CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Applications
no. 57942/00
by Magomed Akhmedovich KHASHIYEV
against Russia
and
no. 57945/00
by Roza Aribovna AKAYEVA
against Russia

The European Court of Human Rights (First Section), sitting on 19 December 2002 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mr E. LEVITS,
Mr A. KOVLER,
Mr V. ZAGREBELSKY, *judges*,
and Mr S. NIELSEN, *Deputy Section Registrar*,

Having regard to the above applications lodged on 25 May 2000 and 20 April 2000,

Having regard to the Court's decision of 11 July 2000 to join the applications,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

A. The circumstances of the case

The facts of the case are partly disputed by the parties. The facts that are not in dispute may be summarised as follows.

The first applicant, Magomed Akhmedovich Khashiyev, was born in 1942. The second applicant, Roza Aribovna Akayeva, was born in 1955. Both are Russian nationals and residents of Grozny, Chechnya. Presently they are staying in Ingushetia. They are represented before the Court by Mr Kirill Korotayev, a lawyer of Memorial, a Russian Human Rights NGO based in Moscow, and Mr William Bowring, Professor at the University of North London.

The killing of the applicants' relatives

The first applicant lived in Tashkalinskaya Street in the Staropromyslovskiy district of Grozny. After 1991 the applicant, who is ethnic Ingush, attempted to sell the house and leave because he felt threatened by the situation in Chechnya, but could not find anyone to buy the house. During the hostilities in 1994-1996 the applicant and his family stayed in Ingushetia, and on their return found that all their property had been destroyed or looted.

In November 1999 the first applicant left Grozny because of the renewed hostilities. His relatives decided to stay in Grozny to look after their house and property. They were his brother, Khashiyev Khamid Akhmedovich (born in 1952), his sister Khashiyeva Lidiya Akhmedovna (born in 1943) and her two sons, Taymeskhanov Rizvan Vakhayevich (born in 1977), and Taymeskhanov Anzor Vakhayevich (born in 1982).

The second applicant was a resident of the "Tashkala" quarter in the Staropromyslovskiy district of Grozny, Chechnya. In October 1999 she left Grozny together with her mother and sister, because of the hostilities. Her brother, Akayev Adlan Aribovich (born in 1953) remained in Grozny to look after their property and house.

At the end of January 2000 the applicants learned that their relatives had been killed in Grozny. On 25 January 2000 the first applicant and his sister, Khashiyeva Movlatkhan, returned to Grozny to find out more about their relatives. In the yard of the second applicant's brother's house they found three bodies with gunshot wounds and torture marks. These were the second applicant's brother, Akayev Adlan, and the sister and nephew of the first applicant, Khashiyeva Lidiya and Taymeskhanov Anzor. The second applicant's brother had in his hand his identity card as Head of the Physics department of the Grozny Teaching Institute. Other documents were in a

pocket of his shirt: his passport, identity card as a researcher of the Grozny Oil Institute and his driving licence. Identity documents were also found on the bodies of the other two persons.

Later, the bodies of the first applicant's brother and second nephew, Khashiyev Khamid and Taymeskhanov Rizvan, were found in a nearby garage. The body of a third man, a neighbour named Goygov Magomed, was also found there.

The first applicant submits that the bodies of his relatives bore marks of numerous stab and gunshot wounds and bruises, and that some bones were broken. In particular, the body of Khashiyeva Lidiya had 19 stab wounds and her arms and legs were broken. The body of Taymeskhanov Anzor had multiple stab and gunshot wounds, and his jaw was broken. The body of Khashiyev Khamid was mutilated, half of his scull was smashed and some fingers were cut off. The body of Taymeskhanov Rizvan was grossly mutilated by numerous gunshots. The first applicant submits that about thirty bullets were extracted from his chest alone. There were also stab wounds and cuts on the face and in the chest area.

The first applicant submits that a forensic report was carried out in Ingushetia on the bodies of Khashiyev Khamid and Taymeskhanov Rizvan, along with an examination of the body of Goygov Magomed. The applicant is not in possession of those reports, but he asks the Court to request them from the Government. The applicant has submitted a copy of the forensic report on the body of Goygov, and stated that it was carried out at the same time and described similar wounds to those of his relatives. The first applicant is in possession of photographs of the dead bodies of his brother and one nephew. The first applicant is prepared to submit witness reports of those who saw the bodies before they were buried.

The first applicant took the bodies of his relatives to the village of Voznesenskoye in Ingushetia for burial.

On 28 January 2000 the second applicant travelled there as well and saw the bodies of her brother and of the first applicant's relatives. She saw numerous gunshot and stab wounds and traces of beatings and torture on the body of her brother and on the other bodies.

In particular, she submits that her brother's body had seven gunshot wounds to his scull, heart and abdomen area. The left side of his face was bruised and his collar-bone was broken.

Both applicants submit that they did not contact a medical doctor or take photographs of all the wounded bodies due to a state of shock caused by their relatives' violent deaths.

The body of the second applicant's brother was brought to the village of Psedakh in Ingushetia and buried there on 29 January 2000. The village authorities of Psedakh on 2 February 2000 confirmed that the body of Mr Akayev Adlan Aribovich, brought from the Staropromyslovskiy district of Grozny, was buried on 29 January 2000 at the village cemetery.

On 9 February 2000 the second applicant also travelled to Grozny. In the courtyard of the house where her brother had been killed she saw machine-gun cartridges and her brother's hat. On the same day she saw five other bodies in a house nearby (in Neftyanaya Street). All had been shot. She learned that a sixth woman from the same group, G., was wounded but had survived. The second applicant later found her in Ingushetia and she told her that they had been shot at by Russian soldiers and that she had last seen the applicant's brother alive on the evening of 19 January 2000.

The investigation into the deaths

On 7 February 2000 the Malgobek Town Court of Ingushetia certified the death of the second applicant's brother, Akayev Adlan Aribovich, born in 1953 in Grozny on 20 January 2000. The court stated that its decision was based on the statements of the applicant and two witnesses in which they testified to the fact that the applicant's brother had remained in Grozny in the winter of 1999/2000 and that at the end of January they had learned of his death, which had allegedly occurred on 20 January. They confirmed that he had been found in Grozny in the courtyard of the Khashiyev's house with numerous gunshot wounds and that he had been buried on 29 January in the village of Psedakh. Following the court's decision, on 18 February 2000 the civil registration office of the Malgobek district of Ingushetia issued a death certificate for the second applicant's brother.

On 10 February 2000 forensic examinations were carried out by officers of the Nazran Department of the Interior on the bodies of the first applicant's brother and nephew and of Goygov Magomed, whose body had been found next to theirs. An examination of Goygov's body, signed by two forensic experts of the local Department of the Interior, reported numerous wounds to the head, chest, abdomen and extremities, some of which were gunshot wounds.

On 14 March 2000 the office of the Malgobek Town Prosecutor issued a paper to the first applicant certifying that on 10 February 2000 the dead body of his brother, Khashiyev Khamid, had been found in Grozny and that he appeared to have died a violent death, given the numerous gunshot wounds to the head and body.

On 7 April 2000 the Malgobek Town Court of Ingushetia, at the first applicant's request, certified the deaths of Khashiyev Khamid Akhmedovich, born in 1952, Khashiyeva Lidiya Akhmedovna, born in 1943, Taymeskhanov Rizvan Vakhayevich, born in 1977, and Taymeskhanov Anzor Vakhayevich, born in 1982 that had occurred in Grozny, Chechnya, on 19 January 2000. The court based its decision on the statements of the applicant and two witnesses in which they testified that the applicant's brother, sister and her two sons had remained in Grozny in the winter of 1999/2000. At the end of January they learned that on 19 January

they had been shot by Russian soldiers at their home. The court noted in the decision that a criminal case had been opened and an investigation was in progress. Following the court decision, on 19 April 2000 the civil registration office of the Malgobek district of Ingushetia issued death certificates for the first applicant's four relatives.

On 27 May 2000 the military prosecutor of military unit no. 20102 informed the first applicant, in response to his complaint of 5 April 2000 concerning the murder of his relatives, that, after a review by the prosecutor (*прокурорская проверка*), no decision to open a criminal investigation had been taken for lack of *corpus delicti* in the actions of federal servicemen.

On 6 June 2000 the Malgobek Town Prosecutor in Ingushetia informed the first applicant that criminal case no. 20540020, opened on 4 May 2000 into the deaths of Taymeskhanov Rizvan and Khashiyev Khamid, had been transferred on 15 May 2000 to the Republican Prosecutor of Ingushetia.

On 30 June 2000 the office of the Chief Military Prosecutor, in response to the Memorial Human Rights Centre's request for information on the investigation into the second applicant's brother's death, forwarded the request to the Military Prosecutor of the Northern Caucasus.

On 17 July 2000 the second applicant was informed by a letter from the office of the Chief Military Prosecutor, addressed to the special prosecutor's office in the Northern Caucasus, that a "local prosecutor's office" was investigating the case of her brother's death.

On 20 July 2000 the Chief Military Prosecutor, in response to an enquiry from Human Rights Watch about violations of the rights of civilians in Grozny in December 1999 - January 2000, informed them that the military prosecutors were investigating only one case - that of murder and injury of two women - unconnected with the applicants. That investigation was still ongoing, and the office of the Chief Military Prosecutor was supervising it.

In August 2000 the Grozny Town Prosecutor informed the first applicant that criminal proceedings had been started under Article 105 (2) (a), (d), (e) and (j) of the Criminal Code and that he would be informed of the results of the investigation. On 5 October 2000 a note from the General Prosecutor's Office to the Prosecutor of the Chechen Republic was forwarded to the second applicant in which that Prosecutor was requested to inform the second applicant about progress in the investigation into her brother's death.

On 12 October 2001 the Government informed the Court of further developments in the case. In November 2000 the Presidium of the Supreme Court of Ingushetia rejected a request for supervisory review (*protest)* by the Republican Prosecutor, by which he sought to quash the decision of the Malgobek Town Court of 7 February 2000. Another request for supervisory review was made by the Deputy Chairman of the Supreme Court of the Russian Federation, and on 1 October 2001 the Supreme Court quashed the decision. The Supreme Court based its decision on Article 250 of the Russian Code of Civil Procedure, which requires those who request courts

to establish facts of legal significance to indicate the reasons for that request. It found that the second applicant had failed to explain the reasons for which she sought the "legal certification" of her brother's death. The case was remitted back to the Malgobek Town Court.

Facts in dispute

Both applicants believe that their relatives were victims of summary executions by the Russian troops.

The Government do not dispute the fact that the applicants' relatives died. They concede that, according to the Office of the Prosecutor General of the Russian Federation, the case file contains "implications of unlawful doings on the part of the federal troops". However, they refer to the ongoing criminal investigation and absence of witnesses to the crimes. The Government dispute that, at the time when the deaths occurred, the area of Grozny where they took place was under the control of the Russian troops. The Government further state that the circumstances of the applicants' relatives deaths are unclear and that it is possible that they were killed by Chechen fighters in retribution for not joining their forces, or by robbers. The Government also suggest that the notion that the applicants' relatives were executed by the Russian troops could be a part of the propaganda war waged by the Chechen armed groups, aimed at discrediting the federal army. The Government further suggest that "there are good reasons to believe that the crime was committed by terrorists while retreating Grozny. It is confirmed by instructions that the international terrorist Hattab have given during the training of sappers ... where he recommended terrorists while committing crimes against peaceful population to camouflage themselves as soldiers of the Russian Federal Forces. Furthermore, the way of infliction of body injuries as well as murdering of victims also confirms that the crime... had been perpetrated by terrorists". Finally, the Government do not exclude "the victims' affiliation and their participation, being part of the unlawful bandit groups, in armed resistance to the federal troops liberating the city of Grozny".

The applicants deny each of those propositions. First, they note that the civilians in Grozny were trapped and that they had no real opportunity to leave the city that had been the scene of fierce fighting. They further refer to press statements by the Government and independent news agencies that describe in detail the advance of the Russian troops on Grozny. According to these, parts of Grozny were under control of the Russian troops as early as 28 December 1999, and on 23 January 2000 police units started operating in the Staropromyslovskiy district.

The applicants further deny the suggestion that their relatives were victims of rebel fighters or of armed robbers. They note that there is no evidence whatsoever of a practice by the rebel groups of murdering those

who refused to join them in retribution or as part of a propaganda war, and point out that robbers could have taken advantage of the many abandoned houses, whose owners had fled, rather then murder the few remaining occupants.

They deny that their relatives could have participated in the armed groups, referring to their age and peaceful occupations: Khashiyeva Lidiya was 57 years old and had been a kindergarten cook by profession; Akayev Adlan was 45 years old and had been the Head of the Physics department of the Grozny Teaching Institute; Khashiyev Khamid was 45 years old and had run a little kiosk near his house; and Anzor and Rizvan Taymeskhanovy had been students at the Grozny University. The applicants refer to the neighbours' testimonies, which deny that the applicants were ever seen involved in any armed groups, and to a letter written by Akayev Adlan to his sister in November 1999 describing their life as civilians in Grozny during the fighting for the city. Finally, the applicants submit that even if their relatives had been members of the armed groups, this would not relieve the Russian Federation of its obligations under Articles 2 and 3 of the Convention.

The applicants submit that there is ample evidence to conclude that their relatives were murdered by the Russian troops. They note that witnesses saw Khashiyev Khamid, Taymeskhanov Rizvan and their neighbour, Goygov Magomed, detained by Russian soldiers on 19 January 2000, and refer to a Human Rights Watch report in which their statements are quoted. The three bodies were later found together. They refer to the fact that their relatives' identity documents were in their hands or on their bodies, which suggests that they were preparing for an official identity check. They further point to the execution-style gunshot-wounds.

The applicants have submitted a number of reports issued in 2000 by the Human Rights Watch and Memorial Human Rights Centre. The reports concern events in the suburbs of Grozny in January - February 2000 and put the blame for the murders of the civilians on the Russian troops. The actual perpetrators of the murders have not been identified, but the applicants submit that the human rights organisations have "documented a pattern of summary executions by Russian troops".

As far as the investigation is concerned, the Government in their submissions state that on 3 May 2000 the prosecutor of Grozny instituted criminal case no. 12038 under Article 105 (2) (a), (d), (e) and (j) - murder of two or more persons in aggravating circumstances. The military prosecution office (military unit no. 20102 in Grozny) was checking whether servicemen of the Russian army were involved in the said events. The ongoing investigation had not established the identity of the perpetrators of the crimes, so the applicants could not claim that the murders should be blamed on the Russian soldiers. In their further submissions of 12 October 2001 the Government informed the Court that criminal case no. 12038 had

been transferred to the office of the Chechnya Prosecutor in February 2001. The Government submit that, during an additional investigation, a number of witnesses were questioned and efforts were made to establish which military units were located in the Staropromyslovskiy district at that time. However, no new information about the murders had been obtained.

On 16 January 2001 the office of the Prosecutor of the Chechen Republic issued a note on the progress of case no. 12038, opened on 3 May 2000 and concerning the murders of civilians in the Novaya Katayama district of Grozny. The publication in the Novaya Gazeta of an article entitled "Freedom or Death", which reported on murders of civilians by federal troops, is cited as a reason for opening the case. The investigation established that in February 2000, after the Russian troops had entered the district, the dead bodies of 10 civilians were found. Among those were the bodies of the applicants' relatives. The investigation established that the individuals had been murdered, but failed to identify the culprits. All witnesses questioned during the investigation confirmed the deaths and burial places of the dead, but could not clarify the identity of the murderers. No witnesses were ever found who could directly identify Russian servicemen as responsible for the acts.

The case was suspended on 3 July 2000, reopened on 30 September 2000, suspended on 20 March 2001, reopened on 9 August 2001, and again suspended on 9 September 2001. In their letter of 17 June 2002, the Government submit that the case had been reopened again on 8 May 2002.

The applicants deny that an effective and meaningful investigation has ever taken place. In particular, they point to the discrepancies in the official answers received from the various Government bodies. They have never been informed of criminal case no. 12038 started on 3 May 2000, to which the Government refer in their observations.

The applicants submit that the Human Rights Watch researchers were told by the prosecutors in Malgobek that they had taken all steps they could undertake before instituting criminal proceedings. They invited forensic experts to carry out an autopsy on the bodies of the first applicant's relatives, Taymeskhanov Rizvan and Khashiyev Khamid, and on the body of Goygov Magomed. They claimed however that they could not formally open a criminal investigation regarding crimes that occurred in another republic, and that only in May 2000, following an instruction from the office of the Republican Prosecutor of Ingushetia, were the proceedings instituted and the case files forwarded to the Chief Department of the Office of the General Prosecutor supervising the enforcement of legislation in federal security and inter-ethnic relations in the Northern Caucasus (*Главное Управление Генеральной Прокуратуры Российской Федерации по надзору за исполнением законов о федеральной безопасности и межнациональных отношениях на Северном Кавказе*), located in Yessentuki in the Stavropol Region.

The applicants submit that although forensic examinations were carried out on only two bodies, neither they nor other relatives have been approached by the investigators for permission to exhume the bodies for a forensic examination. They also submit that they continue to be in possession of a number of items that could serve as evidence, but were never collected by the investigators. The second applicant keeps the sweater in which her brother was found, with numerous small holes on the front and back, his identity documents, and a copy of a letter he wrote in November 1999. As regards the first applicant, the investigators in Ingushetia have collected a certain amount of documentary evidence, including photographs of the bodies, some documents and bullets, but have not collected the clothes that his relatives had been wearing when their bodies were found.

In February 2000 Human Rights Watch issued a report entitled "Civilian Killings in Staropromyslovskiy District of Grozny" in which it accused the Russian forces of deliberately murdering at least 38 civilians between late December and mid-January. Human Rights Watch interviewed survivors, eyewitnesses and relatives of the dead. The report contains information about the deaths of Akayev Aldlan, Taymeskhanova Lidiya and Taymeskhanov Anzor between 21 and 25 January. It also reports the "disappearance" on 19 January of Goygov Magomed, Taymeskhanov Rizvan and Khashiyev Khamid after being detained by soldiers.

After the publication of that report, one of the survivors, G., applied to the prosecutor's office, with the assistance of Memorial. On 9 June 2000 the military prosecutor of military unit no. 20102 informed Memorial that on 22 April 2000 it had been decided not to open a criminal investigation, because no connection had been established between the facts contained in her account - of attempted murder of herself and several murders - and the actions of the servicemen. The letter also informed Memorial that criminal proceedings had been instituted on 31 May 2000 following an application by another survivor, M. Human Rights Watch submit that as late as November 2000 M. had not been asked by the investigators to help identify or draw sketches of the soldiers who shot at her.

The applicants were never officially informed that they had been granted the status of crime victims (*потерпевшие*), as provided by Article 53 of the Code of Criminal Procedure in respect of immediate relatives of murder victims.

B. Relevant domestic law and practice

Article 20 of the Constitution of the Russian Federation protects the right to life.

Article 46 of the Constitution guarantees the protection of rights and liberties in a court of law by providing that the decisions and actions of any public authority can be appealed to a court of law. Section 3 of the same

Article guarantees the right to apply to international bodies for the protection of human rights after domestic legal remedies have been exhausted.

Articles 52 and 53 provide that the rights of victims of crimes and abuse of power are protected by law. They are guaranteed access to the courts and compensation by the State for damage caused by the unlawful actions of a public authority.

Article 55 (3) provides for the restriction of rights and liberties by a federal law, but only to the extent required for the protection of the fundamental principles of the constitutional system, morality, health, rights and lawful interests of other persons, the defence of the country and the security of the state.

Article 56 of the Constitution provides that a state of emergency can be declared in accordance with federal law. Certain rights, including the right to life and freedom from torture, cannot be restricted.

Section 25 of the Law on Defence (*Федеральный закон от 31 мая 1996 г. N 61-ФЗ "Об обороне"*) provides that "supervision of adherence of laws and investigations of crimes committed in the Armed Forces of the Russian Federation, other Forces, military formations and authorities shall be effected by the General Prosecutor of the Russian Federation and subordinate prosecutors. Civil and criminal cases in the Armed Forces of the Russian Federation, other forces, military formations and authorities shall be examined by courts in accordance with the legislation of the Russian Federation."

The Law on Suppression of Terrorism (*Федеральный закон от 25 июля 1998 г. № 130-ФЗ «О борьбе с терроризмом»*) provides as follows:

"Section 3. Basic concepts

For purposes of the present Federal Law the following basic concepts are applied:

... "the suppression of terrorism" means activities aimed at the prevention, detection, suppression and minimisation of consequences of terrorist activities;

"counter terrorist operation" means special activities aimed at the prevention of terrorist acts, ensuring security of individuals, neutralising terrorists and minimising consequences of terrorist acts;

"zone of a counter-terrorist operation" means a separate terrain or water surface, means of transport, building, structure or premises with adjacent territory where a counter-terrorist operation is conducted; ...

Section 13. Legal regime in the zone of an antiterrorist operation

1. In the zone of an antiterrorist operation, persons conducting the operation shall be entitled:

... 2) to check identity documents of private persons and officials and, if they have no identity documents, to detain them for identification;

3) to detain persons who have committed or are committing offences or other acts defying the lawful demands of persons engaged in an antiterrorist operation, including acts of unauthorised entry or attempted entry to the zone of the antiterrorist operation, and to convey them to the local bodies of the Ministry of the Interior of the Russian Federation;

4) to penetrate private residential or other premises ... and means of transport while suppressing a terrorist act or pursuing persons suspected of committing such an act, when a delay can jeopardise human life or health;

5) to search persons, their belongings and vehicles entering or exiting the zone of an antiterrorist operation, including with the use of technical means; ...

Section 21. Exemption from liability for damage

In accordance with and within the limits established by the legislation, in carrying out an antiterrorist operation damage may be caused to the life, health and property of terrorists, as well as to other law-protected interests. However, servicemen, experts and other persons engaged in the suppression of terrorism shall be exempted from the liability for such damage, in accordance with the legislation of the Russian Federation."

Article 225 of the Code of Civil Procedure (*Гражданский процессуальный Кодекс РСФСР*) provides that if a court, in the course of reviewing a complaint against the actions of an official or a civil claim, comes across information indicating that a crime has been committed, it should inform the prosecutor about it.

Chapter 24-1 establishes that a citizen can apply to a court for redress for unlawful actions of a state body or an official. Such complaints can be submitted to a court, either at the location of the state body or of the plaintiff, at the discretion of the plaintiff. In the same procedure the courts may also rule on an award of damages, including non-pecuniary damages, if they conclude that a violation has occurred.

Articles 126-127 of the Code contain general formal requirements governing an application to a court, which should include, *inter alia*, the name and address of the defendant, the exact circumstances on which the claim is based and any documents supporting the claim.

The Code of Criminal Procedure (*Уголовно-процессуальный Кодекс РСФСР 1960г. с изменениями и дополнениями*), as in force at the relevant time, contained provisions relating to the criminal investigation.

Article 53 stated that where the victim had died as a result of the crime, his or her close relatives should be granted victim status. During the investigation the victim could submit evidence and bring motions, and once the investigation was complete the victim had full access to the case-file.

Article 108 provided that criminal proceedings could be instituted on the basis of letters and complaints from citizens, public or private bodies, articles in the press or discovery by an investigating body, prosecutor or court of evidence that a crime had been committed.

Article 109 provided that the investigating body should take one of the following decisions within a maximum period of ten days after being notified of a crime: open or refuse to open a criminal investigation, or transmit the information to an appropriate body. The informants should be informed about any decision.

Article 113 provided that if the investigating body refused to open a criminal investigation, a reasoned decision should be provided. The informant should be made aware of the decision and could appeal to a higher-ranking prosecutor or to a court.

Articles 208 and 209 contained information relating to the closure of a criminal investigation. Reasons for closing a criminal case included absence of *corpus delicti*. Such decisions could be appealed to a higher-ranking prosecutor or to a court.

Article 195 provided that a criminal investigation could be suspended, *inter alia*, if it was impossible to identify the persons who could be charged with the crime. In that event, a reasoned decision should be issued. No investigative actions were to be carried out when a case had been suspended. A suspended criminal case could be closed after the expiry of the limitation period.

No state of emergency or martial law has been declared in Chechnya. No federal law has been enacted to restrict the rights of the population of the area. No derogation under Article 15 of the Convention has been made.

COMPLAINTS

1. The applicants complain under Article 2 of the Convention that the right to life of their relatives was violated. They also complain that the nature of the wounds on the bodies of their relatives suggests that they were tortured before their deaths, in violation of Article 3 of the Convention.

2. The applicants complain, under Article 13 of the Convention, that they had no access to effective national remedies because no law-enforcement structures were functioning in the territory of Chechnya. They are not aware of any way to bring to justice those responsible for the deaths and injuries of their relatives.

THE LAW

The applicants complain that their relatives' rights to life and freedom from torture and inhuman treatment, guaranteed by Articles 2 and 3, were violated. They also complain that they had no effective domestic remedies

in respect of the above violations, contrary to Article 13. These Articles provide:

Article 2

"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."

Article 3

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

Article 13

"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."

The Government raise a number of objections to the admissibility of the applications.

1. Validity of the powers of attorney

First, they dispute the validity of the powers of attorney issued by the applicants to their representatives, Memorial Human Rights Centre. They submit that the powers of attorney contained no reference to the place where they were issued. Further, in accordance with domestic law, they should have been verified by a notary and a separate power of attorney should have been issued by Memorial to their lawyer acting as a representative. They also submit that, in accordance with the 1961 Hague Convention Abolishing the Requirement for Legalisation of Foreign Public Documents, to which Russia is a party, these powers of attorney should bear an apostille. The Government also contest the validity of the applicants' observations in reply to those of the Government, because the text of the observations has not been signed.

The Court notes that the Government have not contested the applicants' status as victims of the alleged violations of the Convention, and have not

challenged the validity of the signatures which have been submitted. The objection to the powers of attorney is based on the assertion that they should have been drawn up in accordance with the national legislation. However, under Rule 45(3) of the Rules of Court, a written authority is valid for the purposes of proceedings before the Court. The Rules of Court contain no requirement for powers of attorney to be drawn up in accordance with the national legislation. As to the validity of the applicants' observations, the Court notes that the applicants' representative signed the postal airway bills to send the observations, and that the observations were forwarded to the Government for information only. The Court has no reason to doubt their authenticity. In these circumstances, the Court accepts, on the basis of the available material, that the applicants are validly represented before the Court and that their submissions to the Court are valid.

2. Exhaustion of domestic remedies

The Government request the Court to declare the applications inadmissible as the applicants have failed to exhaust the domestic remedies available to them. They submit that the relevant authorities were and are at present conducting, in accordance with the domestic legislation, investigations into civilians' deaths and injuries and into the destruction of property in Chechnya.

In particular, the Government submit that although the courts in Chechnya indeed ceased to function in 1996, legal remedies were still available to those who moved out of Chechnya. An established practice allows them to apply to the Supreme Court or directly to the courts at their new place of residence, which would then consider their applications. The availability of such a remedy is supported by the fact that the applicants applied to the Malgobek District Court in Ingushetia for verification of their relatives' deaths.

The Government also submit that the applicants could have applied to the Chief Department of the Office of the General Prosecutor supervising the enforcement of legislation in federal security and inter-ethnic relations in the Northern Caucasus (*Главное управление Генеральной прокуратуры Российской Федерации по надзору за исполнением законов о федеральной безопасности и межнациональных отношениях на Северном Кавказе*), located in Yessentuki in the Stavropol Region. This body was set up to receive information concerning crimes and to open criminal investigations into each submission.

The applicants submit that the formal remedies are not effective, so they were not obliged to exhaust them. The applicants base this assertion on three points.

First, they submit that the anti-terrorist operation in Chechnya, run by agents of the state, is based on the provisions of the Law on Suppression of Terrorism, and was officially sanctioned at the highest level of state power.

The applicants refer to the text of the Law on Suppression of Terrorism, which allows anti-terrorist units to interfere with a number of rights, including the right to freedom of movement, liberty, privacy of home and correspondence, etc. The Law sets no clear limit on the extent to which such rights can be restricted and provides for no remedies for the victims of violations. Nor does it contain provisions regarding responsibility of officials for possible abuses of power. The applicants refer to correspondence between the Secretary General of the Council of Europe and the Russian Government in 2000 under Article 52 of the European Convention on Human Rights. They point out that the Consolidated Report, commissioned by the Secretary General to analyse the correspondence, identified those deficiencies in the very Law to which the Russian Government refer as a legal basis for its actions in Chechnya.

They also submit that even though the officials who mounted the anti-terrorist operations in Chechnya should have been aware of the possibility of wide-scale human rights abuses, no meaningful steps have been taken to stop or prevent them. They submit press-cuttings containing praise of the military and police operations in Chechnya by the President of the Russian Federation, and suggest that the prosecutors would be unwilling to contradict the "official line" by prosecuting agents of the law-enforcement bodies or the military.

Secondly, the applicants submit that there is an administrative practice of non-compliance with the requirement to investigate effectively abuses committed by Russian servicemen and members of the police, both in time of peace and war. The applicants point to a) impunity for crimes committed during the current period of hostilities (since 1999), b) impunity for the crimes committed in 1994-1996, c) impunity for police torture and ill-treatment all over Russia, and d) impunity for torture and ill-treatment that occur in army units in general.

a) As to the current situation in Chechnya, the applicants cite human rights groups, NGO and media reports on violations of civilians' rights committed by federal forces. They also submit that Russian official bodies receive numerous such complaints, both in Chechnya and outside. They cite the report of the Special Representative of the President of the Russian Federation for Human rights in Chechnya, Mr. Kalamanov, where he gives the figure of more than 4,000 applications made to his office in the first six months of his work. Despite so many indications of violations, the number of criminal investigations opened in such cases remains very low, and an even lower number of them are referred to the courts. They refer to the presentation at the State Duma in September 2000, where it was said that 19 criminal cases had been brought in Chechnya against federal servicemen. They therefore conclude that the majority of crimes committed in Chechnya by state agents are not properly investigated, and the perpetrators are not brought to justice. Among such crimes the applicants name indiscriminate

or disproportionate use of force, summary executions, arbitrary detentions and disappearances, torture and ill-treatment, and looting of property.

Even where an investigation is opened, the applicants submit that it is not effective. In particular, they refer to the investigation of the massacre in the Staropromyslovskiy district of Grozny, when the applicants' relatives were killed, and to the similar events in the Novye Aldy district of Grozny in February 2000. They point to the unexplained delays in the investigations, the lack of clarity as to which body is working on the case and the residents' distrust of officials.

The applicants suggest that an atmosphere of impunity reigns among the military and police units involved in the operations in Chechnya and that, with one publicised exception, there are no known cases where a military commander has been suspended from his duties for crimes against civilians committed by himself or his subordinates. They also cite published interviews with servicemen, which suggest that no clear distinction is drawn for them between military and civilian targets.

b) The applicants further refer to the events of the previous military campaign in Chechnya, of 1994-1996. They claim that wide-scale human rights abuses were documented by Memorial, and that the investigation and prosecution of perpetrators were totally inadequate. They point out that not one of the high-ranking military or police officers responsible for the operation was brought to justice, and that no one has ever been held responsible for the large numbers of deaths and injuries of the civil population and the destruction of civilian objects.

The applicants further base their assertion of the existence of an administrative practice of non-investigation on c) the impunity for police torture and ill-treatment of detainees and d) the impunity for various forms of ill-treatment in the Russian army, such as brutal "hazing" of new recruits. The applicants attach NGO reports on the subjects, press articles and a report of the Ombudsman. The applicants submit that in the majority of such cases the investigation is inadequate, slow and the perpetrators rarely brought to justice.

Thirdly, the applicants argue that whether or not an administrative practice as such exists, the domestic remedies to which the Government refer are ineffective due to the failure of the legal system to provide redress. They rely on the Court judgment in the case of Akdivar and others v. Turkey and argue that the Russian Federation has failed to satisfy the requirement that the remedy was "an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaint and offered reasonable prospects of success" (see the Akdivar and Others v. Turkey judgment of 30 August 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1210, § 68).

The applicants challenge each of the two remedies mentioned by the Government. In respect of a civil claim, they argue that it could not have provided an effective remedy within the meaning of the Convention. A civil claim would be ultimately unsuccessful in the absence of a meaningful investigation and prosecution by the prosecutors, and a civil court would be forced to suspend consideration of such a claim pending the investigation under Article 214 (4) of the Code of Civil Procedure. They further argue that civil proceedings can lead only to compensation for pecuniary and non-pecuniary damages, while their principal objective is to see the perpetrators brought to justice. Finally, they point out that although numerous civil claims were submitted to the courts after the military campaign of 1994 - 1996, almost none was successful.

As regards a criminal prosecution by the prosecutor's office, they submit that it does not provide them with a real chance of pursuing an effective remedy. In their opinion, the Law on Suppression of Terrorism sanctions the commission of abuses and exempts officials from liability for them. The prosecutors cannot provide an effective remedy, as is shown by the low number of successful investigations into this sort of abuse. They also submit that the prosecutor's office is not an independent organ of investigation, referring to close political affiliation and hierarchical dependency between the prosecutors and the President. They also argue that neither military prosecutors nor military courts can be regarded as independent bodies, as they are comprised of servicemen with a military rank, who are dependent on the army for their career, pay and other benefits.

With regard to the effectiveness of the investigation, the applicants also submit that the situation that has existed in Chechnya since 1999 is characterised by significant civil strife due to the confrontation between the federal forces and the Chechen armed groups. They refer to press cuttings and NGO reports that demonstrate, in their view, that there are serious obstacles to the proper functioning of the system of administration of justice that cast serious doubts on the effectiveness of the prosecutors' work. They note, in particular, that due to a general situation of insecurity, prosecutors often travel around with a military escort and are often armed themselves, which causes distrust and intimidates local residents if they wish to complain about servicemen. They also refer to poor working conditions of the prosecutors, the fact that the service is understaffed and to a large turnover of staff due to the rotation policy in the prosecution service in Chechnya. They submit that the difficult circumstances in the Republic do not dispense the Russian Government from their obligations under Article 13 and that the Government have failed to provide any evidence that any investigation into abuses against civilians has been effective and adequate.

The applicants also question the effectiveness of the practice whereby criminal cases for crimes committed in Chechnya are sent to the Supreme Court which later redistributes them to regional courts elsewhere in Russia.

They note that the courts in Russia are already overburdened and that the witnesses and victims of the crimes coming out of Chechnya are not able to travel around Russia for financial and security reasons.

Both applicants submit that they had good reason not to apply to the prosecutors immediately after they learned of the deaths of their relatives, because they felt vulnerable, powerless and apprehensive of the State representatives. They also assert that the prosecutor's office failed to act with sufficient expedience on allegations of the summary executions of the applicants' relatives and others in the Staropromyslovskiy district in January 2000. The submit that the prosecutor's office must have known about the deaths of their relatives and other people as early as the beginning of February, and that the fact that no criminal case was opened until May 2000 was a clear sign of a lack of interest in the investigation. On 7 February 2000 the Malgobek Town Court certified the death of Akayev Adlan, the second applicant's brother. The courts, in accordance with Article 225 of the Civil Procedural Code, should have notified the prosecutor's office of any facts coming to their attention that indicated the commission of a criminal offence. On 10 February 2000 forensic examinations were carried out by officers of the Nazran Department of the Interior on the bodies of the first applicant's brother and nephew and of Goygov Magomed. In the beginning of February Human Rights Watch issued several press releases concerning the events in the Staropromyslovskiy district that contained information about the deaths and disappearance of the applicants' relatives. In February and March 2000 these reports and press releases were forwarded to the General Prosecutor's Office and handed over to Mr Kalamanov, the Special Representative of the President for Human Rights in Chechnya and Mr Dyemin, then Chief Military Prosecutor. The first applicant applied to the prosecutor's office in writing on 5 April 2000, and on 7 April 2000 the Malgobek Town Court certified the deaths of his four relatives.

The applicants finally claim that the investigation of the crimes was inadequate and incomplete and cannot be regarded as an effective remedy under Article 13. They note that forensic examinations were not performed in respect of all the bodies, that relevant evidence was not collected from the relatives, that other witnesses and survivors have not been questioned in order to identify the perpetrators of the crime, and that they were not granted the status of victims that would have permitted their procedural involvement in the investigation. The first applicant also refers to a letter of 27 May 2000, in which he was informed that the military prosecutor of the military unit no. 20102 had refused to institute criminal proceedings against the servicemen for lack of *corpus delicti* in their actions. According to information from the Malgobek Town Prosecutors, the case was forwarded to the Prosecutor's office in Yessentuki only in May 2000, and it must have taken some additional time to reach the military prosecutors. The military

prosecutors could not have carried out a meaningful investigation and concluded that there was no *corpus delicti* in such a short time.

The Court considers that in the particular circumstances of the present case it does not have sufficient information to enable it to make a ruling on the question of exhaustion of domestic remedies. Furthermore, this question is so closely linked to the merits of the case that it is inappropriate to determine it at the present stage of the proceedings.

The Court therefore decides to join this objection to the merits.

3. As to the merits of the applicants' complaints

The Government do not dispute the fact that the applicants' relatives died. However, they do not find it possible to answer the question of whether there has been a violation of Articles 2 and 3 in respect of the applicants' relatives as an investigation is still in progress.

The applicants submit that there is overwhelming evidence to conclude that their relatives were tortured and intentionally deprived of their lives in circumstances that violate Article 2 and 3 of the Convention. They also submit that they had no recourse to effective remedies against the said violations, contrary to Article 13.

The Court considers, in the light of the parties' submissions, that the case raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits of the application. Consequently, the Court concludes that the applications cannot be declared manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

For these reasons, the Court unanimously

Joins to the merits the Government's objection concerning non-exhaustion of domestic remedies;

Declares the applications admissible, without prejudging the merits of the case.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President