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

Application no. 57950/00
by Zara Adamovna ISAYEVA
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 application lodged on 27 April 2000,

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

Having deliberated, decides as follows:

THE FACTS

The applicant, Zara Adamovna Isayeva, is a Russian national, who was born in 1954. She was a resident of Katyr-Yurt, Chechnya, but is presently staying in Ingushetia. She is 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.

A. The circumstances of the case

Some of the facts of the case are disputed by the parties. From the parties' submissions, they may be summarised as follows.

The attack on Katyr-Yurt

In autumn 1999 the Russian military forces started hostilities in Chechnya. After the take-over of Grozny by the federal forces, in early February 2000 a large group of Chechen fighters left the city and moved south-west towards the mountains. A significant group of Chechen fighters entered the village of Katyr-Yurt on 4 February.

The applicant submits that the population of Katyr-Yurt at the relevant time was about 25,000 persons, including local residents and numerous displaced persons from elsewhere in Chechnya. According to her, the arrival of the fighters in the village was totally unexpected and the villagers were not warned in advance of the ensuing fighting or about safe exit routes out of the village.

The applicant submits that the heavy bombardment of the village started suddenly in the early hours of 4 February. The applicant and her family were hiding in the cellar of their house. When the shelling stopped at about 3 p.m. the applicant and her family went outside and saw that other residents of the village were packing their belongings and leaving.

The applicant and her family, with their neighbours, got into their Gazel mini-van and drove along the Ordzhonikidze road, heading out of the village. They had just left their house when the planes reappeared, descended and bombed the cars on the road. That took place at about 3.30 pm.

The applicant's son, Isayev Zelimkhan (aged 23) was hit by shells and died within a few minutes. Three other persons in their car were also wounded. During the same attack three nieces of the applicant were also

killed: Batayeva Zarema (aged 15), Batayeva Kheda (aged 13) and Batayeva Marem (aged 6). The applicant also submits that her nephew, Batayev Zaur, was wounded on that day and became handicapped as a result. In total, the applicant submits that over 300 people were killed in the village during the bombing, many of whom were displaced persons from elsewhere in Chechnya.

The applicant and the wounded were later taken by her relative to the town of Achkhoy-Martan. They were afraid to return to Katyr-Yurt, and had to bury the applicant's son in Achkhoy-Martan.

The applicant claims that her house was looted and destroyed, and their car was also destroyed in the garage.

The applicant states that no safe exit routes were provided for the residents of the village before or after the bombardment started. Those who managed to get out and reach the Russian military road-block were detained there for some time.

The applicant has submitted a transcript of interviews with three residents of Katyr-Yurt, made by Memorial some time after the events. The witnesses describe the massive bombardment of the village on 4-5 February and confirm that there were many victims among civilians, including those who tried to leave the village by cars.

According to the Government, in the beginning of February 2000 a large group of Chechen fighters, between 850 and 1000 persons, having left Grozny, took hold of Katyr-Yurt. The federal troops gave the group the chance to surrender, which was rejected. A safe passage was offered to the residents of Katyr-Yurt, but the fighters prevented the people from leaving the village.

The federal forces started a military operation which lasted from 3 to 6 February. According to the Government, 53 federal servicemen were killed and over 200 were wounded, "in view of which aircraft and artillery combat weapons were used in the course of the operation". The Government submit that, as a result of the military operation, over 180 fighters were killed and over 240 injured. According to the Government, "the combat action weapons were used only against earlier designated targets".

The Government concede that on 4 February 2000 eight local residents, including the applicant's son and one niece, attempted to leave the village on their own in a white Gazel mini-van. The vehicle was hit by a missile from a plane, as a result of which three civilians were killed, and two others wounded. Among the dead were the applicant's son and a niece.

The events of the beginning of February were reported in the Russian and international media and in NGO reports. Some of the reports spoke of serious civilian casualties in Katyr-Yurt and other villages during the military operation at the end of January - beginning of February 2000.

The investigation

On 5 April 2000 the civil registration office in Achkhoy-Martan, Chechnya, issued a death certificate no. 273 certifying the death of Isayev Zelimkhan Mokhmadovich, aged 23, on 4 February 2000 in Achkhoy-Martan, from numerous shell-wounds to the chest and heart area. On 12 April 2000 the registration office issued the following death certificates: no. 312 - Batayeva Zarema Akhmetovna, died on 4 February 2000 in Achkhoy-Martan, from shell-wounds to the body, face and right hip; no. 314 - Batayeva Kheda Akhmetovna, died on 4 February 2000 in Achkhoy-Martan, from shell-wounds to the body, face and right hip; no. 315 - Batayeva Maryem Akhmetovna, died on 4 February 2000 in Achkhoy-Martan, from numerous shell-wounds to the head and body.

The Government submitted, in their memorandum, that the law-enforcement bodies were not aware of the events described in the applicant's submissions to the Court before the communication of the complaint in June 2000. After the communication, the office of the prosecutor in the Achkhoy-Martan District in Chechnya carried out a preliminary investigation and on 14 September 2000 instituted criminal proceedings under Article 105 (2) (a) and (f) - murder of two or more persons by universally dangerous means.

In their further submissions the Government informed the court that on 16 September 2000 a local prosecutor's office in Katyr-Yurt, acting upon complaints from individuals, opened criminal case no. 14/00/0003-01 to investigate the deaths of several persons from a rocket strike in the vicinity of the village. It concerned the attack on the Gazel mini-van on 4 February 2000 as a result of which three civilians died and two others were wounded. In December 2000 the case file was forwarded to the office of the military prosecutor in military unit no. 20102.

The Government submit that a number of investigative steps have been taken, including examination of the site of the attack, interviewing of over 50 witnesses and the collection of relevant documents. Nine forensic examinations have been ordered. However, the Government submit that the performance of forensic examinations is hampered by the objections of the relatives to exhumation of the bodies, based on national traditions.

The Government also stated that the investigation was checking "propositions that the dead belonged to the illegal military formations, that members of the illegal military formations were implicated in the killings". They further stated that the investigation was also focusing on the actions of the members of the illegal fighting groups in the village.

On 17 June 2002 the Government finally informed the Court that on 13 March 2002 the investigation had been closed for lack of *corpus delicti.* They stated " In the course of investigation it has been established that death and injuries of civilians have occurred as a result of federal troops special

operation of 4-7 February 1999 aimed at destruction of Ruslan Gelayev's band (one thousand in number) that has occupied the vicinity of Katyr-Yurt. The criminal case papers as well as the opinion of operational and technical commission of experts established that the use of the artillery and aviation was well-founded and met the existing battle conditions. Basing on the stated above the investigation came to a conclusion that harm and injuries to civilians were done as a consequences of absolute necessity".

It further appears from the Government's submissions that the decision to close the criminal investigation has been challenged before the Rostov-on-Don Military Court.

The applicant states that she is not aware of any adequate steps taken by the authorities to conduct an efficient and meaningful investigation. She has not been provided with any official information regarding the investigations and has not been granted the status of crime victim.

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 justice 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, can not 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:

1) to take measures, if necessary, to restrict or prohibit, on a temporary basis, the traffic of vehicles and pedestrians on streets and roads, to ban the access of vehicles, including those of diplomatic missions and consular offices, as well as individuals, to certain areas and facilities, or to evacuate individuals and vehicles from certain areas or facilities;

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."

Chapter 24-1 of the Code of Civil Procedure (*Гражданский процессуальный Кодекс РСФСР*) provides in 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. Within 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.

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 applicant complains under Article 2 § 1 of the Convention that her right to life and the right to life of her relatives was violated by the actions of the Russian army.

2. The applicant complains, under Article 13 of the Convention, that she had no access to effective national remedies because no law-enforcement structures were functioning in the territory of Chechnya. She is not aware of any way to bring to justice those responsible for the deaths and injuries of her relatives.

THE LAW

The applicant complains under Article 2 of the Convention that her and her relatives' right to life was violated by the attacks of the Russian military. She also complains that she had no effective remedies concerning those 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 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 application.

1. Validity of the power of attorney

First, they dispute the validity of the power of attorney issued by the applicant to her representatives, Memorial Human Rights Centre. They submit that, in accordance with domestic law, it 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, the power of attorney should bear an apostille. The Government also contest the validity of the applicant's 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 applicant's status as a victim of the alleged violations of the Convention, and have not challenged the validity of the signature which has been submitted. The objection to the power of attorney is based on the assertion that it 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 applicant's observations, the Court notes that the applicant's 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 applicant is validly represented before the Court and that her submissions to the Court are valid.

2. Exhaustion of domestic remedies

The Government request the Court to declare the application inadmissible as the applicant has failed to exhaust the domestic remedies available to her. They submit 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.

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 Government also submit that the applicant could have applied to the Chief Department of the Office of the General Prosecutor supervising the enforcement of legislation on 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 applicant submits that the formal remedies are not effective, so she was not obliged to exhaust them. The applicant bases this assertion on three points.

First, she submits 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 applicant refers 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 applicant refers 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. She points 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.

She also submits 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. She submits press-cuttings containing praise of the military and police operations in Chechnya by the President of the Russian Federation, and suggests that the prosecutors would be unwilling to contradict the "official line" by prosecuting agents of the law-enforcement bodies or the military.

Secondly, the applicant submits that there is an administrative practice of non-compliance of the requirement to investigate effectively abuses committed by Russian servicemen and members of the police, both in times of peace and war. The applicant points 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 applicant cites human rights groups, NGO and media reports on violations of civilians' rights committed by the federal forces. She also submits that Russian official

bodies receive numerous such complaints, both in Chechnya and outside. She cites 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 courts. She refers 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. She therefore concludes that the majority of crimes committed in Chechnya by the state agents are not properly investigated and the perpetrators are not brought to justice. Among such crimes the applicant names 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 applicant submits that it is not effective. In particular, she refers to the investigation of the massacre in the Staropromyslovskiy district of Grozny and to similar events in the Novye Aldy district of Grozny in February 2000. She points to the unexplained delays in the investigations, to the lack of clarity as to which body is working on the case and residents' distrust of officials.

The applicant suggests 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. She also cites published interviews with servicemen, which suggest that no clear distinction is drawn for them between military and civilian targets.

b) The applicant further refers to the events of the previous military campaign in Chechnya, of 1994-1996. She claims that wide-scale human rights abuses were documented by Memorial, and that the investigation and prosecution of perpetrators were totally inadequate. She points 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 applicant further bases her 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 applicant attaches NGO reports on the subjects, press articles and a report of the Ombudsman. The applicant submits that in the majority of such cases the investigation is inadequate, slow and the perpetrators rarely brought to justice.

Thirdly, the applicant argues 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. She relies on the Court judgment in the case of Akdivar and others v. Turkey and argues 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 applicant challenges each of the two remedies mentioned by the Government. In respect of a civil claim she argues 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. She further argues that civil proceedings can lead only to compensation for pecuniary and non-pecuniary damages, while her principal objective is to see the perpetrators brought to justice. Finally, she points out that although numerous civil claims were submitted to the courts after the military campaign of 1994 - 1996, almost none was successful.

As regards criminal prosecution by the prosecutor's office, she submits that it does not provide her with a real chance of pursuing an effective remedy. In her 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. She also submits 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. She also argues 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 applicant also submits 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. She refers to press cuttings and NGO reports that demonstrate, in her view, that there are serious obstacles to the proper functioning of the system of administration of justice that cast serious doubt on the effectiveness of the prosecutors' work. She notes, 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. She also refers 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. She submits 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 applicant also questions 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. She notes 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.

The applicant further submits that she had good reason not to apply to the prosecutors immediately after the attack, because she felt vulnerable, powerless and apprehensive of the State representatives. She refers to the fact that she had to leave her home due to the bombardment, that she lived as an internally displaced person in Ingushetia, being dependant for her basic needs on Government bodies and international aid organisations, and to the general climate of persecution and discrimination of Chechens in Russia.

The applicant claims that the Russian procuracy inexplicably failed to act with sufficient expedience on receiving news of the attack. She submits that due to the press and NGOs reports, the authorities, including the prosecutors, should have known of the attack on Katyr-Yurt in the immediate aftermath of the events. She also submits that the authorities should have realised that the bombardment of a populous village, even if it had a legitimate military aim, could have seriously endangered the life and well-being of the civilians. This, in the applicant's opinion, should have prompted the prosecutors to take the initiative of checking respect for the civilians' rights.

She further recalls that the Achkhoy-Martan civil registry office, which in April 2000 certified the deaths of her relatives, and medical doctors, who examined the dead bodies and the wounded, should have made the information available to the prosecutors because they were under an obligation to inform the law-enforcement bodies of injuries that might be related to a crime.

Finally, the applicant states that the investigation that was carried out was not adequate and doubts that it proved the absolute necessity of the attacks.

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 applicant's complaints

The Government do not dispute the attack on the village of Katyr-Yurt on 4 February 2000, which resulted in the deaths of the applicant's son and three nieces. However they submit that the investigation has been closed because the use of the combat weapons and the damage to civilians were found to be a consequence of an absolute necessity.

The applicant submits that the authorities should have been aware of the imminent dangers to the civilians in the village and taken precautions to avoid them. She submits that her right to life and the right to life of her son and nieces, as guaranteed by Article 2 of the Convention, has been violated. She also submits that she had no recourse to effective remedies against the said violation, 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 application cannot be declared manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it 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 application admissible, without prejudging the merits of the case.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President