CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF ESTAMIROV AND OTHERS v. RUSSIA

(Application no. 60272/00)

JUDGMENT

STRASBOURG

12 October 2006

FINAL

12/01/2007

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 Estamirov and Others v. Russia,

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

Mr C.L. ROZAKIS, *President*,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 21 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 60272/00) 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 seven Russian nationals listed below ("the applicants"), on 4 August 2000.

2. The applicants, who had been granted legal aid, were represented by Gareth Peirce, a lawyer practicing in the United Kingdom. She was assisted by the lawyers from the Stichting Russian Justice Initiative ("SRJI"), an NGO based in the Netherlands with a representative office in Russia. The Russian Government ("the Government") were represented by their Agent, Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged that their five relatives were killed by servicemen in Grozny, Chechnya, in early February 2000. They complained under Articles 2 and 13 of the Convention.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1), but this case remained with the First Section.

6. By a decision of 19 May 2005, the Court declared the application admissible.

7. The applicants and the Government each filed further written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicants are relatives. They are:

1) Ruslan Khasmagomedovich Estamirov, born in 1965;

2) Leyla (also spelled Layla) Khasmagomedovna Yandarova (maiden name Estamirova), born in 1961, the first applicant'sister;

3) Sovdat Khasmagomedovna Dakayeva (maiden name Estamirova), born in 1970, the first applicant'sister;

4) Yakha Estamirova, born in 1934, their mother;

5) Khuseyn Khozhakhmedovich Estamirov, born in 1996, the first applicant's nephew;

6) Khabirat Khasmagomedovna Zaurbekova (maiden name Estamirova), the first applicant's sister, born in 1960;

7) Khabira Khasmagomedovna Tatasheva (maiden name Estamirova), the first applicant's sister, born in 1958.

9. Until 1999 the applicants were residents of Grozny, Chechnya. The first, the fourth and the fifth applicants now live in the United States of America, where they were granted political asylum. The other applicants live in Ingushetia and in Moscow.

A. The facts

10. The facts surrounding the deaths of the applicants' relatives and the ensuing investigation were partially disputed. In view of this the Court requested the Government to produce copies of the entire investigation file opened in relation to the applicants' relatives' deaths.

11. The submissions of the parties on the facts concerning the circumstances of the applicants' relatives' deaths and the ensuing investigations are set out in Sections 1 and 2 below. A description of the materials submitted to the Court is contained in Part B.

1. The killing of the applicants' relatives

12. The applicants' family lived in the Oktyabrskiy district of Grozny at 1 Podolskaya Street. The household consisted of two houses, built by the family over a period of 15 years, since the end of 1980s, and united by a common courtyard. During the hostilities in 1994 - 1996 one house was burnt and the second one was hit by a shell. After 1996 the applicants' family restored one house. They attempted to obtain compensation for the lost property, but failed to comply with the procedural requirements.

13. In November 1999 the first applicant, his mother and his four-year old nephew (the fourth and fifth applicants) left Grozny for Ingushetia because of the renewed hostilities. A part of the family remained in Grozny to look after the house and property. They were the first applicant's father, Khasmagomed Estamirov (born in 1933), the first applicant's brother Khozhakhmad (also spelled as Khozhakhmed) Estamirov (born in 1963), his pregnant wife Toita Estamirova (born in 1971) and their son Khasan Estamirov (born in January 1999), and Khasmagomed Estamirov's cousin Said-Akhmed Masarov (born in 1950). The first applicant submits that they tried to convince their father, who was partly disabled, to move to Ingushetia, but he decided to remain in the house, and one of his sons with his family stayed to look after him.

14. Some time in February 2000 the first applicant's aunt went to Grozny. She met another relative, the first applicant's uncle Vakhid M., who told her that the family members who remained in Grozny had been killed by the Russian soldiers on 5 February 2000. M., who had suffered a nervous breakdown, told her that he went to the house on 5 February 2000 in the afternoon and found the Estamirov family members dead. The bodies of the first applicant's father and brother were in the courtyard, his uncle's body in the doorway of the house, partly burned. The bodies of the first applicant's sister-in-law, who was at the ninth month of pregnancy, and her one-year old son were in the corner of the courtyard. All bodies had gunshot wounds. The woman's ring and earrings were gone. In the courtyard he found the first applicant's father's purse lying empty on the ground. Many items from the house were missing. Their car in the garage and the cowshed with two calves inside were burned. On the same day M. buried the bodies on a patch of land by the house, having wrapped them into pieces of cloth.

15. The first applicant's aunt returned to Ingushetia and told the other family members about the deaths. On 22 February 2000 the fourth applicant sent a request to the Prosecutor General to initiate criminal proceedings into the killings of five members of her family, looting and destruction of their property on 5 February 2000 by the Russian troops during a “mopping up” operation in Grozny.

16. On 4 April 2000 the first and the second applicants travelled to Grozny. There they sought permission to exhume the bodies and to bury them at the Prigorodnoye cemetery. At first the district military commander refused the permission, because the cemetery could have been mined. But then the head of the city administration gave the permission and ordered that the investigators and the police attend the exhumation.

17. On 8 April 2000 the applicants went to the Oktyabrskiy temporary district office of the interior (VOVD) of Grozny and produced the permission for exhumation. Several policemen accompanied them to 1 Podolskaya Street, one of them had a camera.

18. Once the bodies were exhumed, the cloths enveloping the bodies were lifted only from the faces to take photographs. No pathologist was present, and no forensic examination took place. The bodies were then brought to the Prigorodnoye cemetery and buried. A certificate was issued to the first applicant by the investigator of the Oktyabrskiy VOVD Major S. to confirm that on 8 April 2000 the exhumed bodies of Estamirov Kh., born in 1933, Estamirov Kh. Kh., born in 1963, Estamirov Kh. Kh., born in 1999, and Estamirova T., born in 1971, were handed over to the first applicant for burial. It also stated that "the bodies were examined by the investigator of the Oktyabrskiy VOVD, evidence of a violent death was established, material was handed over to the Grozny prosecutor's service".

19. After the exhumation the police wanted to leave, but the first applicant interfered and asked them to examine the courtyard for relevant evidence: tank or armoured personnel carrier (APC) tracks in front of the house, empty alcohol bottles, a pair of shoes in the courtyard. The policemen drew a report of the site and collected some other evidence, such as cartridges and bullets.

2 Subsequent events and investigation

20. On 4 July 2000 the Malgobek Town Court in Ingushetia, at the first applicant's request, certified the deaths of Khasmagomed Estamirov, born in 1933, Khozhakhmed Khasmagomedovich Estamirov, born on 12 February 1963, Toita Khavazh- Bagaudinovna Estamirova, born in 1971, Khasan Khozhakhmedovich Estamirov, born on 20 January 1999, which had occurred on 5 February 2000 in the Oktyabrskiy district of Grozny, Chechnya. The court based its decision on the statements of the applicant and two witnesses in which they testified that the applicant's father, brother, sister-in-law and nephew had remained in Grozny in the winter of 1999-2000. In March 2000 the first applicant learned from his uncle M. that his family had been shot by the Russian OMON (special police force). The court also reviewed the applicant's internal passport with registered residence in Grozny at 1 Podolskaya Street, the exhumation certificate issued by the Oktyabrskiy VOVD on 8 April 2000, the certificate of the Malgobek town administration confirming that the first, the fourth and the fifth applicants had been registered there as forced migrants from Chechnya since 26 September 1999. The court noted that the death certificates were required to apply for allowances for loss of bread-winner.

21. In August 2000 the Oktyabrskiy district civil registration office of Grozny issued four death certificates for the applicants' relatives. They also recorded the date of death as 5 February 2000.

22. The applicants submit that other civilians were killed on the same day in the Novye Aldy suburb of Grozny, which is only 10-15 minutes walk (1,5 kilometres away) from Podolskaya Street. They refer to the Human Rights Watch report of June 2000 entitled "February 5: A Day of Slaughter

in Novye Aldy", which puts the blame for extra-judicial execution of about sixty civilians in the suburbs of Grozny, Novye Aldy and Chernorechye, on the Russian OMON and military forces. The document reports the deaths of the five Estamirov family members, based on the interviews with the family members in Ingushetia, and mentions copies of the reburial photographs.

23. They also refer to the Human Rights Centre Memorial report entitled "Mopping Up. Settlement of Novye Aldy, 5 February 2000 - Deliberate Crimes Against Civilians" (*«Зачистка». Поселок Новые Алды, 5 февраля 2000 - преднамеренные преступления против мирного населения*), which lists five members of their family together with other civilians murdered on that day in Novye Aldy – in total 56 names.

24. On 21 April 2000 the office of the Military Prosecutor for the North Caucasus military circuit wrote to the NGO Memorial stating that the military prosecutor of military unit no. 20102 had reviewed information related to the crimes against civilians committed in Aldy on 5 and 10 February 2000. The military units of the Ministry of Defence and of the Ministry of the Interior, over which the military prosecutor's office had competence, had not conducted military operations or checked passports in the area on the given dates. In view of this, on 3 March 2000 the criminal proceedings opened by the military prosecutor were closed due to the absence of *corpus delicti*. The letter further stated that it was established that the "mopping up" ("*zachistka"*) in Aldy on 5 and 10 February 2000 had been conducted by the servicemen of OMON of the Ministry of the Interior from St. Petersburg and Ryazan, over whom the military prosecutor had no competence. The case file had been forwarded to the Grozny Town Prosecutor for appropriate action. All further requests should be addressed to him or to the Prosecutor of the Chechen Republic.

25. On 8 August 2000 the first and the fourth applicants filed a civil claim against the Ministry of Defence, the Ministry of the Interior and the Ministry of Finance with the Supreme Court of Russia. They submitted that five members of their family had been murdered on 5 February 2000 in their house in Grozny, during a so-called "mopping up" operation. Their house and car had been set on fire and their property looted. They referred to the Malgobek Town Court decision of 4 July 2000 and the certificate of exhumation issued by the Oktyabrskiy VOVD. They submitted that these acts must have been committed by the federal servicemen, because on that date Grozny had already been under control of the Russian forces. On the same day summary executions took place in Aldy, which is 15 minutes away from their home on foot. They submitted that on 22 February 2000 they had applied to the General Prosecutor requesting a criminal investigation, but no proper investigation had taken place. They also stated that there were no courts in Chechnya, and that many of the relevant documents were burnt in the house. They sought compensation for pecuniary and non-pecuniary damage. It appears that on 31 August 2000 the

Supreme Court refused to consider the claim for lack of jurisdiction and the applicants were advised to apply to a competent district court.

26. On 16 October 2000 the NGO Human Rights Watch wrote to the Prosecutor General and asked for information about the investigation into the Novye Aldy murders. On 31 October 2000 the General Prosecutor replied that the request had been forwarded to the Prosecutor of the Chechen Republic, who should reply in substance.

27. On 4 December 2000 the Chechnya Prosecutor replied to the Human Rights Watch that on 14 April 2000 the Grozny Town Prosecutor's Office had initiated criminal proceedings no. 12023 under Article 105 part 2 of the Criminal Code (murder of one or more persons) and that the investigation was under their supervision.

28. On 8 August 2001 the second applicant wrote to the Chechnya Prosecutor asking for information about the investigation. She inquired what measures had been taken to identify and prosecute the culprits, if the investigation had been suspended, and asked the Prosecutor to forward her a copy of the appropriate order. She received no answer to that request.

29. On 14 August 2001 the SRJI wrote to the Chechnya Prosecutor asking for up to date information on the criminal proceedings no. 12023 opened into the murder of five members of the Estamirov family. They received no answer to that request.

30. On 11 October 2001 the second applicant wrote to the General Prosecutor, saying that she had received no reply to her letter to the Chechnya Prosecutor of 8 August 2001. On 16 November 2001 the Prosecutor General's office informed her that her inquiry had been forwarded to the Chechnya Prosecutor.

31. In a letter of November 2001 the Chechnya Prosecutor's Office informed the second applicant that the investigation was conducted by the Grozny Town Prosecutor's Office, that the Chechnya Prosecutor's Office monitored its progress and that "investigative measures aimed at establishing the perpetrators were being conducted". The letter also stated, mistakenly, that the applicant's relatives were murdered in April 2000.

32. The investigation into the applicants' relatives' deaths was adjourned and reopened several times. The investigation carried out by the Grozny Town Prosecutor's Office produced no tangible results. It appears that it focused on the version of events initially submitted by the applicants, alleging that the killings had been committed by a Russian military detachment, but that it also considered other possible versions. The investigation did not identify the detachment which was responsible and no one was charged with the crimes (see Part B below for a description of the documents in the investigation file). It does not appear that the investigation connected the murder of the applicants' family members with the investigation of the killings in the Novye Aldy settlement of 5 February 2000.

33. In March 2003 the seventh applicant applied to the Leninskiy District Court of Grozny, asking for a review of the prosecutor's decision to suspend the investigation in the criminal case concerning the killing of her relatives.

34. In June 2003 the application was communicated to the Russian Government, who were requested at that time to submit a copy of investigation file no. 12023. In September 2003 the Government submitted a copy of the file as summarised below. In May 2005 the Court declared the application admissible and requested the Government to submit an update of the investigation.

35. The Government responded in August 2005 that the investigation was pending, but no final conclusions as to the identity of the perpetrators were reached. They also stated that the investigation had examined the criminal investigation file no. 12011 concerning the mass murder of civilians in Novye Aldy on 5 February 2000. It had obtained no evidence to conclude that the murders had been committed by the same persons, and therefore no grounds were established to join these proceedings. The Government further stated that the disclosure of the latest documents from the criminal investigation file no. 12023 would be in violation of Article 161 of the Code of Criminal Procedure, because they contained sensitive information of military and security nature, as well as names and addresses of witnesses who had participated in the counter-terrorist operation in Chechnya and other participants of the proceedings.

B. Documents submitted by the parties

36. The parties submitted a number of documents concerning the investigation into the killings. The main documents of relevance are as follows:

1. Documents from the investigation file

37. The Government submitted a copy of the investigation file in criminal case no. 12023, which comprised one volume, and a list of 97 documents contained therein. Of those, 50 documents are dated 20-24 July 2003. The most important documents contained in the file can be summarised as follows.

(a) Decision to open a criminal investigation

38. On 14 April 2000 the investigator of the General Prosecutor's Office Department for the Northern Caucasus opened a criminal investigation under Article 105 § 2 (a) and (j) of the Criminal Code into the murder of five members of the Estamirov family, found on 8 April 2000 at 1 Podolskaya Street with signs of violent death.

39. In May 2000 the investigation was transferred to the Grozny Town Prosecutor's Office.

(b) Descriptions of the site

40. On 8 April 2000 two documents were drawn up by the investigators of the Oktyabrskiy VOVD of Grozny at 1 Podolskaya Street.

41. The first report was written and signed by an investigator, two witnesses and an expert. It contains the following text:

> "Examination of the site 6 by 4 metres in the courtyard of 1 Podolskaya Street, Grozny. ... An excavation is made of an opening 1,5 by 2 metres, 50-60 cm deep. The pit is covered with wooden planks and corrugated iron. In the opening there are four bodies of different sizes wrapped in cellophane. Mr. Vakhid M., taking part in the excavations, explained that on 9 February 2000 he had buried those bodies in the pit. From left to right these are: Estamirov Kh. Kh. born in 1931, Masarov S.A., born in 1951, Estamirov Kh.Kh., born in 1963, Estamirov Kh.Kh., born in 1999. The bodies are wrapped in cellophane and tied with ribbons of white cloth. The second opening is 50 cm by 1,5 metre, about 2 metres away from the first pit, depth about 40-50 cm. In the pit there is a cellophane bundle wrapped with white cloth ribbon, about 160-165 cm long. Mr M. explained that here on 9 February 2000 he had buried Estamirova T. Kh.-B., born in 1971. The bodies were taken out of the pits so that the relatives could organise a burial in the village of Prigorodnoye. Photographs were made. No additions or corrections."

42. The second document was drawn up at the same location, and contains a description of the household, traces of fire and bullets, and a burnt vehicle Zhiguli VAZ-2106. The document further lists 18 cartridges and one bullet taken from the site, collected and sealed for further expertise. Several photographs of the site, the bodies and the bullet traces were appended to the documents, as well as a sketch plan of the household.

43. On the same day the investigator of the Oktyabrskiy VOVD in charge of the exhumation procedure submitted a report to the head of the VOVD, where he stated that five bodies of the Estamirov family members had been exhumed and transferred to the relatives for burial. The bodies bore signs of violent death, and the deaths most probably had occurred between 4 and 9 February 2000.

44. On 24 July 2003 an investigator of the Grozny Town Prosecutor's Office again inspected the site at 1 Podolskaya Street and produced a report. The report noted that the house was burnt and abandoned, and described numerous bullet holes in the walls and furniture and the burnt car in the courtyard. Four bullets from an AK-7,62 sub-machine gun were collected. The report was accompanied by photographs of the site and sketches of the house.

(c) Statements by the fourth applicant and other witnesses

45. On 8 April 2000 investigators of the Oktyabrskiy VOVD questioned the fourth applicant about the known circumstances of the murder of her

husband and other family members. She stated that while she stayed in Ingushetia, her husband Khasmagomed Estamirov, her son Khozhakmed Estamirov with his wife Toita and son Khasan, and her husband's cousin Said-Akhmed Masarov, remained in Grozny in the family house at 1 Podolskaya Street. She did not therefore witness the killings herself, but was informed of it by her other relatives from Grozny. On 4 April 2000 she arrived in Grozny and saw the place of her relatives' burial. Her relative Vakhid M. asked VOVD officers to attend the exhumation on 8 April 2000. She further stated that she was told by others that on 4 February 2000 there had been a "sweeping" operation in the neighbourhood, during which the drafted soldiers checked the residents' documents and left. Later there came "contract" soldiers and killed everyone who was there. By that time the district was under firm control of the federal forces, and there was no more fighting.

46. On 8 April 2000 Vakhit M. explained that he lived in the Oktyabrskiy district of Grozny. On 9 February 2000 he came to visit his relative Said-Akhmed Masarov, who had sent his family to Ingushetia and remained with his cousin Khasmagomed Estamirov at the latter's house. He found the gates opened and a sign on the gates said "People live here". Inside the courtyard he saw a burnt car, behind the car there were two bodies – of Khasmagomed Estamirov and his son Khozhakhmed Estamirov. Khasmagomed Estamirov's body was partially burnt, his left hand and left foot were missing, there were gunshot wounds to his body. Khozhakhmed Estamirov's body was badly burned. Further, in about six metres, was the body of Toita Estamirova, who had been eight months pregnant. She was lying face down in a pool of blood, and when M. lifted the body he saw numerous gunshot wounds to the chest. Nearby was the body of her one-year old son, Khasan, with gunshot wounds to the head and leg. Then M. walked into the house and at the entrance to the bathroom found the body of his relative Said-Akhmed Masarov, which had been badly burnt. He buried the bodies in the courtyard of the house. He had not seen the perpetrators and did know who they were.

47. Also on 8 April 2000 the investigators questioned the mother of Toita Estamirova, resident of the nearby Zavodskoy district of Grozny, the settlement of Aldy. In February 2000 the witness was in the Tver region. On 25 February 2000 she was told by her relatives that her pregnant daughter had been killed together with her husband, son and other relatives. The witness did not know who had killed them but had heard from other residents that it were soldiers of the federal forces.

48. On 22 July 2003 Vakhit M. was granted victim status in the proceedings, as a close relative of Said-Akhmed Masarov. On the same day he was questioned for the second time about the circumstances of the killings. He confirmed his statements concerning the discovery of the bodies on 9 February 2000. He also testified about the exhumation of the bodies on

8 April 2000 in the presence of the officials, and added that they had been buried on the same day in the Prigorodnoye cemetery. He did not permit the exhumation of his relative's body.

49. On 23 July 2003 the investigators questioned Rashid M., another relative of Said-Akhmed Masarov. He stated that in the winter of 1999 – 2000 he, a resident of Grozny, was in Ingushetia with his family. In April 2000 he learnt that his relative and the Estamirov family had been killed in Grozny. They arrived there and on 8 April 2000 in the presence of the VOVD officials unearthed the bodies. He described in more details the wounds on the bodies of his relatives. According to the witness, the bodies of Khasmagomed Estamirov, Khozhakhmed Estamirov and Said-Akhmed Masarov were burnt, but the witness could recognise and identify them. The bodies of Toita and Khasan Estamirov were not burnt. He then gave detailed submissions about the apparent gunshot wounds to the heads and bodies of his relatives. He also explained that the bodies were found in two pits, Toita Estamirova's body was buried in a separate place, about one metre away. He confirmed that the house and the car in the courtyard were burnt, and stated that there were lots of cartridges from Kalashnikov sub-machine guns on the ground. He also noted empty vodka bottles and clearly visible APC or tank tracks on the ground. He also recalled that on the gates of the house at 1 Podolskaya Street there was a sign in chalk "4.II. 2000." The witness further stated that he was aware from other residents, whose names he could not recall, that on 4 February 2000 there was a "sweeping" operation in the district, and that the soldiers were moving from Podolskaya Street towards Kirova Street in the Oktyabrskiy District. Rashid M. objected to the exhumation of his relative's remains. On the same day he was granted victim status in the proceedings.

50. On 24 July 2003 the investigators questioned another local resident, who stated that on 8 April 2000 he was present at 1 Podolskaya Street at the time of the excavations. He confirmed other witnesses' statements about the circumstances of the discovery of the five bodies.

(d) Forensic and ballistic expert reports

51. On 4 and 5 May 2000 an investigator of the Grozny Town Prosecutor's Office ordered forensic reports of the bodies and of the cartridges and bullet collected at the site.

52. In June 2000 the ballistic experts concluded that the 18 cartridges and one bullet had been used by at least four Kalashnikov sub-machine guns, calibre 7,62 mm and 5,45 mm.

53. On 24 July 2003 four more bullets collected at 1 Podolskaya Street were sent for a ballistic report.

54. As to the forensic reports, it appears that none were drawn up, and on 21 July 2003 they were again ordered by the investigator in charge of the case. The experts were asked to resolve questions related to the cause and

date of the victims' deaths on the basis of the site reports drawn on 8 April 2000 by the officers of the Oktyabrskiy VOVD. On 21 July 2003 the investigators questioned a forensic expert in Grozny, who explained that the documents given to him contained no description of the bodies and could not serve as grounds for a forensic report. He also stated that an exhumation would be useless, because no forensic laboratory was functioning in Grozny. On 22 July 2003 the expert produced five identical reports, which stated that the questions could not be resolved on the basis of the submitted documents, because they contained no description of the bodies.

55. On 22 July 2003 the investigator of the Grozny Town Prosecutor's Office applied to the Oktyabrskiy District Court of Grozny seeking to obtain a permission for exhumation of the five bodies of the Estamirov family buried on 8 April 2000 at the Prigorodnoye cemetery.

(e) Other witnesses and victims

56. On 20-24 July 2003 the Grozny Town Prosecutor's Office sent a number of requests to various authorities in an attempt to identify and question the applicants, other victims and witnesses of the crime. Among others, the requests were sent to find the officers of the Oktyabrskiy VOVD who had been at the time on mission in Chechnya from the Khanty-Mansiysk Region. The investigators also requested information from the Chechnya Department of the Federal Security Service (FSB) if they had any information about Khozhakhmed Estamirov's and Said-Akhmed Masarov's possible involvement in the illegal armed groups.

57. On 22-24 July 2003 the investigators questioned a number of local residents, who stated that the Estamirov family had been killed in early February 2000, apparently by the “contract” soldiers of the federal forces. All the witnesses spent the winter of 1999 – 2000 outside of Grozny, and could not testify about the events of February 2000 other than by hearsay. The witnesses denied that anyone from the Estamirov family was ever involved in the illegal armed groups or any other illegal activities, or that they could have had a personal feud with anyone.

(f) Attempts to identify military units

58. On several occasions the investigators in charge of the criminal case raised the question of identifying the units of the army (Ministry of Defence) or of the Ministry of the Interior, possibly involved in the killings.

59. On 14 February 2001 the Grozny Town Prosecutor's Office put this question to the Oktyabrskiy VOVD of Grozny. In response, on 16 March 2001 the head of the VOVD replied that “on 4-9 February 2000 no 'sweeping' operations or recognisance action were undertaken by the officers of the Oktyabrskiy VOVD, which was set up on 17 February 2000”.

60. On 21-22 July 2003 the investigator in charge of the case sent requests to the Ministry of the Interior, the military prosecutor of the

Northern Caucasus, the commander of the United Group Alliance, chief of staff for the Northern Caucasus military circuit. The letters requested to identify military units deployed in Grozny "in the end of February 2000, during the fighting to liberate Grozny from illegal armed groups," and to find out whether any special operations had been carried out by them around Podolskaya Street in the Oktyabrskiy district. The letters further referred to the results of the ballistic expertise and requested to identify military units that could possibly use cartridges with recorded numbers.

(g) The prosecutors' orders

61. At different stages of the proceedings several orders were produced by the prosecutors of the Chechnya Prosecutor's Office enumerating the steps to be taken by the investigators. The order of 30 November 2000 instructed them to question and grant victim status to the relatives of the killed, to find out if any military or "sweeping" operations had taken place in the area on the given dates, to locate the bodies and to obtain from the relatives a permission for exhumation, to identify other witnesses of the crime. Similar directions are contained in the orders of 20 August 2002 and 20 July 2003.

62. The case was adjourned three times and four times reopened. At least on seven occasions it was transferred from one investigator to another. On 23 July 2003 a group of eight investigators was put in charge of the case. More then half of the documents in the criminal case file submitted by the Government were produced on 20-24 July 2003. The submitted case-file contains no documents dated after 24 July 2003, though it appears that the investigation continued after that date.

2. Additional documents submitted by the applicants

63. The applicants submitted a number of additional documents relating to the circumstances of their relatives' murder and discovery of the bodies. In particular, they submitted a number of press reports concerning the progress of the Russian troops in their fight for control over Grozny, which indicate that different parts of the city came under Russian control at the end of January – beginning of February 2000. On 1-3 February 2000 several reports mentioned a retreat or withdrawal of a large group of Chechen fighters from Grozny, following which the control over the city was largely taken by the Russian troops.

64. The applicants also submitted a number of reports about the events of 5 February 2000 in the southern suburbs of Grozny, notably in the Novye Aldy settlement. The reports by the Human Rights Watch, Memorial and media spoke of a "pattern of summary executions" carried out by the Russian troops in the suburbs of Grozny, and linked the killing of the Estamirov family members with the murders committed in Aldy on 5 February 2000.

II. RELEVANT DOMESTIC LAW

1. The Code of Criminal Procedure

65. Until 1 July 2002 criminal-law matters were governed by the 1960 Code of Criminal Procedure of the Russian Soviet Federalist Socialist Republic. From 1 July 2002 the old Code was replaced by the Code of Criminal Procedure of the Russian Federation (CCP).

66. The 1960 CCP required a competent authority to institute criminal proceedings if there was a suspicion that a crime had been committed. That authority was under an obligation to carry out all measures provided for by law to establish the facts and to identify those responsible and secure their conviction. The decision whether or not to institute criminal proceedings had to be taken within three days of the first report on the relevant facts (Articles 3, 108-09). Where an investigating body refused to open or terminated a criminal investigation, a reasoned decision was to be provided. Such decisions could be appealed to a higher-ranking prosecutor or to a court (Articles 113 and 209).

67. During criminal proceedings, persons who had been granted victim status could submit evidence and file applications, had full access to the case file once the investigation was complete, and could challenge appointments and appeal decisions or judgments in the case. At an inquest, the close relatives of the deceased were to be granted victim status (Article 53 of the old CCP). Similar provisions were contained in the new CCP.

68. Article 161 of the new CCP establishes the rule of impermissibility of disclosure of the data of the preliminary investigation. Under part 3 of the said Article, the information from the investigation file may be divulged with the permission of a prosecutor or investigator and only so far as it does not infringe the rights and lawful interests of the participants in the criminal proceedings and does not prejudice the investigation. Divulging information about the private life of participants in criminal proceedings without their permission is prohibited.

2. The Code of Civil Procedure

69. Article 214 part 4 of the Code of Civil Procedure (*Гражданский процессуальный Кодекс РСФСР*), which was in force until 1 February 2003, provided that the court had to suspend consideration of a case if it could not be considered until completion of another set of civil, criminal or administrative proceedings.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

A. Arguments of the parties

70. The Government requested the Court to declare the application inadmissible as the applicants had failed to exhaust the domestic remedies available to them. They submitted that the relevant authorities were conducting, in accordance with the domestic legislation, investigations into civilians' deaths and injuries and into the destruction of property in Chechnya. It also was open to the applicants to apply to a district court seeking redress through civil proceedings.

71. The applicants contested this objection. They submitted that they had sought criminal prosecution through prosecutors' offices, but that avenue had proved futile. They submitted that the investigation was not effective, in particular in that it did not take timely steps to collect the necessary evidence, failed to inform them about its progress and did not verify the involvement of federal servicemen in the murders. As to the civil remedies, the applicants turned to the Supreme Court for an award of damages but their claim was rejected without consideration. The applicants submitted that an application to a district court with a civil claim would have no chances of success in the absence of any conclusions from the criminal investigation. They referred to Article 214 (4) of the Civil Procedural Code, under which a civil court would be forced to suspend consideration of such a claim pending the investigation. They also claimed that in the absence of an effective investigation a civil claim would not be an effective remedy as regards deaths of five members of their family because it would not be capable of establishing the perpetrators and ensuring their punishment.

B. The Court's assessment

72. In the present case the Court made no decision about exhaustion of domestic remedies at the admissibility stage, having found that this question was too closely linked to the merits. The Court should now proceed to evaluate the arguments of the parties in view of the Convention provisions and its relevant practice.

73. The Court recalls that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants first to use the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The

existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law, but that no recourse should be had to remedies which are inadequate or ineffective (see *Aksoy v. Turkey* judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275-76, §§ 51-52, and *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1210, §§ 65-67).

74. The Court emphasises that the application of the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned but also of the general context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see the *Akdivar and Others* judgment cited above, p. 1211, § 69, and the *Aksoy* judgment cited above, p. 2276, §§ 53 and 54).

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

76. As regards a civil action to obtain redress for damage sustained through alleged illegal acts or unlawful conduct on the part of State agents, the Court recalls that the Government suggested that the applicants could have lodged a complaint with a district court. The Government did not refer to any examples where such courts were able, in the absence of any results from the criminal investigation, such as the identity of the potential defendant, to consider the merits of a claim relating to alleged serious criminal actions.

77. The Court further recalls that even assuming that the applicants brought such proceedings and were successful in recovering civil damages from a State body, it would still not resolve the issue of effective remedies in the context of claims brought under Article 2 of the Convention. The civil court is unable to pursue any independent investigation and is incapable, without the benefit of the conclusions of a criminal investigation, of making any meaningful findings as to the perpetrators of fatal assaults, and still less to establish their responsibility (see *Khashiyev and Akayeva v. Russia*, nos.

57942/00 and 57945/00, § 119-121, 24 February 2005). Furthermore, a Contracting State's obligation under Articles 2 and 13 of the Convention to conduct an investigation capable of leading to the identification and punishment of those responsible in cases of fatal assault might be rendered illusory if, in respect of complaints under those Articles, an applicant would be required to exhaust an action leading only to an award of damages (see *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, p. 2431, § 74).

78. In the light of the above the Court finds that the applicants were not obliged to pursue the civil remedies suggested by the Government in order to exhaust domestic remedies, and the preliminary objection is in this respect unfounded.

79. As regards criminal law remedies, the Court observes that on 22 February 2000 the fourth applicant sent a request to the General Prosecutor to initiate criminal proceedings into the killings of five members of her family. In April 2000 the investigation into the deaths was started. This investigation lasted for more than six years, without producing any known results. No charges were brought against any individuals. The applicants argued that the investigation has proven ineffective and that they were not properly informed of the proceedings in order to be able to participate or to challenge its results. The Government maintained that the relevant authorities had conducted, and continued to conduct, criminal investigations in accordance with the domestic legislation.

80. The Court considers that this limb of the Government's preliminary objection raises issues concerning the effectiveness of the criminal investigation, which are closely linked to the merits of the applicants' complaints. Thus, it considers that these matters fall to be examined below under the substantive provisions of the Convention invoked by the applicants.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

81. The applicants alleged that their relatives had been unlawfully killed by the agents of the State and that the authorities had failed to carry out an effective and adequate investigation into the circumstances of their deaths. They relied on Article 2 of the Convention, which 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.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

82. The Court will first examine the applicants' complaint concerning the effectiveness of the investigation.

A. The alleged inadequacy of the investigation

1. Arguments of the parties

83. The applicants maintained that the respondent Government had failed to conduct an effective and thorough investigation into their relatives' deaths. The investigation was slow and did not take the necessary steps to secure the relevant evidence and to identify the perpetrators of the crime. The applicants were not granted victim status in the proceedings and were not properly informed of their progress.

84. The Government disputed that there were failures in the investigation. They pointed to the difficulties associated with investigative work in Chechnya, including the fact that almost all the residents of the district had been away at the material time. The Government stressed that the applicants and their relative M. who had been granted victim status in the criminal proceedings repeatedly objected to the exhumation and a forensic expertise, thus complicating the investigation progress.

2. The Court's assessment

(a) General considerations

85. 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", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *McCann and Others v. the United Kingdom* judgment of 27 September 1995, Series A no. 324, p. 49, § 161; and the *Kaya v. Turkey* judgment of 19 February 1998, *Reports* 1998-I, p. 329, § 105). The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving state agents or bodies, to ensure their accountability for deaths occurring under their responsibility. What form of investigation will achieve those purposes may vary in different circumstances. However, whatever mode is employed, the authorities must act of their own motion once the matter has come to their

attention. They cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigatory procedures (see *İlhan v. Turkey* [GC] no. 22277/93, § 63, ECHR 2000-VII).

86. The investigation must be effective in the sense that it is capable of leading to the identification and punishment of those responsible (*Ögur v. Turkey* [GC], no. 21954/93, § 88, ECHR 1999-III). This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death (with regard to autopsies, see, for example, *Salman v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000-VII; concerning witnesses, for example, *Tanrikulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 109; concerning forensic evidence, for example, *Gül v. Turkey*, no. 22676/93, § 89, judgment of 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling below this standard.

87. In this context, there must also be an implicit requirement of promptness and reasonable expedition (see *Yaşa v. Turkey*, cited above, § 102-104; and *Mahmut Kaya v. Turkey*, no. 22535/93, ECHR 2000-III, §§ 106-107). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating the use of lethal force may generally be regarded as essential in maintaining public confidence in respect of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.

(b) Application in the present case

88. In the present case, an investigation was carried out into the killings. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

89. The Court notes that the applicants notified the authorities of the crime in the end of February 2000. The officers of the local department of the interior were present at the site in early April 2000 and an investigation was opened one week later. Already such a substantial delay in opening of the investigation into a very serious crime could not but affect the future effectiveness of the proceedings. Once the investigation began, it continued to be plagued by inexplicable delays. The Court notes that majority of the documents in the case-file were produced in July 2003, after the case had been communicated to the respondent Government, and more than three years after both the events in question and the opening of the proceedings. The steps that were taken in July 2003 included such crucial steps as

identification and questioning of witnesses, an additional examination of the site and the attempts to identify the military units that could have been involved in the murders. The results of the ballistic expert reports were only sent out to the relevant authorities in July 2003, even though they were available already in June 2000. It is obvious that these measures, if they were to produce any meaningful results, should have been taken immediately after the crime was reported to the authorities, and certainly as soon as the investigation had commenced. The Court reiterates that it is crucial in cases of deaths in contentious situations for the investigation to be prompt. The passage of time will inevitably erode the amount and quality of the evidence available and the appearance of a lack of diligence will cast doubt on the good faith of the investigative efforts, as well as dragging out the ordeal for the members of the family (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II). These delays, unexplained in this case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness.

90. Furthermore, the requests for information relating to the identification of the military units directed by the investigation in July 2003 referred to the wrong dates of the murder – to the end of February 2000 (see § 60 above), and thus could not have produced any valuable results.

91. A number of crucial steps were never taken. No autopsies or forensic reports were conducted in the course of the investigation, even though it appears that certain attempts to obtain a relevant permission from the relatives had been made in July 2003. Two reports drawn up during the reburial in April 2000 were prepared without removing the covers or clothes from the bodies. These documents contained hardly any significant information about the state of the bodies or the type of injuries and clearly cannot be called compatible with the requirement of thoroughness expected from an authority charged with law-enforcement tasks. A comprehensive forensic report, including a full autopsy, would have undoubtedly provided substantially more details as to the manner of deaths.

92. The applicants, with the exception of the fourth applicant, were not questioned about the circumstances of the case and none of them were granted victim status in the proceedings. The Government submitted no explanations on this point. There is no evidence that the applicants' participation in the investigation was ensured otherwise; and they did not receive any information about its progress. Accordingly, the investigation did not ensure sufficient public accountability to provide the investigation and its results with an adequate element of public scrutiny; nor did it safeguard the interests of the next-of-kin.

93. Finally, the Court notes that the investigation was adjourned and resumed a number of times and that the supervising prosecutors on several

occasions pointed out the deficiencies in the proceedings and ordered measures to remedy them, but these instructions were not complied with.

94. The Government pointed out in their submissions that the investigation was pending at the time of the replies and thus requested the Court to declare the case inadmissible for failure to exhaust domestic remedies. The Court notes that the Russian law provides a possibility for the participants of the proceedings to challenge the progress of the criminal investigation, notably, the decision to adjourn the investigation, either to a supervising prosecutor or to a judge. However, as noted above, the applicants were entirely excluded from the proceedings. Contrary to the usual practice under national law, they were not granted the official status of victims in criminal proceedings, a procedural role which would have entitled them to intervene during the course of the investigation. Thus, it is unclear how they could have made use of this provision. Even assuming that they could, the decisions to adjourn the investigation were any way repeatedly quashed by the supervising prosecutors who instructed the investigation to take certain steps – but these orders were not complied with. The Court is thus not persuaded that an appeal by the applicants would have been able to remedy the defects in the proceedings. The applicants must therefore be regarded as having complied with the requirement to exhaust the relevant criminal-law remedies.

95. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the deaths of Khasmagomed Estamirov, Khozhakhmad Estamirov, Toita Estamirova, Khasan Estamirov and Said-Akhmed Masarov. This rendered recourse to the domestic remedies, either civil or criminal, equally ineffective in the circumstances. The Court accordingly dismisses the Government's preliminary objection and holds that there has been a violation of Article 2 in this respect.

B. The alleged failure to protect the right to life

1. Arguments of the parties

96. The applicants submitted that there was overwhelming evidence to conclude that their relatives had been deprived of their lives by the State agents in circumstances that violate Article 2 of the Convention. They argued that their relatives had been killed on 5 February 2000 during a "mopping-up" operation in the southern districts of Grozny, in particular, in the nearby settlement of Novye Aldy.

97. The Government did not dispute the fact that the applicants' relatives had died. However, they did not find it possible to answer the question of whether there has been a violation of Article 2 in respect of the applicants' relatives as an investigation was still in progress. They noted that no

witnesses of the crimes were identified, and that the applicants based their assertion of the servicemen' implications in the murders only on hearsay from unnamed persons. They also specified that the investigation conducted in the present case had established no link with the murders committed in the Novye Aldy settlement.

2. The Court's assessment

(a) General considerations

98. The Court reiterates that Article 2, which safeguards the right to life and sets out those circumstances in which 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 also enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which 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 (*McCann and Others v. the United Kingdom* cited above, §§ 146-147).

99. 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, amongst other authorities, *Avsar v. Turkey*, no. 25657/94, § 391, ECHR 2001).

100. As to the facts that are in dispute, the Court recalls its jurisprudence confirming the standard of proof "beyond reasonable doubt" in its assessment of evidence (*Avsar v. Turkey*, cited above, § 282). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (*Ireland v. the United Kingdom* judgment of 18 January 1978, Series A no. 25, p. 65, § 161).

101. 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). Nonetheless, where allegations are made under Articles 2 and 3 of the Convention the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, the *Ribitsch v. Austria* judgment of 4 December 1995, Series A no. 336, § 32, and *Avsar* cited above, § 283) even if certain domestic proceedings and investigations have already taken place.

(b) Application in the present case

102. In order to be able to assess the merits of the applicants' complaints and in view of the nature of the allegations, the Court requested the Government to submit a copy of the complete criminal investigation file in the present case, which they did in July 2003. When requested to provide an update to the file in 2005, the Government commented that the disclosure of further documents would be contrary to the national legislation, namely Article 161 of the Criminal Procedural Code. They failed to present any information about the progress of the investigation, simply stating that it was ongoing.

103. The Court reiterates in this respect that it is of utmost importance for the effective operation of the system of individual petition instituted by Article 34 that States should furnish all necessary facilities to make possible a proper and effective examination of applications (see, as a recent authority, *Trubnikov v. Russia*, no. 49790/99, §§ 55-57, 5 July 2005). It is inherent in proceedings relating to cases of this nature, where an individual applicant accuses State agents of violating 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).

104. The Court notes that the provisions of Article 161 of the Criminal Procedural Code, to which the Government refer, do not preclude disclosure of the documents from a pending investigation file, but rather set a procedure and limits to such disclosure (see, for similar conclusions, *Mikheyev v. Russia*, no. 77617/01, § 104, 26 January 2006). The Government failed to specify the nature of the documents and the grounds on which they could not be disclosed. The Court also recalls that in a number of comparable cases reviewed and pending before the Court, similar requests have been made to the Russian Government and the documents from the investigation files have been submitted without a reference to Article 161 (see, for example, *Khashiyev and Akayeva v. Russia* cited above, § 46; *Magomadov and Magomadov v. Russia* (dec.), no. 58752/00, 24 November 2005). For these reasons the Court considers the Government's explanations concerning the disclosure of the case-file insufficient to justify the withholding of the information requested by the Court.

105. Accordingly, the Court finds that it can draw inferences from the Government's conduct in this respect. The Court does not find it necessary, however, to draw separate conclusions under Article 38§ 1 (a) of the

Convention as to whether the Government complied with their obligations, in view of the submission of the large part of the case-file.

106. As to the merits of the complaint, it is undisputed that the applicants' relatives were victims of unlawful killings. The Government did not suggest that the exceptions of the second paragraph of Article 2 could be applicable in the present case. The question remains whether the respondent Government may be held responsible for their deaths.

107. The Court notes that the investigation into the deaths was never completed and that the individuals responsible were not identified or indicted. The version of the events suggested by the applicants received some attention from the investigation, which in 2003 requested information from several military and police authorities about their possible engagement in the area. It is unclear whether any answers were obtained, especially in view of the wrong dates indicated in those requests (see § 60 above). It appears that the investigation also looked at other versions of the applicants' relatives' murders, such as their possible connection with illegal activities or being involved in a personal feud, however these suggestions found no support in the witness' statements or in other materials submitted to the Court. The Government did not provide any alterative account of the applicant's relatives' deaths.

108. The applicants themselves, starting from 22 February 2000, and other witnesses questioned within the framework of the proceedings, consistently stated that the killings had been perpetrated by the members of the army or police forces. Although no direct witnesses of the events could be identified, the investigation could have used other means to verify this version, unanimously advanced by the local residents. Inexplicably, no actions in that direction were taken until more than three years after the commencement of the investigation. Once these measures were taken, the Court was not informed of their outcome. There is no information about the identification of the cartridges and bullets collected at the site of crime or about the carrying out of a military or security operation in the area on the relevant dates. The case-file reviewed by the Court contains the relevant information requests, but the Government refused to provide an update possibly containing answers to these crucial questions.

109. The Court further notes that the domestic authorities accepted the date of 5 February 2000 as the date of death, even though the applicants' relative M. indicated two different dates on which he had found the bodies, 5 and 9 February 2000 (see § 14 and 46 above). The Malgobek Town Court in Ingushetia found it established that the applicants' relatives had been killed on 5 February 2000. The witnesses in these proceedings directly referred to the involvement of the special police forces in the murders (see § 20 above). Furthermore, the death certificates recorded the date of deaths as 5 February 2000, which is the same day as the killings that occurred in neighbouring Aldy.

110. The Court further takes note of the applicants' allegation, undisputed by the Government and not contested by the documents in the investigation file, that by 5 February 2000 the district was under control of the federal forces.

111. The applicants and other witnesses systematically referred to the much better documented case of the events in the neighbouring settlement of Novye Aldy and argued that the killings of the Estamirov family had been committed on the same day by the same members of the "special forces". This possibility cannot be excluded, given the similar circumstances of the deaths in both cases – residents were shot with machine-guns in their houses or in the courtyards and the houses were set on fire – and the proximity of Novye Aldy to the applicants' house. The Government dismissed this link in their observations, without explaining why. In the documents submitted to the Court no linkage can be traced to the investigation in the Novye Aldy case and it is therefore difficult to evaluate the validity of this conclusion. The Court also had regard to the reports by the human rights groups and documents by international organisations which have been submitted, which support the version of the events submitted by the applicants and list their relatives among the persons killed on 5 February 2000 during a mopping-up operation in the southern parts of Grozny.

112. The Court has already noted the difficulties for an applicant to obtain the necessary evidence in support of his or her allegations which is in the hands of the respondent Government in cases where the Government fail to submit relevant documentation. Where the applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions for 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 it fails in its arguments, issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005; *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-... (extracts)).

113. The Court is satisfied that the applicants made a *prima facie* case that their relatives had been killed by the servicemen on 5 February 2000 and that the Government failed to provide any other satisfactory and convincing explanation of the events. It also finds that it can draw inferences from the Government's conduct in respect of the investigation documents.

114. On the basis of the above the Court finds it established that the 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 their agents, the Court finds that there has been also a violation of Article 2 in this respect.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

115. The applicants complained that they had had no effective remedies in respect of the violations alleged under Article 2 of the Convention. They referred to Article 13 of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

116. The Government disagreed.

117. 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. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by acts or omissions by the authorities of the respondent State (see *Aksoy v. Turkey,* cited above, § 95; and *Aydin v. Turkey* judgment of 25 September 1997, *Reports* 1997-VI, § 103).

118. Given the fundamental importance of the rights guaranteed by Article 2 of the Convention, 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, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *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*, cited above, § 183).

119. In view of the Court's findings above with regard to Article 2, this complaint is 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 § 52). The applicants should accordingly have been able to avail themselves 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.

120. However, in circumstances where, as here, the criminal investigation into the killings was ineffective (see §§ 89-95 above), and

where the effectiveness of any other remedy that may have existed, including the civil remedies, was consequently undermined, the Court finds that the State has failed in its obligation under Article 13 of the Convention.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

122. 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

1. Pecuniary damage

123. Under this heading, the applicants first claimed compensation of the value of the destroyed two-story brick house in Grozny, estimated by them at 60,000 euros (EUR), of the destroyed car at the value of EUR 1,500 and the burnt cowshed with two calves at the value of EUR 1,500.

124. The Government noted that these claims were not supported by any documents.

125. The Court recalls that the applicants did not state any claims concerning the destroyed property at the earlier stages of the proceedings. Nor did the applicants take any relevant steps aiming at obtaining compensation, at recording the status of the property or of the extent of their losses within the domestic legal system. In the absence of any independent and conclusive evidence as to the applicants' claims for the lost property the Court cannot award any compensation under this heading.

126. Further, the applicants claimed damages in respect of the lost wages of their relative Khozhakhmad Estamirov. The fourth applicant claimed 70,715.15 Russian roubles (RUR) under this heading (EUR 2,076). The first applicant claimed RUR 193,294.48 (EUR 5,675) on behalf of the fifth applicant, the son of his deceased brother Khozhakhmad Estamirov. The first applicant stated that after his brother's death the financial burden of bringing up his nephew was borne by him.

127. The applicants claimed that Khozhakhmad Estamirov had been employed as a car mechanic in Nazran, Ingushetia. The applicants were not aware of his exact earnings and based their accounts on the official minimum wage. In 2002-2006 the official minimum was increased annually on an average rate of 25 % and the applicants assumed that this growth rate

should apply in further calculations. The fourth applicant assumed that she could be financially dependant on her son from February 2000 until 2010. His earnings for that period would constitute RUR 212,145.45. The fourth applicant could count on 30 % of that sum, which would constitute RUR 70,715.15 (EUR 2,076). The first applicant claimed, on behalf of the fifth applicant, 30% of his deceased brother's earnings from February 2000 to 2014, i.e. until the 18-th birthday of the fifth applicant. The total earnings were estimated at RUR 579,883.45, of which 30% would constitute RUR 193,294.48 (EUR 5,675).

128. The Government regarded these claims as based on suppositions and unfounded.

129. The Court recalls that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention, and that this may, in the appropriate case, include compensation in respect of loss of earnings (see, among recent authorities, *Isayeva v. Russia*, no. 57950/00, § 236, 24 February 2005). Having regard to its above conclusions, there is indeed a direct causal link between the violation of Article 2 in respect of the applicants' son and brother's death and the loss by the applicants of the financial support which he could have provided for them. Having regard to the applicants' submissions, the Court awards EUR 2,076 to the fourth applicant and EUR 5,675 to the first applicant, on behalf of his nephew, the fifth applicant, as pecuniary damage, plus any tax that may be chargeable on these amounts.

2. Non-pecuniary damage

130. The applicants claim EUR 295,000 as non-pecuniary damages for the suffering they had endured for the loss of their five family members, which included a one-year old boy, a pregnant woman and a man in his late sixties. They referred to the indifference the authorities have shown towards them and the failure to provide them with information about the progress of the investigation into their relatives' deaths, and for being forced to flee their homeland.

131. In particular, the first, the second, the third, the sixth and the seventh applicants each claimed EUR 35,000 for the sufferings they had endured in connection to the loss of their father, brother, pregnant sister-in-law, nephew and uncle, as well as the authorities' indifference to their relatives' deaths demonstrated in the inefficient investigation. The fourth applicant claimed EUR 50,000 for the loss of her husband, her son, daughter-in-law, grandson and her husband's cousin, as well as for the authorities' indifference and for being forced to flee her homeland. The fifth applicant claimed EUR 70,000 for the loss of his entire immediate family at the very early age of four, the failure to conduct a proper investigation into their deaths and for being forced to flee his homeland.

132. The Government found the amounts claimed to be exaggerated.

133. The Court has found a violation of Articles 2 and 13 of the Convention on account of the killings of the applicants' five relatives by the agents of the State, a failure to carry out an effective investigation and the absence of effective domestic remedies. The Court agrees that the pain and suffering inflicted upon the applicants by the brutal murder of their relatives must have been exacerbated by the absence of any findings in the investigation, where they were not even accorded victim status and thus were deprived of the possibility to participate. The Court thus accepts that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations.

134. In the circumstances, making its assessment on an equitable basis, the Court awards the first and the second applicants EUR 35,000 each, plus any tax that may be chargeable on the above amounts. The Court further awards the third, the sixth and the seventh applicants EUR 10,000 each, plus any tax that may be chargeable on the above amounts. In view of their special family ties with the deceased and the impact the deaths must have had on them, the Court awards the fourth and the fifth applicants the amounts as claimed, EUR 50,000 and EUR 70,000 respectively, plus any tax that may be chargeable on the above amounts. The awards to the second, the third, the sixth and the seventh applicants are to be converted into Russian roubles at the rate applicable at the date of the payment.

B. Costs and expenses

135. The applicants were represented by Gareth Peirce, a lawyer practicing in the United Kingdom. She was assisted in her work by the SRJI who had conducted all the legal work and correspondence with the Court after September 2001. The applicants submitted that the costs borne by the representatives included research in Ingushetia and in Moscow at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the European Court and domestic authorities at a rate of EUR 50 per hour for SRJI staff and EUR 150 per hour for Gareth Peirce and SRJI senior staff.

136. The applicants claimed EUR 12,338.17 in respect of costs and expenses related to her legal representation. This included:

- EUR 2,000 for the preparation of the initial application in relation to the deaths of the applicants' relatives;
- EUR 3,500 for the preparation of full application and additional submissions to the ECHR;
- EUR 3,750 for the preparation of the applicants' reply to the Government's memorandum;
- EUR 425 in connection with the preparation of additional correspondence with the ECHR;
- EUR 1,000 in connection with the preparation of the applicants' response to the ECHR decision on admissibility;

- EUR 750 in connection with the preparation of legal documents submitted to the domestic law-enforcement agencies;
- EUR 799.75 for administrative costs (7% of legal fees);
- EUR 113.42 for international courier post to the ECHR.

137. The Government did not dispute the details of the calculations submitted by the applicants, but contended that the sum claimed was excessive for a non-profit organisation such as the applicant's representative, the SRJI.

138. 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* cited above, § 220).

139. The Court notes that Gareth Peirce was authorised by the applicants to represent them before the ECHR in May 2000 and that she and the SRJI acted as the applicant's representative throughout the procedure. The Court is satisfied that the above rates are reasonable.

140. Further, it has to be established whether the costs and expenses incurred by the applicant for legal representation were necessary. The Court notes that this case was rather complex, in view of the number of the applicants, the seriousness of the violations alleged and a considerable amount of documents involved.

141. In these circumstances, having regard to the details of the claims submitted by the applicants, the Court awards the entire amount claimed, less the EUR 701 received by way of legal aid from the Council of Europe, together with any value-added tax that may be chargeable. This amount is to be transferred to the SRJI account in the Netherlands.

C. Default interest

142. 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 UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;

2. *Holds* that there has been a violation of Article 2 of the Convention in that the authorities failed to carry out an effective and adequate investigation into the circumstances of the applicants' relatives' deaths;

3. *Holds* that there has been a violation of Article 2 of the Convention in respect of the applicants' relatives' deaths;

4. *Holds* that there has been a violation of Article 13 of the Convention;

5. *Holds*

(a) that the respondent State is to pay the applicants, 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 2,076 (two thousand and seventy-six euros) to the fourth applicant and EUR 5,675 (five thousand six hundred and seventy-five euros) to the first applicant, on behalf of his nephew, the fifth applicant, in respect of pecuniary damage;

(ii) EUR 35,000 (thirty-five thousand euros) to the first and the second applicants each, EUR 10,000 to the third, the sixth and the seventh applicants each, EUR 50,000 (fifty thousand euros) to the fourth applicant and EUR 70,000 (seventy thousand euros) to the fifth applicant in respect of non-pecuniary damage, the awards to the second, the third, the sixth and the seventh applicants to be converted into Russian roubles at the rate applicable at the date of the payment;

(iii) EUR 11,637.17 (eleven thousand six hundred and thirty-seven euros and seventeen cents) in respect of costs and expenses, this amount to be transferred to the SRJI account in the Netherlands;

(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;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 12 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President