation of criminal case no. 12038 nor granted victim status in the criminal case.

20. On 2 July 2003 the Staropromyslovskiy District Prosecutor’s Office in Grozny (the district prosecutor’s office) opened criminal case no. 50080 in connection with the murder of the applicant’s sisters.

21. On 6 December 2007 the applicant requested that the investigators allow her to access the investigation file. On 10 December 2007 her request was granted in part and she was able to obtain copies of a few basic procedural decisions.

22. On 15 April 2008 the applicant complained to the Staropromyslovskiy District Court of Grozny (the district court) that the investigation in criminal case no. 50080 was ineffective. She requested that the court order the district prosecutor's office to resume the investigation and conduct it in a thorough and effective manner.

23. On 19 May 2008 the district court rejected the applicant's complaint stating that on 16 May 2008 the district prosecutor's office had already resumed the investigation of the criminal case.

24. According to the applicant, throughout the investigation the authorities failed to provide her with information on the progress of the criminal proceedings in case no. 50080.

2. Information submitted by the Government

25. On 3 May 2000 the town prosecutor's office opened criminal case no. 12583 in connection with the publication of the article "Freedom or death" in *Novaya Gazeta* concerning the mass murder of civilians on 19 February 2000 by the 205th brigade of the Russian military forces in the Katayama (also spelt Katoyama) settlement in the Staropromyslovskiy District of Grozny.

26. On 17 June 2000 the investigators from the town prosecutor's office questioned the applicant who stated that on 9 February 2000 she had returned to Grozny from Ingushetia and found out that her sisters Shema and Shamani had been killed by servicemen from military unit no. 3737. On the same date she had found her sisters' bodies in the basement at no. 154B Pugacheva Street and had subsequently buried them at a cemetery in the Achkhoy-Martan District.

27. On the same date the investigators questioned the applicant's sister Mobarik Inderbiyeva who stated that on 12 February 2000 the applicant had returned home with the remains of their sisters Shema and Shamani who had been blown up by military servicemen with a flamethrower on 10 January 2000 while they had been hiding in the basement. The witness further stated that she had been able to identify the remains of her sisters by their personal belongings, pieces of hair, remaining facial features and teeth crowns. The witness stressed that her sisters could have been killed only by Russian soldiers as the area in question had at the time been under the full control of the Russian military and it had been impossible for persons who had not belonged to the federal forces to access the premises without a special pass.

28. On 5 July 2000 the investigators questioned the applicant's mother Yakhita Inderbiyeva who stated, amongst other things, that at some point in January 2000 the applicant had told her that she had found the burnt remains of her daughters Shema and Shamani in the basement next to the pavilion.

29. On 27 July 2000 the investigators questioned Ms Ya.Z. whose statement concerning the circumstances surrounding the death of the applicant's sisters the Government did not give to the Court.

30. On 11 June 2003 the Chechnya Prosecutor's Office forwarded part of criminal case file no. 12038 to the district prosecutor's office to be severed into a separate criminal case. The relevant part of the file concerned the discovery by the applicant on 12 February 2000 of the burnt bodies of her sisters Shema and Shamani Inderbiyeva.

31. On 16 June 2003 the investigators in criminal case no. 12583 requested that the military prosecutor of the United Group Alignment (the UGA) inform them which military units had participated in the military operation in the Staropromyslovskiy District of Grozny in January and February 2000.

32. On 25 June 2003 an investigator from the district prosecutor's office initiated a preliminary inquiry into the discovery by the applicant of her sisters' bodies.

33. On 2 July 2003 the district prosecutor's office opened criminal case no. 50080 under Article 105 § 2 of the Russian Criminal Code (murder) in connection with the discovery on 12 February 2000 of the bodies of Shema and Shamani Inderbiyeva in the basement situated across the courtyard from the block of flats at no. 154B Pugacheva Street in Grozny.

34. On 3 July 2003 the investigators examined the crime scene at no. 154B Pugacheva Street. Nothing was collected from the scene.

35. On 29 July 2003 the investigators requested that the Staropromyslovskiy District Department of the Interior (the ROVD) identify any witnesses to the applicant's sisters' murder and that those witnesses be brought in for questioning.

36. In reply to the above request, on 1 August 2003 the ROVD informed the investigators that the applicant's mother and Ms Ya.Z. had been summoned for questioning.

37. On 15 September 2003 the investigators again requested that the ROVD identify witnesses to the murder, bring the applicant, her mother, her sister Mobarik Inderbiyeva and Ms Ya.Z. for questioning and identify the place of the applicant's sisters' burial.

38. On 17 September 2003 the ROVD reported to the investigators that it was impossible to establish other witnesses to the events, other than the applicant and Mobarik Inderbiyeva, as the buildings in the area had been destroyed as a result of the armed hostilities and residents who had resided there in 2000 had moved elsewhere.

39. On 17 September 2003 the applicant provided the ROVD officers with a short statement concerning the circumstances surrounding the discovery of her sisters' bodies and stated that her mother Yakhita Inderbiyeva had developed a mental illness as a result of her daughters' murder.

40. On 23 September 2003 the investigators again requested that the ROVD identify the witnesses to the events and bring them for questioning stating that the ROVD had provided them with superficial replies and failed to take meaningful steps to identify the witnesses.

41. On 5 October 2003 the investigators granted the applicant victim status in criminal case no. 50080 and questioned her. The applicant stated that on 9 February 2000 she had gone from Ingushetia to visit her sisters and mother in Grozny. On 10 February 2000 she had gone to Pugacheva Street where she had met a woman who had told her that her mother had become mentally ill and was living in a basement situated in a former dentist's office. The applicant had found her mother in an incoherent state. Then the applicant had met an elderly, ethnically Russian couple and the woman had told her about the circumstances of her sisters' murder by servicemen from military unit no. 3737. According to the woman, the soldiers had conducted a 'sweeping-up' operation in the area; they had pulled Yakhita Inderbiyeva out from the basement and let her go, but they had killed her daughters Shema and Shamani who had remained in the basement, with a flamethrower. Then the applicant had gone to the basement, found the burnt bodies of her sisters and had taken the remains to the village of Valerik for burial.

42. On 17 October 2003 the investigators ordered that the bodies of Shema and Shamani Inderbiyeva be exhumed.

43. On 21 October 2003 the investigators examined the bodies. It was impossible to establish any traces of physical violence, other than burns, owing to the state of decomposition.

44. On 22 October 2003 the investigators ordered forensic medical examinations of the remains of Shema and Shamani Inderbiyeva and requested that the experts determine the cause of their death, possible origins and the extent of the injuries, traces of gunshot wounds and their number.

45. On 23 October 2003 the Chechnya Bureau of Forensic Expert Evaluations (the Bureau) reported to the investigators that the state of the bodies of Shema and Shamani Inderbiyeva, which must have been exposed to high temperatures, precluded them from obtaining the information necessary to reply to the investigators' questions.

46. On 2 November 2003 the investigation in criminal case no. 50080 was suspended for failure to identify the perpetrators.

47. On 3 April 2004 (in the documents submitted the date was also referred to as 1 April 2004) the deputy Chechnya prosecutor overruled the decision to suspend the investigation as unsubstantiated and premature and ordered the investigators to resume the proceedings and take a number of steps, such as identifying the servicemen from military unit no. 3737 who had participated in the military operation in the Staropromyslovskiy District of Grozny in January 2000 and providing an explanation of the differences

in the witness statements given by the applicant, her sister Mobarik Inderbiyeva and Ms Ya.Z.

48. On 10 April 2004 the investigators again requested that the ROVD identify among the neighbourhood's residents the witnesses to the applicant's sisters' murder.

49. On 12 April 2004 the investigators again examined the crime scene; no evidence was collected.

50. On various dates in April 2004 the investigators questioned a number of witnesses, including Ms M.S., Mr R.M., Ms M.Ib., Ms T.Sh., Ms Kh.D., Mr R.Kh., Mr A.Kh., Ms F.M., Ms M.Kh., and Ms M.O., all of whom stated that at the material time they had lived elsewhere and had not witnessed the events in question; however, at some point they had learnt from their relatives and neighbours that the applicant's sisters Shema and Shamani had been killed by Russian servicemen and their corpses had been found later in the basement.

51. On 15 May 2004 the investigators requested that the Central Archives of the Russian Ministry of the Interior (the MVD) provide them with the following information:

“...the investigation established the involvement in the crime [the murder of the applicant's sisters] of military servicemen from military brigade no. 205.

According to the reply from the North-Caucasus Headquarters of the Internal Troops of the Ministry of the Interior to our request for information, documents concerning special operations conducted in the Chechen Republic in 1999, 2000, 2001 and 2002 were transferred to the Central Archives of the Ministry of the Interior.

Based on the above information, I ask you to identify which regiments of which military units and troops of the Ministry of the Interior carried out their service duties or were stationed between October 1999 and February 2000 inclusive in the Staropromyslovskiy District of Grozny... and to establish the location of these regiments and units at present...

...you are also requested to declare which troops of military brigade no. 205 of the Russian Military Forces participated in the military operation in Grozny... between October 1999 and February 2000 in the Staropromyslovskiy District of Grozny...”

52. On 16 May 2004 the investigators again requested that the ROVD identify the witnesses to the events, including the elderly Russian couple who had informed the applicant of the circumstances of her sisters' murder, and bring them for questioning.

53. On 8 June 2004 the investigation in the criminal case was again suspended for failure to identify the perpetrators.

54. On 9 July 2004 the supervising prosecutor overruled the decision to suspend the investigation as unsubstantiated and premature and ordered the investigators to resume it and take a number of steps, such as identifying the servicemen from military unit no. 3737 who had participated in the military

operation in the Staropromyslovskiy District of Grozny in January 2000. The prosecutor also ordered the investigators to provide an explanation of the differences in the witness statements given by the applicant, her sister Mobarik Inderbiyeva and Ms Ya.Z., and to identify the elderly Russian couple who had informed the applicant about the circumstances of her sisters' murder.

55. On 15 July 2004 the investigators again questioned the applicant's sister Mobarik Inderbiyeva who stated that she had found out about the circumstances of her sisters' murder from the applicant and that the area where her sisters had been killed had at the time been under the full control of the Russian military.

56. On 2 August 2004 the investigators questioned Mr I.A. who stated that he had not witnessed the murder, but had learnt from his relatives and neighbours that the applicant's sisters had been killed during a 'sweeping-up' operation by Russian military servicemen who had been called by the local population 'the jailers' (*'тюремщики'*).

57. On the same date, 2 August 2004, the investigators questioned Mr A.G. whose statement about the events was similar to the one given by Mr I.A.

58. On 9 August 2004 the investigation in the criminal case was suspended for the third time for failure to identify the perpetrators.

59. On 18 October 2004 the supervising prosecutor overruled the decision to suspend the investigation as unsubstantiated and premature and ordered the investigators to take the necessary steps ordered on 9 July 2004. The investigation was resumed on the same date.

60. On 21 October 2004 the investigators questioned Mr K.S. whose statement about the events was similar to that given by Mr I.A. (see paragraph 56 above).

61. On 18 November 2004 the investigation in the criminal case was suspended for the fourth time for failure to identify the perpetrators.

62. On 14 December 2004 the supervising prosecutor again overruled the decision to suspend the investigation as unsubstantiated and premature and ordered the investigators to take the necessary steps, including those ordered on 9 July and 18 October 2004. The investigation was resumed on the same date and the applicant was informed of this decision.

63. On 14 January 2005 the investigation in the criminal case was again suspended for failure to identify the perpetrators without having taken any of the steps ordered by the supervising prosecutor.

64. On 27 January 2005 the investigators requested that the ROVD identify the witnesses to the murder and bring them for questioning. On the same date the investigators requested that the Archives of the North-Caucasus Military Circuit inform them which military unit had been stationed in the area of the events at the material time.

65. On 6 December 2007 the applicant complained to the district prosecutor's office that the investigation into her sisters' murder was ineffective and requested that the investigators allow her to access the investigation file.

66. On 10 December 2007 the investigators granted the applicant's request in part and allowed her to access the procedural documents reflecting the investigative steps taken with her participation.

67. On 8 April 2008 the applicant again complained to the district prosecutor's office that the investigation into her sisters' murder was ineffective and requested that the investigators grant her access to the investigation file and resume the criminal proceedings. No reply was given to this request.

68. On 16 May 2008 the supervising prosecutor again overruled the decision to suspend the investigation as unsubstantiated and premature and ordered the investigators to take the necessary steps, including those ordered on 9 July, 18 October and 14 December 2004. The investigation was resumed on the same date.

69. On 20 May 2008 the investigators requested that the investigative department of the UGA assist them in identifying the military unit which had been stationed in the area of the events in January and February 2000, provide them with a list of its servicemen for the period and inform them of the stationing of the military unit at present.

70. On 2 June 2008 the investigators questioned Ms Ya.Z. The Government did not furnish a copy of this statement to the Court either (see paragraph 29 above).

71. On 9 June 2008 the ROVD informed the investigators that it was impossible to establish the identities of the elderly Russian couple who had witnessed the applicant's sisters' murder.

72. On 16 June 2008 the investigation in the criminal case was suspended for the sixth time for failure to identify the perpetrators.

73. On 26 June 2008 the applicant again complained to the district prosecutor's office that the investigation into her sisters' murder was ineffective and requested that the investigators grant her access to the investigation file and resume the criminal proceedings.

74. On 30 June 2008 the investigators replied to the applicant's complaint stating that she was entitled to a copy of the last decision to suspend the investigation.

75. On an unspecified date in January 2009 the supervising prosecutor again overruled the decision to suspend the investigation as unlawful and ordered the investigators to take the necessary steps. The Government did not furnish the Court with a copy of this document.

76. On 19 January 2009 the investigation in the criminal case was resumed.

77. The Government submitted that although the investigation had failed to establish the perpetrators of the murder of Shema and Shamani Inderbiyeva, the proceedings were still in progress. The information gathered by the investigators demonstrated that the applicant's sisters had been killed by unidentified persons and that "it cannot be seen from the case file that Shema and Shamani Inderbiyeva were killed as a result of the use of lethal force by representatives of the State". The Government further submitted that the domestic authorities had been taking all possible steps to have the crime resolved.⁷⁸ In reply to the Court's request for the full contents of the investigation file in criminal case no. 50080, the Government stated in a Memorandum of 20 January 2010 that they enclosed the contents of the criminal case file 'in full' and that it ran to 171 pages. However, from the documents submitted and their pagination it follows that a number of documents, such as witness statements, were not furnished by the Government and no explanation had been given for the failure to submit the remaining documents to the Court.

II. RELEVANT DOMESTIC LAW

79. For a summary of the relevant domestic law see *Goygova v. Russia* (no. 74240/01, §§ 63-64, 4 October 2007).

THE LAW

I. THE ISSUE OF EXHAUSTION OF DOMESTIC REMEDIES

A. The parties' submissions

80. The Government submitted that the investigation into the murder of the applicant's sisters had not yet been completed. They further argued, in relation to the complaint under Article 13 of the Convention, that it had been open to the applicant to lodge court complaints about any acts or omissions of the investigating authorities. She could also have applied for civil damages.

81. The applicant contested the Government's submission. She stated that the only available remedy, the criminal investigation, had proved to be ineffective.

B. The Court's assessment

82. The Court will examine the arguments of the parties in the light of the provisions of the Convention and its relevant practice (for a relevant summary, see *Estamirov and Others v. Russia*, no. 60272/00, §§ 73-74, 12 October 2006).

83. The Court notes that the Russian legal system provides, in principle, two avenues of recourse for the victims of illegal and criminal acts attributable to the State or its agents, namely civil and criminal remedies.

84. As regards a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention (see *Khashiyev and Akayeva v. Russia*, cited above, §§ 119-21, and *Estamirov and Others*, cited above, § 77). In the light of the above, the Court confirms that the applicant was not obliged to pursue civil remedies. The Government's objection in this regard is thus dismissed.

85. As regards criminal-law remedies, the Court observes that the investigation into the murders has been pending since 3 May 2000. The applicant and the Government dispute the effectiveness of the investigation.

86. The Court considers that the Government's objection raises issues concerning the effectiveness of the investigation which are closely linked to the merits of the applicant's complaints. Thus, it decides to join this objection to the merits of the case and considers that the issue falls to be examined below.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

87. The applicant alleged that her sisters had been unlawfully killed by agents of the State and that no effective investigation had been carried out into the matter. She relied on Article 2 of the Convention, which reads:

“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. Admissibility

88. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government's objection concerning the issue of exhaustion of domestic remedies should be joined to the merits of the complaint (see paragraph 86 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

B. The alleged violation of the right to life of Shema and Shamani Inderbiyeva

1. The parties' submissions

89. The applicant alleged that her sisters had been unlawfully killed by agents of the State and referred to the Court's conclusion in the cases of *Khashiyev and Akayeva*, *Goygova*, *Makhauri*, *Goncharuk*, and *Tangiyeva* (all cited above), noting that, at the relevant time, the area was under the full control of the Russian federal forces. She argued that the Government had not suggested any other version of the events.

90. The Government denied any involvement of State agents in the killing of the applicant's sisters and stated that they had been murdered by unidentified criminals.

2. The Court's assessment

91. It was not disputed by the parties that the applicant's sisters had been killed. The Government did not suggest that the exceptions provided for in the second paragraph of Article 2 could be applicable in the present case. The question remains whether the respondent State may be held responsible for their death.

92. The Court observes that it has developed a number of general principles relating to the establishment of facts in dispute, in particular when faced with allegations of a violation of Article 2 (for a summary of these, see *Estamirov and Others*, cited above, §§ 98-101). In the light of these principles, the Court will decide whether the death of the applicant's sisters can be attributed to the State and whether there has been a violation of Article 2 in this respect.

93. The Court finds that the factual circumstances as presented by the applicant were not disputed by the Government and were not contradicted by the documents in the investigation file. As it appears, the only version of the events pursued by the investigation was that suggested by the applicant. The Government did not present any alternative account of the attack and,

moreover, the investigation obtained information proving the applicant's allegations of the State agents' responsibility for her sisters' death (see paragraph 51 above).

94. In addition, the Court has long held that where the events in issue lie wholly, or to a large extent, within the exclusive knowledge of the authorities – as in the case of persons in custody under those authorities' control – strong presumptions of fact will arise in respect of injuries and deaths occurring during such detention. Thus, it has found that where an individual is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which an issue will arise under Article 3 of the Convention (see *Tomasi v. France*, 27 August 1992, §§ 108-11, Series A no. 241-A; *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336; and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V). Indeed, in such situations the burden of proof may be regarded as resting on the authorities (see, *inter alia*, *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

95. The Court has also considered it legitimate to draw a parallel between the situation of detainees, for whose well-being the State is held responsible, and the situation of persons found injured or dead in an area within the exclusive control of the State authorities. Such a parallel is based on the salient fact that in both situations the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities (see *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II (extracts)).

96. The Court will assess the effectiveness of the investigation into the death of the applicant's sisters below (see paragraphs 100 - 107), but it is clear that it failed to establish the military units presumably involved in the incident or to indict the individuals responsible. Taking this into account and the Court's finding in the judgments referred to by the applicant, the Court finds that she has made a *prima facie* case that her sisters were killed by servicemen during a security operation on or around 10 January 2000 in the Staropromyslovskiy District of Grozny, and that the Government have failed to provide any other satisfactory and convincing explanation of the events. Their reference to the absence of conclusions from the criminal investigation is not enough to absolve them from their burden of proof under Article 2 of the Convention.

97. On the basis of the above, the Court finds that the death of Shema and Shamani Inderbiyeva can be attributed to the State. In the absence of any justification put forward by the Government, the Court finds that there has been a violation of Article 2 under its substantive limb.

C. Alleged inadequacy of the investigation

1. *The parties' submissions*

98. The applicant alleged that the authorities had failed to conduct an effective investigation into the circumstances of her sisters' death, in violation of their procedural obligation under Article 2. She argued that the investigation had fallen short of the standards established by the Convention and national legislation. In particular, the investigation had not been prompt because of the delay in opening it and in taking important steps. A number of investigative measures had never been taken, such as securing the relevant evidence and questioning servicemen who could have been involved. The investigation had been ongoing for more than ten years without producing any tangible results. The authorities had systematically failed to inform her of the progress of the proceedings and that she had been given no information about important procedural steps.

99. The Government contended in reply that the investigation was being carried out in accordance with the relevant domestic legislation and Convention standards.

2. *The Court's assessment*

100. The Court has on many occasions stated that the obligation to protect the right to life under Article 2 of the Convention also 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. It has developed a number of guiding principles to be followed for an investigation to comply with the Convention's requirements (for a summary see, for example, *Bazorkina v. Russia*, no. 69481/01, §§ 117-19, 27 July 2006).

101. In the present case, an investigation was carried out into the murder of the applicant's sisters. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

102. The Court notes from the outset that it has previously found the investigation into the murders of the inhabitants of the Staropromyslovskiy District perpetrated in January and February 2000 to be ineffective and in breach of the requirements of Article 2 of the Convention (see *Khashiyev and Akayeva v. Russia*, cited above, §§ 156-66; *Goygova*, cited above, §§ 76-85; *Makhauri v. Russia*, cited above, §§ 105-14; *Goncharuk v. Russia*, cited above, §§ 65-71; and *Tangiyeva v. Russia*, cited above §§ 88-95). It can be seen from the documents submitted that no different conclusion could be arrived at in the present case for the following reasons.

103. The Court notes that the authorities were aware of the crime by at least May 2000, when a criminal investigation into the killings committed in the Staropromyslovskiy District was opened by the town prosecutor's

office. In June and July 2000, within the scope of this investigation, the applicant, her sister and her mother were questioned and confirmed information about the circumstances in which their relatives' bodies had been found and their burial. However, it does not appear that any other steps were taken at that time in order to solve the murders. More than three years later, in June 2003, the documents relating to the murder of the applicant's sisters were transferred to the district prosecutor's office with an instruction to carry out a separate investigation but the authorities only initiated a separate set of proceedings to investigate the matter in July 2003.

104. The Court further notes that even the most basic procedural steps in the investigation were taken after September 2003, that is, more than three and half years after the events in question. The measures taken after September 2003 included such crucial steps as the questioning of other witnesses, examination of the crime scene, attempts to identify the military units that could have been involved in the murders and the carrying out of a forensic medical examination. It is obvious that these measures, if they were to produce any meaningful results, should have been taken immediately after the crime was reported to the authorities, and certainly as soon as the investigation had commenced. The Court reiterates that it is crucial in cases of deaths in contentious situations for the investigation to be prompt. The passage of time will inevitably erode the amount and quality of the evidence available and the appearance of a lack of diligence will cast doubt on the good faith of the investigative efforts, as well as drag out the ordeal for the members of the family (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II). These delays, unexplained in this case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime.

105. The Court also notes that the applicant was granted victim status only in October 2003. Even after that she was only informed of the suspension and reopening of the proceedings, and not of any other significant developments. Accordingly, the investigators did not ensure sufficient public accountability to provide the investigation and its results with the required level of public scrutiny; nor did it safeguard the interests of the next of kin in the proceedings.

106. Finally, the Court notes that the investigation was suspended and resumed a number of times and that on several occasions the supervising prosecutors pointed out the deficiencies in the proceedings and ordered measures to remedy them, but that these instructions were not complied with.

107. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the death of Shema and Shamani Inderbiyeva. This rendered recourse to the criminal domestic remedies, referred to by the Government,

ineffective in the circumstances. The Court accordingly dismisses the Government's objection in this respect and holds that there has been a violation of Article 2 under its procedural limb as well.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

108. The applicant relied on Article 3 of the Convention, submitting that prior to their killing Shema and Shamani Inderbiyeva were subjected to ill-treatment and that as a result of her sisters' death and the State's reaction thereto, she had endured psychological suffering in breach of Article 3 of the Convention. Article 3 reads:

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

Admissibility

109. Turning to the first part of the applicant's complaint, the Court notes that the applicant neither raised it with competent domestic authorities nor enclosed any documents with the application to substantiate her allegations.

110. As for the second part of the complaint, the Court notes that the present case concerns the instantaneous death of the applicant's sisters as a result of an explosion. In this regard, the Court refers to its practice by which the application of Article 3 is usually not extended to the relatives of persons who have been killed by the authorities in violation of Article 2 (see *Yasin Ateş v. Turkey*, no. 30949/96, § 135, 31 May 2005) or to cases of unjustified use of lethal force by State agents (see *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, § 229, 24 February 2005), as opposed to the relatives of the victims of enforced disappearances. The latter approach is exercised by the Court in view of the continuous nature of the psychological suffering of the applicants whose relatives disappeared and the applicants' inability for a prolonged period of time to find out what happened to them (see, among many other authorities, *Bazorkina*, cited above, § 141; *Imakayeva v. Russia*, no. 7615/02, § 166, ECHR 2006-XIII (extracts); and *Luluyev and Others v. Russia*, no. 69480/01, § 115, ECHR 2006-XIII (extracts)). As for the present case, even though the Court does not doubt that the tragic death of her sisters caused the applicant profound suffering, it nonetheless, owing to the instantaneous nature of the incident, does not find that it amounts to a violation of Article 3 of the Convention (see, for a similar situation, *Udayeva and Yusupova v. Russia*, no. 36542/05, §§ 82-83, 21 December 2010).

111. It therefore follows that the applicant's complaint under Article 3 should be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

112. The applicant complained that the proceedings brought by her against the investigators were unfair (see paragraph 22 above). She relied on Article 6 of the Convention, which, in so far as relevant, reads as follows:

“1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...”

113. The Court finds that Article 6 § 1 of the Convention is inapplicable to the proceedings in question, as they did not involve the determination of the applicant's civil rights or obligations or a criminal charge against the applicant, within the meaning of the Convention (see, among many other authorities, *Udayeva and Yusupova*, cited above, § 86).

114. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4 thereof.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

115. The applicant complained that she had been deprived of effective remedies in respect of the alleged violation of Article 2 contrary to Article 13 of the Convention, which provides:

“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.”

A. The parties' submissions

116. The Government contended that the applicant had effective remedies at her disposal as required by Article 13 of the Convention and that the authorities had not prevented her from using those remedies. The applicant had the opportunity to challenge the acts or omissions of the investigating authorities in court. They added that participants in criminal proceedings could also claim damages in civil proceedings. In sum, the Government submitted that there had been no violation of Article 13.

117. The applicant maintained the complaint.

B. The Court's assessment

1. Admissibility

118. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

119. The Court reiterates that in circumstances where, as in the present case, a criminal investigation into a murder has been ineffective and the effectiveness of any other remedy that might have existed has consequently been undermined, the State has failed in its obligations under Article 13 of the Convention (see *Khashiyev and Akayeva*, cited above, § 183).

120. Consequently, there has been a violation of Article 13 in conjunction with Article 2 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

121. 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. Damage

122. The applicant did not submit any claims for pecuniary damage. As regards non-pecuniary damage, she stated that she had endured emotional suffering in relation to the loss of her sisters and the authorities' failure to effectively investigate their death. She left the determination of the amount of compensation to the Court.

123. The Government submitted that finding a violation of the Convention would be adequate just satisfaction in the applicant's case.

124. The Court has found a violation of both aspects of Article 2 and of Article 13 of the Convention on account of the death of the applicant's sisters and the authorities' failure to effectively investigate the matter. The Court thus accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the applicant 100,000 euros (EUR) plus any tax that may be chargeable thereon.

B. Costs and expenses

125. The applicant was represented by Mr D. Itslayev, a lawyer practising in Grozny. The applicant submitted a contract with her representative and an itemised schedule of costs and expenses that included legal research and drafting, as well as administrative and translation expenses. The overall claim in respect of costs and expenses related to the applicant's legal representation amounted to EUR 4,306. The applicant submitted the following breakdown of costs:

(a) EUR 3,637 for 24.25 hours of interviews and drafting of legal documents submitted to the Court and the domestic authorities, at the rate of EUR 150 per hour;

(b) EUR 125 of administrative expenses;

(c) EUR 544 in translation fees based on the rate of EUR 80 per 1000 words.

126. The Government regarded the claim as unsubstantiated, pointing out that the relevant documents were not sufficiently itemised or supported by documentary evidence.

127. The Court has to establish first whether the costs and expenses indicated by the applicant were actually incurred and, second, whether they were necessary (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 220, Series A no. 324)

128. Having regard to the details of the information submitted by the applicant, the Court is satisfied that these rates are reasonable and reflect the expenses incurred. The Court notes that this case was rather complex and required the amount of research and preparation claimed by the applicant.

129. Having regard to the details of the claims submitted by the applicant, the Court awards her the amount of EUR 4,000 together with any tax that may be chargeable to the applicant, the net award to be paid into the representative's bank account, as identified by the applicant.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection as to the issue of exhaustion of criminal domestic remedies and rejects it;

2. *Declares* the complaints under Articles 2 and 13 of the Convention admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Shema and Shamani Inderbiyeva;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Shema and Shamani Inderbiyeva died;
5. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
6. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the date of settlement:
 - (i) EUR 100,000 (one hundred thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicant;
 - (ii) EUR 4,000 (four thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the representative's bank account;
 - (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;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 March 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President