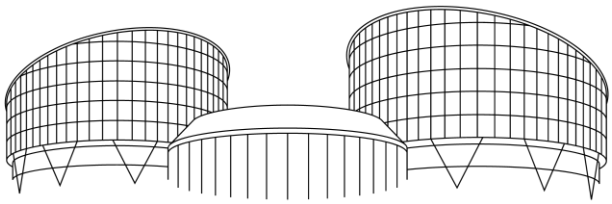

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KHAMZAYEV AND OTHERS v. RUSSIA

(Application no. 1503/02)

JUDGMENT

STRASBOURG

3 May 2011

FINAL

15/09/2011

This judgment has become final under Article 44 § 2 (c) of the Convention. It may be subject to editorial revision.

In the case of Khamzayev and Others v. Russia,

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

Nina Vajić, *President,*
Anatoly Kovler,
Christos Rozakis,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
George Nicolaou, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 5 April 2011,

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

PROCEDURE

1. The case originated in an application (no. 1503/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Abdulla Mayrbekovich Khamzayev ("the first applicant"), on 21 November 2001. On 21 August 2003 and 2 March 2004 respectively Ms Leyla Abdullayevna Khamzayeva ("the second applicant") and Ms Eliza Sharipovna Tovgayeva ("the third applicant"), both Russian nationals, joined in the case. In June 2004 the first applicant died, and the second applicant, his daughter, expressed the wish to pursue the application on his behalf.

2. The applicants were represented by the second applicant, who is a lawyer practising in Moscow. The Russian Government ("the Government") were initially represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights and subsequently by their Representative, Mr G. Matyushkin.

3. The applicants alleged, in particular, that the life of the third applicant had been put at risk and that their property, including housing, had been severely damaged, as a result of a federal aerial attack. They relied on Articles 2 and 8 of the Convention and Article 1 of Protocol No. 1.

4. On 29 August 2004 the President of the First Section decided to grant priority to the application under Rule 41 of the Rules of Court.

5. By a decision of 25 March 2010, the Court declared the application partly admissible.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants were born in 1937, 1964 and 1971 respectively. The last two applicants live respectively in Moscow and in the village of Pliyevo, Ingushetia.

A. The facts

8. At the material time the first two applicants and Mr Mayrbek Abdullayevich Khamzayev, who is not a party to the proceedings before the Court, owned property at 24a Dostoevsky Street in the town of Urus-Martan, the Chechen Republic. The third applicant was the first applicant's relative and had been living in the house with her family with the latter's permission since October 1997.

9. The first two applicants submitted a certificate dated 29 January 1982 confirming that they and Mr Mayrbek Abdullayevich Khamzayev inherited in equal shares the real estate situated at 24a Dostoyevskiy Street from their deceased relative. The certificate also indicated that the property comprised a brick house with a usable surface area of 90 square metres, a summer kitchen, an awning and other outhouses situated on a plot of land measuring about 180 square metres. The certificate was signed and stamped by a notary public.

10. In early October 1999 the Russian Government commenced a counter-terrorism operation in the Chechen Republic.

1. Attack of 19 October 1999

11. On 19 October 1999 the federal military air forces attacked the town of Urus-Martan. The bombing killed six people and wounded sixteen as well as destroying thirteen houses, including the one at 24a Dostoevsky Street, and damaging twenty-seven. According to the third applicant, her belongings were destroyed with the house.

12. In the applicants' submission, after the attack an unexploded bomb was found at 15 Dostoevsky Street.

13. It appears that on 10 November 1999 a video record of the site of the incident was made by local residents.

14. On 24 January 2000 the Urus-Martan Administration (*администрация г. Урус-Мартан*) drew up an evaluation report (*дефектный акт*) describing in detail the damage inflicted on the house at 24a Dostoevsky Street as a result of the attack.

15. On an unspecified date in November 2000 the Urus-Martan Administration issued the first applicant with a certificate confirming that the house at 24a Dostoevsky Street belonging to him had been partly destroyed as a result of the bomb strike on 19 October 1999.

16. On 25 February 2002 the Urus-Martan Administration issued the second applicant with a certificate confirming that the house at 24a Dostoevsky Street had been partly destroyed as a result of warfare in the Chechen Republic and that it was presently unfit for human habitation.

2. Official investigation

17. After the attack the applicants sought the opening of an investigation into the events of 19 October 1999. It was mostly the first applicant who, in his own name and on behalf of the other applicants, applied, both in person and in writing, to various public bodies.

(a) Replies from military and administrative authorities

18. Between January 2000 and November 2001 the first applicant received a number of similar letters from the General Headquarters of the Russian Air Force (*Главный штаб Военно-воздушных сил*), the acting commander-in-chief of the Air Force (*временно исполняющий обязанности Главнокомандующего Военно-воздушными силами*) and the General Headquarters of the Armed Forces of Russia (*Генеральный штаб Вооруженных Сил РФ*), stating that the Air Force had never flown in the vicinity of Urus-Martan or launched any bomb strikes in October 1999 or later. The letters added that air strikes were only aimed at targets which had been pre-selected and identified as military and were situated at a distance of at least two to three kilometres from inhabited areas, and that the accuracy of military aircraft precluded any possibility of accidental hits on civilian buildings. As regards the first applicant's complaint about an unexploded bomb found by the residents, he was invited to apply to "a competent body of the Ministry of the Interior" in the vicinity of his home.

19. During the same period the first applicant also received responses from the Ministry of the Interior, the commander of the Missile Troops and Artillery (*начальник ракетных войск и артиллерии*) and the commander of the Troops of the North Caucasus Military Circuit (*командующий войсками Северо-Кавказского военного округа*), who denied any involvement by their personnel in the alleged attack of 19 October 1999 on Urus-Martan.

20. On 15 February 2001 an acting head of the Headquarters of military unit no. 40911 informed the first applicant that the aircraft of the Fourth Army of the Air Force and Counter Missile Defence (*Четвертая Армия Военно-воздушных сил и противоракетной обороны*) had not attacked Urus-Martan or launched an air strike on the house at 24a Dostoevsky Street, since they had not possessed any information regarding any military

objects in the said area which would warrant such a strike. The letter also stated that the information allegedly received by the first applicant from the military prosecutor's office, to the effect that on 19 October 1999 two SU-25 military aeroplanes had launched an air strike on Urus-Martan, was inaccurate.

21. On 18 December 2001 the Office of the Plenipotentiary Representative of the Russian President in the Southern Federal Circuit (*Аппарат Полномочного представителя Президента РФ в Южном федеральном округе*) informed the first applicant that there had been no warfare on the territory of Urus-Martan in October 1999, that illegal armed formations had no military aircraft or bombs and missiles in their arsenal and that in October 1999 no incursion by foreign military aircraft into the airspace of the Russian Federation had been detected.

22. In a letter of 14 November 2002 the commander-in-chief of the Air Forces also informed the first applicant that, according to a register of combat air missions (*журнал учета боевых вылетов*) and a tactical map (*карта ведения боевых действий*), on 19 October 1999 aircraft of the Russian Air Forces had not carried out any bomb strikes at a distance of one kilometre from the south-eastern outskirts of Urus-Martan.

(b) Criminal proceedings

23. It appears that on 7 April 2000 the military prosecutor of military unit no. 20102 decided to dispense with criminal proceedings in connection with the events of 19 October 1999, stating that there was no evidence of involvement by federal military personnel in the imputed offence, and that the alleged casualties and damage could have been inflicted by fighters of illegal armed groups.

24. On 21 July 2000 the prosecutor's office of the Chechen Republic (*прокуратура Чеченской Республики* – "the republican prosecutor's office") instituted criminal proceedings in connection with the aerial attack of 19 October 1999 on Urus-Martan and the killing of residents and destruction of property, under Articles 105 § 2 (a) and (e) (killing of two or more persons committed in a socially dangerous manner) and 167 § 2 (aggravated deliberate destruction of one's property) of the Russian Criminal Code. The case file was given the number 24031 and sent to the prosecutor's office of the Urus-Martan District (*прокуратура Урус-Мартановского района* – "the district prosecutor's office").

25. Between 21 July 2000 and 7 March 2001 the criminal proceedings were suspended and resumed on three occasions (see paragraphs 54-56 below).

26. On 28 March 2001 the first applicant was acknowledged as a victim and a civil claimant in criminal case no. 24031.

27. On 29 April 2001 the district prosecutor's office referred the file in case no. 24031 to the military prosecutor of military unit no. 20102

(*военная прокуратура – войсковая часть 20102*) for further investigation (see paragraph 58 below). The latter sent the case file to the republican prosecutor's office on 11 May 2001 (see paragraph 59 below).

28. On 6 June 2001 the investigation was resumed and then stayed on 6 July 2001 (see paragraphs 60-61 below).

29. By a decision of 18 March 2002 the military prosecutor's office of the North Caucasus Military Circuit (*военная прокуратура Северо-Кавказского военного округа* – "the circuit military prosecutor's office") refused the first applicant's request to have criminal proceedings instituted against senior officers from the General Headquarters of the Russian Armed Forces and the General Headquarters of the Russian Air Forces who had allegedly provided him with false information concerning the attack of 19 October 1999. The decision referred to the statements of a number of officers who had claimed that the first applicant's allegations relating to the bombing of Urus-Martan had been thoroughly investigated on several occasions and had proved to be unsubstantiated. In particular, one of the officers stated that he had personally examined the register of combat air missions (*журнал учет боевых вылетов*) and tactical map (*карта ведения боевых действий*) for the relevant period and ascertained that there had been no air strikes on the town of Urus-Martan on 19 October 1999. However, at 1.30 p.m. on that date high-explosive 250 kg aerial bombs had been launched on a group of fighters located one kilometre from the south-eastern outskirts of Urus-Martan. The decision concluded that it had since been established that the officers had provided the first applicant with full and true information and that there were no constituent elements of a crime as regards their actions.

30. On the same date the circuit military prosecutor's office quashed the decision taken by the military prosecutor's office of military unit no. 20102 on 7 April 2000. The circuit military prosecutor's office stated, in particular, that the decision of 7 April 2000 had been based on explanations by the Head of the Headquarters of the Group "West", Colonel K., and an extract from the register of combat air missions, indicating coordinates which had been attacked by a pair of SU-25 planes on 19 October 1999 and which had been situated twenty-seven kilometres from Urus-Martan. The decision of 18 March 2002 went on to say that an inquiry carried out in connection with the first applicant's complaint against senior high-ranking officers from the General Headquarters of the Russian Armed Forces and the Main Headquarters of the Russian Air Forces had established that no air strikes on the town of Urus-Martan had been planned or carried out on 19 October 1999, and that the closest area attacked by a pair of federal planes on that date had been located one kilometre from Urus-Martan, in an area where members of illegal armed formations had been stationed. The decision concluded that in view of discrepancies in the information obtained, the

inquiry could not be said to have been complete, and that therefore the decision of 7 April 2000 should be set aside.

31. On 25 August 2002 the district prosecutor's office resumed the proceedings in case no. 24031. Thereafter in the period between 25 September 2002 and 18 April 2003 the investigation was stayed and resumed eight times (see paragraphs 64-71 below). During that period, on 17 October 2002 and 21 January 2003 respectively, the district prosecutor's office granted victim status to the second and third applicants and declared them civil claimants in criminal case no. 24031.

32. In a letter of 3 September 2003 the district prosecutor's office informed the first applicant that a number of investigative actions in criminal case no. 24031 had been taken, and in particular the scene of the incident had been inspected, fragments of bombs had been seized, new expert examinations had been ordered, and the military commander of the Chechen Republic (*военный комендант Чеченской Республики*) had been requested to take steps aimed at disposing of unexploded air bombs found in the residential district of Urus-Martan. The letter further stated that on 15 March 2003 the criminal proceedings in case no. 24031 had been stayed, and on 19 March 2003 the case file had been transmitted to the republican prosecutor's office. At present the investigation was being carried out by the military prosecutor's office of the United Group Alignment.

33. On 17 November 2003 the investigation into the attack of 19 October 2003 had been terminated with reference to the absence of constituent elements of a crime in the actions of high-ranking military officers (see paragraphs 74-82 below). According to the applicants, it was only the first applicant who had been informed of this decision, and none of the applicants had been furnished with a copy.

34. It appears that the first applicant then unsuccessfully applied to prosecutors at various levels in an attempt to obtain a copy of the decision of 17 November 2003.

35. In a letter of 15 March 2004 the military prosecutor's office of the United Group Alignment informed the first applicant that the criminal proceedings in connection with the bomb strike of 19 October 1999 had been discontinued on 17 November 2003 and that a letter informing him of that decision had been sent to him on the same date.

36. On 26 March 2004 the military prosecutor's office of the United Group Alignment informed the first applicant that the decision to discontinue the criminal proceedings in connection with the attack of 19 October 1999 had been lawful and well-founded, as it had been established during the investigation that the federal aircraft had bombed fortified command points, bases and ammunition depots of the illegal armed groups rather than any residential areas of Urus-Martan. The letter also stated that the first applicant was entitled to make a claim for compensation for his destroyed property.

37. On 10 May 2004 the first applicant complained to the Supreme Court of the Chechen Republic about the refusal of the military prosecutor's office of the United Group Alignment to furnish him with a copy of the decision of 17 November 2003, which prevented him from appealing against that decision in court. It is unclear whether this complaint was examined.

38. On 7 June 2004 the Main Military Prosecutor's Office (*Главная военная прокуратура*) transmitted the first applicant's complaints about the prosecutors to the military prosecutor of the United Group Alignment for examination.

39. In a letter of 12 July 2004 the military prosecutor's office of the United Group Alignment stated that the file of the criminal case opened in connection with the attack by federal aircraft on Urus-Martan on 19 October 1999 had been classified as secret, and therefore the first applicant's request to provide him with the case-file materials could not be granted. It also transpired from the letter that the criminal proceedings had been discontinued, that the first applicant was entitled to institute civil proceedings, and that the case file could be submitted to a court upon the latter's order.

40. In two letters of 31 July 2004 the military prosecutor's office of the United Group Alignment informed the first applicant, in reply to his complaints of 26 April and 26 May 2004, that criminal proceedings instituted in connection with the aerial attack on Urus-Martan on 19 October 1999 had been discontinued on 17 November 2003 in the absence of the constituent elements of a crime in the attack, and that the criminal case file was classified as secret.

41. On 2 August 2004 the military prosecutor's office of the United Group Alignment replied to the first applicant's complaint of 26 May 2004, stating that the preliminary investigation in case no. 34/00/0008-03 had established that in October 1999 the town of Urus-Martan had been occupied by Islamic extremists, amounting to over 1,500 persons, who had based their headquarters in the town, had fortified it and had not been prepared to surrender, and that in such circumstances the federal command had taken a decision to carry out pinpoint bomb strikes against the bases of illegal fighters in Urus-Martan.

42. In a letter of 10 August 2004 the military prosecutor's office of the United Group Alignment confirmed, in reply to the first applicant's complaint of 20 April 2004, that the criminal proceedings concerning the attack of 19 October 1999 on Urus-Martan had been terminated. The letter also stated that the case-file materials had been classified as secret.

3. Proceedings for compensation

43. On an unspecified date in 2000 the first applicant issued civil proceedings against the Government of Russia, the Ministry of Finance and

the Ministry of Defence and a number of prosecutors in the Basmanny District Court of Moscow ("the District Court"). He sought damages in connection with the allegedly improper handling of his complaints by prosecutors as well as pecuniary and non-pecuniary damage for his destroyed property.

44. On 14 November 2000 the Urus-Martan Administration replied to a query of the District Court, having confirmed that as a result of the air strike on 19 October 1999 six residents of Urus-Martan had been killed and several wounded, and that it held evaluation reports in respect of the destroyed and damaged houses.

45. In a letter of 19 January 2001 the Urus-Martan Administration again stated in reply to another query from the District Court, that an air strike of 19 October 1999 had resulted in six residents being killed and several wounded, as well as damage to dozens of houses, including the one at 24a Dostoevsky Street. This latter house was unfit for human habitation, and its poor state of repair had been reflected in an evaluation report previously submitted to the District Court.

46. On 24 May 2001 the district prosecutor's office furnished the District Court with a report on the results of the investigation in criminal case no. 24031. The document stated that on 19 October 1999 an unidentified aircraft had launched a strike on Urus-Martan, with the result that six residents had died, sixteen were wounded, thirteen private houses were destroyed, including that of the first applicant, and twenty-seven houses were damaged. In this connection, on 27 July 2000 the republican prosecutor's office had instituted criminal proceedings in case no. 24031 and the first applicant had been declared a victim and civil claimant in this case. The events of 19 October 1999 had been confirmed by forty-eight witnesses listed in the report and other witnesses, reports of the inspection of the crime scene and forensic examination as well as other evidence, such as fragments of exploded bombs seized from the first applicant's house and a video record of the site of the incident, dated 10 November 1999. Finally, the report stated that, as the illegal armed groups had no aircraft, on three occasions the criminal case had been sent for further investigation to the military prosecutor's office, which, however, had returned it on various grounds, thus protracting the investigation and making it difficult to identify the pilots involved in the attack of 19 October 1999.

47. On 11 May 2001 the District Court delivered its judgment, holding that the public bodies had properly examined the first applicant's complaints and given him timely responses, and therefore had not infringed his rights, including the right to receive information. As to the first applicant's claims regarding compensation for the destroyed property, the court held that they could not be granted, as "the federal armed forces had conducted a military operation in the Chechen Republic by virtue of presidential and governmental decrees that had not been found unlawful". The court further

stated that the destruction of the first applicant's house could not be imputed to the defendants, since the military actions had been carried out not only by the federal troops but by the illegal armed groups as well, and that no causal link had been established between the defendants' actions and the damage sustained by the claimant. The first applicant's claims for compensation in respect of non-pecuniary damage could not be granted either, as he had not submitted any evidence that the defendants' actions had caused him any physical, mental or emotional suffering, and had not indicated the amount of the compensation sought. In view of the above, the court concluded that there were no grounds to grant the first applicant's claims.

48. On 4 October 2001 the Moscow City Court upheld the first-instance judgment on appeal, relying largely on the District Court's reasoning.

B. Documents submitted by the Government

49. In December 2006, following communication to them of the present application, the Government produced a copy of the investigation file in case no. 34/00/0008-03 (initially no. 24031) opened in respect of the attack of 19 October 1999 on Urus-Martan. The materials produced ran to approximately 1,200 pages and seemed to represent a copy of the major part of, if not entire, case file. These documents, in so far as relevant, can be summarised as follows.

(a) Documents relating to the conduct of the investigation and informing the applicants of its progress

50. By a decision of 21 July 2000 the republican prosecutor's office instituted criminal proceedings in connection with the first applicant's complaint concerning a bomb strike on a residential quarter of Urus-Martan on 19 October 1999, resulting in six persons being killed, sixteen wounded, with thirteen houses being destroyed and twenty-seven damaged. The proceedings were brought under Articles 105 § 2 (aggravated murder) and 167 § 2 of the Russian Criminal Code, and the case was transferred to the district prosecutor's office for investigation. A letter of the same date informed the first applicant of the decision to institute criminal proceedings but did not indicate the date of that decision.

51. In a letter of 31 August 2000 the republican prosecutor's office drew the attention of the district prosecutor's office to "unprecedented procrastination" of the investigation in case no. 24031. The letter stated, in particular, that for a period of one month the investigator in charge had not performed any investigative action and had not questioned victims or witnesses. It instructed the district prosecutor's office to revive the investigation and to establish the circumstances of the case. In particular, it was necessary to interview all the victims of the bomb strike in question, to grant them victim status and declare them civil claimants; to question the

relatives of those deceased and grant them victim status; to inspect the scene of the incident using photographic and video devices, and to establish and interview eyewitnesses of the events in question.

52. On an unspecified date in October 2000 the investigator in charge sought the competent prosecutor's authorisation for an extension of the term of the preliminary investigation. The relevant decision listed the findings made by the investigation up to that time. It referred, in particular, to statements of a number of residents of the quarter that had come under attack on 19 October 1999 who, being eyewitnesses to the incident, insisted that the military planes had been flying at a low altitude and that the pilots could therefore have clearly seen that they were targeting a residential quarter. The decision further referred to the residents' statements to the effect that no illegal fighters had ever lived in their quarter and that property occupied by the rebel fighters had been located on the outskirts of Urus-Martan and by that time had already been hit by federal bombers, and that therefore there had been no reason to bomb a residential quarter inhabited by civilians. The decision went on to note that during the inspection of the scene of the incident large metal fragments of aerial bombs had been found and that, in addition, unexploded bombs were still lying in the courtyards of a number of properties. The decision stated that the evidence obtained proved the involvement of the federal air forces in the attack of 19 October 1999, this finding being confirmed by eyewitness statements, photographs and video records, evaluation reports attesting to the inflicted damage and a report on the inspection of the scene of the incident.

53. In a letter of October 2000 (the exact date is illegible) the military prosecutor's office of military unit no. 20102 returned the case file to the republican prosecutor's office stating that a number of formal requirements had not been complied with. The latter referred the case file to the district prosecutor's office on 30 October 2000 ordering it to remedy the defects.

54. A decision of 21 January 2001 by the district prosecutor's office ordered the suspension of the criminal proceedings. It stated that all possible investigative measures had been performed but it had not been possible to establish who was responsible.

55. In a decision of 7 February 2001 a supervising prosecutor set aside the decision of 21 January 2001 as unfounded and premature. It ordered that the investigation be resumed, that eyewitnesses to the attack be questioned, that the results of medical forensic examinations and ballistic tests be included in the case file and that the first applicant be granted victim status in connection with pecuniary losses that he had incurred as a result of the attack.

56. In a decision of 7 March 2001 the district prosecutor's office ordered a suspension of the criminal proceedings in case no. 24031, stating that all investigative measures indicated in the supervising prosecutor's decision of

7 February 2001 had been carried out, but it had not been possible to establish who was responsible.

57. In a letter of 14 April 2001 the district prosecutor's office replied to the first applicant that his request for certified copies of decisions instituting criminal proceedings in case no. 24031 and extending the term of the preliminary investigation "had no basis in law" and therefore could not be granted. The letter also indicated that the term of the preliminary investigation into the said criminal case had been extended until 21 January 2001 and that on 10 October 2000 it had been sent to a military prosecutor's office, which had returned it on 26 October 2000 because of procedural defects. The letter went on to say that ballistic tests had been ordered in the case on 16 November 2000; however, those tests had not yet been carried out. It then noted that on 21 January 2001 the investigation had been suspended, then resumed on 7 February 2001 and again stayed on 7 March 2001. The letter also assured the first applicant that his requests in the present case would be recorded in the case file and taken into consideration during further investigation.

58. In a decision of 29 April 2001 the district prosecutor's office ordered that the case file be transferred to the military prosecutor's office of military unit no. 20102 for further investigation. The decision stated that it had been established that the destruction of houses and other property and the deaths and injuries of residents of Urus-Martan on 19 October 1999 had been due to an aerial strike by aircraft of the federal armed forces. This fact had been confirmed by witnesses and victims and by the inspection of the site of the incident, where fragments of aerial bombs and missiles had been found. The involvement of federal military personnel in that attack was obvious, since the illegal armed formations had no aircraft, and the case file therefore had to be transferred to the military prosecutor for further investigation, in order to identify the military unit and military personnel which had committed the offence in question.

59. In a letter of 11 May 2001 the military prosecutor's office of military unit no. 20102 transmitted the case file to the republican prosecutor's office. The letter stated that the district prosecutor's office's conclusion that on 19 October 1999 Urus-Martan had come under a bomb strike was based on contradictory witness statements and had no objective confirmation. The letter pointed out, in particular, that whilst some of the witnesses had stated that they had seen planes that had allegedly carried out the strike, some other witnesses had indicated that they had not been able to see planes as on the day in question it had been cloudy and misty. Moreover, according to the letter, there were also discrepancies in witness statements concerning the overall number of planes that had allegedly participated in the attack and their colour. The letter went on to note that the origin of the ammunition fragments seized from two of the properties, that had allegedly come under the attack on 19 October 1999 (see paragraph 88 below), had not been

established and it had not been ascertained how it had been possible that those fragments could still be found a year after the attack. At the end, the letter stated that at the same time the command of the United Groups Alignment and the Russian Ministry of Defence had reported that on 19 October 1999 the federal aircraft had not carried out any strikes on Urus-Martan.

60. By a decision of 6 June 2001 the district prosecutor's office resumed the investigation.

61. A decision of 6 July 2001 ordered that criminal proceedings be suspended owing to the failure to establish the alleged perpetrators and that the case file be transferred to the military prosecutor's office. The decision was similar to that of 29 April 2001. It stated, in particular, that the involvement of the federal aircraft in the attack had been established by eyewitness statements and the results of ballistics tests, which had confirmed that fragments found at the scene of the incident had been those of artillery shells and aerial bombs. It also stated that an unexploded aerial bomb had remained on the ground near the house at 15 Dostoyevskiy Street since the attack of 19 October 1999.

62. In a letter of 15 May 2002 the republican prosecutor's office returned case no. 24031 to the district prosecutor's office for further investigation. The letter stated that upon the study of the case-file materials it had been established that the investigation had been vitiated by flagrant violations of procedural law with the result that the military prosecutor's office had refused to take over the case. The letter then listed in detail the procedural breaches that had occurred during the inspection of the scene of the incident and the seizure and examination of ammunition fragments found there and stated that as a result of those breaches the seized splinters could not be admitted in evidence. The letter further noted that to date those who had suffered pecuniary damage had not been declared civil claimants and that contradictions in eyewitness statements had not yet been resolved. The letter also stated that although the case had repeatedly been returned to the district prosecutor's office because of all those shortcomings, they had not been remedied.

63. By a decision of 25 August 2002 the district prosecutor's office resumed the criminal proceedings.

64. A decision of 25 September 2002 ordered that the investigation be stayed. The decision stated briefly that all possible investigative measures had been taken but that it had not been possible to establish the alleged perpetrators.

65. By a decision of 1 October 2002 the district prosecutor's office resumed the investigation. The decision stated that, as requested by the first applicant, it was necessary to question as witnesses a number of high-ranking military officers who had participated in the counter-terrorism operation in the Chechen Republic.

66. A decision of 1 November 2002 ordered the suspension of the criminal proceedings. It stated that after the reopening of the investigation on 1 October 2002, the investigating authorities had sent a request to interview a number of high-ranking officers, carried out an expert examination of the first applicant's orchard lost during the attack in question and granted victim status to the second applicant. Therefore, according to the decision, all possible investigative actions had been taken.

67. A decision of 10 January 2003 set aside the decision of 1 November 2002 as unfounded, stating that the instructions of the republican prosecutor's office to remedy the procedural breaches had not been complied with. In particular, there had been breaches of procedural law in the seizure of ammunition fragments, which were therefore inadmissible evidence. Moreover, a number of persons who had suffered losses as a result of the incident had not been declared civil claimants in the case. Also, the contradictions in eyewitnesses' descriptions of the attack had not been resolved. The decision thus ordered that the proceedings be resumed.

68. A decision of 10 February 2003 ordered the suspension of the criminal proceedings. It listed investigative measures taken in January 2003, including the seizure of splinters, ordering their expert examination, granted the status of civil claimant to the victims and concluded that all the investigative actions that had been possible in the absence of those responsible had been carried out.

69. A decision of 15 February 2003 ordered that the investigation be resumed, stating that a number of investigative actions should be carried out in the case. In a letter of February 2003 (the exact date is unclear), the first applicant was informed of the recent developments in the case.

70. By a decision of 15 March 2003 the criminal proceedings in case no. 24031 were adjourned owing to the failure to establish the alleged perpetrators.

71. By a decision of 18 April 2003 a prosecutor of the military prosecutor's office of the United Group Alignment ordered that the investigation be resumed. It can be ascertained that at this stage the case was assigned the number 34/00/0008-03.

72. On the same date the military prosecutor's office of the United Group Alignment informed the district prosecutor's office of this decision and invited it to notify those declared victims of the reopening of the case. In another letter of the same date the military prosecutor's office of the United Group Alignment apprised the first applicant of its decision to resume the investigation.

73. In a decision of 18 April 2003 the investigator in charge sought the authorisation of a competent prosecutor to extend the term of the preliminary investigation until 18 August 2003. The decision stated that a large number of investigative actions had to be taken. In particular, it was necessary to question high-ranking officers in command of the counter-

terrorism operation in the Chechen Republic; to identify and interview an officer in charge of the operation in Urus-Martan on 19 October 1999, an officer in command of the pilots who had carried out bomb strikes on Urus-Martan on the date in question and the pilots themselves; to examine and, if necessary, seize relevant military documents, including a register of combat air missions and tactical maps; to examine the materials of enquiries carried out by the military authorities in connection with the first applicant's complaints about the attack; to conduct expert examinations; and to perform other necessary investigative actions.

(b) Decision of 17 November 2003

74. A decision of 17 November 2003 terminated the criminal proceedings in case no. 34/00/0008-03. It stated, in particular, that pursuant to Presidential Decree no. 1255c of 23 September 1999, the Russian authorities had launched a counter-terrorism operation in the Northern Caucasus for the disarmament and liquidation of illegal armed groups and restoration of constitutional order.

75. The decision went on to say that the operation had been carried out by the federal armed forces and that in late September 1999 the Group "West" had been formed under the command of General Major Sh. In the same period the United Air Forces Group had been created under the command of General Lieutenant G. In early October 1999 the federal forces had commenced the counter-terrorism operation in the Chechen Republic.

76. According to the decision, the authorities, via the mass-media and leaflets, had ordered the illegal fighters to stop their criminal activity and lay down arms. The authorities had warned the local population of the possible use of aircraft and artillery in case of organised resistance by the illegal armed groups to the federal forces. In response, the rebel fighters had offered fierce armed resistance and had organised fortified defence in local settlements, prohibiting the residents from leaving their houses and using them as human shields.

77. The decision further stated that in the middle of October the town of Urus-Martan had been occupied by Islamic extremists – Wahhabis – amounting to over 1,500 persons, who had based their headquarters in the town and had significantly fortified it. In particular, they had located their command points in the central part of the town, in school no. 7 and the building of the town administration and had kept captives and local residents detained for refusal to collaborate with them in the basements of those buildings. The illegal fighters had also had a number of radio relays and television re-transmitters in the town which they had actively used for detecting movements of the federal forces. On the outskirts the rebel fighters had located their bases and a centre for subversive training.

78. The decision referred, in particular, to witness interviews of Mr Af. and Mr Chay., intelligence officers, who had carried out reconnaissance in

Urus-Martan in the relevant period. They both stated that the town had been occupied by the Wahhabis, who had significantly fortified it and prepared for long-term defence. According to them, the depth of defence extended to three to four quarters from the outskirts towards the town centre; the fighters had dug trenches and dugouts, filled pits with oil to be able to explode them on the approach of the federal forces, and organised numerous firing posts in residential buildings. Mr Af. also stated that the majority of the local residents had left the town, and that an insignificant number of residents remaining in Urus-Martan had been forcibly kept by the extremists who had used them as human shields. The decision also referred to statements of Mr Kh., a resident of Urus-Martan, who pointed out, in particular, that at the material time more than half of the civilian residents had left the town because of persecutions by illegal fighters, who had detained, robbed, killed and used as human shields those residents who had shown resistance to them.

79. The decision also stated that in October 1999 the illegal armed groups had led active military actions against the federal forces, using surface-to-air missile systems and large-calibre firearms against the federal aircraft. In particular, the extremists had attacked the federal aircraft from the roofs of high-rise buildings in Urus-Martan with the result that a number of planes and helicopters had been shot down and the pilots either killed or captured. Such incidents had taken place on 1, 2 and 4 October 1999. Also, according to intelligence data, a new group of approximately 300 fighters had arrived at Urus-Martan for reinforcement around 18 October 1999.

80. In those circumstances, on 18 October 1999 General Major Sh. had issued order no. 04, which in paragraph 2 prescribed that aircraft resources be assigned for tactical support to the Western Alignment and that illegal fighters' bases, ammunition depots and other important targets outside the reach of the federal artillery fire be destroyed by pinpoint aerial strikes.

81. On 19 October 1999, pursuant to that order, two military SU-24M planes, each laden with eighteen high-explosive fragmentation aerial bombs of calibre 250-270 kg, had carried out strikes on concentrations of illegal fighters one kilometre to the east of Urus-Martan at 1.30 p.m. and 1.31 p.m. At the same time they had carried out strikes on the extremists' bases in Urus-Martan, including those situated in school no. 7 and the building of the town administration. The planes had also bombed rectangle no. 75443 on the eastern outskirts of Urus-Martan where residential buildings prepared for long-term defence were situated. The residential quarter comprising Dostoyevskiy, Mayakovskiy and Pervomayskaya Streets had fallen within rectangular no. 75443.

82. The decision further quoted the conclusions of the operative and tactical experts' examination (see paragraph 114 below) to the effect that the decision had been well-founded and timely and that the relevant military authorities had taken measures to minimise casualties among civilian

residents of Urus-Martan. It then concluded that there had been no elements of criminal offences punishable under Articles 105 § 2 and 167 § 2 of the Russian Criminal Code in the actions of General Major Sh. and General Lieutenant G. and that therefore the criminal proceedings against them should be discontinued.

(c) Documents relating to investigative measures

83. In a request of 29 July 2000 the district prosecutor's office instructed the Urus-Martan VOVD to establish and interview the victims of the attack of 19 October 1999, relatives of those deceased; to grant them victim status and the status of civil claimant in the case; to inspect carefully the scene of the incident; to take photographs and to make a video record of the site, and, if possible, to seize exhibits, including fragments of bombs, to carry out ballistics tests and to perform other necessary investigative actions.

84. In a letter of the same date the district prosecutor's office requested the military prosecutor's office of military unit no. 20102 to send them material of an inquiry into the first applicant's complaint concerning the attack of 19 October 1999.

85. In letters of 24 August 2000 the district prosecutor's office reminded the Urus-Martan VOVD and the military prosecutor's office of military unit no. 20102 of its requests of 29 July 2000, stating that to date they had not been complied with.

86. In a letter of 24 August 2000 the first applicant requested that victim status be granted to a number of persons, including himself and the third applicant, in connection with the destruction of the property at 24a Dostoyevskiy Street, as a result of the federal aerial attack of 19 October 1999.

87. Reports of 3 and 5 October 2000 on the inspection of the scene of the incident described in detail the state of the houses that had come under the aerial attack of 19 October 1999. In particular, the report of 3 October 2000 attested to the damage inflicted on "the property belonging to [the first applicant]" and mentioned a bomb crater on the plot of land on which the property was situated. The same report also indicated that during the inspection metal shrapnel resembling fragments of an artillery shell had been found and seized. Photographs taken during the inspection of the scene of the incident were enclosed with the reports. They represented a number of damaged properties, including that of the first applicant, and shrapnel found on the plot of land of the first applicant's property.

88. By two similar decisions of 5 October 2000 the investigator in charge ordered the seizure of metal fragments resembling pieces of an aerial bomb or artillery shell from the first applicant's property and from that of another resident of the quarter that had come under the attack of 19 October 1999.

89. A decision of 16 November 2000 ordered an expert's examination of metal fragments found at the scene of the incident with a view to establishing their origin. It does not appear that any expert's examination was carried out pursuant to that decision, as on 6 June 2001 the investigator in charge ordered another expert's examination of the fragments. An expert's report of 25 June 2001 confirmed that the fragments in question were pieces of artillery shells, aerial bombs and ammunition, the origin of which had not been possible to establish.

90. Reports of 9 February 2001 attested to the seizure and examination of a videotape, with a record of the results of the attack of 19 October 1999.

91. In a letter of 18 February 2001 the investigator in charge requested a competent prosecutor in Moscow, where the first applicant lived at that time, to interview the first applicant in connection with the events of 19 October 1999 and to declare him a victim and civil claimant. On 16 March 2001 the investigator re-sent his request to the same prosecutor, stating that there was no indication that the previous request had been complied with.

92. By a decision of 28 March 2001 the first applicant was declared a victim in criminal case no. 24031. He was apprised of this decision on the same date.

93. By a decision of 1 October 2002 the investigator in charge ordered an expert's examination of the applicant's orchard, which, according to him, had been lost as a result of the bombing of 19 October 1999, with a view to establishing the degree of damage incurred.

94. By a decision of 17 October 2002 the district prosecutor's office declared the second applicant a victim and a civil claimant in the case. In a request of the same date the district prosecutor's office instructed a competent prosecutor at the second applicant's current place of residence in Moscow to interview her in connection with the incident of 19 October 1999. The second applicant was apprised of this request in a letter of the same date.

95. In another request of the same date the district prosecutor's office instructed the military prosecutor's office of the Moscow Garrison to interview as witnesses a number of high-ranking military officers about the circumstances of the attack of 19 October 1999. In a letter of the same date the district prosecutor's office informed the applicants of that decision as well as of the decision to carry an expert's examination of the orchard.

96. In a letter of 23 December 2002 the republican prosecutor's office informed the district prosecutor's office of the second applicant's complaint, lodged on behalf of the third applicant, about the failure of the district prosecutor's office to grant victim status to the third applicant despite the first applicant's request to that end submitted previously. The letter thus invited the district prosecutor's office to resume the investigation in case no. 24031 and to take the requested decision.

97. Decisions of 21 and 22 January 2003 granted victim status and the status of civil claimant, respectively, to the third applicant, who was notified thereof on the same dates.

98. A decision of 17 January 2003 ordered the seizure of pieces of shrapnel from the first applicant's property in Urus-Martan. Two reports of the same date described the seized splinters.

99. A decision of 19 January 2003 ordered that the splinters seized on 17 January 2003 be included in the case file as evidence. A report of the same date described the results of the examination of those splinters by the investigator in charge.

100. A decision of 25 January 2003 ordered an expert's examination of the pieces of shrapnel seized on 17 January 2003 with a view to establishing their origin.

101. In a letter of 17 February 2003 the district prosecutor's office requested the Urus-Martan Administration to establish a competent commission to assess damage inflicted on the individual houses during the attack of 19 October 1999 and to draw up evaluation reports.

102. In another letter of the same date the district prosecutor's office informed the military commander's office of the Urus-Martan District (*военный комендант Урус-Мартановского района*) that after the bomb strike of 19 October 1999 two unexploded bombs remained lying on the plots of land of two private properties and invited the military commander's office to take measures to dispose of those bombs. A similar letter was sent to the military commander's office of the Chechen Republic on 26 February 2003.

103. According to a report of 23 April 2003, on the date in question the register of the combat air missions of the federal forces in the Chechen Republic for the period between 8 and 27 October 1999 and the tactical map for the period between 13 and 26 October 1999 were examined by the investigating authorities. The report then described in detail the entries made in those documents as regards the air combat missions on 19 October 1999. It also indicated that, according to those documents, Urus-Martan had not been attacked by the federal aircraft on the date in question, and that the only targets hit that day had been located at distances of one and twenty-two kilometres from the town.

104. A report of 30 April 2003 gave the results of the examination of the register of military actions of the aircraft of the United Group Alignment (*журнал боевых действий авиации ОГВ*) for the period from 29 September 1999 to 20 January 2000. According to the report, on 19 October 1999 two entries had been made in the register; they concerned two attacks by federal military helicopters against illegal fighters who had been located about forty kilometres from Urus-Martan. There was no other information regarding the events of 19 October 1999 in the register.

105. As can be ascertained from a report of 5 May 2003, which is barely legible, on that date the investigating authorities examined the register of military actions of the United Group Alignment comprising the period between 25 September and 29 November 1999. It appears that in the register there were no entries to the effect that any aerial strikes had been carried out on Urus-Martan on 19 October 1999.

106. In letters of 31 May and 5 June 2003 the investigator in charge requested the relevant military units to provide information on the identity of the pilots who had carried out strikes at a distance of one kilometre from Urus-Martan on 19 October 1999.

107. In letters of 3 June 2003 the investigator in charge requested various competent authorities to provide information as to whether the residents of Urus-Martan listed in that letter had been involved in the activities of illegal armed groups. The list of names included those killed during the attack of 19 October 1999 as well as those who had been granted victim status in connection with that incident. On 29 October 2003 the Russian Federal Security Service replied that four persons included in the list had participated in the activities of the illegal armed groups.

108. In two letters of 10 June 2003 the acting commander of military unit no. 22290 – an air-force unit that had participated in military operations in the vicinity of Urus-Martan in the relevant period – stated in reply to the military prosecutor of the United Group Alignment that it was not possible to submit their unit's tasking schedule (*плановая таблица*) for 19 October 1999 as it had been destroyed in November 2000, given that pursuant to a relevant order of the Russian Ministry of Defence its storage time had been one year. The letters went on to say that in the relevant period no register of orders received and given had been maintained, no register of combat air missions had been maintained, no register of military actions had been maintained and no tactical map had been maintained. The letters also stated that the means of objective control – testorograms and photographs – for 19 October 1999 had been unavailable as they had been destroyed a year after that date, as prescribed in a relevant order of the Russian Ministry of Defence, and no tape-recordings were available as they had only been kept for three months. Lastly, the letters indicated that the register of the commander's military orders and the map for the commander's orders for military actions had been sent to Rostov-on-Don in December 2000.

109. An expert's report of 20 June 2003 stated that the metal fragments seized on 17 January 2003 (see paragraph 98 above) were pieces of industrially manufactured metal objects that had been destroyed by explosion of a contact charge and that some of them might be fragments of ammunition.

110. A report of 2 July 2003 on the examination of a video-recording of the process of excavation and destruction of unexploded aerial bombs that had remained after the attack of 19 October 1999 stated that it had been

established that they had been highly explosive bombs of calibre 250-270 kg.

111. In a letter of 3 July 2003 the commander of military unit no. 11731, which at the relevant time was participating in military actions in the vicinity of Urus-Martan, stated that all the documents relating to operations in October 1999, and, namely, a register of orders given and received, a register of combat air missions, a register of military actions, combat orders, pilots' reports on their missions and a tactical map, had been destroyed on 13 December 2001 as they had lost their practical value and had had no historical or scientific value.

112. An expert's report of 9 July 2003 assessed the damage inflicted on the orchard on the first applicant's real estate. The report stated that of 131 fruit trees only 40 trees had remained undamaged and then described in detail the ruined orchard. The report further indicated that the pecuniary losses incurred as a result of the devastation amounted to 856,400 Russian roubles (RUB, approximately 21,000 euros (EUR)).

113. By a decision of 20 October 2003 the investigator in charge ordered an operative and tactical experts' examination with a view to establishing whether there had been any shortcomings in the organisation and execution of a bomb strike in the vicinity of Urus-Martan on 19 October 1999 on the part of the commander of the Group "West", General Major Sh., and the commander of the United Air Forces Group, General Lieutenant G.

114. A report of 16 November 2003 gave the results of the operative and tactical experts' examination. The experts stated that General-Major Sh.'s decision to carry out bomb strikes on 19 October 1999 on fortified points and bases of illegal armed groups and on their radio and electronic facilities had been well-founded and timely, as at that time the town of Urus-Martan had been occupied by illegal fighters, amounting to over 1,500 persons, who had fortified it and had not been prepared to surrender and who had been reinforced with a new group of around 300 illegal fighters a day before the attack. According to the experts, any other methods of action by federal forces, such as a ground attack, storming or forcing out, would have led to unjustified losses among them. The experts also stated that, when organising the bomb strike in question the command of the Group "West" had taken certain measures with a view to minimising civilian casualties. In particular, according to the report, the military authorities had opted for pinpoint strikes, which had resulted in only six people being killed and seventeen wounded, four of the latter belonging to illegal armed groups. On the other hand, considerable losses had been caused to the illegal fighters who, as a result, had subsequently, on 7 and 8 December 1999, surrendered the town without fighting with the result that there had been no casualties among the federal armed forces. The report thus concluded that the actions of General Major Sh. and General Lieutenant G. had complied with all relevant instructions and regulations, including the Infantry Field Manual,

that the decision to carry out a strike on 19 October 1999 had been reasonable and that the federal aircraft had been used in Urus-Martan on 19 October 1999 pursuant to competent officers' decisions and taking into account the existing situation and intelligence data.

(d) Witness interviews

115. The case file contains written explanations given on 18 March 2000 by Mr K. – the Head of the Headquarters of the Group "West" – to the prosecutor of military unit no. 20102. According to them, during the period of 19-20 October 1999 the Group "West" had been entrusted with a mission to force out illegal armed groups from the town of Urus-Martan. In Mr K.'s submission, in order to avoid casualties among civilian residents of Urus-Martan, the federal command had repeatedly applied to them with a request for the Wahhabis to discontinue their resistance and leave the town and had warned the residents that otherwise the Wahhabis would be destroyed by artillery fire and aerial attacks. Therefore, according to Mr K., the civilians residing in Urus-Martan had been warned; however, given that the illegal fighters had not surrendered, pinpoint bomb strikes had been aimed at their bases. In Mr K.'s submission, bomb strikes had been carried out by the military aircraft on the basis of information obtained by the latter's intelligence service. Mr K. also noted that in December 1999 the federal forces had blocked Urus-Martan for further "sweeping-up" operations. During a witness interview of 18 April 2003 Mr K. stated that he could not give any explanations regarding the events of 19 October 1999, as he did not remember anything. He also stated as regards his written explanations of 18 March 2000 that the signatures on that document were his, but that he did not remember that he himself had stated what was written there. He added that at present he was unable to comment on those explanations, given that more than three years had elapsed since the date when they had been given.

116. In their explanations of 4-6 July 2000 a number of eyewitnesses – residents of the quarter that came under the attack – described the attack of 19 October 1999, stating that on the date in question, approximately between 12.30 and 1.30 p.m., two Russian military planes had arrived and that one of them had carried out strikes outside the territory of Urus-Martan, whereas the other had bombed the residential quarter in which the eyewitnesses lived. Two of them also stated that the residents of Urus-Martan had not been warned about any bomb strikes.

117. During witness interviews in the period from 7 September to 5 October 2000 sixty-three residents of the quarter that had come under the attack of 19 October 1999 described the events in question.

118. In explanations of 12 March 2001, Mr Z. – a senior officer of military unit no. 45881 – stated that, according to that unit's tactical map, the town of Urus-Martan had not come under aerial attack in the period

between 18 and 27 October 1999, and that on 19 October 1999 at 1.30 p.m. high-explosive 250 kg aerial bombs had been launched against a group of fighters located one kilometre from the south-eastern outskirts of Urus-Martan. As regards the information in the register of combat air missions (see paragraph 133 below), Mr Z. stated that the coordinates mentioned there had been situated from twenty-six to twenty-seven kilometres from Urus-Martan. During a witness interview of 12 November 2002 Mr Z. confirmed that he had been seconded to the Chechen Republic at the material time but stated that from 11 October to 28 November 1999 he had been on leave outside the territory of the Chechen Republic, and therefore he had never participated in the planning and organisation of the aerial attack of 19 October 1999. He added that he could not be a witness in the case concerning that incident, as he had been serving in a military unit other than that which had participated in that attack.

119. According to a relevant transcript of a witness interview, the first applicant was questioned on 27 March 2001.

120. In a witness interview of 21 January 2003 Mr M., at the material time a First Deputy Head of the General Headquarters of the Russian Armed Forces, stated that, as far as he knew, during the counter-terrorism operation in the Chechen Republic no bomb or missile strikes, or any other aerial attacks had been planned or carried out on inhabited settlements. According to Mr M., such strikes had been carried out only on pre-selected targets relating to the activities of illegal armed groups.

121. In his witness interview of 25 January 2003 Mr Mikh., at the relevant time the Deputy Commander-in-Chief of the Russian Air Forces, stated that he had not given any orders to carry out a bomb strike on the town of Urus-Martan on 19 October 1999, and that he was unaware of any bombing of Urus-Martan by federal aircraft.

122. During a witness interview of the same date Mr Ch., a Deputy Head of the Chief Headquarters and the Head of the Operative Administration of the Air Forces, made similar statements.

123. In a witness interview of 15 April 2003 the second applicant described the possessions that she had lost during the attack of 19 October 1999.

124. In a witness interview of 24 April 2003 Mr A., a high-ranking military officer who at the material time had been seconded to the Chechen Republic, stated that he knew nothing of a bomb strike on Urus-Martan on 19 October 1999 and was therefore unable to provide any relevant information in that respect. He was also unable to give any explanation as regards his reply of 15 February 2001 to the first applicant's complaint concerning the attack of 19 October 1999 (see paragraph 20 above).

125. In a witness interview of the same date Mr B., a high-ranking officer who at the relevant time had been seconded to the Chechen Republic, stated that he knew nothing about the attack of 19 October 1999

on Urus-Martan as in that period he had been in charge of operations in another area of the Chechen Republic. He was unable to provide any information other than that indicated in his reply to the first applicant dated 23 November 2000 to the effect that the federal air forces had never bombed Urus-Martan.

126. During questioning on 25 April 2003 Mr G., at the material time the Commander of the United Air Forces Group in the Chechen Republic (see paragraph 75 above), stated that he did not remember the events of October 1999, as much time had elapsed since them, and that all the actions of the federal air forces for that period had been recorded in the register of combat air missions and tactical map.

127. During questioning on 29 April 2003 Mr P., a high-ranking military officer seconded to the Chechen Republic at the material time, made similar statements.

128. On 9 and 10 June 2003 the investigating authorities questioned a number of officers of the federal air forces who had taken part in military operations in the vicinity of Urus-Martan at the relevant time. Two pilots, Par. and Mak., who in the relevant period had been seconded to the Chechen Republic and served in military unit no. 22290, stated that in October 1999 they had received an order from their commander, Colonel Mar., to carry out strikes in pre-selected rectangles on targets representing illegal armed groups on the northern and north-western outskirts of Urus-Martan. According to the pilots, when carrying out the strikes they had used missiles rather than aerial bombs given that the targets had been located very close to the town. The pilots stated that they had not used aerial bombs during their combat mission and had not carried out any strikes on residential quarters of Urus-Martan. They also insisted that any technical errors during the strikes, deviation from pre-selected targets and accidental striking had not been possible.

129. In his witness interview of 16 June 2003 Mr Iv., who in the relevant period had been seconded to the Chechen Republic as an officer of the Russian Ministry for Emergency Situations, stated that he had participated in deactivation of unexploded bombs that had remained, *inter alia*, in Mayakovskiy Street in Urus-Martan after the attack of 19 October 1999. He confirmed that on 2 and 3 April 2003 two unexploded aerial bombs had been excavated and then taken away and destroyed.

130. During questioning on 2 and 3 July 2003 four pilots, Pog., Ab., D. and Sh., who at the material time had been seconded to the Chechen Republic and served in military unit 11731, stated that they had performed a flight in a group of four planes on 19 October 1999 to the southern mountainous area of the Chechen Republic. According to Mr Pog., the planes had been laden with aerial bombs of calibre 250 or 500 kg. The pilots also stated that the results of the bombing had been recorded by means of objective control devices – video recorders and photographic cameras – and

after the flight had been given to a commanding officer. The pilots insisted that they had been instructed to launch bombs in an area situated at a distance of no less than three kilometres from any inhabited settlement and that they had never carried out any strikes on Urus-Martan. They also stated that they had never heard of any such incidents, as in that case an internal investigation should have been carried out and those responsible should have been punished.

131. The case file also contains witness statements of Mr S., a pilot of a federal plane that had been shot down by rebel fighters on 4 October 1999 with the result that the other pilot of that plane had died and Mr S. had been captured by fighters. Mr S. stated that on the date in question they had been given orders to search for another federal plane that had been shot down by extremists the previous day, and then described the incident of 4 October 1999.

(e) Other documents

132. The case file contains an evaluation report (*дефектный акт*) drawn up by the Urus-Martan Administration on 21 January 2000 in respect of the first applicant's property. It listed in detail the damage inflicted thereon.

133. An extract from the register of combat air missions signed by Mr K. (see paragraph 115 above) indicated that on 19 October 1999, between 3 and 3.10 p.m., a pair of SU-25 planes had carried out a bomb strike in a rectangle with coordinates [X] and [Y], that a truck with illegal fighters had been destroyed in a rectangle with coordinates [X1] and [Y1], and that a car with illegal fighters had also been destroyed.

134. A telegram of 17 November 2000 sent by a commanding officer of military unit 41001 stated that in October 1999 the targets selected for aerial strikes included illegal fighters' bases, their fortified points, their ammunition depots, and the like, that during the relevant period the residential quarter in which the applicants lived had not been selected as a target, that on 19 October 1999 no pilots had been given an order to carry out a bomb strike on that quarter, and that no such strike had taken place on the date in question.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Domestic law

1. Code of Criminal Procedure

135. Until 1 July 2002 criminal-law matters were governed by the 1960 Code of Criminal Procedure of the RSFSR. On 1 July 2002 the old Code was replaced by the Russian Code of Criminal Procedure ("the CCP").

136. Article 125 of the CCP provides that the decision of an investigator or prosecutor to dispense with or terminate criminal proceedings, and other decisions and acts or omissions which are liable to infringe the constitutional rights and freedoms of the parties to criminal proceedings or to impede citizens' access to justice, may be appealed against to a district court, which is empowered to examine the lawfulness and grounds of the impugned decisions.

2. Civil Code

137. Article 1069 provides that a State agency or a State official will be liable towards a citizen for damage caused by their unlawful actions or failure to act. Compensation for such damage will be awarded at the expense of the federal or regional treasury.

3. Suppression of Terrorism Act

138. The Federal Law on Suppression of Terrorism of 25 July 1998 (*Федеральный закон от 25 июля 1998 г. № 130-ФЗ «О борьбе с терроризмом»* – "the Suppression of Terrorism Act"), as in force at the relevant time, provided as follows:

Section 3. Basic Concepts

"For the purposes of the present Federal Law the following basic concepts shall be applied:

... 'suppression of terrorism' shall refer to activities aimed at the prevention, detection, suppression and minimisation of consequences of terrorist activities;

'counter-terrorism operation' shall refer to special activities aimed at the prevention of terrorist acts, ensuring the security of individuals, neutralising terrorists and minimising the consequences of terrorist acts;

'zone of a counter-terrorism operation' shall refer to an individual terrain or water surface, means of transport, building, structure or premises with adjacent territory where a counter-terrorism operation is conducted; ... "

Section 21. Exemption from liability for damage

"On the basis of the legislation and within the limits established by it, damage may be caused to the life, health and property of terrorists, as well as to other legally protected interests, in the course of a counter-terrorism operation. However, servicemen, experts and other persons engaged in the suppression of terrorism shall be exempted from liability for such damage, in accordance with the legislation of the Russian Federation."

4. Presidential and governmental decrees

139. In Decree no. 510 of 30 April 1997 the Russian Government established that residents of the Chechen Republic who had lost their housing and/or other possessions during the hostilities in the Republic and who, no later than 12 December 1994, had left permanently for another region, were entitled to compensation.

140. Governmental Decree no. 404 of 4 July 2003 established the right of all permanent residents of the Chechen Republic who had lost their housing and any possessions therein after 12 December 1994 to receive compensation in the amount of RUB 300,000 for the housing and RUB 50,000 for the other possessions.

B. Practice of the Russian courts

141. On 14 December 2000 the Basmanny District Court of Moscow delivered a judgment in civil proceedings brought by a Mr Dunayev, who claimed that the block of flats in which he had lived had collapsed during heavy shelling of Grozny by the federal armed forces in January 1995 and sought compensation for pecuniary and non-pecuniary damage in that connection. While acknowledging the fact that Mr Dunayev's property, including his apartment in the block of flats, had been destroyed as a result of an attack in 1995, the court noted, *inter alia*, that under Articles 1069-1071 and 1100 of the Russian Civil Code, the State was liable for damage caused only by unlawful actions on the part of its agents. It further held that the military operation in the Chechen Republic had been launched by virtue of relevant presidential and governmental decrees, which had been found to be constitutional by the Russian Constitutional Court and were still in force. Accordingly, the court concluded that the actions of the federal armed forces in the Chechen Republic had been lawful and dismissed Mr Dunayev's claim for compensation (see *Dunayev v. Russia*, no. 70142/01, § 8, 24 May 2007).

142. On 4 July 2001 the Basmanny District Court of Moscow dismissed a claim against the Ministry of Finance brought by a Mr Umarov, who stated that his house and other property had been destroyed during massive air strikes and artillery shelling of Grozny by the federal armed forces in

October and November 1999 and sought compensation for pecuniary and non-pecuniary damage in that connection. The court acknowledged the fact that Mr Umarov's private house and other belongings had been destroyed as a result of the hostilities in 1999 to 2000. It held, however, that under Article 1069 of the Russian Civil Code, the State was liable for damage caused only by unlawful actions on the part of its agents. It noted that the military operation in the Chechen Republic had been launched by virtue of relevant presidential and governmental decrees, which had been found to be constitutional by the Russian Constitutional Court, except for two provisions of the relevant governmental decree. In that connection the court noted that the two provisions had never been applied to Mr Umarov, and therefore no unlawful actions on the part of State bodies had ever taken place to warrant compensation for damage inflicted on his property. On 12 April 2002 the Moscow City Court upheld that judgment on appeal (see *Umarov v. Russia* (dec.), no. 30788/02, 18 May 2006).

143. By a default judgment of 3 December 2001 the Leninskiy District Court of Stavropol dismissed a claim brought by a Ms Trapeznikova against a number of federal ministries in so far as she alleged that the block of flats in which she had lived had been destroyed by a missile during an attack by the federal armed forces on Grozny in January 2000 and sought compensation for the destroyed flat and belongings that had been in it. She also sought compensation for non-pecuniary damage. The court noted, *inter alia*, that under Article 1069 of the Russian Civil Code, the State was liable for damage caused only by unlawful actions on the part of its agents. It further found that the actions of the Russian federal troops in the Chechen Republic had been lawful, as the military operation in the Chechen Republic had been launched under relevant presidential and governmental decrees, which had been found to be constitutional by the Russian Constitutional Court. The court concluded that there were no grounds to grant Ms Trapeznikova's claim for pecuniary damage and that her claim for compensation for non-pecuniary damage could not be granted either, in the absence of any fault or unlawful actions on the part of the defendants. The judgment was upheld on appeal by the Stavropol Regional Court on 30 January 2002 (see *Trapeznikova v. Russia*, no. 21539/02, § 30, 11 December 2008).

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

144. The Court reiterates that in its decision as to the admissibility of the present application of 25 March 2010 it decided to join to the merits the Government's objections concerning the applicants' compliance with the requirements set out in Article 35 § 1 of the Convention in respect of their complaints under Articles 2 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention. The Court will accordingly deal with these issues now.

A. Exhaustion of domestic remedies

1. The Government

145. The Government argued that the applicants had failed to exhaust the available domestic remedies. In particular, they had not challenged in court the actions or omissions of the investigating authorities during the investigation, or appealed in court against any of the procedural decisions taken in case no. 34/00/0008-03, including the decision of 17 November 2003 by which the criminal proceedings in connection with the attack of 19 October 1999 had been discontinued, under Article 125 of the Russian Code of Criminal Procedure. The Government insisted that the remedy invoked by them was effective. In this respect they relied on the Court's case-law stating that although a court itself had no competence to institute criminal proceedings, its power to annul a refusal to institute criminal proceedings and indicate the defects to be addressed appeared to be a substantial safeguard against the arbitrary exercise of powers by the investigating authority (see *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003) and that, therefore, in the ordinary course of events such an appeal might be regarded as a possible remedy where the prosecution had decided not to investigate the claims (see *Knyazev v. Russia*, no. 25948/05, § 86, 8 November 2007). In support of their argument, the Government enclosed a number of court decisions by which domestic courts, acting in accordance with Article 125 of the Russian Code of Criminal Procedure, had set aside decisions by investigating authorities to dispense with or discontinue criminal proceedings in connection with various incidents involving military personnel.

146. Furthermore, in the Government's submission, the second and third applicants had not brought civil proceedings to obtain compensation for the property allegedly lost by them during the bombing. The Government stated

that the first applicant had issued the civil proceedings for compensation only in his own name and that the other two applicants had not submitted their claims in the context of those proceedings. The Government insisted that the remedy invoked by them would be effective in the applicants' situation. In particular, in their view, the second and third applicants could seek compensation for pecuniary damage under relevant provisions of the Russian Civil Code, and compensation for non-pecuniary damage under other relevant provisions of the same Code. They also argued that, when examining a civil claim for compensation for damage sustained as a result of a criminal offence, a domestic court was entirely independent of decisions taken by investigating authorities and courts in the context of criminal proceedings in connection with that offence. To corroborate their arguments, the Government referred to a first-instance judgment and appeal decision awarding damages to the first applicant in *Khashiyev and Akayeva v. Russia* (nos. 57942/00 and 57945/00, 24 February 2005) in connection with the death of his relatives in the Chechen Republic and to a first-instance judgment and appeal decision awarding compensation for non-pecuniary damage and burial expenses to a certain V. for the death of V.'s son during a military operation.

147. Lastly, the Government contended that the applicants were also entitled to extra-judicial compensation in accordance with Governmental Decree no. 510 of 30 April 1997 and Governmental Decree no. 404 of 4 July 2003. However, to date the applicants had not availed themselves of that remedy.

2. The applicants

148. The applicants disputed the Government's arguments concerning their alleged failure to exhaust domestic remedies. They argued that the remedies advanced by the Government had been illusory, inadequate and ineffective. In particular, in so far as the Government stated that they had not appealed against the decision of 17 November 2003 by which the criminal proceedings in connection with the attack of 19 October 1999 had been discontinued, the applicants stated that it was only the first applicant who, in reply to his numerous requests and complaints, had received at least some information concerning the investigation in criminal case no. 24031. Moreover, as the case file had been classified as secret, even the first applicant was unable to receive any documents from it; he had never been furnished with a copy of the decision of 17 November 2003 and his right to appeal had never been explained to him. The applicants insisted that neither the second nor third applicant, although they had the status of victim, had ever been informed of the course of the investigation, and therefore they had been unable to appeal against any procedural decisions taken during the investigation.

149. The second and third applicants further argued that they had been absolved of the requirement to lodge a civil claim for compensation, as suggested by the Government, given that the domestic courts had rejected a similar claim lodged by the first applicant and with no meaningful findings emanating from the criminal investigation into the attack.

3. The Court's assessment

150. The Court reiterates that the rule of exhaustion of domestic remedies under Article 35 § 1 of the Convention obliges applicants to use first the remedies which are 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 both in theory and in practice, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that 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 and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used. However, there is no obligation to have recourse to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI; *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-67, *Reports* 1996-IV; and, more recently, *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, no. 41964/98, § 64, 27 June 2006).

151. The Court has emphasised that the application of the rule of exhaustion of domestic remedies must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting States have agreed to set up. Accordingly, it has recognised that Article 35 § 1 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 *Akdivar and Others*, cited above, § 69; *Aksoy*, cited above, §§ 53-54; and *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 82, ECHR 1999-IV).

152. In the present case, as regards the applicants' alleged failure to appeal to a court against procedural decisions taken in the context of the criminal proceedings concerning the events of 19 October 1999, under

Article 125 of the Russian Code of Criminal Procedure, the Court observes that the legal instrument referred to by the Government became operational on 1 July 2002 and that the applicants were clearly unable to have recourse to this remedy prior to that date. As regards the period thereafter, the Court considers that this limb of the Government's preliminary objection raises issues which are closely linked to the question of the effectiveness of the investigation, and it would therefore be appropriate to address the matter in the examination of the substance of the relevant complaint under Article 2 of the Convention.

153. As regards the Government's argument that the second and third applicants had not sought compensation in civil proceedings for the possessions allegedly lost by them in the attack of 19 October 1999, the Court reiterates that, when an individual formulates an arguable claim in respect of killing, torture or destruction of property involving the responsibility of the State, the notion of an "effective remedy", in the sense of Article 13 of the Convention, entails, 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 and including effective access by the complainant to the investigative procedure (see *Kaya v. Turkey*, 19 February 1998, § 107, *Reports* 1998-I; *Aksoy*, cited above, § 98; *Menteş and Others v. Turkey*, 28 November 1997, § 89, *Reports* 1997-VIII; and *Çaçan v. Turkey* (dec.), no. 33646/96, 28 March 2000).

154. In the light of these principles, the Court considers that the only potentially effective domestic remedy in the circumstances would be an adequate criminal investigation. If a civil claim were to be regarded as a legal action to be exhausted in respect of the complaints of a violation of Article 8 and Article 1 of Protocol No. 1 as a result of State agents' actions, the State's obligation to pursue those guilty of such serious breaches might be superseded thereby (see *Çaçan* (dec.), cited above).

155. Moreover, it appears that, in any event, the second and third applicants' civil claim for compensation for the damage inflicted on their possessions would hardly have had any prospects of success. Indeed, Article 1069 of the Russian Civil Code invoked by the Government establishes the rules on compensation for damage inflicted by representatives of the State and provides that State agents are liable only for damage caused by their unlawful actions or failure to act. In the circumstances of the present case, where the investigation into the attack of 19 October 1999 ended with a decision of 17 November 2003 stating that the federal officers' actions had been justified, the second and third applicants' civil claim for damages would clearly be bound to fail. In this connection, the Court also refers to the practice of the Russian courts, which have consistently refused to award any compensation for damage caused by the federal forces during the conflict in the Chechen Republic, stating that

the latter's actions had been lawful as the counter-terrorism operation in the region had been launched under relevant presidential and governmental decrees, which had not been found to be unconstitutional (see paragraphs 141-143 above). The Court finds even more relevant in the circumstances of the present case the fact that on 11 May and 4 October 2001, respectively, the domestic courts at two levels of jurisdiction rejected as unsubstantiated the first applicant's claim for compensation for his house that had been destroyed in the attack of 19 October 1999, despite evidence proving the involvement of the federal forces adduced by the first applicant (see paragraphs 43-48 above). In such circumstances, the Court sees no reason to conclude that the outcome of civil proceedings concerning a claim that could have been brought by the second and third applicants, and would have been similar to that brought by the first applicant, would have been favourable to them.

156. With this in mind, the Court rejects the Government's argument that it was open to the second and third applicants to file a civil claim for compensation in respect of their damaged housing and property, as the right in question was illusory and devoid of substance. In sum, the Court finds the alleged remedy inadequate and ineffective, given that it was clearly incapable of leading to the identification and punishment of those responsible, or even to any financial award in the circumstances of the present case. It therefore rejects this part of the Government's preliminary objection.

157. Lastly, as regards the Government's argument that the applicants could have received extra-judicial compensation for their lost property, the Court notes firstly that Governmental Decree no. 510 of 30 April 1997, referred to by the Government, concerns the payment of compensation in respect of property that had been destroyed before 12 December 1994, and is therefore clearly irrelevant in the present case. As regards Governmental Decree no. 404 of 4 July 2003, which afforded a right to compensation to permanent residents of the Chechen Republic, it is clear from the relevant legal instrument that the compensation in question is paid without regard to the particular circumstances in which the property was lost, that is to say, irrespective of whether State agents were responsible for the destruction. Moreover, the value of the lost property is not taken into account either, since the overall amount paid for lost housing and other possessions cannot exceed RUB 350,000 Russian roubles (approximately EUR 9,000). In such circumstances, the Court is not persuaded that the compensation referred to by the Government can be regarded as an effective remedy for the violation alleged.

158. To sum up, the Court decides to address the Government's preliminary objection, in so far as it refers to criminal-law remedies, during its examination of the substance of the applicants' complaints under Article 2 of the Convention. It further dismisses the Government's objection

in so far as it concerns the applicants' alleged failure to have recourse to civil-law remedies and extra-judicial compensation.

B. Compliance with the six-month rule

159. The Government also argued that if the Court considered the proceedings for compensation brought by the first applicant as the remedy that had been exhausted by all three applicants, then the second and third applicants had failed to comply with the six-month requirement, given that the final decision in those proceedings had been taken on 4 October 2001, whilst the second and third applicants had lodged their applications on 21 August 2003 and 2 March 2004 respectively.

160. The second and third applicant argued they had not failed to comply with the six-month requirement when lodging their complaints. They insisted that the decision of the Moscow City Court of 4 October 2001, by which the first applicant's claim for compensation for the destroyed property had been rejected at last instance, could not be regarded as the final decision in so far as their applications were concerned.

161. The Court observes that, as acknowledged by the Government, the second and third applicants were not parties to the proceedings for compensation brought by the first applicant, and therefore they cannot be regarded as having failed to comply with the six-month time-limit by not having lodged their applications within six months from the date of the final court decision taken in those proceedings.

162. The Court further observes that the criminal proceedings instituted in connection with the incident of 19 October 1999, in which the second and third applicants were granted the victim status, ended up with a decision of 17 November 2003 to discontinue those proceedings. None of the applicants appealed against this decision to a court. The Court has noted in paragraph 152 above that the question of the availability of effective remedies in this respect is closely linked to the question of the effectiveness of the investigation, and it would therefore be appropriate to address the matter in the examination of the substance of the relevant complaint under Article 2 of the Convention. However, assuming that no such remedies were available in the circumstances of the present case, the Court finds that the second and third applicants did not fail to comply with the time-limit established in Article 35 § 1 of the Convention, given that, as indicated above, the second applicant lodged her application on 21 August 2003, that is before the decision in question was taken, and the third applicant lodged her application on 2 March 2004, that is less than six months after it was taken.

163. Accordingly, the Government's preliminary objection should be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

164. The third applicant complained that as a result of the federal aerial attack on Urus-Martan on 19 October 1999 her life had been put at risk, and that there had been no effective investigation into this incident, in breach of Article 2 of the Convention, which reads as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

A. Alleged failure to protect the right to life

1. Submissions by the parties

(a) The third applicant

165. The third applicant insisted that the attack in question had not been planned or controlled by the authorities so as to minimise the risk of civilian casualties. She pointed, in particular, to the replies from the various military authorities, who for several years following the attack had denied even that the attack had taken place. It was not until 2004 that the authorities had mentioned for the first time illegal armed groups that had allegedly been targeted in the attack of 19 October 1999. The third applicant argued that the Government had not submitted any evidence that illegal armed groups had actually been present in Urus-Martan at the relevant time and that they had posed a threat to civilian residents of Urus-Martan, which had rendered necessary the bomb strike, as alleged by the Government.

166. Moreover, in the third applicant's submission, the civilians had not been informed beforehand of the attack of 19 October 1999, or of possible ways to ensure their evacuation, etc. The attack had taken place on a cloudy day, with the result that the pilots who had carried out the strike had most probably been unable to see their targets clearly and to ensure target accuracy. Also, the fact that the military authorities had used highly explosive bombs for their attack indicated, in the third applicant's view, that

the authorities had not taken appropriate care to ensure that any risk to the lives of civilians, including the third applicant, was minimised.

(b) The Government

167. The Government acknowledged that the federal air strike on Urus-Martan on 19 October 1999 had resulted in human casualties and in the destruction of or damage to a number of houses. They insisted, however, that there had been no violation of Article 2 of the Convention in the present case.

168. In particular, they pointed out, with reference to findings of the domestic investigation, that from the beginning of the counter-terrorism operation in September 1999 to early December 1999 the town of Urus-Martan had been occupied by illegal fighters, amounting to over 1,500 persons, who had based their headquarters on civilian premises in the town, had fortified them and had not been prepared to surrender. They had been showing active resistance and had been leading large-scale military actions using heavy weaponry, including surface-to-air missile systems. Such circumstances, in the Government's submission, had rendered necessary the pinpoint air strikes against the bases of illegal fighters in Urus-Martan which had been carried out on 19 October 1999.

169. The Government submitted that, when planning the operation in question, the military authorities – commanding officers of the Group "West", those of the united air forces group and those of relevant headquarters – had taken into account the actual situation and intelligence data. Control of the attack had been exercised on the basis of reports on the execution of orders, analysis of data by objective control equipment and intelligence information. The Government insisted that the attack had been planned and controlled so as to minimise any risk to the lives of civilians in Urus-Martan, including the third applicant. In particular, the strikes had been aimed exclusively at places of concentration of illegal armed groups, all the targets having been clearly identified and located. Moreover, the strikes had been carried out by single planes, their total number not exceeding two at a time. According to the Government, there was no precise information concerning meteorological conditions on the day of the attack, but "the evidence suggested the absence of any factors that would have prevented the use of the aircraft with a due degree of care".

170. The Government further asserted that the federal military authorities had informed the local population, via the local mass-media and leaflets, of a possible use of the aircraft and artillery in case of organised armed resistance on the part of illegal armed groups. According to the Government, in view of that warning the majority of the civilian population had left Urus-Martan before 19 October 1999.

171. The Government thus insisted that in the circumstances the use of force by the federal forces was no more than absolutely necessary in order

to eliminate danger to the local population emanating from the illegal armed groups and that it was impossible to eliminate that danger by any other means. In their submission, of all available methods, the military authorities had opted for pinpoint air strikes, which had enabled the federal forces to minimise the risk of civilian casualties while causing considerable losses to illegal fighters who, as a result, had subsequently, on 7 and 8 December 1999, surrendered the town without resistance, with the result that there had been no casualties among the federal armed forces. In the Government's view, the present case could be distinguished from the cases of *Isayeva, Yusupova and Bazayeva v. Russia* (nos. 57947/00, 57948/00 and 57949/00, 24 February 2005) and *Isayeva v. Russia*, (no. 57950/00, 24 February 2005), since in the present case the military targets in Urus-Martan, their danger to the residents and the necessity of their destruction were obvious, and the consequences of the attack in question were less serious than those in the above-cited cases.

2. The Court's assessment

172. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances where deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which in peacetime no derogation is permitted under Article 15. The situations where deprivation of life may be justified are exhaustive and must be narrowly interpreted. The use of force which may result in the deprivation of life must be no more than "absolutely necessary" for the achievement of one of the purposes set out in Article 2 § 2 (a), (b) and (c). This term indicates that a stricter and more compelling test of necessity must be employed than that normally applicable when determining whether State action is "necessary in a democratic society" under paragraphs 2 of Articles 8 to 11 of the Convention. Consequently, the force used must be strictly proportionate to the achievement of the permitted aims. 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, particularly where deliberate lethal force is used, taking into consideration not only the actions of State agents who actually administer the force but also all the surrounding circumstances including such matters as the planning and control of the actions under examination (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-50, Series A no. 324; *Andronicou and Constantinou v. Cyprus*, 9 October 1997, § 171, *Reports* 1997-VI; and *Oğur v. Turkey* [GC], no. 21594/93, § 78, ECHR 1999-III).

173. In addition to setting out the circumstances where deprivation of life may be justified, Article 2 implies a primary duty on the State to secure the right to life by putting in place an appropriate legal and administrative framework defining the limited circumstances in which law-enforcement officials may use force and firearms, in the light of the relevant international

standards (see *Makaratzis v. Greece* [GC], no. 50385/99, §§ 57-59, ECHR 2004-XI, and *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 96, ECHR 2005-VII). Furthermore, the national law regulating policing operations must secure a system of adequate and effective safeguards against arbitrariness and abuse of force and even against avoidable accident (see *Makaratzis*, cited above, § 58). In particular, law-enforcement agents must be trained to assess whether or not there is an absolute necessity to use firearms, not only on the basis of the letter of the relevant regulations, but also with due regard to the pre-eminence of respect for human life as a fundamental value (see *Nachova and Others*, cited above, § 97).

174. The same applies to an attack where the victim survives but which, because of the lethal force used, amounts to attempted murder (see *Makaratzis*, cited above, §§ 49-55, *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, § 171, 24 February 2005, and *Isayeva v. Russia*, no. 57950/00, § 175, 24 February 2005).

175. In the present case, the Court observes at the outset that the Government acknowledged that the aerial attack of 19 October 1999 had been carried out by federal forces and that it had resulted in human casualties and destruction of property. This brings the third applicant's relevant complaint within the ambit of Article 2 (see paragraph 174 above). It is therefore for the State to account for the use of lethal force in the present case, and, in particular, to demonstrate that that force was used in pursuit of one of the aims set out in paragraph 2 of Article 2 of the Convention and that it was absolutely necessary and therefore strictly proportionate to the achievement of one of those aims.

176. In this connection, the Court notes first of all that its ability to assess the circumstances surrounding the attack in question, including the planning and control of this operation, the actions of the federal servicemen who actually administered the force, and the legal or regulatory framework in place, is rather limited. Although the Government gave certain explanations in that connection, the Court is still unable to see the full and clear picture of that incident. Whilst describing in general a complex situation in Urus-Martan and referring to the need to break the resistance of illegal fighters who had entrenched themselves in the town, the Government, however, did not provide any details concerning the planning and control of the strike of 19 October 1999 and remained silent as regards the actions of the federal servicemen who participated in that attack. They also failed to submit documents concerning that attack, such as copies of plans of the operation, orders, reports on its results, or the like. In this latter respect, the Court finds it open to criticism that a number of such documents or other important sources of information, such as photographs and tape-recordings, that appear to have been directly relevant to that attack, were destroyed a year, or even three months, after the attack in question with

reference to a relevant order of the Russian Ministry of Defence (see paragraphs 108 and 111 above). In the Court's view, such time-limits for storage of information concerning planning, control, performance and results of large-scale military actions, in particular aerial bomb attacks, which may entail multiple deaths or injuries, massive destruction or damage to property, or other drastic consequences, are too tight to be accepted as adequate.

177. The Court further notes that the Government justified the attack of 19 October 1999 by the need to eliminate a danger to the local population emanating from illegal fighters who were occupying Urus-Martan at that time. They stated, in particular, that pinpoint aerial strikes on Urus-Martan in the relevant period had been necessary to enable the federal forces to regain control over the town and to suppress the criminal activity of illegal armed groups, who had offered active and organised resistance to the federal forces, had fortified the town and had been prepared for long-term defence. The Government also argued that it was not possible to fulfil that purpose in any other way than by involving federal aircraft. In their submission, all other methods, such as, for example, an attack or storming by land troops, would have led to considerable losses among federal servicemen.

178. The Court is aware of the difficult situation in the Chechen Republic at the material time, which called for exceptional measures on the part of the State to suppress the illegal armed insurgency (see *Khatsiyeva and Others*, cited above, § 134, or *Akhmadov and Others v. Russia*, no. 21586/02, § 97, 14 November 2008). Those measures could presumably comprise the deployment of armed forces equipped with combat weapons, including military aircraft (see *Isayeva and Others*, cited above, § 178, or *Isayeva*, cited above, § 180), and could entail, as a regrettable but unavoidable consequence, human casualties. Bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the obligation to protect the right to life must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities (see, *mutatis mutandis*, *Makaratzis*, cited above, § 69, and *Mahmut Kaya v. Turkey*, no. 22535/93, § 86, ECHR 2000-III).

179. Having regard to the Government's submissions on the situation in Urus-Martan in the relevant period, the Court considers that their argument to the effect that the use of land troops would have involved unjustified casualties is not without foundation. In particular, the Court takes into account the Government's arguments, corroborated by witness statements of a number of federal servicemen, that the town had been occupied by a considerable number of well-equipped extremists, armed with a range of large-yield weaponry, who were in fact conducting large-scale military

actions against the federal forces, including attacks on federal aircraft causing casualties among the federal forces, and had turned the town into a fortress, having dug trenches and dugouts, having filled pits with oil to be able to explode them on the approach of the federal forces, and having extended the depth of defence to three or four quarters from the outskirts towards the town centre (see paragraphs 77-79, 114 and 131 above).

180. Against this background and in the light of the principles stated in paragraph 178 above, the Court may be prepared to accept that the Russian authorities had no choice other than to carry out aerial strikes in order to be able to take over Urus-Martan, and that their actions were in pursuit of the aim set out in paragraph 2 (a) of Article 2 of the Convention, as alleged by the Government. It is, however, not convinced, having regard to the materials at its disposal, that the necessary degree of care was exercised in preparing the operation of 19 October 1999 in such a way as to avoid or minimise, to the greatest extent possible, the risk of a loss of life, both for the persons at whom the measures were directed and for civilians (see *McCann*, cited above, § 194).

181. In the above connection, the Court notes first of all that for several years the military authorities insistently denied the very fact that the attack had taken place, or the existence of any plans, tasks or orders to carry out such a strike on the residential quarter in question (see paragraphs 18-20 and 22 above), and this cannot but cast doubt on the Government's argument that pinpoint aerial strikes on Urus-Martan had been duly organised.

182. Furthermore, when referring to the need to break the rebel fighters' resistance and claiming that the residential quarter that had been hit on 19 October 1999 had comprised residential buildings prepared for long-term defence, the Government did not explain in any detail, whether, before making a decision to carry out an aerial strike, the competent authorities had thoroughly verified that information, and whether they knew exactly which particular residential buildings had been prepared for defence, and whether any fighters had been located there. The Government remained silent as to whether the military authorities had had any information to the effect that the house in which the third applicant had lived and which had come under the attack had been listed among such buildings, and whether any specific order had been given to bomb that house.

183. It is also clear from the Government's submissions and the documents produced that the authorities were aware of the presence of some civilians in Urus-Martan at the relevant time (see paragraphs 76 and 78 above), even if their number was insignificant. It fell therefore to the authorities to verify, to the extent possible, whether any civilians were present in buildings presumably selected as targets for an aerial strike, particularly when it came to attacking residential quarters. It does not

appear, however, that any such precautions were taken before striking the residential quarter in which the third applicant lived.

184. Moreover, it does not appear that the authorities took, or considered taking, any meaningful steps to inform the civilian inhabitants of Urus-Martan of the attack of 19 October 1999 beforehand and to secure their evacuation. The Court is not persuaded by the Government's argument that the authorities had informed the local population via leaflets and local mass-media of possible aerial strikes and artillery shelling in case of an organised armed resistance on the part of the illegal armed groups located in Urus-Martan. It notes, in particular, that Mr K., a high-ranking officer, who gave explanations to that effect, later refused to confirm them alleging that he could no longer recall the events in question (see paragraph 115 above). In any event, in a situation where the authorities knew that the residents who had remained in the town were, in fact, prevented from leaving by the illegal fighters who intended to use them as human shields (see paragraph 76 and 78 above), the measures referred to by the Government could hardly be regarded as adequate. It is true that the evacuation of inhabitants in a situation where they were held hostage by fighters might have been particularly difficult, but the Government did not demonstrate that the authorities had taken any steps at all in that direction, that they had attempted to organise a safe exit for civilians, to negotiate their evacuation with the fighters, or the like.

185. In the light of the foregoing, the Court is struck by the Russian authorities' choice of weapon in the present case. It is clear that during the attack of 19 October 1999 high-explosive fragmentation bombs of calibre 250-270 kg were used (see paragraph 81 above), this being an indiscriminate weapon. The Court has already held that using this kind of weapon in a populated area is impossible to reconcile with the degree of caution expected from a law-enforcement body in a democratic society. No martial law or state of emergency had ever been declared in the Chechen Republic, and no derogation had been made under Article 15 of the Convention. The attack in question therefore has to be examined against a normal legal background. Even when faced with a situation where the population of the town was held hostage by a large group of well-equipped and well-trained fighters, the authorities' primary aim should have been to protect lives from unlawful violence. The use of indiscriminate weapons stands in flagrant contrast to this aim and cannot be considered compatible with the requisite standard of care that should be exercised in operations involving the use of lethal force by State agents (see *Isayeva*, cited above, § 191).

186. In this connection, the Court finds some indication in witness statements of federal pilots who participated in aerial operations in the vicinity of Urus-Martan in October 1999 that the use of missiles, as opposed to the use of high-explosive aerial bombs, might have been more

appropriate in the circumstances (see paragraphs 128 and 130 above). The Court cannot speculate as to whether the damage caused could have been diminished if the federal aircraft had used missiles during the attack of 19 October 1999. However, it regrets the absence of any explanation on the part of the Government in this connection.

187. The Court further notes discrepancies between the fact of striking Urus-Martan with aerial bombs and the fact that, according to the above-mentioned statements of federal pilots, they had apparently been instructed to launch such bombs at a distance of no less than three kilometres from any inhabited settlement (see paragraph 130 above), and that apparently the targets situated closer than three kilometres were to be hit with missiles (see paragraph 128 above). Nor does it overlook the fact that, as is apparent from the military documents, the only target that had been indicated as pre-selected in the attack of 19 October 1999 was located at a distance of one kilometre from Urus-Martan (see paragraphs 29, 30 and 81 above), whereas the residential quarter that came under attack on that date had not been mentioned in any of those documents at all.

188. Irrespective of whether those discrepancies between the actual conduct of the federal pilots and the official instructions or orders apparently given to them should be regarded as defects in the legal framework governing operations such as those in the present case, or as defects in the planning and control of the attack under examination or should be attributed to the federal pilots who actually administered the force, the foregoing considerations in paragraphs 176-186 above are sufficient to enable the Court to conclude that the authorities failed to exercise appropriate care in the organisation and control of the operation of 19 October 1999. It therefore does not consider it necessary to examine separately the question whether an appropriate legal framework was in place and whether the actions of the pilots who participated in the attack were compatible with the requirements of Article 2 of the Convention.

189. In sum, the Court considers that the bombing with indiscriminate weapons of the residential quarter of Urus-Martan inhabited by civilians was manifestly disproportionate to the achievement of the purpose under Article 2 § 2 (a) indicated by the Government. It therefore finds that the respondent State failed in its obligation to protect the third applicant's right to life.

190. There has accordingly been a violation of Article 2 of the Convention on that account.

B. Alleged ineffectiveness of the investigation

1. Submissions by the parties

191. The third applicant also asserted that the investigation carried out by the authorities had been inadequate and that she had not been duly informed of its course. She therefore argued that there had been a violation of Article 2 on that account.

192. According to the Government, the investigating authorities had taken all possible measures to establish the circumstances of the incident of 19 October 1999, despite the fact that at the initial stages of the investigation the active military actions had still been underway, and therefore the lives of the investigating officers had been in danger. They further alleged that the second and third applicants had not shown any intention of taking part in the investigation and that it was only the first applicant who had actively participated in those proceedings. In the Government's submission, the first applicant had been duly notified of the termination of the criminal proceedings and had been furnished with a copy of the relevant decision so that he could challenge it before the competent authorities. Overall, the Government argued that the investigation in the present case had met the Convention requirements of effectiveness.

2. The Court's assessment

193. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force, in particular by agents of the State. The investigation must be effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances (see *Kaya*, cited above, § 87) and to the identification and punishment of those responsible (see *Oğur*, cited above, § 88).

194. In particular, the authorities must take 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 (see, concerning autopsies, for example, *Salman v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000-VII; concerning witnesses, for example, *Tanrıkulu*, cited above, § 109; and concerning forensic evidence, for example, *Gül v. Turkey*, no. 22676/93, § 89). Any deficiency in the investigation which undermines

its ability to establish the cause of death or the person responsible may risk falling foul of this standard.

195. Furthermore, there must be an implicit requirement of promptness and reasonable expedition (see *Yaşa*, cited above, §§ 102-04, and *Mahmut Kaya*, cited above, §§ 106-07). 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 the maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.

196. For the same reasons, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the victim's next-of-kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *Shanaghan v. the United Kingdom*, no. 37715/97, §§ 91-92, 4 May 2001).

197. In the present case, some degree of investigation was carried out into the attack of 19 October 1999. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

198. It notes that the criminal proceedings in connection with that incident were not brought until 21 July 2000, that is more than nine months after the events in question. The Court considers that the results of a large-scale attack involving federal aircraft should normally become known to the authorities immediately after such an attack. It falls to the State to ensure that State agents who participated in the attack duly report on it, and that the competent authorities, including those in charge of it, ascertain its results without delay. The Court does not overlook the Government's argument that at the relevant time active warfare was ongoing and that on the date of the incident in question Urus-Martan had been occupied by illegal fighters. However, it notes that, as can be ascertained from the documents produced, the town had been overtaken by the federal forces no later than on 7 and 8 December 1999 (see paragraph 114 above), and therefore the authorities could and should have become aware of the results of the attack of 19 October 1999 at that time. The Government did not advance any explanation as to why the authorities remained passive, and left without investigation an incident that resulted in multiple deaths and the destruction of property, from the time when they had regained control over the town of Urus-Martan until 21 July 2000. Such a considerable delay between the incident and the beginning of the investigation into it cannot but significantly undermine the effectiveness of the investigation. Indeed, it is clear from the materials produced that a number of important items of evidence which might have been directly relevant to the attack in question, such as registers of orders given and received, registers of combat air

missions, registers of military actions, tactical maps, tasking schedules, combat orders, reports on executed combat missions, photographs and tape-recordings, were destroyed a year, or even three months, after the attack (see paragraphs 108 and 111 above).

199. Furthermore, once started, the investigation was plagued with inexplicable delays and shortcomings in respect of the most trivial steps. In particular, within a period of one month after the investigation was commenced, the investigating authorities had taken no investigative measures at all (see paragraph 51 above). Furthermore, the scene of the incident was not inspected until 3 and 5 October 2000 (see paragraph 87 above). Also, an expert examination of splinters seized from the scene of the incident on 5 October 2000 was not carried out until 25 June 2001 (see paragraph 89 above). The Court also finds it striking that it was not until 2 and 3 April 2003, that is almost three years after the beginning of the investigation, that the authorities finally took measures to dispose of unexploded bombs that remained lying in the courtyards of individual houses after the attack (see paragraph 129 above), although they were aware of the presence of those bombs for all that time (see paragraphs 52, 61 and 102 above). It appears that the relevant requests by the first applicant were ignored by the authorities (see paragraph 18 above).

200. The Court further considers that the investigation can only be described as inadequate since, as can be ascertained from the materials in the Court's possession, it failed to establish the identity of the pilots who participated in the attack of 19 October 1999.

201. The ineffectiveness of the investigation, the incompetence and manifest failure of the investigators and other law-enforcement bodies to take practical measures aimed at resolving the incident were acknowledged by superior prosecutors on several occasions (see paragraphs 51, 62 and 67 above). The Court specifically notes the obvious unwillingness of the military authorities to assume responsibility for the strike in question and to investigate that incident properly. Indeed, for several years the military authorities denied that the attack had taken place at all (see paragraphs 18-20 and 22 above), and a military prosecutor's office refused to institute criminal proceedings in respect of the attack of 19 October 1999, even though no meaningful inquiry into that incident appears to have been carried out before the decision to dispense with criminal proceedings was taken (see paragraph 30 above). Moreover, after such proceedings had been brought by the civilian authorities, on several occasions the military authorities refused to take over the investigation, returning the case file to the civilian authorities under various pretexts (see paragraphs 46 and 59 above).

202. The Court further notes delays in granting victim status to the applicants, which could have afforded them minimum procedural safeguards. Indeed, although the criminal proceedings in the present case

were instituted on 21 July 2000, the first applicant was not declared a victim until 28 March 2001 (see paragraph 92 above), the second applicant was not declared a victim until 17 October 2002 (see paragraph 94 above), and the third applicant was granted victim status only on 21 January 2003 (see paragraph 97 above). The Court is sceptical about the Government's argument that the second and third applicants had never shown any interest in the investigation, as it is clear from the documents in its possession that the first applicant, acting on their behalf, applied on numerous occasions to various authorities describing the incident in question and seeking to have it investigated and victim status granted to those concerned, including himself and the third applicant (see paragraphs 17 and 86 above). It is furthermore clear that the second applicant also applied, in her own name and on the third applicant's behalf, for information concerning the investigation, and, in particular, complained about the investigating authorities' failure to grant victim status to the third applicant (see paragraph 96 above). In any event, the Court reiterates that the authorities must act of their own motion, once the matter has come to their attention, and that 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 investigative procedures (see, for example, *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 105, ECHR 2001-III (extracts)). It fell therefore to the authorities to take the necessary investigative steps in the present case, and in particular to grant victim status to those concerned without undue delay.

203. The Court further observes that the applicants were, in any event, unable at any stage to gain access to the case file, given that it was classified (see paragraphs 39, 40 and 42 above). Moreover, it does not appear that any of the applicants were ever furnished with a copy of the decision of 17 November 2003 by which the criminal proceedings regarding the attack of 19 October 1999 were discontinued. The Court thus considers that the applicants were, in fact, excluded from the criminal proceedings and were unable to have their legitimate interests upheld.

204. Against this background, and having regard to the Government's argument concerning the applicants' alleged failure to appeal to a court, under Article 125 of the Russian Code of Criminal Procedure, against actions or omissions or procedural decisions of the investigating authorities in the context of the investigation into the attack of 19 October 1999, the Court notes that the Government failed to indicate which particular actions, omissions or procedural decisions, except for that of 17 November 2003, the applicants should have challenged.

205. In so far as the Government referred to the applicants' alleged failure to challenge in a court the decision of 17 November 2003, the Court reiterates that, in principle, an appeal against a decision to discontinue criminal proceedings may offer a substantial safeguard against the arbitrary exercise of power by the investigating authority, given a court's power to

annul such a decision and indicate the defects to be addressed (see, *mutatis mutandis*, *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003). Therefore, as rightly pointed out by the Government, in the ordinary course of events such an appeal might be regarded as a possible remedy where the prosecution has decided not to investigate the claims. The Court, however, has strong doubts that this remedy would have been effective in the present case. The materials in its possession reveal that the authorities only notified the first applicant of the decision of 17 November 2003, but did not furnish him with a copy. Moreover, he made it clear that he needed a copy of the decision of 17 November 2003 to be able to appeal against it before a court, but his request to that effect was explicitly refused by the authorities (see paragraphs 37 and 39 above).

206. In the Court's view, in such circumstances the applicants could hardly have been expected to apply to a court. Indeed, it is highly questionable whether, in the absence of a copy of the decision of 17 November 2003, the applicants would have been able to detect possible defects in the investigation and bring them to the attention of a domestic court, or to present, in a comprehensive appeal, any other arguments that they might have considered relevant. In other words, in the circumstances of the present case, the applicants would have had no realistic opportunity effectively to challenge the decision of 17 November 2003 before a court. Accordingly, the Court considers that it has not been established with sufficient certainty that the remedy advanced by the Government had a reasonable prospect of success (see, in a similar context, *Chitayev and Chitayev v. Russia*, no. 59334/00, §§ 140-41, 18 January 2007). The Court therefore dismisses the Government's preliminary objection regarding the exhaustion of domestic remedies in so far as it relates to this part of the application.

207. In the light of the foregoing, the Court further concludes that the authorities failed to carry out a thorough and effective investigation into the circumstances of the attack of 19 October 1999 in which the third applicant's life was put at risk. There has therefore been a violation of Article 2 of the Convention on that account.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

208. The applicants complained under Article 1 of Protocol No. 1 that their property had been destroyed in the federal attack on Urus-Martan on 19 October 1999. The third applicant also complained that her right to respect for her home secured by Article 8 of the Convention had been infringed as a result of that attack. The respective Convention provisions state as follows:

Article 8

"1. Everyone has the right to respect for ... his home ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Submissions by the parties

209. In so far as the Government seem to have contested the applicants' title to the property which, according to them, they had lost as a result of the strike of 19 October 1999, the applicants pointed out that the title of the first two applicants to the destroyed house had never been called into question by any of the authorities at the domestic level. The second applicant also argued that household belongings, such as furniture, household appliances and other objects, had been lost during the attack. The third applicant alleged that her personal possessions had been destroyed in the house. They, however, had not submitted any information or documents concerning household or any other belongings allegedly destroyed in the house.

210. The applicants further maintained that the third applicant's right to respect for her home under Article 8 of the Convention and their right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 had been violated, as the means employed by the authorities had been disproportionate to the aims sought to be achieved. They also referred to the domestic courts' decisions by which the first applicant's claim for compensation had been rejected and argued that the right to compensation for the destroyed property established, according to the Government, in a number of legal instruments, was illusory and not enforceable in practice.

211. The Government seem to have argued, with reference to the case of *Elsanova v. Russia* ((dec.), no. 57952/00, 15 November 2005), that the applicants' claims concerning the loss of their property had not been

substantiated, as they had failed to submit relevant documents confirming their title to the property which they claimed had been damaged or destroyed during the strike of 19 October 1999. The Government argued, in particular, that the certificate of 29 January 1982 could not be regarded as a document confirming the first two applicants' title to the real estate at 24a Dostoyevskiy Street, as, in their submission, it had not been properly certified, and namely a signature and a stamp of the person who had certified it were missing. They also contended that this document did not attest to the first two applicants' title, but merely entitled them to apply for State registration of the real estate mentioned therein in their names, and that the registration process could be suspended if any third persons filed claims in respect of the property in question.

212. The Government further contended that the alleged interference with the applicants' rights had been lawful, given that the counter-terrorism measures within the territory of the Chechen Republic had been taken on the basis of the Suppression of Terrorism Act (see paragraph 138 above) and "relevant legal instruments of State bodies". The Government insisted that the interference in question had been in the public interest as it was necessary to suppress the criminal activity of the illegal armed groups. They added that they had complied with their obligations under Article 1 of Protocol No. 1 by enacting a number of legal instruments enabling the applicants to obtain compensation for their lost property. The Government thus concluded that there had been no violation of Article 8 of the Convention or Article 1 of Protocol No. 1 in the present case.

B. The Court's assessment

213. The Court observes at the outset that the Government contested the first two applicants' title to the real estate at 24a Dostoyevskiy Street and to the other property allegedly destroyed during the aerial attack, stating that the applicants' property rights had not been corroborated by any reliable documents. In so far as the real estate is concerned, the Court notes that the first two applicants submitted a certificate confirming that they had inherited the said estate from a deceased relative (see paragraph 9 above). The Court rejects the Government's argument to the effect that the document in question was not duly signed and stamped, as it is clear that, contrary to the Government's allegation, it does bear a signature and stamp. Moreover, in the absence of any evidence that the first two applicants' title to the inherited estate had been challenged by any third persons, the Court finds that the aforementioned document can be regarded as proving that the first two applicants held title in respect of the property in question. In this connection the Court also takes note of the first two applicants' argument that their title had never been called into question by any authorities at the

domestic level, and finds it established that they were the rightful co-owners of that property.

214. The Court further notes that the second and third applicants alleged that, as a result of the attack of 19 October 1999, they had lost certain possessions that had been inside the house. The second and third applicants, however, did not submit any documents in support of their allegations, nor did they specifically describe the possessions allegedly lost by each of them. Whilst not excluding the existence of certain possessions in the house before the attack and being mindful of the practical difficulties for the second and third applicants to obtain documents relating to those possessions, the Court is however unable to establish the rightful owner of those possessions in a situation where it was the first two applicants who owned the property without residing in it, and the third applicant who actually lived there. In the absence of any detailed explanations on the part of the applicants in this connection, the Court therefore finds that their claims in this part have not been substantiated.

215. The Court further observes that the Government acknowledged that damaged was inflicted on a number of houses in Urus-Martan, including the one situated at 24a Dostoyevskiy Street as a result of the federal aerial attack of 19 October 1999. The Court has established above that the first two applicants had property rights in respect of this house. It also remains undisputed that the third applicant lived in that property at the time of the attack. It is therefore clear that there has been interference with the first two applicants' rights secured by Article 1 of Protocol No. 1 and the third applicant's rights established in Article 8 of the Convention. The Court has now to satisfy itself that this interference met the requirement of lawfulness, pursued a legitimate aim and was proportionate to the aim pursued.

216. As regards the lawfulness of the interference in question, the Government referred to the Suppression of Terrorism Act and unnamed "relevant regulations of State bodies" as a legal basis for the alleged interference.

217. The Court reiterates, as it has already noted in other cases concerning the conflict in the Chechen Republic, that the Suppression of Terrorism Act and, in particular, section 21, which releases State agents participating in a counter-terrorism operation from any liability for damage caused to, *inter alia*, "other legally protected interests", while vesting wide powers in State agents within the zone of the counter-terrorism operation, does not define with sufficient clarity the scope of those powers and the manner of their exercise so as to afford an individual adequate protection against arbitrariness (see *Khamidov v. Russia*, no. 72118/01, § 143, ECHR 2007-XII (extracts). The Government's reference to this Act cannot replace specific authorisation of interference with an individual's rights under Article 8 of the Convention and Article 1 of Protocol No. 1, duly delimiting the object and scope of that interference and drawn up in accordance with

the relevant legal provisions. The provisions of the above-mentioned Act are not to be construed so as to create an exemption for any kind of limitations of personal rights for an indefinite period of time and without setting clear boundaries for the security forces' actions (see, *mutatis mutandis*, *Imakayeva v. Russia*, no. 7615/02, § 188, ECHR 2006-XIII (extracts)).

218. Similarly, in the present case the Court considers that the legal instrument in question, formulated in vague and general terms, cannot serve as a sufficient legal basis for such a drastic interference as the destruction of an individual's housing and property. For the same reasons, the Court is also unable to regard General Major Sh.'s order no. 04 (see paragraph 80 above) as a sufficient legal basis for the interference with the relevant applicants' rights secured by Article 8 and Article 1 of Protocol No. 1. While directing the federal forces to destroy military targets, such as illegal fighters' bases, ammunition depots, etc, this order does not appear to have specifically authorised the federal servicemen to inflict damage on the first two applicants' property and the third applicant's home, and, in any event, it clearly contained no guarantees against an arbitrary use of force that might result in damage to, or destruction of, an individual's private property and home.

219. The Court thus concludes, in view of the above considerations and in the absence of an individualised decision or order which clearly indicated the grounds and conditions for inflicting damage on the first two applicants' property and the third applicant's home, and which could have been appealed against in a court, that the interference with the first two applicants' rights under Article 1 of Protocol No. 1 and the third applicant's rights under Article 8 of the Convention was not "lawful", within the meaning of the Convention. In view of this finding the Court does not consider it necessary to examine whether the interference in question pursued a legitimate aim and was proportionate to that aim.

220. It thus finds that there has been a violation of Article 8 of the Convention on account of the infliction of damage on the third applicant's home and a violation of Article 1 of Protocol No. 1 on account of the infliction of damage on the property of which the first two applicants were co-owners in the federal aerial attack of 19 October 1999.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

221. 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

222. The second applicant, on behalf of the first applicant and in her own name, sought pecuniary damage for their destroyed property and possessions therein. In particular, she claimed 3,404,025 Russian roubles (RUB, approximately 83,700 euros (EUR)) in compensation for the destroyed house. She referred to a certificate issued by the Urus-Martan Administration confirming that the real estate measured 184.5 square metres (see paragraph 9 above) and to Decree no. 86 dated 1 March 2010 of the Russian Ministry for Regional Development which established a maximum purchase price for one square metre of general surface area of housing in various regions of Russia. The said decree indicated that the price for one square metre of housing in the Chechen Republic was equal to RUB 18,450 (approximately EUR 450). The second applicant also claimed RUB 1,000,000 (approximately EUR 25,000) for the household belongings allegedly destroyed in the house. The third applicant did not submit any claims under this head.

223. The Government disputed the second applicant's claims as speculative and unsubstantiated. They argued that there was no evidence that the first two applicants had title to the property, and that the second applicant had failed to corroborate her claims concerning the allegedly lost property, including its quantity and value, with any documentary or other evidence.

224. The Court reiterates that there must be a clear causal connection between the pecuniary damage claimed by an applicant and the violation of the Convention (see, among other authorities, *Çakıcı v. Turkey* [GC], no. 23657/94, § 127, ECHR 1999-IV). In this connection, the Court notes first of all its above finding that the applicants had not substantiated their claims concerning the lost household belongings (see paragraph 214 above). Accordingly, it makes no award in this respect.

225. The Court further notes that it has found a violation of Article 1 of Protocol No. 1 on account of the damage inflicted on the property, which the first and second applicants owned along with the third co-owner, during the bomb strike of 19 October 1999 by the federal forces. The Court has no doubt that there is a direct link between that violation and the pecuniary losses alleged by the second applicant in respect of the property. It further notes that the second applicant submitted a document attesting to the total surface area of the property and indicating that it had been partly destroyed and was unfit for human habitation (see paragraph 16 above). The second applicant based her calculations of the amount claimed on information concerning the price of a square metre of housing as indicated in the relevant decree of the Russian Ministry for Regional Development (see

paragraph 222 above). The Court observes, however, that, as can be ascertained from that decree, it refers to the maximum price per square meter of housing in the Chechen Republic and makes no adjustments taking into account such circumstances as the type of housing, the area in which that housing is situated, etc. Moreover, the decree indicates a price for purchase rather than reconstruction of housing. Therefore, in the Court's opinion, it cannot be regarded as a reliable basis for calculating the actual value of the property in question to enable the Court to make an assessment of the amount to be awarded in this respect. The Court also does not overlook the fact that the first two applicants were two out of three co-owners of the property, the third co-owner not being a party to the proceedings before the Court. Therefore the second applicant, acting as the first applicant's heir and in her own name, can claim only two thirds of the amount that may be awarded for the damaged property in the present case. In such circumstances, the Court considers it reasonable to award EUR 14,000 to the second applicant in respect of the pecuniary damage suffered by her and the first applicant because of the damage inflicted on the property at 24a Dostoyevskiy Street.

2. Non-pecuniary damage

226. The applicants also claimed compensation for non-pecuniary damage, leaving the determination of its amount to the Court's discretion.

227. The Government submitted that the amount of the award under this head should be determined on an equitable basis with due regard to the Court's case-law in such matters.

228. The Court observes that it has found a violation of Article 2 of the Convention on account of a federal aerial attack which put the third applicant's life at risk, and of the Russian authorities' failure to carry out an effective investigation into that incident. It also found a violation of the third applicant's right to respect for her home under Article 8 of the Convention as a result of that attack and a violation of the first and second applicants' property rights as a result of infliction of damage on their property. The applicants must have suffered anguish and distress as a result of all these circumstances, which cannot be compensated for by a mere finding of a violation. Having regard to these considerations, the Court awards, on an equitable basis, EUR 12,000 to the second applicant in respect of the non-pecuniary damage suffered by her and the first applicant and EUR 20,000 to the third applicant in respect of non-pecuniary damage, plus any tax that may be chargeable on these amounts.

B. Costs and expenses

229. The applicants having submitted no claim under this head, the Court sees no reason to make any award in this respect.

C. Default interest

230. 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 objections;

2. *Holds* that there has been a violation of Article 2 of the Convention as regards the failure by the respondent State to protect the third applicant's right to life;

3. *Holds* that there has been a violation of Article 2 of the Convention on account of the authorities' failure to carry out an adequate and effective investigation into the circumstances of the incident putting the third applicant's life at risk;

4. *Holds* that there has been a violation of Article 8 of the Convention in respect of the third applicant;

5. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention, in so far as the first and second applicants' property rights are concerned;

6. *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, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 14,000 (fourteen thousand euros) to the second applicant in respect of pecuniary damage;

(ii) EUR 12,000 (twelve thousand euros) to the second applicant and EUR 20,000 (twenty thousand euros) to the third applicant in respect of non-pecuniary damage;

(iii) any tax that may be chargeable to the applicants 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;

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

Done in English, and notified in writing on 3 May 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach	Nina Vajić
Deputy Registrar	President