



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

FIRST SECTION

CASE OF BITIYEVA AND X v. RUSSIA

(Applications nos. 57953/00 and 37392/03)

JUDGMENT

STRASBOURG

21 June 2007

FINAL

30/01/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Bitiyeva and X v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 31 May 2007,

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

PROCEDURE

1. The case originated in two applications (nos. 57953/00 and 37392/03) 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 two Russian nationals, Mrs Zura Sharaniyevna Bitiyeva and Mrs X (“the applicants”), on 25 April 2000 and 21 November 2003 respectively.

2. The applicants were represented by the lawyers of the NGO EHRAC/Memorial Human Rights Centre. The Russian Government (“the Government”) were represented by their Agent, Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The first applicant complained under Articles 3 and 5 about her ill-treatment and illegal detention in January and February 2000. In May 2003 the first applicant was killed in her house by unidentified gunmen along with three other members of her family. The second applicant, who is the daughter of the first applicant, expressed her wish to pursue the application. She also complained in her own name under Articles 2, 3, 13 and 34 of the Convention about her family members' death, the lack of effective remedies and hindrance of the right of individual petition.

4. The Chamber decided to join the proceedings in the applications (Rule 42 § 1 of the Rules of Court).

5. By a decision of 20 October 2005, the Court declared the applications admissible.

6. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The first applicant was born in 1948 and lived in the village of Kalinovskaya, Naurskiy District, Chechnya. She was killed on 21 May 2003 in her house, along with three other members of her family. The second applicant is the first applicant's daughter. She was born in 1976 and currently resides in Germany, where she sought asylum.

8. The facts of the case are partly disputed by the parties. In view of that, the Court requested the Government to submit copies of certain documents in relation to the applicants' complaints. The submissions of the parties are summarised below in Part A. A summary of the documents submitted by the Government is set out in Part B and a summary of other relevant documents in Part C below.

A. Submissions of the parties

1. The first applicant's detention from January to February 2000

9. The first applicant lived in the village of Kalinovskaya in the Naurskiy District in Chechnya, together with her husband, Ramzan Idyuev, and her children, Idris Idyuev, I. and X (the second applicant).

10. The first applicant was an active political figure in the Republic and participated in anti-war protests. From 1994 to 1996 she worked with the Russian NGO Committee of Soldiers' Mothers.

11. The applicants submitted that on 24 January 2000 Russian soldiers had entered the first applicant's house to conduct a passport check. The first applicant and her son Idris Idyuev explained that their passports had been submitted to the local authority for renewal. This explanation had apparently been accepted and the soldiers had left.

12. On 25 January 2000 at about 6 a.m. about 20 men in military uniforms, some wearing balaclava masks, entered the house. Four men, apparently the same ones who had been in the house the previous day, said that they were carrying out a passport check and ordered the first applicant, whom they had addressed by name, to go with them to the local police department to find out about her passport. The first applicant's son Idris Idyuev was also ordered to go.

13. The first applicant and her son were taken to the Naurskiy District Temporary Department of the Interior (VOVD). After about two hours they were transferred to the Chernokozovo detention facility, where the first applicant and her son were separated.

14. The first applicant submitted that upon arrival in Chernokozovo she had been forced to watch other detainees being ill-treated. About 60 men were made to run naked, with their clothes folded in their arms, along a corridor about 50 metres long while the soldiers beat them.

15. The first applicant was forced to stand with her face to the wall, with her hands raised against the wall until the evening. The hall was unheated, with broken windows, and it was very cold. She was not allowed to sit or lie down. In the evening she was taken to a cell.

16. Cell no. 2, where the first applicant was detained, was very small. It contained four metal beds and a toilet. Three to ten women were kept there at different times, and sometimes the detainees had to sleep in turns. The cell was very dirty and the stench from the toilet was unbearable. Once a day the detainees were given four litres of water per cell and one bowl of food for three persons in dirty crockery.

17. During her detention the first applicant was humiliated constantly as a woman and as a person of Chechen origin. The guards told her that she would not leave the place alive, that she would go insane or kill herself. The applicant was pushed and hit with rifle butts on many occasions. On one occasion, around 3 February 2000, the guards sprayed gas into each cell, causing the detainees to cough.

18. Other inmates in the cell, according to her submissions, included sick persons and children. The applicant witnessed other detainees being beaten and humiliated by the guards. Sometimes she could hear her son's screams while he was being beaten in the corridor in front of her cell.

19. The first applicant was called for questioning about four times during her stay. The person questioning her did not state his name or rank and asked questions of a general character. The applicant was asked about her name and where she was from, to which clan she belonged, if she was a Muslim and if she prayed. She was also asked questions about the "peace march" to Moscow in which she had participated and who had financed it.

20. The first applicant, who suffered from cholecystitis and heart failure, was denied professional medical help while in detention. Her medical condition deteriorated rapidly. On one occasion she fainted in the corridor and the guards only allowed other women inmates to carry her into the cell after half an hour.

21. The second applicant submitted that she had brought food and medicines to her mother and brother in detention in Chernokozovo, but that little had reached them, as the soldiers had taken most of it.

22. In support of the first applicant's submissions as to the conditions of detention in Chernokozovo the applicants submitted a statement by Sh., who had been detained in the same cell as the first applicant in January and February 2000. She confirmed the first applicant's submissions concerning the conditions of detention, the beatings of other detainees and the applicant's health problems.

23. In addition, the applicants submitted press and NGO reports about the situation in the Chernokozovo detention facility at the end of 1999 and the beginning of 2000, which described the intolerable conditions of detention and the widespread torture and ill-treatment of detainees, together with relevant Council of Europe documents (see Part C below).

24. In their observations the Government submitted that the first applicant and her son Idris Iduyev had been detained on 25 January 2000 on the basis of the Presidential Decree of 2 November 1993 (no. 1815) on measures aimed at prevention of vagrancy, and placed in the reception and identification centre (*приемник-распределитель*) in Chernokozovo, which had operated from November 1999 to February 2000. The first applicant had remained there until 17 February 2000, when her identity had been established and she had been transferred to a hospital in view of the deterioration of her health. The Government submitted some documents relevant to the first applicant's detention (see Part B below).

25. As to the status of the Chernokozovo detention facility, in December 2005 the Government submitted that there were no documents available about the legal status of the institution prior to 8 February 2000, but that the premises of the former high-security wing of correctional facility IS-36/2 (*помещение бывшего штрафного изолятора исправительной колонии ИС-36/2*) had been used as a reception and identification centre. According to the Government, on 8 February 2000 the Minister of Justice had issued orders for a pre-trial detention centre ("SIZO") to be set up and for responsibility for the institution to be transferred to the Ministry of Justice of Chechnya.

26. At the same time the Government submitted a copy of the order issued by the Minister of Justice on 8 August 2000 (no. 229), by which responsibility for pre-trial detention centre IZ-4/2 in Chernokozovo had been transferred from the Ministry of Justice of Kabardino-Balkaria to the Ministry of Justice of Chechnya. The institution was designated as "IZ-14/2". Its capacity was established at 150 persons. (Documents issued by the pre-trial detention centre in 2004 and 2005 referred to it as "IZ-20/2".)

2. The first applicant's release and subsequent events

27. The first applicant was transferred to the district hospital in Naurskaya on 17 February 2000. According to the second applicant's statement, her mother was unconscious and the doctors insisted that she should be taken to the hospital for intensive care. The first applicant submitted that in the hospital she had been guarded by the military for another few weeks.

28. The first applicant submitted that in mid-March 2000 she had been visited in the hospital by the Naurskiy District Prosecutor, who had told her that she had been cleared of charges.

29. The first applicant was issued with a certificate by the head of the Naurskiy VOVD, dated 2 March 2000, which stated that “from 25 January to 26 February 2000 the criminal police of the Naurskiy VOVD investigated on the basis of incriminating materials [the first applicant's] participation and involvement in illegal armed groups in Chechnya. No incriminating material was found.”

30. The first applicant was discharged from the hospital on 15 March 2000. The second applicant submitted that she had remained very weak and spent another month in bed. She had lost a significant amount of weight, and her arms and head had trembled.

31. The first applicant's son, Idris Iduyev, was released from Chernokozovo on 26 February 2000. The second applicant submitted that he had likewise suffered beatings and ill-treatment while in detention. No medical documents were submitted to substantiate this.

32. Neither the first applicant nor her son Idris Iduyev was charged with any crime in relation to their detention.

33. The Government submitted that the first applicant had been admitted to Naurskiy District Hospital on 17 February 2000 and diagnosed with “bronchopneumonia on both sides and cardiac-type neurocirculatory dystonia with asthmatic syndrome”. She had undergone a number of complex examinations, but no injuries or traces of beatings had been recorded. After release neither the first applicant nor her son had filed complaints with the prosecutor's office about alleged ill-treatment while in detention.

34. The Government further stated that it was impossible to identify the persons who had worked at the reception and identification centre at the relevant time or to obtain copies of documents, in view of the absence of any archives. A check carried out by the Naurskiy District Prosecutor's Office resulted on 27 January 2005 in a decision not to open a criminal investigation. Later this decision was reversed (see Part B below).

35. The applicants submitted a number of NGO and media reports relating to the situation in Chernokozovo at the material time. In particular, they referred to a Human Rights Watch report of October 2000 entitled “Welcome to Hell: Arbitrary Detention, Torture and Extortion in Chechnya”. The report contained a special section on the Chernokozovo detention centre in January and early February 2000 based on interviews with former inmates. The report presented a picture of systematic abuse and ill-treatment of detainees, compounded with sordid conditions of detention. It called upon the Russian authorities to investigate fully the events in Chernokozovo in January and February 2000 to ensure prosecution of those responsible for the abuses and to grant compensation to the victims.

36. On 24 March 2000 the NGO Memorial contacted the Prosecutor General following a publication in *Itogi* magazine about “filtration points” for persons whom the federal authorities had suspected of being linked to

illegal armed groups. The article and accompanying pictures described the harsh conditions of detention at a filtration point in Tolstoy-Yurt, near Grozny. It also spoke of abuse and ill-treatment in Chernokozovo. On 24 March 2000 the prosecutor of the Grozny District responded to Memorial, confirming that from 2 to 12 February 2000 a “filtration point” had indeed been set up in the village of Tolstoy-Yurt. He stated that in the period in question 356 persons had been detained there. Of these, 141 persons had been charged with the offence of participating in illegal armed groups, detained on the basis of a prosecutor's order and transferred to the Chernokozovo pre-trial detention centre (SIZO). All others had been released. The legality of their detention had been supervised by the relevant prosecutors and the detainees had been provided with sleeping facilities, food and medical assistance.

3. The killing of the first applicant on 21 May 2003

37. The second applicant submitted three statements by witnesses to the events: her brother I. and two neighbours, M. and G. According to these statements, on 21 May 2003 the first applicant, her husband Ramzan Iduyev (the second applicant's father), their son Idris Iduyev (the second applicant's brother) and the first applicant's brother Abubakar Bitiyev (the second applicant's uncle) spent the night at the first applicant's house at 7 Filatova Street in Kalinovskaya. The first applicant's other son, I., was sleeping in a separate house in the same courtyard, and his one-year old son was in the house with the first applicant, his grandmother.

38. At around 3 a.m. two UAZ-45 cars without registration plates, equipped with large aerials, arrived at the house next door to the first applicant's house. Several men entered the house very quietly, so the owner of the house, D., did not hear them enter. They woke D. up and gagged her with adhesive tape. Then they demanded her passport. One of them looked at the photograph and told the others in Russian “This is not her”. They then left, having warned the inhabitants to be quiet for ten minutes. They took the passport along with them. D. later found her passport in the first applicant's house.

39. The group arrived at the first applicant's house at about 3.30 a.m. Eleven persons entered the first applicant's house; a few others, armed with grenade-launchers and machine guns, gathered in the street around the house. They were all tall and well-built and were wearing camouflage which the witnesses identified as the uniform of the special forces. Four of them were masked; others were wearing black helmets covering their necks and ears. The men who entered the house were armed with AK-7.62 guns. After a few minutes a neighbour heard six or seven sounds of muffled blows, which he at first mistook for knocking at the gates. He then realised it had been the sound of shooting.

40. I., the first applicant's son, testified that he had heard noise and a scream at the neighbours' at about 3.30 a.m. He thought that it was probably a special operation, something that happened regularly in the village. He dressed very quickly and looked outside. He noticed several men in camouflage and "special forces helmets" jumping into the courtyard across the fence. The witness guessed that they would not immediately break into the house and noted that they had first taken up combat positions around the door. He rushed into the room and covered his bed with a blanket, then hid behind an armchair. As soon as he did so, several men ran into the house and spread into the rooms. One of them said "There is no one here", and another one said "Take the video". They spoke Russian and did not mention any names or ranks when addressing each other. In two or three minutes they left, having taken the video player. The second applicant's brother heard the dog barking and some noise outside. Then he heard about 10 shots being fired very rapidly. About five minutes later he heard them shouting "Come on, let's leave, quick", and then the sound of the cars leaving.

41. The neighbours saw two UAZ cars leave towards the main road to Grozny.

42. I. waited a few more minutes and went outside. He saw three women in the street and was very surprised that his mother had not come out, because usually she was very active and intervened when someone had been detained in the village. He noticed that the door of his parents' house was ajar and thought that his whole family had been taken away. When he entered the house he noticed his mother lying on the floor. A female neighbour entered and he gave her his one-year-old son, who was crying in his bed, and asked her to take him out.

43. He then returned to the room and turned on the light. He found the first applicant on the floor, lying on her back. Her mouth was covered with adhesive tape and her hands were bound together with the same tape. She had been shot in the face and in the hands. I. later counted three bullet holes in the floor, from an AK-7.62 machine gun.

44. Then he went into the corridor and found the body of his uncle, Abubakar Bitiyev. The neighbour M. submitted that there was a black hood with strings on his head, used by the military when they detained people. His hands and feet were taped together. He had been shot three times in the back of his head. I. testified that his uncle had been sleeping that night in a separate house in the same courtyard and that the killers must have brought him to the first applicant's house by force because the furniture in that house had been smashed.

45. In the living room they found the body of the first applicant's husband, Ramzan Iduyev. He was lying on the floor near the sofa, and his hands and legs were taped together. He had been shot in the back of his head. A roll of adhesive tape was lying near his body. In the bedroom on the floor they found the body of the first applicant's son, Idris Iduyev, with his

hands taped behind his back and his legs taped together. He had also been shot three times in the back of his head.

46. In the morning the villagers learnt that on the same night two other men had been killed, apparently by the same group. A.G.'s house at Oktyabrskaya Street had been raided at about 2 a.m.; his wife, who had opened the door, had been gagged and her hands and feet bound with tape. Once she had managed to free herself, she had found her husband's body with bullet wounds to the head. At about 3 a.m. the group had raided the house of T.I. in Kooperativnaya Street. His wife and mother had been bound up with adhesive tape and the owner of the house had been taken out by men identified by the witnesses as "military". T.I.'s body, with his hands bound in front of the body with adhesive tape, was found by his relatives later that night in the vegetable patch at the house with four or five bullet holes in the head and shoulder.

4. Investigation into the killings

47. Once I. discovered the bodies he ran into the courtyard screaming for help. In response to his cries neighbours came and one of them went to call the local police. The police came in the morning, at least two hours later. At about 11 a.m. scene of crime experts arrived from the district's administrative centre in Naurskaya, photographed the bodies and collected the cartridges.

48. On 21 May 2003 the relatives washed and buried the bodies. The second applicant submitted that the experts had not asked them to postpone the burials or to allow an autopsy.

49. The witnesses submitted that some villagers had asked the military at the roadblocks surrounding the village who had come that night and why they had been allowed to pass through to Kalinovskaya and back. They were apparently told that this had been a military group with a "special mission" permit. They also alleged that similar information had been given to the local police and that was why they had not interfered.

50. On 21 May 2003 the Naurskiy District Prosecutor's Office opened criminal investigation no. 48023 under Article 105, part 2 (a) and (g), of the Criminal Code (killing of two or more persons with aggravating circumstances).

51. On 26 May 2003 the NGO Memorial issued a press release entitled "Political Crime in Kalinovskaya". It reported the killing of the first applicant and her family and linked it to the first applicant's complaint to the European Court of Human Rights. It also referred to the pending criminal proceedings against the first applicant's brother and son, Abubakar Bitiyev and Idris Iduyev, for possession of illegal drugs for non-commercial purposes. The document reported that the first applicant had insisted that the proceedings had been contrived in retribution for her active position in relation to the crimes committed by the military, including a request to

investigate a mass burial discovered in the Naurskiy District in February 2003.

52. On 31 July 2003 the Court, acting under Rule 40 of the Rules of Court, informed the Russian Government about the application lodged by the first applicant and about her killing and that of her family members, on the basis of information received from the applicants' representatives.

53. On 12 August 2003 Memorial contacted the Prosecutor General with an inquiry about the killings in Kalinovskaya. In October 2003 the Prosecutor General's Office replied that their letter had been forwarded to the Chechnya Prosecutor's Office.

54. In November 2003 the second applicant contacted the Naurskiy District Prosecutor's Office with a request to grant her victim status in criminal case no. 48023. She received no answer to this letter.

55. The Government in their observations submitted additional information about the investigation into the killings. According to them, on 21 May 2003 the investigators examined the site of the crime and collected evidence. The relatives of the deceased refused to submit the bodies for forensic examination. In view of that, the forensic experts' reports had been carried out on the basis of medical documents. They confirmed the presence of gunshot wounds, which had caused the deaths. A ballistic expert report was also carried out.

56. According to the Government, on 21 May 2003 the investigation questioned eight relatives and neighbours of the persons who had been killed. They also questioned 20 servicemen of the law-enforcement bodies. In June 2003 the investigation questioned I. and the first applicant's brother B., who were both granted victim status. Additional questioning of the witnesses and victims took place in May and July 2005. In July 2003 and April 2005 the investigation questioned and granted victim status to the relatives of A.G. and T.I. The second applicant had never applied to the prosecutors in relation to the killings of her family members. Thus, a decision to grant her victim status was only taken on 15 December 2005, but it was not announced to her, in view of her absence from her place of residence.

57. According to the Government, the investigation established that on 21 May 2003 between 3.30 and 4 a.m. a group of unidentified men wearing camouflage and masks and armed with automatic weapons had entered three houses in the village of Kalinovskaya and killed six persons, including the first applicant and three members of her family. The identities of the perpetrators were not established. The involvement of the special forces was not confirmed by the investigation. According to the information supplied by the United Group Alliance (UGA), no servicemen of the UGA had been involved on 20 and 21 May 2003 in any operations in the Naurskiy District. The investigation reviewed the log records of the vehicles belonging to the military units stationed in the district, which indicated that no vehicles had

left their location on that night. The Federal Security Service also denied that they had carried out any operations in the district.

58. The investigation of criminal case no. 48023 was adjourned and reopened on several occasions. It failed to identify the perpetrators of the crimes. Following a request from the Court, the Government submitted a number of documents from the criminal investigation file in case no. 48023 (see below).

5. Harassment of the second applicant

59. The second applicant submitted that she and her brother I. had been threatened and harassed by the military and law-enforcement bodies after the killing of the first applicant and her family. She submitted that about two months after the killings her brother had been detained by the military for some time, and that while in detention he had been beaten and ill-treated. Soon afterwards he had left without any notice and she had no information as to his whereabouts.

60. She also submitted that on an unspecified date in April 2004 her aunt (the first applicant's sister) had been visited in Grozny by officers of the Naurskiy District Prosecutor's Office, who had told her that they were looking for the second applicant. The woman told them that she did not know where the second applicant lived, because the latter had no permanent address. The prosecutors asked the second applicant's aunt questions about the complaint to the Court, who had applied and why the prosecutor's office had not been informed of this complaint. The second applicant submitted that her aunt had not been aware of the complaint and had replied that they had never applied to the Court. The prosecutors had asked her to sign some papers without disclosing their contents, or blank papers, but she had refused.

61. The second applicant also submitted that on 17 May 2004, while in the village of Kalinovskaya, she had been approached by a local policeman, an officer of the District Prosecutor's Office and their three guards. They had demanded that the applicant produce her internal passport and had taken it away. They had then asked her if she was aware of Article 222 of the Criminal Code (illegal possession of arms), where she kept her weapons, what she was doing in Grozny and in Kalinovskaya and what the price of arms was. The second applicant replied that she had nothing to do with weapons and that she did not have any. The second applicant submitted that when they had noticed her relative, a member of the security service, they had returned the passport to her, had said that they "just wanted to talk" and had left.

62. The second applicant submitted that her husband had divorced her because he and his relatives were afraid that they could have problems being associated with her. She felt intimidated and feared for her safety, security and life.

63. On 24 June 2004 the Court, acting under Rule 39 of the Rules of Court, requested the Russian Government to take all measures to ensure that there was no hindrance in any way of the effective exercise of the second applicant's right of individual petition as provided by Article 34 of the Convention. This measure was lifted on 20 October 2005.

64. The Government submitted that in response to the second applicant's complaint about intimidation, the Naurskiy District Prosecutor's Office had carried out an inquiry. The office had refused to open criminal proceedings, but later this decision had been reversed by the Chechnya Prosecutor's Office. Following a request from the Court, the Government submitted a number of documents relevant to these proceedings (see Part B below).

65. The second applicant submitted that on 14 July and on 2 September 2004 investigators from the District Prosecutor's Office had questioned her and obtained written explanations about the alleged intimidation. In July 2004 questioning had taken place at the Naurskiy District Prosecutor's Office and in September the investigator had visited her while she was working in a hospital in Grozny.

66. The second applicant submitted to the Court her own statement and a copy of the "explanation" obtained on 14 July 2004. She submitted that the investigator had assured her that she would be protected from further threats and that no one would bother her in the future. The applicant stated, however, that the questioning had concerned not only the incidents of harassment, but also some details about her complaint to the Court and about her lawyer. The investigator had warned her that she should submit correct information, otherwise she could be prosecuted for giving false statements. The second applicant submitted that the questioning had been an intimidating experience, because of the nature of the questions, because she had been pregnant at the time and had to take care of her two-year-old child and because her elderly relatives, who were present, had not been happy to learn that she had applied to Strasbourg, fearing for their lives and safety. The applicant also referred to the poor security situation overall, when any contact with representatives of the law-enforcement bodies was perceived by her and her family as a threat.

B. Documents submitted by the Government

67. Following the decision on admissibility, the Court requested the Government to submit copies of a number of documents. In particular, the Government were requested to submit documents concerning the investigation into the first applicant's complaints of ill-treatment, documents specifying the legal status of the detention centre in Chernokozovo during the relevant period and documents relating to the first applicant's medical complaints and condition. The Court also requested the Government to submit a copy of the file on the criminal investigation opened into the

murder of the first applicant and documents relating to the inquiry into the second applicant's allegations of harassment. In response, the Government submitted about 100 pages of relevant material. The Government stated that the submission of other related documents was impossible because they contained information about the location and actions of the military and special units and personal information about the participants in the proceedings. They referred to Article 161 of the Code of Criminal Procedure (CCP).

68. The relevant documents are summarised below.

1. Documents relating to the first applicant's detention and release

69. In 2003 the temporary isolation facility of the Naurskiy District Department of the Interior (ROVD) informed the investigator from the District Prosecutor's Office that the first applicant had not been detained there between 1 and 31 January 2000.

70. On an unspecified date the head of the Chernokozovo SIZO (IZ-20/2) informed the Chechnya Prosecutor that the first applicant had been detained there between 25 January 2000 and 16 February 2000. On the latter date she had been transferred to the district hospital in Naurskaya. The letter further informed the prosecutor that no copies of the criminal investigation file or of the personal file on the first applicant had been preserved, with the exception of the entry cards. Another document issued by the same officer in 2003 stated that it was impossible to find out any details about the first applicant's detention because no proper records had been kept at the relevant time. It further stated that between November 1999 and February 2000 the facility had been guarded by military servicemen on assignment from other regions and that it was impossible to identify them. From 8 February 2000 the institution had come under the authority of the Ministry of Justice of Kabardino-Balkaria and had been manned by its staff. After August 2000 the detention facility had operated under the authority of the Ministry of Justice of Chechnya.

71. In December 2005 the Ministry of Justice of Chechnya issued a note to the effect that it had no information as to the operation of a reception and identification centre in Chernokozovo or whether it had ever been under the authority of the Ministry of Justice of Kabardino-Balkaria.

72. The Government also submitted copies of log entries for the first applicant and for her son Idris Iduyev. The first applicant's card contained information about her name, date and place of birth and place of residence. It stated that she had entered Chernokozovo on 25 January and that on 16 February 2000 she had been transferred to hospital. The entry for Idris Iduyev also contained personal information, and stated that on 26 February 2000 he had been "checked and released".

73. The Government submitted a number of documents relating to the first applicant's treatment at the District Hospital. In so far as they are

legible, the documents confirm that on 17 February 2000 the first applicant was delivered by ambulance from the “detention facility” in a grave condition and diagnosed with acute bronchopneumonia on both sides, heart failure, stenocardia, exacerbations of chronic cholecystitis and pyelonephritis on both sides. The records state that the first applicant had fallen ill about two weeks previously as a result of hypothermia. She was treated at the hospital until 15 March 2000.

74. From the documents submitted by the Government it also appears that in January 2005 the Naurskiy District Prosecutor's Office carried out an inquiry into the first applicant's ill-treatment while in detention. The inquiry was prompted by an Amnesty International report about the persecution of human-rights activists in Chechnya. The documents referred to the records kept in Chernokozovo, according to which on 6 February 2000 the first applicant had been diagnosed with and treated for tracheobronchitis and cholecystitis. She had again sought medical assistance on 15 February 2000, when her pulse and blood pressure had been taken. On 27 January 2005 the investigator stated that no other records were available and ruled that no criminal investigation should be opened on account of the absence of *corpus delicti*. In December 2005 a supervising prosecutor quashed that ruling and ordered a further inquiry.

2. Documents relating to the investigation into the first applicant's murder

(a) Decision to open a criminal investigation

75. On 21 May 2003 a prosecutor of the Naurskiy District Prosecutor's Office opened a criminal investigation into the murders of A.G., T.I., the first applicant and her three family members in the village of Kalinovskaya “by unidentified persons wearing camouflage uniforms and masks and armed with automatic weapons”. The order referred to the types of weapons used: a PM pistol and Kalashnikov sub-machine guns of 7.62 mm and 5.45 mm calibre. The case file was registered as no. 48023. On the same day the Deputy Prosecutor of Chechnya set up an investigative group of 14 officers from the prosecutor's offices of the Naurskiy District and Grozny, and from the military prosecutor's offices and the Ministry of the Interior.

(b) Decisions concerning victim status

76. On 4 June 2003 I., the first applicant's son, was granted victim status in the proceedings. On 7 June 2003 M.B., the first applicant's brother, was also granted victim status. In July 2003 the relatives of T.I. were granted victim status in the proceedings. In April and July 2005 relatives of A.G. were recognised as victims.

77. On 15 and 28 December 2005 the investigating body issued orders to grant victim status to the second applicant. They were forwarded to her place of residence in Kalinovskaya by mail, and were not countersigned by her.

(c) Prosecutors' orders

78. The documents submitted by the Government include a number of prosecutors' orders to extend the term of the investigation, and to adjourn and reopen the proceedings. These orders mention some investigative steps, such as information requests, forensic and fingerprint experts' reports, and the records of the questioning of witnesses and victims. They also refer to a certain "directive of the Regional Operative Headquarters" ("*директива РОИП*"). The Government did not submit copies of these documents and no further details of these measures have been made available to the Court.

79. Between 21 May 2003 and 9 December 2005 the investigation was adjourned four times owing to the failure to identify the culprits. Each time it was reopened by a supervising prosecutor on the ground that the investigation had not been carried out in full. The last order to reopen the proceedings is dated 9 December 2005.

80. The persons who had been granted victim status were informed of the decisions to adjourn and reopen the investigation.

3. Documents related to the investigation of the second applicant's complaints of harassment

81. In July 2004 an investigator from the Chechnya Prosecutor's Office ordered an inquiry into these allegations further to information provided by the Representative of the Russian Federation at the Court.

82. The investigators questioned the second applicant, the local policeman, an officer of the District Prosecutor's Office, guards and the second applicant's relatives. They confirmed that in May 2004 there had been a passport check in Kalinovskaya, during which the second applicant had been asked questions about the presence of illegal items, including weapons, in her house. The witnesses stated that the second applicant had not been subjected to any threats or pressure. The documents also confirm that after the prosecutor's office had been instructed to investigate the complaint of harassment, a number of questions put to the second applicant and her relatives concerned her application to the Court. The second applicant stated that she had not received any threats after applying to the Court.

83. Between July 2004 and 15 December 2005 four orders not to open a criminal investigation into the second applicant's complaints of harassment were issued, each time being quashed by the supervising prosecutor. The last document issued on 15 December 2005 by the Deputy Prosecutor of Chechnya ordered the investigators from that office to carry out an

additional inquiry and to question the second applicant's lawyer about the circumstances of the case.

C. Relevant Council of Europe reports

84. The detention centre in Chernokozovo, where the first applicant was detained, received extensive attention from various human-rights institutions, including the European Committee for the Prevention of Torture (CPT), following allegations of severe ill-treatment of detainees. On 4 March 2000 the head of the CPT delegation, Mr Hajek, issued a statement to the Russian officials at the end of the visit to the North Caucasian region of the Russian Federation. The statement said, *inter alia*, in relation to the visit to Chernokozovo:

“... the information gathered by the delegation strongly indicates that many persons detained at Chernokozovo were physically ill-treated in the establishment during the period December 1999 to early February 2000. In different locations, the delegation has interviewed individually and in private a considerable number of persons who were held at Chernokozovo during that period. A clear pattern of physical ill-treatment of prisoners by custodial staff emerged. The ill-treatment alleged consisted essentially of kicks, punches and truncheon blows to various parts of the body (excluding the face). The ill-treatment was said to have been inflicted principally in the central corridor of the detention facility, usually when prisoners were taken to an investigator's room for questioning or when they were returned to their cells after such questioning; apparently, prisoners were also on occasion physically ill-treated in the investigators' rooms. Investigators were said to have been fully aware of the ill-treatment being inflicted, and some prisoners affirmed that it was inflicted at their instigation. In certain cases, the delegation has gathered medical evidence which is consistent with the allegations of ill-treatment made by the prisoners concerned.”

85. On 10 July 2001 the CPT issued a public statement concerning the Chechen Republic, under Article 10 § 2 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. This step was prompted by the Russian authorities' failure to cooperate with the CPT in relation to two issues: (i) the carrying out of a thorough and independent inquiry into the events in the detention facility at Chernokozovo during the period from December 1999 to early February 2000; and (ii) action taken to uncover and prosecute cases of ill-treatment of persons deprived of their liberty in the Chechen Republic in the course of the current conflict. The statement said, in particular:

“I. The information gathered by the CPT during its visits to the North Caucasian region in late February/early March and in April 2000 strongly indicated that many persons were physically ill-treated in a detention facility at Chernokozovo during the period December 1999 to early February 2000. Ever since the beginning of March 2000, the CPT has been urging the Russian authorities to carry out a thorough and independent inquiry into events at this detention facility during that period. To date, an inquiry of the kind requested by the CPT has not been carried out and the Russian authorities have now made it clear that they have no intention of organising such an inquiry. A particularly disturbing aspect of the Russian authorities' current position is

their contention that no facilities intended for accommodating detainees were established by public authorities in the area of Chernokozovo during the period referred to by the CPT.

It is an indisputable fact that a detention facility operated at Chernokozovo during the period December 1999 to early February 2000, prior to the formal setting up in that village of a pre-trial establishment (SIZO no. 2) by a Ministry of Justice Order dated 8 February 2000. The CPT's delegation interviewed many persons who stated that they had been held in a detention facility at Chernokozovo during that period. Numerous Russian officials (prosecutors, investigators, custodial staff) met by the delegation confirmed that the establishment designated as from 8 February 2000 as SIZO no. 2 had prior to that date been used as a detention facility. The CPT is in possession of a copy of the medical journal of the establishment covering the period 8 November 1999 to 12 February 2000, in which the day by day arrival of detainees (and any injuries they bore) was recorded; the staff who completed that journal referred to the establishment first as an 'IVS' (temporary detention facility) and at a later stage as a 'temporary reception and distribution centre'. The Russian authorities have themselves, in earlier correspondence, provided to the CPT written statements signed by officers attesting to the fact that they worked in the detention facility during the period December 1999 to early February 2000 as well as written statements signed by persons who certified that they were held at Chernokozovo during that period.

The Russian authorities' contention that no detention facilities were established by public authorities at Chernokozovo during the period in question (and that, as a result, an inquiry of the kind requested can serve no purpose) is clearly untenable and constitutes a failure to cooperate with the CPT.”

86. On 10 July 2003 the CPT issued a second public statement in relation to Chechnya. It was prompted by allegations of continued recourse to torture and other forms of ill-treatment by members of the law-enforcement agencies and federal forces operating in the Chechen Republic. It also described the action taken to bring to justice those responsible for ill-treatment as slow and ultimately ineffective.

II. RELEVANT DOMESTIC LAW

87. Presidential Decree no. 1815 of 2 November 1993 on measures aimed at prevention of vagrancy and begging¹ provided for the reorganisation of the system of “reception and distribution centres” for persons detained by the bodies of the Ministry of the Interior for vagrancy and begging into centres of social rehabilitation for such persons. Under the Decree, persons could be placed in such centres on the order of a prosecutor for a period of up to ten days.

88. Article 161 of the Code of Criminal Procedure (CCP) prohibits the disclosure of information from the preliminary investigation file. Under part 3 of the Article, information from the investigation file may be divulged only with the permission of a prosecutor or investigator and only in so far as

¹ Repealed in February 2004.

it does not infringe the rights and lawful interests of the participants in the criminal proceedings or prejudice the investigation. Divulging information about the private lives of participants in criminal proceedings without their permission is prohibited.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION AS TO EXHAUSTION OF DOMESTIC REMEDIES

89. In their submissions following the Court's decision as to the admissibility of the application, the Government stated that the investigation of the applicants' complaints was continuing and that the complaints should be dismissed for failure to exhaust domestic remedies.

90. The Court reiterates that, under Rule 55 of the Rules of Court, any plea of inadmissibility must be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application (see *K. and T. v. Finland* [GC], no. 25702/94, § 145, ECHR 2001-VII, and *N.C. v. Italy* [GC], no. 24952/94, § 44, ECHR 2002-X). However, in their observations on the admissibility of the application the Government did not formally raise this point. Moreover, the Court cannot discern any exceptional circumstances that could have dispensed the Government from the obligation to raise their preliminary objection before the adoption of the Chamber's admissibility decision of 20 October 2005 (see *Prokopovich v. Russia*, no. 58255/00, § 29, 18 November 2004).

91. Consequently, the Government are estopped at this stage of the proceedings from raising the preliminary objection of failure to use the relevant domestic remedy (see, *mutatis mutandis*, *Bracci v. Italy*, no. 36822/02, §§ 35-37, 13 October 2005). It follows that the Government's preliminary objection must be dismissed.

II. COMPLAINTS BROUGHT BY THE FIRST APPLICANT

A. *Locus standi*

92. The first applicant complained that her detention in January and February 2000 had been unlawful and that she had been subjected to inhuman and degrading treatment and torture while in detention. The first applicant had been killed on 21 May 2003, after having lodged her application under Article 34 of the Convention. The Court observes that in

various cases in which an applicant has died in the course of the Convention proceedings it has taken into account the statements of the applicant's heirs or of close family members expressing their wish to pursue the application (see, among other authorities, *Kalló v. Hungary*, no. 30081/02, § 24, 11 April 2006). The Court considers that the second applicant, the first applicant's daughter, who stated her intention of continuing the proceedings, has a legitimate interest in obtaining a finding that there had been a breach of the first applicant's rights guaranteed by Articles 3 and 5 of the Convention (see, mutatis mutandis, *Dalban v. Romania* [GC], no. 28114/95, §§ 1 and 39, ECHR 1999-VI). Accordingly, the Court finds that the second applicant, as the first applicant's heir, has standing to continue these proceedings.

B. Alleged violation of Article 3 of the Convention

93. The first applicant complained that she had been subjected to inhuman and degrading treatment and torture, in violation of Article 3 of the Convention. She also complained that the relevant authorities had failed to effectively investigate the allegations of ill-treatment in Chernokozovo during the relevant period. Article 3 reads:

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

1. Arguments of the parties

94. The first applicant complained about her ill-treatment and the poor conditions of her detention, as a result of which her health had significantly deteriorated. She submitted that the Government had had enough information about the situation in Chernokozovo, but had failed to conduct an investigation. She referred to her medical records and to the reports that spoke of widespread ill-treatment of prisoners and intolerable conditions of detention.

95. The Government stated that upon their release the first applicant and her son had not made any complaints about their alleged ill-treatment. The first applicant had received medical assistance while in detention. The medical documents drawn up on the first applicant's release contained no reference to bodily injuries. In 2005 the prosecutor's service had conducted an inquiry into her complaints, but had been unable to find any evidence necessitating the opening of a criminal investigation. An additional inquiry was pending in December 2005.

2. *The Court's assessment*

(a) **As regards the ill-treatment**

96. In the present case the parties disagreed as to the conditions of the first applicant's detention and her allegations of ill-treatment. Consequently, the Court will begin its examination of complaints under Article 3 with the establishment of the facts.

97. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161). However, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, pp. 25-26, § 34, and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII). In the absence of such explanation the Court can draw inferences which may be unfavourable for the respondent Government (see *Orhan v. Turkey*, no. 25656/94, § 274, 18 June 2002).

98. In the present case the first applicant submitted that she had been subjected to ill-treatment, that the conditions of her detention amounted to inhuman and degrading treatment and that she had not been given proper medical assistance, which had caused a serious deterioration of her health. In support of her allegations she submitted her own statement of facts, together with testimonies by another detainee and by the second applicant confirming the first applicant's medical problems, and referred to the publicly available information about the conditions of detention at the Chernokozovo detention facility at the relevant time. The Government submitted a number of medical documents drawn up after the first applicant's release from Chernokozovo which confirmed that she had been placed in hospital in a grave condition and that she had suffered from several serious respiratory, heart and inflammatory diseases. The Government claimed that further investigation of the complaint was impossible owing to the absence of records and the change of staff at the detention facility.

99. In view of the particular circumstances of the present case, the Court will start by examining the first applicant's complaints concerning the deterioration of her health and the medical assistance she received while in detention. It follows from the documents examined by the Court that on

17 February 2000 the first applicant was hospitalised in a grave condition and diagnosed with acute bronchopneumonia on both sides, heart failure, stenocardia, exacerbations of chronic cholecystitis and pyelonephritis on both sides (see paragraph 73 above). Although her illnesses may be partly explained by her past medical history, the sharp deterioration of her state of health in the detention facility raises doubts as to the adequacy of medical treatment available there (see *Farbtuhs v. Latvia*, no. 4672/02, § 57, 2 December 2004).

100. Furthermore, the Court notes that the Government referred to the medical record kept in Chernokozovo, according to which the applicant had sought medical assistance on two occasions (see paragraph 74 above). The Government did not submit copies of that record to the Court, but, in any event, it only referred to the illnesses diagnosed and not to the manner of treatment. It does not explain why the entry for 15 February 2000 only contained a reference to the applicant's pulse rate and blood pressure, whereas two days later in the District Hospital she was diagnosed with a number of serious respiratory and heart problems necessitating urgent treatment.

101. The Court notes the first applicant's allegations concerning lack of heating, overcrowding and poor food, which were not disputed by the Government. The findings of the CPT as regards the situation in Chernokozovo at the relevant time provide, at least to some degree, a reliable basis for an assessment of the conditions in which the first applicant was imprisoned (see, for another example of the Court's taking into account the reports of the CPT, *Kehayov v. Bulgaria*, no. 41035/98, § 66, 18 January 2005). It accepts that the conditions as described by the first applicant would have inevitably contributed to the deterioration of her health, in particular as regards respiratory and heart diseases.

102. In sum, the Court is satisfied that the information reviewed by it supports the first applicant's assertion about the sharp deterioration of her health in the detention facility, which must be at least partly attributable to the conditions of her detention and the lack of medical assistance. In these circumstances it was incumbent on the Government to refute them. However, the Government were unable to provide any documents relating to the first applicant's detention or to explain what kind of medical treatment was administered to her, or to give any details of such treatment (see *Ostrovar v. Moldova*, no. 35207/03, § 86, 13 September 2005).

103. The Court will next proceed to examine whether these facts disclose a breach of Article 3 of the Convention, which enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no 26772/95, § 119, ECHR 2000-IV).

104. To fall within the scope of Article 3, ill-treatment must attain a minimum level of severity. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, cited above, p. 65, § 162).

105. The State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance (see *Kudla v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI). When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions and the duration of the detention (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II, and *Kalashnikov v. Russia*, no. 47095/99, § 102, ECHR 2002-VI).

106. Turning to the present case, the Court takes note of the evidence that attested to a serious deterioration of the first applicant's health during her detention. It also finds it established that none of the requisite medical assistance was given to the first applicant while she was in detention. The first applicant clearly suffered from the physical effects of her medical condition and this suffering was further aggravated by the detainees' poor hygienic and living conditions, as well as the inappropriate level of medical assistance. The Court will examine the questions relating to the lawfulness of the first applicant's detention in the context of the complaints brought under Article 5 below; however, it observes that at the relevant time the legal status of the detention centre was not clearly defined. In such circumstances it was impossible to make provision for appropriate monitoring of prisoners' complaints or for adequate medical assistance.

107. Taking into account the first applicant's age, her general state of health, the length and conditions of her detention and the specific impact it had on her, the Court finds that the deterioration of her health, compounded by the poor detention conditions and the lack of adequate medical care, entailed a level of suffering which amounted to inhuman and degrading treatment contrary to Article 3 of the Convention.

(b) As regards an effective investigation into the ill-treatment

108. The first applicant argued that the authorities were well aware of the poor conditions of detention and the widespread ill-treatment at the Chernokozovo detention facility at the relevant time and should have taken proactive steps to investigate these allegations. The Government argued that the first applicant had not made any complaints of ill-treatment upon her

release. In any event, a prosecutor's inquiry in 2005 had not obtained any information necessitating a criminal investigation.

109. The Court notes that on the basis of the information submitted by the parties it has found a violation of Article 3 on account of the first applicant's state of health and her lack of medical assistance while in detention. The legal situation of the detention centre is addressed below under the heading of Article 5. In view of this, the Court does not find that a separate examination is necessary under the procedural head of Article 3.

C. Alleged violation of Article 5 of the Convention

110. The first applicant alleged that her detention from January to February 2000 had been unlawful and had not complied with the relevant safeguards in Article 5 of the Convention, which provides:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

1. Arguments of the parties

111. As to the lawfulness of her detention, the first applicant rejected the Government's assertion that she had been detained for the purpose of combating vagrancy. She stressed that she had been taken into detention from her own house, that her name and occupation had been known to the authorities, that her detention had been longer than the maximum period of ten days permitted by the Decree and, most notably, that the document issued to her on 2 March 2000 by the Naurskiy VOVD specifically referred to the verification of her involvement with illegal armed groups. In her view, the Government had failed to specify the legal status of the detention facility in Chernokozovo and such detention could not be considered compatible with the provisions of Article 5.

112. The Government argued that the first applicant's detention had been lawful and based on the provisions of the Presidential Decree aimed at combating vagrancy. They referred to the available information about the status of the Chernokozovo detention facility, from which it appeared that all records pertaining to the period in question had been destroyed and that it was not possible to ascertain the body that had been responsible for the detention centre or to identify the servicemen who had guarded it prior to 8 February 2000. After that date the detention facility had functioned as a pre-trial detention centre.

2. The Court's assessment

113. The Court stresses the fundamental importance of the guarantees contained in Article 5 for securing the rights of individuals in a democracy to be free from arbitrary detention at the hands of the authorities. It has emphasised in that connection that any deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law but must equally be in keeping with the very purpose of Article 5, namely to protect the individual from arbitrary detention. In order to minimise the risks of arbitrary detention, Article 5 provides a corpus of substantive rights intended to ensure that the act of deprivation of liberty is amenable to independent judicial scrutiny, and secures the accountability of the authorities for that measure. The Court has also found that the unacknowledged detention of an individual is a complete negation of these guarantees and discloses a most grave violation of Article 5 (see *Çakici*

v. Turkey [GC], no.23657/94, § 104, ECHR-1999-IV, and *Çiçek v. Turkey*, no. 25704/94, § 164, 27 February 2001).

114. In view of the Government's reference to the applicant's detention within the legal framework relating to the prevention of vagrancy, the Court will first proceed to examine whether the first applicant's detention can be considered to fall within the scope of Article 5 § 1 (e).

115. The parties do not dispute that the first applicant was taken into detention from her home on 25 January 2000 and released on 17 February 2000. She was thus in detention for 24 days. The Court notes that Decree no. 1815 allowed persons detained for vagrancy and begging to be placed in reception centres on the order of a prosecutor for a period of up to ten days. Even assuming that the Decree could have been applied in the present case, and that the detention could therefore have fallen within the scope of Article 5 § 1 (e), the Government have never alleged that there existed a prosecutor's order to detain the first applicant, or explained why she was detained for a period exceeding ten days. There is no reference to any such documents in the materials examined by the Court. Thus, the first applicant's detention was not in conformity with the domestic law or with the relevant provisions of Article 5 § 1 (e).

116. The Court further notes that the document issued to the first applicant on 2 March 2000 by the head of the Naurskiy Department of the Interior stated that between 25 January and 26 February 2000 her alleged participation in illegal armed groups had been investigated. It transpires from that document that the real reason for the first applicant's detention was the suspicion of her having committed a criminal act. However, it appears that the domestic procedural requirements relating to the detention of criminal suspects were completely disregarded. No charges were brought against the applicant, no decision to detain or to release her was given by a competent authority, and her detention was not formally linked to any criminal investigation. She did not benefit from the procedural safeguards applicable to persons deprived of their liberty. The Court can only characterise such detention as arbitrary and in total disregard of the requirement of lawfulness.

117. Furthermore, it appears that the legal status of the detention centre in Chernokozovo, where the first applicant was detained between 25 January and 17 February 2000, was clarified, at best, only after 8 February 2000, when, as the Government submitted, it was transferred to the Ministry of Justice of the Chechen Republic (see paragraph 25 above). The Court notes a number of documents which are in contradiction even with this statement: the Decree of the Ministry of Justice of 8 August 2000 ordered the transfer of the pre-trial detention centre from the Ministry of Justice of the Republic of Kabardino-Balkaria to that of the Chechen Republic (see paragraph 26 above), but in 2005 the prosecutor's service failed to obtain any information about the centre's alleged attachment to the

Ministry of Justice of the Republic of Kabardino-Balkaria prior to 8 August 2000 or to identify the persons who had served as guards there (see paragraphs 70-71 above).

118. The Court also notes in this connection the CPT documents cited above, notably the public statement of 10 July 2001, which referred to the absence of a clear legal status for the detention centre in Chernokozovo prior to 8 February 2000 and called on the Russian authorities to carry out a thorough and independent inquiry into the matter. The Court finds it inconceivable that in a State subject to the rule of law a person could be deprived of his or her liberty in a detention facility over which for a significant period of time no responsible authority was exercised by a competent State institution. This situation fosters impunity for all kinds of abuses and is absolutely incompatible with the responsibility of the authorities to account for individuals under their control. Once brought to the attention of the competent bodies, it should have prompted urgent and comprehensive steps in order to identify and bring to justice those responsible, to provide redress for the victims and to ensure that no such situation would arise in the future. The Court is struck by the fact that no such action has taken place.

119. To sum up, the Court finds that the first applicant's detention between 25 January and 17 February 2000 was arbitrary and ran counter to the fundamental aspects of the rule of law, in breach of the provisions of Article 5 of the Convention.

III. COMPLAINTS BROUGHT BY THE SECOND APPLICANT

A. The Court's assessment of the evidence and establishment of the facts

1. Arguments of the parties

120. The second applicant alleged that her mother and three other relatives had been deprived of their lives by State servicemen. She referred to the witness statements which described the perpetrators as wearing camouflage uniforms, speaking Russian and travelling in military vehicles through roadblocks during curfew hours. She also noted that the Government had failed to produce any proof of an effective investigation into the killings, or to substantiate the conclusion that the State authorities had borne no responsibility for the killings.

121. The Government argued that the circumstances of the killing of the first applicant and five other persons in the village of Kalinovskaya on 21 May 2003 had not been elucidated. The investigation had found no

evidence to support the involvement of the special forces in the crime. They referred to the information gathered by the investigation, which indicated that no servicemen of the UGA had taken part in special operations in the district on the date in question and that the vehicles of the military units stationed in the district had not been used on that night (see paragraph 57 above).

2. *Article 38 § 1 (a) and consequent inferences drawn by the Court*

122. Article 38 § 1 (a) states:

“1. If the Court declares the application admissible, it shall

(a) pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities.”

Before proceeding to assess the evidence, the Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications (see *Tanrıku v. Turkey* [GC], no. 23763/94, § 70, ECHR 1999–IV). It is inherent in proceedings relating to cases of this nature, where an individual applicant accuses State agents of violating his rights under the Convention, that in certain instances solely the respondent Government have access to information capable of corroborating or refuting these allegations. A failure on a Government's part to submit such information which is in their hands without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a) of the Convention (see *Timurtaş v. Turkey*, no. 23531/94, §§ 66 and 70, ECHR 2000–VI).

123. As regards the domestic investigation into the first applicant's murder, the Court observes that on 20 October 2005 the Government were requested to submit the entire investigation file. In reply, the Government produced a number of documents from the file and a brief summary of the investigative steps (see paragraphs 55-58 and 75-80 above).

124. The Court observes that the documents submitted by the Government obviously constitute only a small part of the investigation file. For example, they do not include any of the numerous witness statements, including those made by I., by the second applicant's other relatives, by the families of other victims and by servicemen, the findings of forensic and ballistic experts' reports, the examination of the scene of the crime, the requests for information, and replies relating to the alleged participation of the security or military forces in the killings. The Government argued that their disclosure was impossible because they contained information about

the location and actions of military and special units and personal information about the participants in the proceedings, and referred to Article 161 of the CCP (see paragraph 67 above).

125. The Court observes in this connection that the Government did not seek the application of Rule 33 § 2 of the Rules of Court, which permits a restriction on the principle of the public character of the documents deposited with the Court for legitimate purposes, such as the protection of national security and the private life of the parties, as well as the interests of justice. It also notes that it has found on a number of occasions that the provisions of Article 161 of the CCP cannot be regarded as precluding disclosure of the documents from a pending investigation file (see, for example, *Mikheyev v. Russia*, no. 77617/01, § 104, 26 January 2006). For these reasons the Court considers the Government's explanations insufficient to justify the withholding of the vital information requested by the Court.

126. The Court finds, accordingly, that it can draw inferences from the Government's conduct. Furthermore, and referring to the importance of a respondent Government's cooperation in Convention proceedings (see paragraph 122 above), the Court finds that the Government have fallen short of their obligations under Article 38 § 1 (a) of the Convention to furnish all necessary facilities to the Court in its task of establishing the facts.

3. *The Court's evaluation of the facts*

127. The second applicant maintained that her mother (the first applicant), father, brother and uncle had been unlawfully killed by State agents on 21 May 2003.

128. The Government denied any involvement of the State in the killings and argued that the investigation had failed to identify the culprits.

129. The Court would refer to a number of principles that have been developed in its case-law when facing the task of establishing facts on which the parties disagree (see paragraph 97 above). In this context, the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, cited above, pp. 64-65, § 161).

130. 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, in the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of state agents but also all the surrounding circumstances (see *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII).

131. The Court has already noted the Government's failure to submit to it the relevant documents from the criminal investigation file relating to the

circumstances of the first applicant's killing, such as statements collected from eyewitnesses to the events, from the relatives of the victims and from the servicemen of the law-enforcement bodies, and other relevant documents (see paragraph 126 above). In the Court's opinion, these documents would have been crucial in the verification of the accuracy of the applicant's allegations concerning the involvement of State servicemen in the killings (see *Tepe v. Turkey*, no. 27244/95, §§ 48 and 163, 9 May 2003).

132. The Court has also noted the difficulties for applicants to obtain the necessary evidence in support of allegations in cases where the respondent Government are in possession of the relevant documentation and fail to submit it. Where the applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to the lack of such documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicants, or to provide a satisfactory and convincing explanation of how the events in question occurred. The burden of proof is thus shifted to the Government and if they fail in their arguments, issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II).

133. The second applicant submitted three statements made by eyewitnesses to the events, namely her brother I. and two neighbours. They referred to the perpetrators of the killings as belonging to the military or special forces in view of their speaking Russian, their camouflage uniforms and helmets, their use of two UAZ vehicles equipped with aerials, their ability to travel unhindered during curfew hours and their actions which were characteristic of special operations, such as checking the passport of the family's neighbour D., which was found later at the first applicant's house. They also alleged that the servicemen at the roadblocks surrounding the village had informed them that there had been a group with a "special permit". One of the witnesses referred to the hood over the head of the first applicant's brother's body, similar to the ones used by the military when they detained persons (see paragraphs 37-46 and 49 above). The witnesses noted the similarity and the indisputable execution style of the six killings. The NGO Memorial, which reported the killings on 26 May 2003, likewise advanced the argument that they had been perpetrated by State agents (see paragraph 51 above).

134. The Court notes in this regard the Government's submission about certain documents examined during the investigation which did not support the involvement of the servicemen or of military vehicles in the operations in the Naurskiy District on 21 May 2003. However, this statement has not been substantiated. The Government did not produce any copies of these documents, or even disclose their content any further; nor can their content be ascertained from the documents in the investigation file submitted to the

Court. The Court would stress in this regard that the evaluation of the evidence and the establishment of the facts is a matter for the Court, and it is incumbent on it to decide on the evidentiary value of the documents submitted to it (see *Çelikkilek v. Turkey*, no. 27693/95, § 71, 31 May 2005). In the present case it finds that the Government failed to produce key elements of the investigation which could have shed light on the circumstances of the killings of the first applicant and three members of her family.

135. In the light of the foregoing, the Court finds that the second applicant made out a prima facie case that her relatives had been extrajudicially executed by State agents on 21 May 2003. The Government failed to provide any other explanation of the events. The Government's statement that the investigation did not find any evidence to support the involvement of the special forces in the killings is insufficient to discharge them from the above-mentioned burden of proof. The Court also finds that it can draw inferences from the Government's conduct in respect of the investigation documents.

136. On the basis of the above the Court concludes, therefore, that the deaths of the second applicant's relatives can be attributed to the State.

B. Alleged violation of Article 2 of the Convention

137. The second applicant alleged a violation of Article 2 on account of the killing of the first applicant and three other members of her family. She also alleged that no effective investigation had been carried out into the killing. Article 2 provides:

“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. ...”

1. The killing of the second applicant's relatives

138. The second applicant submitted that her mother, her father, her brother and her uncle had been killed by agents of the State, in violation of Article 2 of the Convention.

139. The Government denied the allegation.

140. 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, to which no derogation is permitted. Together with Article 3, it enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which a deprivation of life may be justified must therefore be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that

Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-147).

141. The Court has already found it established that the second applicant's relatives' deaths can be attributed to the State. In the absence of any justification in respect of the use of lethal force by State agents, the Court finds that there has been a violation of Article 2 in respect of the deaths of Zura Bitiyeva, Ramzan Iduyev, Idris Iduyev and Abibakar Bitiyev.

2. *The alleged inadequacy of the investigation*

142. The second applicant alleged that the investigation into the killing of her mother, father, brother and uncle had not been effective.

143. The Government disputed this allegation and submitted that the investigation had been in line with the Convention's requirements and with national legislation.

144. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", 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. The Court refers to its case-law in respect of the scope of this obligation (see, for a recent summary of relevant principles, *Estamirov and Others v. Russia*, no. 60272/00, § 85-87, 12 October 2006).

145. In the present case, an investigation was carried out into the killing of the first applicant and three members of her family. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

146. The Court observes that, in view of the Government's failure to submit most of the criminal investigation file or to disclose its contents, its ability to draw conclusions about the adequacy of the investigation will be limited. It has already noted that the Government failed to produce key elements of the investigation (see paragraph 136 above). As a result, the Court is not aware of the scope or even the dates of most of the investigative measures. The Court finds that here, too, it can draw strong inferences from the respondent Government's behaviour and assume that the materials made available to it have been selected so as to demonstrate to the maximum extent possible the effectiveness of the investigation in question. It will therefore assess the merits of this complaint on the basis of the existing elements in the file and in the light of these inferences.

147. The Court first notes that the authorities were immediately aware of the murders and that the investigation was started on the day of the killings. It appears that a number of important steps, such as the examination of the

scene of the crime and the questioning of some witnesses, were taken on the same day. It appears that the version of events suggested by the second applicant received at least some attention from the investigating body, which at some point sought information about the special operations carried out in the district and the whereabouts of military personnel and vehicles on the date in question.

148. Despite these efforts, the investigation into the deaths was never completed and the individuals responsible were not identified or indicted. Although the obligation under Article 2 to investigate effectively is not an obligation of results, but of means (see *Avşar v. Turkey*, no. 25657/94, § 394, ECHR 2001-VII (extracts)), the Court notes with surprise that the prosecutors' orders submitted by the Government do not show any visible progress over two and a half years in the task of solving the killings of the four members of the second applicant's family and two other villagers (see paragraphs 57 and 78-79 above). The prosecutor's order of 9 December 2005 cites the same facts as those set out in the decision of 21 May 2003 to open a criminal investigation. Thus, it does not appear that the investigation was able to establish the number of perpetrators of the killings, whether they had used any vehicles, the sequence of their actions, the routes they had taken to enter or to leave the village or the type of weapons they had used. Most notably, it does not appear that the investigation was able to discern any motive for the killings or to come up with an explanation as to what had happened on that particular night in Kalinovskaya. The Court further notes that the second applicant asked to be granted victim status in November 2003, but that a decision on the matter was not taken until 2005 (see paragraphs 34 and 77 above). The only information communicated to the victims, it appears, concerned the decisions to adjourn and to reopen the investigation, and these letters did not refer to any progress in solving the crime (see paragraph 80 above).

149. In these circumstances the Court finds that the respondent State has failed in its obligation to conduct an effective, prompt and thorough investigation into the killing of the first applicant and of the second applicant's three other relatives. Accordingly, there has been a violation of Article 2 of the Convention on this account as well.

C. Alleged violation of Article 3 of the Convention

150. The second applicant submitted that the feelings of fear, anguish and distress she had suffered as a result of the killing of four close members of her family amounted to treatment contrary to Article 3 of the Convention.

151. The Government, beyond denying the factual basis of the applicant's allegations, did not specifically deal with the complaint under Article 3 of the Convention.

152. Under Article 3 the Court has previously found that issues may arise in respect of close relatives of persons who have “disappeared” if the anguish and distress suffered by the applicants have caused them suffering of sufficient severity for the acts of the authorities to be categorised as inhuman treatment within the meaning of Article 3. Whether a member of the family of a “disappeared person” is a victim of treatment contrary to Article 3 will depend on the existence of special factors which give the suffering of the relative a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of serious violations of human rights. Relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family members in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries (see *Orhan*, cited above, §§ 357-360). In some cases the Court has extended the application of Article 3 to the relatives of persons who have been killed, where the news of their death was preceded by a marked period of disappearance, thus entailing the uncertainty, anguish and distress characteristic of the specific phenomenon of disappearances (see *Luluyev and Others v. Russia*, no. 69480/01, § 115, ECHR 2006-...). The Court has consistently refused to extend the application of Article 3 to the relatives of persons who have been killed by the authorities in violation of Article 2, as opposed to the relatives of the victims of enforced disappearances (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).

153. In accordance with the case-law summarised above, while the Court does not doubt that the death of her family members caused the second applicant profound suffering, it nevertheless finds no basis for finding a violation of Article 3 in this context.

D. Alleged violation of Article 13 in conjunction with Article 2

154. The second applicant submitted that she had no effective remedies in respect of the above violations, in breach of 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.”

155. The Government disagreed and referred to the ongoing criminal investigation into the murders.

156. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. Given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and infliction of treatment contrary to Article 3, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-162, ECHR 2002-IV, and *Süheyla Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005). The Court further reiterates that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 183, 24 February 2005).

157. In view of the Court's findings above with regard to Article 2, these complaints are clearly “arguable” for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, p. 23, § 52). The second applicant should accordingly have been able to avail herself of effective and practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation, for the purposes of Article 13.

158. It follows that in circumstances where, as here, the criminal investigation into the death was ineffective (see paragraphs 144-151 above) and the effectiveness of any other remedy that may have existed, including civil remedies, was consequently undermined, the State has failed in its obligation under Article 13 of the Convention.

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

E. Alleged failure to comply with obligations under Article 34 of the Convention

160. The second applicant alleged a breach of Russia's obligations under Article 34, which provides:

“The Court may receive applications from any person, ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

161. The second applicant submitted that Russia had breached its obligations under Article 34 of the Convention not to hinder the right of individual petition by killing the first applicant in retaliation for her bringing a complaint to Strasbourg, by intimidating the second applicant herself and

further by questioning her about the details of her complaint to the Court, despite her vulnerable situation. She submitted that obtaining “explanations” from her and putting questions about her complaint to the Court had served no separate purpose within the criminal proceedings concerning the investigation of her complaints of harassment.

162. The Government denied these allegations.

163. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual application instituted by Article 34 that applicants should be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. In this context, “pressure” includes not only direct coercion and flagrant acts of intimidation, but also other improper indirect acts or contacts designed to dissuade or discourage applicants from using a Convention remedy. The issue of whether or not contacts between the authorities and an applicant amount to unacceptable practices from the standpoint of Article 34 must be determined in the light of the particular circumstances of the case. In the context of the questioning of applicants about their applications under the Convention by authorities exercising a domestic investigative function, this will depend on whether the procedures adopted have involved a form of illicit and unacceptable pressure which may be regarded as hindering the exercise of the right of individual application (see, for example, *Aydın v. Turkey*, judgment of 25 September 1997, *Reports of Judgments and Decisions* 1997-VI, pp. 1899-1900, §§ 115-117; and *Salman v. Turkey* [GC], no. 21986/93, § 130, ECHR 2000-VII).

164. As to the first element of the complaint, the Court finds that there is no direct evidence to support the second applicant's assertion that the killings of the first applicant and of her family members were related to her application to the Court. A breach of Article 34 cannot be found on a mere supposition. The Court does recognise, however, that the brutal and unresolved killing of the first applicant after she had lodged a complaint in Strasbourg alleging serious human-rights violations by State agents would have inevitably had a “chilling effect” on other current and prospective applicants to the Court, especially for the residents of Chechnya. It can only express its deepest regret and disappointment that there has been no effective investigation which could have elucidated the circumstances of the first applicant's killing (see paragraphs 144-151 above). However, it does not consider that it should make a separate finding of a breach of the respondent State's obligations under Article 34 in this respect, having already found a double violation of Article 2 and of Article 13.

165. As to the second applicant's allegations of threats made in May 2004, it appears that after this information had been communicated to the Government, the authorities took steps to investigate the incident and to reassure the second applicant. From the documents submitted by the

Government (see paragraphs 81-83 above), the Court is unable to conclude that the incident to which the first applicant referred had any relation to the complaints she had submitted before it. It appears that the incident occurred within the context of a security check conducted in the village and does not raise any separate issues under Article 34.

166. In so far as the second applicant complains about the questions put to her in July and September 2004, it appears from the transcripts that the interviews related mostly to the public prosecutor's duty to collect information about the applicant's complaints for the purpose of his own investigation. The questions about her application to the Court were not central, and the second applicant was not requested, for example, to certify the authenticity of her complaints or to give details about their contents (see, by contrast, *Dulaş v. Turkey*, no. 25801/94, § 81, 30 January 2001). It transpires from the applicant's statements that she perceives any contact with the law-enforcement bodies as dangerous. This might be understandable in view of the second applicant's personal experience and the overall security situation in Chechnya, but leaves the State authorities without appropriate recourse if they wish to investigate the complaints and to ensure protection from the alleged threats. In short, the Court is not satisfied that the questioning of the second applicant in July and September 2004 constituted undue interference with her right of petition to the Court.

167. In sum, the Court does not have sufficient material before it to conclude that the respondent Government have breached their obligations under Article 34 by putting undue pressure on the second applicant in order to dissuade her from pursuing her application to the Court.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

168. 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

169. The applicants did not submit any claims for pecuniary damage. As to non-pecuniary damage, the second applicant asked the Court to award her compensation for the violations found in respect of the first applicant, her mother. She left it to the Court to determine the amount of this compensation. As to compensation for the non-pecuniary damage sustained by the second applicant, she stressed that she had lost three members of her immediate family and her uncle, which had caused her deep feelings of

anguish, distress and anxiety. She claimed 75,000 euros (EUR) in respect of herself.

170. The Government found the amount claimed to be excessive.

171. In respect of the claims made by the second applicant on behalf of the first applicant, the Court has found that an applicant's close heirs may claim compensation for non-pecuniary damage (see, *inter alia*, *Ernestina Zullo v. Italy* [GC], no. 64897/01, § 149, 29 March 2006). The Court has found two serious violations of Articles 3 and 5 in respect of the first applicant and considers that the distress and anguish suffered in relation to these violations cannot be adequately compensated by the mere finding of a violation. Accordingly, making its assessment on an equitable basis, the Court awards EUR 10,000 under this head, plus any tax that may be chargeable on that amount.

172. As regards the claim brought by the second applicant, the Court observes that it has found a violation of Articles 2 and 13 of the Convention on account of the unlawful killing of four members of the second applicant's family, the failure to investigate the killings and the lack of effective remedies. The Court accepts that she has suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the second applicant EUR 75,000 as claimed, plus any tax that may be chargeable on that amount.

B. Costs and expenses

173. The applicant was represented by lawyers from the NGO EHRAC/Memorial Human Rights Centre. She submitted that the representatives had incurred the following costs:

(a) EUR 1,250 for 50 hours of research in Chechnya and Ingushetia at a rate of EUR 25 per hour;

(b) EUR 1,200 in travel expenses for the field workers;

(c) EUR 2,000 for 40 hours of drafting legal documents submitted to the Court and the domestic authorities at a rate of EUR 50 per hour by the lawyers in Moscow;

(d) 1,200 pounds sterling (GBP) for 12 hours of legal work by a United Kingdom-based lawyer at a rate of GBP 100 per hour;

(e) 2,976 Russian roubles (RUR) for postal expenses, as certified by invoice;

(f) GBP 684.90 for translation costs, as certified by invoices; and

(g) GBP 370 for administrative costs.

174. The Government disputed the reasonableness and the justification of the amounts claimed under this heading. In particular, they expressed doubts about the need for five lawyers, including one foreign specialist. They also objected to the representatives' request to transfer the award for legal representation directly to their account in the UK.

175. 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*, cited above, p. 63, § 220).

176. The Court notes that the first and subsequently the second applicant were represented by the lawyers of EHRAC/Memorial from the outset of the proceedings before it. It is satisfied that the rates set out above were reasonable and reflect the expenses actually incurred by the applicant's representatives.

177. Further, it has to be established whether the costs and expenses incurred by the applicant for legal representation were necessary. The Court notes that the case was rather complex, involved a significant quantity of factual and documentary evidence and required a large amount of research and preparation. As to the presence of a foreign lawyer among the applicants' representatives, as applicants are free to select legal representatives of their choice, their recourse to a United Kingdom-based lawyer specialising in the international protection of human rights cannot be criticised (see *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, p. 2445, § 127). Furthermore, the Court notes that it is its standard practice to rule that awards in relation of costs and expenses are to be paid directly to the applicant's representative's accounts (see, for example, *Toğcu*, cited above, § 158; *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 175, ECHR 2005-VII; and *Imakayeva v. Russia*, no. 7615/02, ECHR 2006-...).

178. In these circumstances, and having regard to the details of the claims submitted by the second applicant, the Court awards the following sums as claimed under this heading: EUR 4,450, GBP 2,255 and RUR 2,976, exclusive of any value-added tax that may be chargeable, the net award to be paid in pounds sterling into the representatives' bank account in the United Kingdom, as identified by the applicant.

C. Default interest

179. The Court considers it appropriate that the default interest 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

1. *Dismisses* unanimously the Government's preliminary objection;
2. *Holds* unanimously that the second applicant, as the first applicant's heir, has standing to continue the present proceedings in her stead;
3. *Holds* unanimously that there has been a failure to comply with Article 38 § 1 (a) of the Convention;
4. *Holds* unanimously that there has been a violation of Article 3 of the Convention in respect of the first applicant;
5. *Holds* by six votes to one that no separate issues arise under Article 3 of the Convention in respect of the investigation into the allegations of ill-treatment made by the first applicant;
6. *Holds* unanimously that there has been a violation of Article 5 of the Convention in respect of the first applicant;
7. *Holds* unanimously that there has been a violation of Article 2 of the Convention in respect of the killing of four members of the second applicant's family;
8. *Holds* unanimously 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 of the deaths of Zura Bitiyeva, Ramzan Iduev, Idris Iduev and Abibakar Bitiyev;
9. *Holds* by five votes to two that there has been no violation of Article 3 of the Convention in respect of the second applicant;
10. *Holds* unanimously that there has been a violation of Article 13 of the Convention in respect of the alleged violations of Article 2 of the Convention;
11. *Holds* unanimously that there has been no breach of the obligation not to hinder the right of individual petition under Article 34 of the Convention;
12. *Holds* unanimously
 - (a) that the respondent State is to pay the second applicant, within three months from the date on which the judgment becomes final in

accordance with Article 44 § 2 of the Convention, the following amounts:

- (i) EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage sustained by the first applicant;
 - (ii) EUR 75,000 (seventy-five thousand euros) in respect of non-pecuniary damage sustained by the second applicant;
 - (iii) EUR 4,450 (four thousand four hundred and fifty euros), GBP 2,255 (two thousand two hundred and fifty-five pounds sterling) and RUR 2,976 (two thousand nine hundred and seventy-six Russian roubles), the net award to be converted into pounds sterling at the rate applicable at the date of settlement, to be paid into the representatives' bank account in the United Kingdom;
 - (iv) any tax that may be chargeable on the above amounts;
- (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.

Done in English, and notified in writing on 21 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinions of Mr L. Loucaides and Mr D. Spielmann are annexed to this judgment.

C.L.R.
S.N.

PARTLY DISSENTING OPINION OF JUDGE LOUCAIDES

I do not share the approach of the majority as regards the complaint of the second applicant for violation of Article 3 of the Convention in her case. I agree with the partly dissenting opinion of Judge Spielmann as regards this aspect of the case. I would like to emphasise that the murder of the second applicant's mother was effected in such circumstances that it was rendered particularly atrocious. I would go further and say that I believe that the murder, of someone's mother, as in the present case, should by itself be considered sufficient to bring a case within the ambit of Article 3 of the Convention. Murderers know full well that when they commit a murder, their action will cause great pain, suffering and a sense of insecurity- in any case to the immediate relatives of the victim- of such a severity as to reach the threshold of treatment contrary to Article 3 of the Convention. And an objective consideration of such situation would lead to the acceptance of this effect.

Like Judge Spielmann, I would add that I find “it somewhat artificial that a finding of a violation of Article 3 of the Convention should be limited to cases of 'disappeared persons’”. I believe that what really matters is the actual effect of an act, be that the causing of a disappearance of a person or a murder, to be decided objectively on the facts of each particular case, and not the formal classification or denomination of the situation complained of (eg “disappeared persons”)

I do therefore find that there has been a violation of Article 3 of the Convention in respect of the second applicant.

PARTLY DISSENTING OPINION OF JUDGE SPIELMANN

(Translation)

1. I am unable to share the opinion of the majority as regards points 5 and 9 of the operative provisions.

2. In point 5 of the operative provisions, the majority have decided that no separate issues arise under Article 3 of the Convention in respect of the investigation into the first applicant's allegations that she was ill-treated (I).

3. In point 9 of the operative provisions, the majority have decided that there has been no violation of Article 3 of the Convention in respect of the second applicant (II).

I.

4. As to the issue whether any separate issues arose under Article 3 of the Convention in respect of the investigation into the first applicant's allegations of ill-treatment, I wish to point out that the parties' views differed as to the need for such an investigation. The first applicant claimed that the authorities had been well aware of the poor conditions and widespread ill-treatment and that they should have taken proactive steps to conduct an investigation. The Government, however, emphasised the fact that the first applicant had not complained about ill-treatment upon her release and that the prosecutor's inquiry in 2005 had not obtained any further information necessitating a criminal investigation (see paragraph 108 of the judgment).

5. This question concerning the lack of an investigation should, in my opinion, have been examined separately in the light of the Court's now settled case-law on the fundamental importance of the procedural obligations stemming from the protection of non-derogable rights.

6. In finding that an examination of this question was not necessary, the Court based its reasoning on the fact that it had already found a substantive violation of Article 3 of the Convention (see paragraph 109 of the judgment). However, I am of the opinion that the substantive violation observed cannot exhaust the question of the authorities' responsibility having regard to the absolute prohibition of any treatment contrary to Article 3 of the Convention. The question of the lack of an investigation accordingly warranted a separate examination.

II.

7. The second applicant alleged that the feelings of fear, anguish and distress she had suffered as a result of the killing of four close members of her family had amounted to treatment contrary to Article 3 of the Convention.

8. It transpires from the Court's case-law that this question has been examined most of all in the context of "enforced disappearance" cases and that the question whether a family member is such a victim will depend on the existence of special factors which give the suffering of the applicant a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation (see, among many other authorities, *Çakıcı v. Turkey* [GC], no. 23657/94, § 98, ECHR 1999-IV and *Gezici v. Turkey*, no. 34594/97, § 73, 17 March 2005).

9. In analysing the question of the applicant's suffering, the Court pointed out (in paragraph 152 of the judgment) a certain number of factors that were pertinent in the context of cases of "disappeared persons", but nonetheless refused to extend the application of those factors, and therefore that of Article 3, to relatives of persons who had been killed by the authorities, as opposed to the relatives of victims of enforced disappearances (*Yasin Ateş v. Turkey*, no. 30949/96, § 135, 31 May 2005).

10. Admittedly, this is not a case of "disappeared persons". However, the case is nevertheless a serious one and in my view the threshold of seriousness required for purposes of Article 3 has been reached.

11. Accordingly, in the light of the particular seriousness of the case, I am not persuaded that there are no special factors in this case which give the suffering of the second applicant a dimension and character distinct from the emotional distress which is inevitably caused to relatives of a victim of a serious human rights violation. I find it somewhat artificial that a finding of a violation of Article 3 of the Convention should be limited to cases of "disappeared persons". Moreover, I note that some of the factors mentioned in paragraph 152 of the judgment, if they had been applied to the facts of the present case, would have carried particular weight. Thus, among the relevant factors, I would refer to the fact that the second applicant is the daughter of the first applicant and that her status as victim was recognised on 15 and 28 December 2005 by the investigating authority (see paragraph 77 of the judgment).

12. In conclusion, I consider that there has been a violation of Article 3 of the Convention in respect of the second applicant.