



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

FIRST SECTION

CASE OF ESTAMIROVA v. RUSSIA

(Application no. 27365/07)

JUDGMENT

STRASBOURG

17 April 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 Estamirova v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Elisabeth Steiner,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 27 March 2012,

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

PROCEDURE

1. The case originated in an application (no. 27365/07) 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 Sovman Estamirova (“the applicant”), on 8 June 2007.

2. The applicant was represented by lawyers from the Stichting Russian Justice Initiative (“SRJI”), an NGO based in the Netherlands with a representative office in Russia. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. Relying on Articles 2, 3 and 13 of the Convention, the applicant alleged, in particular, that her husband had been killed by State servicemen, and that the authorities had failed to carry out an effective investigation into the matter.

4. On 27 August 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 the 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 1959; at the material time she lived in Argun. She currently lives in Noybera, Chechnya. The applicant was the wife of Asrادی (also spelled as Asrudi, Asrادیn and Visrudi) Estamirov, who was born in 1957.

A. Killing of Asrادی Estamirov

1. The applicant's account

7. At about 5 p.m. on 5 January 2001 a convoy of the 70th motorised infantry battalion was moving on the Gudermes-Argun highway through the town of Argun in Chechnya.

8. At about 5.30 p.m., when the military was moving in the vicinity of the corner of Gudermesskaya Street and Stepnoy Lane in Argun, the convoy exchanged intense fire with unidentified persons, who had attempted to attack it. Asrادی Estamirov, who happened to be at the corner of Gudermesskaya Street and Stepnoy Lane was wounded in the head and subsequently died.

9. According to Mr R.V., who was at home on 5 January 2001, at about 5 p.m. on that date he heard intensive shooting. Shortly after the firing had come to an end, he was asked to take the wounded Asrادی Estamirov to hospital in his car. He took the applicant's husband to the Argun town hospital.

10. On 6 February 2001 the Argun town registration office issued an official certificate confirming the death of Asrادی Estamirov. The document stated that he had died on 6 January 2001.

11. On 16 May 2001 the Argun town hospital issued a medical statement concerning the death of Asrادی Estamirov. According to the document, the cause of his death had been a "...blunt penetrating wound of the left frontal region of the head... received during the shooting by the federal military forces..."

12. On an unspecified date a doctor of the Argun town hospital issued an information statement concerning the cause of Asrادی Estamirov's death. According to the document, "...the corpse arrived at the trauma ward of the Argun town hospital at 5.20 p.m. on 5 January 2001; [Asrادی Estamirov] was killed during the fire [opened by] the federal forces... diagnosis: blunt penetrating wound of the left frontal region of the head, fatal injury..."

13. In support of her statement the applicant enclosed the following documents: a statement by Mr R.V. dated 18 November 2004; a statement by Mr T.E. dated 18 November 2004; a copy of two medical statements, undated and dated 16 May 2001, respectively; and a copy of Asrادی Estamirov's death certificate dated 6 February 2001.

2. Information submitted by the Government

14. The Government did not challenge the matter as presented by the applicant. They submitted that the applicant's husband had been killed on 5 January 2001 during an exchange of fire between the military convoy and unidentified individuals.

B. The investigation into the killing

15. On 5 January 2001 three residents of Argun, Ms Kh.E., Ms Ya.D. and Ms S.E., provided their statements to the applicant to the effect that on 5 January 2001 they had seen a convoy of Russian federal forces driving on the Gudermes-Argun motorway; the convoy had been firing at unknown targets. According to the document, none of the three residents had witnessed the shooting of the applicant's husband or had been able to notice the registration numbers or any distinctive features of the military vehicles.

16. On 5 or 6 January 2001 an officer from the Argun Department of the Interior (the Argun VOVD) informed his superiors that at about 6 p.m. on 5 January 2001 Asrادی Estamirov had been taken to the hospital by Mr R.V. who had found him wounded in Stepnoy Lane earlier the same day.

17. On 6 January 2001 the Argun town hospital no. 1 informed the Argun VOVD that on 5 January 2001 they had received the body of Asrادی Estamirov with a gunshot wound on his forehead.

18. On 6 January 2001 the Argun Inter-District Prosecutor's Office (the Prosecutor's Office) instituted an investigation into the killing of Asrادی Estamirov under Article 109 § 1 of the Criminal Code (negligent infliction of death). The case file was given the number 45003.

19. On 6 January 2001 the investigators examined the crime scene and collected four bullet cartridges left after the shooting.

20. On the same date, 6 January 2001, the investigators questioned Mr M.B. who stated that he had been the duty doctor at the Argun town hospital no. 1 when at about 5 p.m. on 5 January 2001 Asrادی Estamirov had been taken there. Upon arrival at the hospital the applicant's husband had been dead.

21. On 6 January 2001 the investigators also questioned Mr T.-A.E., who stated that on 5 January 2001 he had been at home in Stepnoy Lane when he had heard automatic gunfire which had lasted a few minutes. The witness had stayed at home and had gone out when the gunfire had stopped.

On the ground he had found Asrادی Estamirov, who had been alive but with a gunshot wound on his forehead. The witness decided to take Asrادی Estamirov to the hospital; he had asked his neighbour Mr R.V. (also known as Mr A.V.) to assist him, and the two men had taken Asrادی to the hospital where it had been established that the applicant's husband had died.

22. On 6 January 2001 (in the documents submitted the date was also cited as 6 December 2001) the investigators questioned Mr R.V. who stated, amongst other things, that on 5 January 2001 he had been told that a man had been wounded as a result of gunfire in his neighbourhood. The witness had taken this man, Asrادی Estamirov, to the hospital, but the latter had died.

23. On 7 January 2001 the Prosecutor's Office ordered a ballistic expert examination of the cartridge cases found at the crime scene.

24. On 8 January 2001 the Prosecutor's Office ordered an expert forensic examination of a blood-like substance found at the crime scene.

25. On 9 January 2001 the expert examinations department of the Argun VOVD carried out a ballistic expert examination of four cartridge cases collected from the crime scene. According to the report:

“...two cartridge cases were fired... from the same firearm; one cartridge case... was fired from the second type of firearm and the third one... from the third type of firearm.

...the comparative analysis... established that the cartridge cases had been a part of ammunition....of bullets of 7.62 mm calibre...

... it is impossible to establish precisely from what type of firearm the cartridge cases had been fired owing to the lack of a relevant database in Argun...”

26. On 8 January 2001 (in the submitted documents the date is mistakenly cited as 9 January 2000) the Prosecutor's Office ordered an expert forensic examination of Asrادی Estamirov's body.

27. On 9 January 2001 the Chechnya Forensics Examinations Bureau issued its report, according to which the death of Asrادی Estamirov had been caused by a blunt perforating gunshot wound to the forehead.

28. On 11 January 2001 an investigator from the Prosecutor's Office issued an information statement concerning the criminal case, according to which on 5 January 2001 five military units had gone through the town of Argun, and the last one had been military convoy no. 7001, which had consisted of thirty-six servicemen under the command of Lieutenant Colonel Shv.

29. On 12 January 2001 the investigators forwarded a request to the Military Prosecutor's Office of military unit no. 20102, asking them to take the following steps: to identify which convoy had passed through Argun on 5 January 2001 at about 5 p.m.; to question the head of the convoy and the senior drivers about the circumstances of Asrادی Estamirov's killing and to collect at the military unit all the documents pertaining to the shooting.

30. On 27 January 2001 the investigators questioned the mother of Asrادی Estamirov, Ms S.E., who stated, amongst other things, that she had not witnessed the events, but had learnt from neighbours that her son had been accidentally killed during an exchange of gunfire between a military convoy and unidentified persons.

31. On the same date the investigators questioned Asrادی Estamirov's sister, Ms Kh.G., whose statement about the events was similar to the one given by her mother, Ms S.E.

32. On 22 February 2001 the investigators requested that the Argun VOVD take operational-search measures to establish the circumstances of Asrادی Estamirov's death.

33. On 6 March 2001 the applicant was granted victim status in the criminal case.

34. On the same date, 6 March 2001, the Prosecutor's Office suspended the investigation in the criminal case for failure to identify the perpetrators.

35. On 18 May 2001 the applicant wrote to the Argun prosecutor and requested the authorities to identify the perpetrators of her husband's killing. In his reply of 6 June 2001 the Argun prosecutor informed the applicant that all measures envisaged under the domestic law were being taken to identify the culprits.

36. On 17 July 2001 the applicant requested that the Chechnya prosecutor provided her with information on the progress of the investigation and the reasons for its suspension. No reply was given to this request.

37. On 14 December 2001 the Argun Department of the Federal Security Service (the Argun FSB) informed the investigators that they had no information concerning the stationing of the 70th military unit of military convoy no. 7001.

38. On 14 October 2004 the deputy Argun prosecutor overruled the decision of 6 March 2001 to suspend the investigation as unlawful and resumed the proceedings. The prosecutor pointed out that the investigators had failed to take a number of necessary steps. The decision stated, *inter alia*, the following:

“.... It is necessary to order and conduct additional ballistic expert examinations... to check whether A. Estamirov was involved in illegal armed groups... to obtain the results of the forensic examination... to identify and question the servicemen who had participated in the military convoy and to conduct a ballistic expert examination of their firearms, to compare these firearms with the cartridge cases collected from the crime scene and to take other investigating measures...”

39. On 15 October 2004 the deputy Argun prosecutor informed the applicant's representatives that the decision to suspend the investigation had been overruled and that on 6 March 2001 the applicant had been granted victim status in the criminal case, but she had not yet been questioned by the investigators.

40. On 18 October 2004 the investigators requested that the Military Prosecutor's Office of military unit no. 20102 inform them about the stationing of the 70th motorised infantry battalion of military convoy no. 7001 and provide them with the list of servicemen who had served in this military convoy on 5 January 2001.

41. On or after 12 November 2004 the supervisory prosecutor criticised the investigators for their failure to carry out previously given orders stating, *inter alia*, the following:

“...examination of the investigation file of 12 November 2004 demonstrated that none of the [previously] given prosecutor's orders in criminal case no. 45003 concerning the death of A. Estamirov had been carried out during the investigation.

The criminal case file does not contain the plan of investigative steps and operational measures... which leads to chaos in taking the necessary steps aimed at solving the crime...”

42. On 18 November 2004 the investigators again questioned Mr T.-A. E. who reiterated his statement of 6 January 2001 (see paragraph 21 above).

43. On 19 November 2004 the investigators questioned Ms T.A., Asrادی Estamirov's sister, who stated that on 5 January 2001 she had been at home in Gudermesskaya Street when she had heard an exchange of gunfire lasting about twenty minutes. On the following day she had learnt from the neighbours that this shooting had taken place between a Russian military convoy and members of illegal armed groups.

44. On the same date, 19 November 2004, the investigators again questioned Mr R.V., who reiterated his statement of 6 January 2001 (see paragraph 22 above).

45. On 22 November 2004 the investigators showed the applicant a copy of the decision granting her victim status in the criminal case and questioned her. She stated that she had not witnessed the events on 5 January 2001 as she had not been at home. From her relatives she had learnt that her husband Asrادی Estamirov had been shot at about 5.30 p.m. on 5 January 2001 during an exchange of gunfire between a Russian military convoy and unidentified persons. The applicant further stated that her husband's death had been an accident.

46. On 29 November 2004 the investigators questioned the applicant's son, Mr I.E., whose statement concerning the events was similar to the one given by the applicant on 22 November 2004.

47. On 7 December 2004 the investigators requested that the Stavropol Expert Examinations Bureau provide them with the results of the forensic expert examination ordered in 2001. On 28 December 2004 the Bureau replied that they had neither received the investigators' order nor the evidence for examination.

48. On 8 December 2004 the investigators requested that the Argun FSB, the Argun town Department of the Interior (the Argun GOVD) and the

Argun Military Department of the United Group Alignment inform them about the current location of the 70th motorised infantry battalion and provide them with the names of the servicemen who had served in military convoy no. 7001 on 5 January 2001.

49. On 10 December 2004 the Military Prosecutor's Office of military unit no. 20102 informed the investigators that the 70th motorised infantry battalion was stationed in Shali, Chechnya and that it was impossible to identify the servicemen who had served in military convoy no. 7001 on 5 January 2001 as the Military Prosecutor's Office was not supposed to take operational-search measures.

50. On 13 December 2004 the Argun GOVD informed the investigators that it was impossible to establish where the 70th motorised infantry battalion was currently stationed.

51. On 14 December 2004 the Argun FSB replied to the investigators, stating that owing to departmental subordination, they had been unable to establish the current stationing of the 70th motorised infantry battalion and suggested that such information could be obtained from the military.

52. On 14 December 2004 (in the documents submitted the date is also cited as 15 December 2004) the investigators suspended the investigation in the criminal case for failure to identify the perpetrators and informed the applicant accordingly.

53. On 15 December 2004 the investigators requested the Argun GOVD to take operational measures to identify the perpetrators of Asrادی Estamirov's killing.

54. On 16 December 2004 an operational-search officer from the Argun GOVD informed his superiors that it was impossible to find witnesses to Asrادی Estamirov's killing.

55. On 24 January 2005 the Military Prosecutor's Office of military unit no. 20116 requested that military unit no. 23132 provide information about their servicemen who had participated in military convoy no. 7001 on 5 January 2001.

56. On 18 March 2005 the applicant's representatives requested that the Argun Prosecutor's Office inform them of the progress in the investigation and whether the applicant and other witnesses had been questioned by the investigators. They also requested that the applicant be provided with copies of documents from the case file. On 22 April 2005 the Argun Prosecutor's Office replied to the request, stating that the applicant had been granted victim status in the criminal case and questioned.

57. On 14 January 2006 the applicant complained to the Argun Prosecutor's Office that the investigation into her husband's killing had been ineffective, and requested to be provided with detailed information concerning the progress in the proceedings. In their reply of 8 February 2006 the Argun Prosecutor's Office stated that the investigation had taken all necessary steps in the criminal case and that the applicant's allegations of

its ineffectiveness were unsubstantiated. On the same date the applicant was provided with copies of a few procedural documents from the case file.

58. On 8 February 2006 the investigators replied to the applicant, stating that they had taken all possible measures to solve the crime, that she had been granted victim status in the criminal case and had been informed about it on 22 November 2004, and that she was entitled to the procedural rights of a victim according to the law.

59. On 13 February 2006 the applicant requested the investigators to grant her access to the investigation file. Her request was granted on the same date and she was shown the contents of the investigation file in the Prosecutor's Office.

60. On 15 February 2006 the applicant complained to the Argun Prosecutor that the investigation into her husband's killing had been ineffective, and requested that the authorities provide her with the results of the ballistic and forensic expert examinations of evidence and the results of the information requests concerning the servicemen of military convoy no. 7001. She also asked to be provided with access to the investigation file. On 2 March 2006 the Argun Prosecutor's Office replied to the applicant, stating that she had already been provided with copies of procedural documents to which she was entitled under the domestic law, and that access to the other documents in the case file would be possible only upon completion of the investigation.

61. On 2 March 2006 the investigators replied to the applicant that by law she was entitled to have access to the entire contents of the investigation file only upon completion of the investigation.

62. On 29 March 2006 the investigators allowed the applicant's lawyer access to the investigation file.

63. On 21 October 2009 the investigators resumed the investigation in the criminal case, stating that it was incomplete and that a number of steps, including the following, should be taken:

“... it is necessary to:

- identify the servicemen of the 70th motorised infantry battalion of military unit no. 23132 (in 2004 the unit was stationed in Shali) who had participated in military convoy no. 7001 which had moved through the town of Argun on 5 January 2001 and had been subjected to gunfire by unidentified persons. Upon identifying the servicemen, they should be questioned about the circumstances of the crime. It is also necessary to take measures to establish which firearms the servicemen had at the time and then to subject them to expert examination;

- establish the whereabouts of the bullet cartridges collected from the crime scene and send them to the ballistics information centres...to order an additional ballistic expert examination in order to identify the firearms used [by the perpetrators];

- compare the bullet cartridges collected from the crime scene with the firearms which had been used by servicemen of the 70th motorised infantry battalion on 5 January 2001;

- establish the whereabouts of and question Lieutenant Colonel Shv. who had been in charge of military convoy no. 7001...;

- forward information requests to archives of the power structures concerning the servicemen and the command of the 70th motorised infantry battalion of military unit no. 23132 who had been there on assignment in January 2001 and had participated in the exchange of gunfire on 5 January 2001 ...”

The applicant was informed about this decision on the same date.

64. On 12 November 2009 the Argun town Prosecutor’s Office informed the investigators that their office had no information concerning the four bullet cartridges collected from the crime scene.

65. On 21 November 2009 the investigation in the criminal case was again suspended for failure to identify the perpetrators. The applicant was informed accordingly on the same date.

66. On 25 November 2009 the Southern Federal Department of the Russian Ministry of the Interior informed the investigators that they had no information concerning the possible involvement of Asrادی Estamirov in illegal armed groups.

67. According to the Government, the investigation has so far failed to identify the perpetrators of Asrادی Estamirov’s killing, but it is still in progress. The investigative authorities are taking all possible measures to have the crime resolved.

68. Upon the Court’s request the Government submitted a copy of the investigation file in criminal case no. 45003, which is 119 pages long.

C. Civil proceedings initiated by the applicant

69. On an unspecified date the applicant brought proceedings against the Russian Government, demanding compensation for the damage caused by her husband’s death.

70. On 14 May 2002 the Presnenskiy District Court of Moscow rejected her claim. The decision stated that as the criminal investigation into the killing had not yet been completed and the perpetrators had not been prosecuted, the applicant’s allegations that Asrادی Estamirov had been killed by Russian servicemen were unsubstantiated. On 26 August 2002 the Moscow City Court upheld that decision on appeal.

71. According to the applicant, in May 2005 she lodged three claims for damages with the Moscow City Court and the Presnenskiy District Court of Moscow, but her requests went unanswered.

II. RELEVANT DOMESTIC LAW

72. For a summary of the relevant domestic law see *Khatsiyeva and Others v. Russia* (no. 5108/02, §§ 105-107, 17 January 2008).

THE LAW

I. ISSUE CONCERNING THE EXHAUSTION OF DOMESTIC REMEDIES

A. The parties' submissions

73. The Government submitted that the investigation into the killing of Asrادی Estamirov 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 on the part of the investigating authorities. Moreover, she could have claimed damages.

74. 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

75. 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 and 74, 12 October 2006).

76. 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.

77. 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*, nos. 57942/00 and 57945/00, §§ 119-21, 24 February 2005, and *Estamirov and Others*, cited above, § 77). In the light of the above and the conclusion of the Presnenskiy District Court of Moscow in respect of the applicant's claim for damages, the Court confirms that the applicant was not

obliged to further pursue civil remedies. The Government's objection in this regard is thus dismissed.

78. As regards criminal-law remedies, the Court observes that the applicant complained to the law-enforcement authorities after the killing of Asrادی Estamirov, and that an investigation has been pending since 6 January 2001. The applicant and the Government dispute the effectiveness of the criminal investigation.

79. 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

80. The applicant complained under Article 2 of the Convention that her husband had been deprived of his life by Russian servicemen and that the domestic authorities had failed to carry out an effective investigation into the matter. Article 2 reads as follows:

“1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

A. The parties' submissions

81. The applicant maintained that it was beyond reasonable doubt that Asrادی Estamirov had been killed by State agents, submitting that the State's responsibility for her husband's death had been confirmed by medical statements issued by the local hospital (see paragraphs 11 and 12 above). She further contended that the authorities had failed to carry out an effective investigation into the incident. For instance, the authorities had failed to take basic investigative steps such as the identification of the persons in the military convoy who had opened fire on 5 January 2001; the questioning of the head of the military convoy and the senior drivers despite

the supervising prosecutor's direct orders to this end; and the questioning of the servicemen from the 70th motorised infantry battalion who had participated in the military convoy, despite information that the battalion had been stationed in Shali in 2004. The applicant stressed that the investigation, which had been protracted by unlawful decisions to suspend the proceedings, had been pending for more than nine years without producing any tangible results.

82. The Government submitted that unidentified men had killed Asrادی Estamirov. They stressed that it had been impossible to identify the perpetrators as there had been no direct witnesses to the exchange of gunfire between the military servicemen and the unidentified persons. They argued that the medical statements submitted by the applicant could not serve as proof of the State's responsibility for his death in the absence of the results of the pending criminal investigation, which was being conducted in full compliance with the requirements of the Convention and domestic law.

B. The Court's assessment

1. Admissibility

83. 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. Furthermore, the Court has already found that the Government's objection concerning the alleged non-exhaustion of criminal domestic remedies should be joined to the merits of the complaint (see paragraph 79 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) The alleged violation of the right to life of Asrادی Estamirov

84. It was not disputed by the parties that Asrادی Estamirov had died as a result of a gunshot wound to the head. The question to decide in the present case is whether the State authorities were responsible for the death of the applicant's husband, as she alleged.

85. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nevertheless, since Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted, the Court must

subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-47, Series A no. 324, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII).

86. The Court points out that a number of principles have been developed in its case-law as regards cases where it is faced with the task of establishing facts. As to the facts that are in dispute, the Court reiterates its jurisprudence requiring the standard of proof “beyond reasonable doubt” in its assessment of evidence (see *Avşar*, cited above, § 282). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account. In particular when, as in the instant case, the respondent Government have exclusive access to information able to corroborate or refute the applicant’s allegations, any lack of cooperation by the Government without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant’s allegations (see *Taniş and Others v. Turkey*, no. 65899/01, § 160, ECHR 2005-VIII).

87. Turning to the circumstances of the present case, the Court notes that the Government cooperated with the Court and furnished the Court with a copy of the official investigation file. From the documents submitted it follows that the applicant’s husband had been shot as a result of the fire exchange between unidentified persons and the military convoy and that there had been neither direct witnesses to the incident nor material evidence proving whether the bullet which caused Asrادی Estamirov’s death was fired from a weapon belonging to the military or to unidentified persons. In these circumstances the Court does not find it possible to come to the conclusion that the applicant’s husband was shot by Russian federal forces.

88. Thus, the Court considers that the present case does not disclose such evidence in support of the applicant’s allegations that the military forces were responsible for her husband’s death and that the burden of proof should be shifted to the Government. For that reason, and as it has not been established to the required standard of proof “beyond reasonable doubt” that State authorities were responsible for the death of Asrادی Estamirov, the Court finds no violation of the substantive limb of Article 2 of the Convention.

(b) The alleged inadequacy of the investigation into the incident

89. 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 of these principles see *Bazorkina v. Russia*, no. 69481/01, §§ 117-19, 27 July 2006).

90. In the present case, the death of Asrady Estamirov was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

91. From the outset the Court notes that the investigation into the applicant's husband's death has been suspended on three occasions and that each time the decision to suspend was overruled by the supervising prosecutors as unsubstantiated and premature. The prosecutors have pointed out flaws in the criminal proceedings and ordered remedial measures which were not complied with by the investigative authorities. From these orders it transpires that the investigators failed to take such basic steps as the questioning of the head of the military convoy and its senior drivers about the circumstances of the events as well as the questioning of the servicemen from the 70th motorised infantry battalion who had participated in the military convoy despite information that the battalion was stationed in Shali in 2004. It is clear that such measures should have been taken either as soon as the investigation commenced or shortly after receipt of the relevant information. From the documents submitted it is clear that a number of important steps, such as the ballistic expert examination and the identification of the firearms used by the perpetrators, had not been taken as late as October 2009, and that the investigators themselves were aware of the investigation's shortcomings (see paragraph 63 above).

92. The Court also notes that even though the applicant was granted victim status in the investigation concerning her husband's killing, she was only informed of the suspension and resumption of the proceedings, and not of any other significant developments. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next-of-kin in the proceedings.

93. Finally, the Court notes that as the investigation was suspended and resumed several times, there were lengthy periods of inactivity during which no proceedings were pending.

94. The Government argued that the applicant could have sought judicial review of the decisions of the investigating authorities in the context of the exhaustion of domestic remedies. The Court observes that the applicant, having limited access to the case file and not being properly informed of the progress of the investigation, could not have effectively challenged acts or omissions of the investigating authorities before a court. Furthermore, the Court emphasises in this regard that while the suspension or resumption of proceedings is not in itself a sign that the proceedings are ineffective, in the present case the decisions to suspend were taken without the necessary investigative steps being taken, which led to unnecessary protraction. Moreover, owing to the time that had elapsed since the events complained

of, certain investigative measures that ought to have been carried out much earlier could no longer usefully be conducted. Therefore, it is highly doubtful that the remedy relied on would have had any prospects of success. Accordingly, the Court finds that the remedy cited by the Government was ineffective in the circumstances and dismisses their objection as regards the applicant's failure to exhaust domestic remedies within the context of the criminal investigation.

95. In the light of the foregoing, the Court holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the killing of Asrادی Estamirov, in breach of Article 2 in its procedural aspect.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

96. The applicant relied on Article 3 of the Convention, submitting that as a result of her husband's death and the State's reaction thereto, she had endured psychological suffering in breach of Article 3 of the Convention. Article 3 reads as follows:

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

97. Turning to the circumstances of the present case, the Court notes that the applicant is the wife of Asrادی Estamirov. Accordingly, it has no doubt that she has indeed suffered from serious emotional distress following the death of her husband. However, in the absence of a finding of State responsibility for the killing of Asrادی Estamirov, the Court is not persuaded that the investigating authorities' conduct, albeit negligent to the extent that it has breached Article 2 in its procedural aspect, could have in itself caused the applicant mental distress in excess of the minimum level of severity which is necessary in order to consider treatment as falling within the scope of Article 3 (see, for a similar situation, *Khumaydov and Khumaydov v. Russia*, no. 13862/05, §§ 130-31, 28 May 2009, and *Zakriyeva and Others v. Russia*, no. 20583/04, §§ 97-98, 8 January 2009).

98. It follows that this part of the application should be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

99. 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

100. The Government contended that the applicant had 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 had an opportunity to challenge the acts or omissions of the investigating authorities in court. In sum, the Government submitted that there had been no violation of Article 13.

101. The applicant maintained the complaint.

B. The Court's assessment

1. Admissibility

102. 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

103. 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 *Zubayrayev v. Russia*, no. 67797/01, § 106, 10 January 2008).

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

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

105. 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

106. The applicant did not submit any claims for pecuniary damage. As regards non-pecuniary damage, she claimed 10,000,000 euros (EUR) for the suffering she had endured as a result of the loss of her husband, the

indifference shown by the authorities towards her and their failure to effectively investigate his death.

107. The Government found the amounts claimed excessive.

108. The Court has found a violation of the procedural aspect of Article 2 and a violation of Article 13 of the Convention on account of the authorities' failure to carry out an effective investigation into Asrادی Estamirov's death. The Court thus accepts that she has suffered non-pecuniary damage which cannot be compensated for solely by the finding of the violation. It awards to the applicant EUR 30,000, plus any tax that may be chargeable thereon.

B. Costs and expenses

109. The applicant was represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews, at a rate of EUR 50 per hour for the work in the area of exhausting domestic remedies, and of EUR 150 per hour for the drafting of submissions to the Court. The aggregate claim in respect of costs and expenses related to the applicant's legal representation amounted to EUR 5,872.

110. The Government disputed the reasonableness of the amounts claimed under this heading. In particular, they stressed that the case was rather simple and that preparation and research had not been necessary to the extent claimed by the applicant's representatives.

111. The Court has to establish first whether the costs and expenses indicated by the applicant's representatives were actually incurred and, second, whether they were necessary (see *McCann and Others*, cited above, § 220).

112. Having regard to the details of the information and legal representation contracts submitted by the applicant, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicant's representatives.

113. As to whether the costs and expenses were necessary, the Court notes that this case required a certain amount of research and preparation. It notes at the same time, that owing to the application of Article 29 § 3 in the present case, the applicant's representatives submitted their observations on admissibility and merits in one set of documents. The Court thus doubts that research was necessary to the extent claimed by the representatives.

114. Having regard to the details of the claims submitted by the applicant, the Court awards them the amount of EUR 2,500, together with any value-added tax that may be chargeable to the applicant, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicant.

C. The applicant's request for an investigation

115. The applicant also requested, referring to Article 41 of the Convention, that an independent investigation in compliance with the requirements of the Convention be conducted into the killing of Asrady Estamirov.

116. The Court notes that in *Kukayev v. Russia*, (no. 29361/02, §§ 131-34, 15 November 2007) and *Medova v. Russia*, (no. 25385/04, §§ 142-43, ECHR 2009-...), the Court decided that it was most appropriate to leave it to the respondent Government to choose the means to be used in the domestic legal order in order to discharge their legal obligation under Article 46 of the Convention. The Court does not see any exceptional circumstances which would lead it to reach a different conclusion in the present case.

D. Default interest

117. 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 non-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 no violation of Article 2 of the Convention in its substantive limb in respect of Asrady Estamirov;
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 Asrady Estamirov 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, save in the case of the payment in respect of costs and expenses:

- (i) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicant;
- (ii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands;
- (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 17 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President