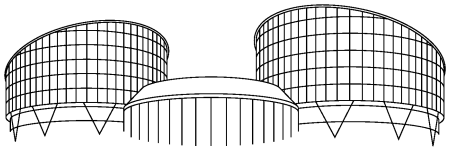

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ABAKAROVA v. RUSSIA

(Application no. 16664/07)

JUDGMENT

STRASBOURG

15 October 2015

FINAL

14/03/2016

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

In the case of Abakarova v. Russia,

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

András Sajó, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Erik Møse,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 22 September 2015,

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

PROCEDURE

1. The case originated in an application (no. 16664/07) 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, Ms Taisa Abakarova ("the applicant"), on 18 April 2007.

2. The applicant was represented by lawyers of the NGO EHRAC/Memorial Human Rights Centre. The Russian Government ("the Government") were represented by their Representative, Mr G. Matyushkin.

3. The applicant alleged, in particular, that her parents and three siblings had died, and she had suffered injuries, in an aerial attack in February 2000, and that no proper investigation of that incident had taken place. She referred to Articles 2 and 13 of the Convention.

4. On 11 May 2010 the application was communicated to the Government. At the same time, it was decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1991 and lives in Zakan-Yurt, Chechnya.

A. Events of 2-7 February 2000

1. Relevant information from other cases

6. The facts of the case are connected to *Isayeva v. Russia*, no. 57950/00, 24 February 2005, and *Abuyeva and Others v. Russia*, no. 27065/05, 2 December 2010. These two applications were lodged by residents of Katyr-Yurt, Chechnya, who alleged that their relatives had been killed or wounded, and that they had suffered injuries and lost their property during the attack on the village from 4-7 February 2000. In the *Isayeva* case, cited above, the applicant and her relatives were trying to flee the fighting on 4 February 2000 when an aviation bomb exploded near their minivan, wounding the applicant and killing three of her relatives. In the *Abuyeva and Others* case, cited above, the applicants described how they had been trapped in the village during intense shelling and had tried to leave through what they had perceived to be a safe exit route. The Court has established a number of facts relevant to the present case, which can be summarised as follows.

7. Ever since the start of operations by the Russian military and security forces in Chechnya in the autumn of 1999, the village of Katyr-Yurt, situated in the Achkhoy-Martan district, had been considered a "safe zone". By the beginning of February 2000 up to 25,000 persons were living there, including local residents and internally displaced persons from elsewhere in Chechnya. In the period leading up to 4 February 2000 the residents of Katyr-Yurt were not informed by the State authorities about the possible advance of illegal fighters into the village, even though such information was available to the military commanders. On 4 February 2000 the village was captured by a large group of Chechen fighters escaping from Grozny. The Russian military forces carried out an assault, using indiscriminate weapons such as heavy, free-falling aviation bombs, artillery, missiles and other weaponry. Although the operation was not spontaneous and involved the use of indiscriminate and highly lethal weaponry, the residents of the village were provided neither with sufficient time to prepare to leave nor with safe exit routes to escape the fighting. The two exits from the village were controlled by the military by means of roadblocks. The residents were allowed to leave through the roadblock on the road leading towards the district centre of Achkhoy-Martan, but the other one, on the road leading towards Valerick, remained closed during most of the fighting. The shelling of Katyr-Yurt continued until 7 February 2000 inclusive (see *Abuyeva and Others*, cited above, §§ 8 and 197-201).

2. The applicant's account

8. The applicant and her family had been living in the village of Zakan-Yurt, situated about thirteen kilometres from Katyr-Yurt. In

November 1999 the applicant turned eight years old. She had lived with her mother, father, two elder brothers and a younger sister. She could remember the events of winter 1999-2000 when the hostilities erupted. On 1 February 2000 a large group of insurgent fighters entered Zakan-Yurt, walking into houses and asking for clothes and food. On the same day airstrikes started. The applicant's family went into hiding in a cellar.

9. On 2 February 2000 the applicant's family decided to travel to Katyr-Yurt, which the applicant's father described as a "peace zone". The applicant's father drove his black Volga car; her mother and brother Magomed sat in front, while the applicant, her sister Madina and brother Ruslan, as well as two cousins, Khava and Luiza Abakarovy, were in the back seat. On the same day they arrived in Katyr-Yurt and stopped in the centre of the village.

10. According to the applicant, they did not know anyone in the village and an unknown man invited them to stay at his house, as did many other villagers. The family stayed with this man for two nights and everything was calm. On the morning of 4 February 2000 airstrikes started, and there were a lot of explosions. The applicant's family went into the cellar under their host's house. Many other people also arrived, including relatives and acquaintances from Zakan-Yurt. They stayed in the cellar throughout the day, while the shelling of the village continued.

11. Later in the afternoon the applicant's father said that it was too dangerous to stay in Katyr-Yurt and that they would drive to Achkhoy-Martan. The applicant's father, mother, two brothers and two cousins, as well as the applicant herself, got into the car. The applicant remembered seeing a lot of people on cars, tractors and on foot trying to get out of Katyr-Yurt. There were explosions.

12. At some point the applicant lost her conscious awareness of what was happening and found herself lying in the road. Their car was burning. She could see her sister Madina, brother Ruslan and cousin Luisa. They were all alive but wounded and burned. The applicant could not see her parents. An old man brought the applicant into the courtyard of a house. Sometime later the applicant, her sister, brother and cousin were put on a bus. The applicant lost consciousness and woke to find herself in hospital in Urus-Martan. Her legs were covered with plaster, and her face and hands were burned. She also saw her sister Madina in the same room.

13. On 5 February 2000 the applicant and her sister were brought by ambulance to Nazran, Ingushetia. The following morning the applicant did not see her sister and she did not know at that time where her family was.

14. On 4 March 2000 the applicant was discharged from the Nazran hospital, with her legs still in plaster. She was diagnosed with fractures of the left hip and right shin, and thermal burns. The circumstances of the wounding were indicated as "shelling, direct hit on the car in which the family was travelling". The applicant went to live with her grandmother in

Zakan-Yurt. There she learnt that her whole family had died. As a result of the air-strike, the following relatives of the applicant were killed:

- Mr Mansur Abakarov, born in 1955, the applicant's father;
- Mrs Khava Zaumayeva, born in 1954, her mother;
- Mr Ruslan Abakarov, born in 1987, her brother;
- Mr Magomed Abakarov, born in 1985, her brother; and
- Mr Madina Zaumayeva, born in 1994, her sister.

15. The applicant's cousin Ms Khava Abakarova was also killed.

16. In March and April 2000 the Achkhoy-Martan district civil registration office recorded the deaths of the applicant's mother, father and three siblings which had occurred in Katyr-Yurt on 4 February 2000. The cause of death was recorded as splinter wounds and burns.

B. Subsequent events and investigation

1. *Information about the investigation from the cases Isayeva v. Russia, no. 57950/00, and Abuyeva and Others v. Russia, no. 27065/05*

17. On 16 September 2000 the prosecutor's office of the Achkhoy-Martan district (the district prosecutor's office) initiated an investigation into the events of 2-7 February 2000 in Katyr-Yurt in response to a complaint by the applicant in the *Isayeva* case, cited above.

18. On 19 February 2001 the investigation into the criminal case was transferred to the military prosecutor's office of the North-Caucasus Military Circuit (the military prosecutor's office). The case file was assigned number 14/00/0004-01.

19. It appears that in 2000-2001 the investigation questioned most of the applicants in application no. 27065/05, as well as other individuals who had been in Katyr-Yurt at the time.

20. At that time the investigation found it established that 43 civilians had been killed and 53 wounded as a result of the operation. 62 individuals were granted victim status in the proceedings. The applicant's relatives and the applicant herself were not listed among the victims.

21. On 13 March 2002 the military prosecutor's office terminated the proceedings in criminal case no. 14/00/0004-01. The decision referred to a large quantity of documents and statements from dozens of witnesses, including local residents, servicemen from various units, and commanding officers. The decision also referred to the results of the military experts' report of 11 February 2002, which established that the actions of officers from the Internal Troops involved in the special operation in Katyr-Yurt on 4-6 February had been appropriate to the circumstances and in line with the applicable legal provisions. On this basis the investigation concluded that command corps' actions were absolutely necessary and proportionate to the

resistance put up by the insurgent fighters. It found an absence of *corpus delicti* in the actions of the servicemen. By the same decision the victim status of 62 individuals was withdrawn. The individuals in question were to be informed of the possibility of seeking redress through civil proceedings.

22. It appears that the victims were not informed by the prosecutor's office about the termination of the proceedings and nothing happened until January 2005, when they learnt that the proceedings had been terminated.

23. Between January and March 2005 the applicants in application no. 27065/05 contacted the military prosecutor's office in writing, seeking information about the progress of the investigation in case no. 14/00/0004-01. They referred to the circumstances of the deaths and wounding of their family members and asked to be granted formal status of victims in the proceedings.

24. In response to these requests, between January and April 2005 the military prosecutor's office informed the applicants of the results of the military experts' report, the termination of proceedings in criminal case no. 14/00/0004-01 and the withdrawal of victim status in 2002. The letters also confirmed that the investigation had established the deaths and injuries of which they had complained and informed them that they could apply to a civil court to obtain compensation. Some of these letters contained the decision of 13 March 2002 as attachment.

25. On 6 June 2005 26 applicants in *Abuyeva and Others* case lodged a claim with the military court of the North-Caucasus Military Circuit. They complained about the ineffectiveness and incompleteness of the investigation. In particular, the applicants noted that some of their relatives' deaths had not been recorded by the investigation and that these persons had not been listed amongst those who died in Katyr-Yurt in February 2000. They asked the court to quash the decision to terminate the criminal proceedings and to oblige the military prosecutor's office to resume the investigation in the criminal case, to grant each of them the status of victim in the criminal proceedings, and to issue them with copies of the relevant decisions. These complaints did not directly refer to the situation of the applicant's family.

26. The applicants' request was granted and the case was reopened in 2007 under the number 44/00/0026-05. However, on 14 June 2007 the investigation was closed, with the same conclusions as in March 2002, on the basis of Article 39, part 1 of the Criminal Code. The decision confirmed the deaths of 46 and the wounding of 53 local residents, without listing their names. An additional expert report was produced by the Military Academy of the Armed Forces in June 2007, which found that the actions of the command corps in planning and executing the operation had been reasonable and in line with domestic law. No copy of that report has ever been disclosed to the applicants or submitted to the Court. The decision stated in this respect:

"... The actions of the fighters (the occupation of Katyr-Yurt by a group of fighters numbering three to four thousand persons, the fighters establishing strongholds in the houses, [their] fierce resistance and their using local residents as a "human shield") ... represented a real danger to the lives and health of the local residents, and could have entailed unnecessary losses by the federal forces ...

These circumstances required the taking of adequate measures by the command corps in order to prevent the danger of armed assault against the citizens and their lives and property (residents of Katyr-Yurt and military servicemen), in addition to [the need to safeguard] the interests of society and the State which are protected by law (the reinstatement of the constitutional order in Chechnya). After issuing a preliminary notification and giving the civilians a real opportunity to leave the village, the subsequent extermination of pockets of the fighters' resistance by means of artillery and attack aircraft, employing area-point method ("зонально-объектовый метод"), did not exclude deaths among civilians. At the same time, the use of such means of extermination was consistent with the circumstances and with the measures taken in order to minimise losses among civilians. The actions of the command corps (commanders) during the preparation and carrying out of the special operation aimed at the liberation of Katyr-Yurt between 4 and 7 February 2000 were in line with the requirements of relevant field manuals, internal regulations and instructions, were lawful and did not contain elements of criminally ".

27. The decision to grant victim status to 95 people was quashed. The military prosecutor of the United Group Alliance in the Northern Caucasus (UGA) forwarded the decision to the head of the Government of Chechnya, asking it to identify the victims' places of residence and to inform them of the closure of the investigation, as well as the possibility of seeking compensation through the civil courts.

28. The name of the applicant in the present case was not listed among the 95 individuals who had been granted victim status.

2. The investigation into the applicant's complaint

29. After discharge from hospital, the applicant had to keep plaster on her legs for three months. Because the hostilities in Chechnya were still ongoing, her relatives took her to the Volgograd Region to continue her treatment. In 2002 the applicant was taken to Norway for treatment for one week. In 2002 her paternal grandmother, with whom she had been living after her parents' deaths, died. After that the applicant lived with her maternal grandparents in Zakan-Yurt.

30. In their observations of September 2010, the Government stated that in 2001 a witness had told the investigators about the deaths of six people in a Volga car (see *Isayeva*, cited above, § 56) but their identities were unknown at that time. It was not until the applicant's questioning in March 2007 (see below) that the investigation obtained this information.

31. In December 2006 a distant relative of the applicant's took her to a human rights organisation, at her request, where she found out for the first time that a criminal investigation had been opened into the attack at Katyr-Yurt.

32. On 18 December 2006 the applicant wrote a letter to the military prosecutor of the UGA and informed him about the deaths of her five relatives and the injuries she suffered on 4 February 2000 in Katyr-Yurt. She attached five death certificates and her discharge papers from the Nazran hospital dated 4 March 2000.

33. On 19 March 2007 the applicant was questioned and granted the status of victim in criminal case no. 34/00/0026-05. At that time the applicant was a minor but the questioning took place in the absence of legal guardian or representative. According to the parties, there is no information indicating the establishment of guardianship over the applicant up to the age of majority.

34. She was not informed of the decision to close proceedings of 14 June 2007 (see paragraphs 26–28 above). The Government submitted in their observations that this had been an omission on the part of the investigator which had been due to the large number of victims in the case.

3. The reopening of the investigation and the decision to close it of 9 March 2013

35. As is apparent from subsequent documents submitted by the applicant, the investigation into the attack upon Katyr-Yurt was reopened in September 2012. The investigators commissioned an additional expert report into the lawfulness and reasonableness of the military intervention. Neither party submitted to the Court the decision to commission the expert report, the questions put to the experts, or a copy of the report itself, nor is it clear which documents were made available to the experts. The applicant's knowledge of and involvement in this procedural step has not been clarified. It appears that the document, as most other documents in the file, has been classified. A summary thereof and summaries of other documents are contained in a twenty-page-long extract from the decision to close the criminal investigation issued by a senior investigator of the Military Investigations Unit of the Investigative Committee in the Southern Federal Circuit on 9 March 2013 (extract dated 16 March 2013).

36. The aforementioned extract opens by stating the factual circumstances of the case as established at that time. According to the text, on the night of 3 to 4 February 2000 a group of between three and four thousand fighters under the command of field commander Gelayev had entered Katyr-Yurt (also spelled Katar-Yurt). They were armed with automatic firearms, large-calibre machine guns, flame-throwers, portable anti-aircraft launchers and armoured vehicles. On 4 February 2000 the head of the operations centre (OC) of the Western Zone Alignment in Chechnya gave orders to block the village to carry out a special operation. By that time, most inhabitants had left the village and others were hiding in their houses. The decision to evacuate the civilians was taken between 7 and 11 a.m. on 4 February. The population had been informed of this

possibility through the head of the administration and by means of a loudspeaker device mounted on a helicopter. Following skirmishes on the outskirts of Katyr-Yurt and casualties suffered by the security forces, at 9 a.m. artillery started to carry out pin-point strikes aimed at clusters of fighters in the centre and on the periphery of the village. After sustaining casualties, a reconnaissance group retreated from Katyr-Yurt on the morning on 4 February, following which attack aircraft were called in. Due to the fierce fighting and the artillery and air strikes upon the clusters of fighters, the residents started to leave, and by midday on 4 February "their outflow had become significant". The extract stated that the special operation had continued for two days, although the strikes continued until 7 February. On the third night [presumably the night of 6 to 7 February] a significant proportion of the fighters, numbering about 800 in all, had left the village under cover of poor visibility and escaped into the mountains; 386 had been killed during the operation. The commanders of the special operation had taken measures to arrange the evacuation of civilians but their plans had been upset by the fighters, especially in the initial stages of the operation. Many residents trying to leave the village had been caught in the crossfire between the fighters and the security forces. Most residents had been killed or injured in the initial stages of the operation, in the central part of the village where the most intense fighting had taken place. No conclusive figure of injured or dead civilians, fighters or security forces was given in the extract.

37. The extract then states that the latest decision to terminate proceedings had occurred on 28 September 2012. That decision was quashed on 9 October 2012 and the investigation was extended until 9 March 2013.

38. The extract goes on to cite statements from various military and civilian witnesses, without indicating their names or ranks or the dates when these statements were taken (see *Isayeva*, cited above, §§ 42-92).

39. The document also refers to an additional operational-tactical expert report ("*дополнительная комиссионная оперативно-тактическая судебная экспертиза"*) produced on 24 September 2012 by unnamed "external experts from the military faculty of the Southern Federal University" ("*внештатные эксперты факультета военного обучения Южного федерального университета"*) based in Rostov-on-Don. As summarised in the extract, the experts' conclusion did not differ from the findings reached by the previous expert reports commissioned by the investigation (see paragraphs 21-27 above). The expert report is cited as follows:

> "In early February 2000 the operational situation in the area of the counter-terrorist operation in Chechnya was extremely tense and difficult. ... After the defeat suffered in the plains of Chechnya and in Grozny, [the illegal insurgents] attempted to move into harsh southern mountainous regions where they would be able to take rest and

recover, in order to organise further military action. ... A very difficult situation developed in the area covered by the Western Zone Alignment. Their main task was to prevent the illegal insurgents from breaking through from the mountainous areas of Chechnya to the plains, to identify, disarm and detain members of the illegal armed groups, and to destroy them in the event of armed resistance ...

... In early February 2000 reconnaissance information was received about the taking of Katyr-Yurt by a large group of fighters. The exact number of fighters was unknown. In order to prevent any further gathering of the fighters, it was decided to surround the village and carry out a special operation there ... A plan for the special operation was worked out. The plan detailed the detachments responsible for blocking and searching, the order of fire contact in the event of armed resistance by the fighters, the location of the command headquarters and control points ... The artillery targets were established in advance along the lines of the fighters' possible escape routes from Katyr-Yurt and potential arrival of reinforcements, outside of the village. Two control points (roadblocks) were established at the two ends of the village to ensure the exit of civilians – one towards Achkhoy-Martan and the other towards Valerik. The civilians left the village through the two roadblocks, along 'humanitarian corridors'.

The head of Katyr-Yurt was informed of the decision to carry out a special operation. He requested postponement in order to ascertain the situation with his own resources and to drive the fighters out of the village. The special operation was postponed for one day. However, the following morning the fighters attacked OMON [special police forces] based in Katyr-Yurt and attempted to break through the lines of the security forces. The security forces sustained casualties. As became apparent during the clashes, the fighters were armed not only with firearms, but also with grenades and fire-launchers, large calibre machine guns, mine-launchers and anti-tank rocket launchers. The fighters were well prepared and were able to use artificial and natural hiding places in order to deliver combat in a populated area. The number of fighters greatly exceeded the security forces (by 4-6 times)."

40. The decision goes on to cite the report's conclusion that the use of fighter jets, artillery and mine-launchers upon fortified positions had been justified and that the refusal to employ them would have resulted in heavy losses among the security forces and failure to achieve the goals as set. Over a period of three days most fighters present in the village were killed (one military unit had reported 386 killed fighters).

41. The report cited military field manuals and concluded that the actions of the commanders had been in full compliance with those acts. The commanders had organised and planned the enforcement of the objectives set. The pin-point air strikes upon previously agreed targets, the direct strikes by artillery and anti-tank rocket launchers, and the tank and anti-tank guns had been directed by forward air controllers and artillery pointers upon clearly established and observed targets.

42. Page 12 of the extract contains the following citation from the decision: "the evidential material in the criminal investigation file ... shows that over 1,000 fighters who entered Katyr-Yurt were armed with automatic firearms, large-calibre machine-guns, grenade-launchers and armoured vehicles; fortified firing points had been established in the captured houses.

[In such circumstances] the use of artillery and airborne weapons between 4 and 7 February 2000 was justified ...”

43. As cited in the extract, the experts focused on the use of artillery and aircraft. From the operative military documents referring to the use of artillery it was impossible to discern where and when exactly, and at what targets the artillery had been employed, since all the documents reviewed by the experts were judged by them as either irrelevant to the operation in question or not containing any relevant information. As to the aircraft, they had used aviation bombs and unguided and guided missiles of undisclosed types. The number of aircraft involved and the number and timing of the mission sorties, as well as the number of missiles and bombs used, was not specified. As cited, the report established that during the mission sorties the pilots had received information from the forward controllers, because the missions were taking place in the vicinity of, or within, the populated area. The target selection was done using smoke pods or by reference to clearly identifiable topographical “highpoints”. There was no evidence of provocations by fighters or mistakes in selecting targets. The document went on to state that the identification of targets had occurred on the basis of information received prior to departure, from the forward air controllers during the flight, and from the observed activity. Since their use by illegal insurgents could not be verified, attacks on vehicles were ruled out unless very precise and distinguishable directions had been received from the ground. The aircraft attacked from a height of about two kilometres and from a distance of about two kilometres; from that distance details such as clothing and the presence of firearms could not be distinguished. For that reason, contact with the air controllers was necessary before and after hitting the selected target.

44. In the cited extract, the experts concluded that “such engagement of artillery and aviation munitions practically ruled out the likelihood of casualties to civilians, except those who were with the fighters in houses occupied by the latter”.

45. They further concluded that the “employment of a minimal amount of artillery, the choice of the most accurate target direction possible, and the use of the minimum amount of shells necessary ... guaranteed safety from injuries by splinters both for the civilians and security forces. ... Having examined the criminal investigation file, the experts concluded that the OC of the Western Zone Alignment and the head of the special operation in Katyr-Yurt had taken all possible measures in order to prevent losses among civilians while planning and carrying out the operation”.

46. Turning to the situation of the civilians, the experts judged that they had been able to leave the village along “humanitarian corridors” through two roadblocks. The information about the corridors had been communicated by means of a helicopter and an armoured personnel carrier (APC). The head of the administration had been properly informed of the

beginning of the special operation and, at his request, its start had been postponed for a day. The civilians had been informed of the need to evacuate and two roadblocks had ensured safe and unhindered passage. The civilians had been accorded the time necessary for the evacuation and the transport carrying the civilians was able to travel back and forth through the roadblocks.

47. While the report, as cited in the extract, conceded that an unspecified number of civilians had been killed during the operation through the use of weapons under the control of the operation's commanders, such measures had been in compliance with the appropriate order of decision-taking in the choice of targets and means employed during the special operation.

48. On the basis of this report, the investigator concluded that the measures resulting in civilian casualties had been absolutely necessary within the meaning of Article 39, part 1 of the Criminal Code (as in the previous decisions of 13 March 2002 and 14 June 2007 – see *Abuyeva and Others*, cited above, § 159).

49. The extract ended by listing the names of the 47 individuals who had been killed, but Mr Z. M. Isayev (a son of the applicant in the *Isayeva* case, cited above) was listed twice. It did not contain the names of the applicant's five family members, nor of her cousin Khava Abakarova (see paragraphs 14 and 15 above). Nor did it contain the names of five relatives of applicants 2 and 24 in the *Abuyeva and Others* case (see *Abuyeva and Others*, cited above, § 156). The non-exhaustive list of the wounded included the applicant; however no separate list of victims has been drawn up; nor does it appear that a copy of that decision was sent to them.

4. The victims' appeals

50. On 26 September 2013 a lawyer representing Mrs Marusa Abuyeva, another victim in criminal investigation no. 14/90/0092-11, appealed to the Grozny Garrison Military Court against the decision of 9 March 2013 to close the criminal investigation and to terminate Mrs Abuyeva's victim status in the proceedings. The statement of appeal was based on the following grounds: the decision had not been based on the established facts, no proper collection and examination of evidence had taken place and legal classification of the events had been incorrect.

51. Firstly, it was argued that the investigation had failed to establish the following pertinent facts: the number of illegal fighters in Katyr-Yurt; the timing and conditions of the transmission of information about the operation and evacuation of civilians; the purpose of the roadblocks at the two extremities of the village; and the details of the aircraft bombings. As to the number of fighters, the statement of appeal referred to various figures cited in the extract and emphasised the fact that the source of this information had not been identified. Likewise, there was a lack of clarity as to the number of fighters killed, nor were there any indications as to any names, identification

procedures etc. The appeal statement also pointed out that the number of the security force personnel involved had not been given; it was therefore difficult to evaluate the numerical superiority of the fighters and the need to employ massive weapons. Furthermore, the victim challenged the statement that the administration and population of Katyr-Yurt had been informed about the operation in advance, pointing to the absence of any clear evidence in the case-file to that effect. Turning to the roadblocks set up by the security forces, the appeal statement pointed out that there were no grounds for concluding that this measure had facilitated the exit of civilians from Katyr-Yurt and reiterated the findings made in this respect by the Court in the judgments in the *Isayeva* and *Abuyeva and Others* cases (both cited above, §§ 194 and 199, accordingly). As to the details of aircraft bombing, it was argued that the investigators had accepted two mutually incompatible versions and no steps had been taken in order to clarify whether the pilots, or the aviation controllers who had coordinated the fire, had been able to observe and distinguish legitimate targets (members of illegal armed groups) from civilians. It was also pointed out that the employment of unguided missiles and free-falling general purpose bombs in any event ruled out the possibility of limiting the impact to the selected targets.

52. As regards the incompleteness of the investigation, it was stressed that the investigators had failed to collect the information necessary to evaluate the threat to the civilian population and the appropriateness of the use of selected weapons and ammunition, and to compile an exhaustive list of victims and damage caused. On the last point, it was emphasised that no list of those who had been killed, both civilians and fighters, had ever been compiled and that the information in this regard remained incomplete.

53. Finally, it was argued that the legal classification of the commanders' actions had been incorrect and that the application of Article 39 part 2 of the Criminal Code had been unjustified without the prior establishment of all the circumstances of the case, including those listed above.

54. On 6 December 2013 the Grozny Military Garrison Court examined and dismissed the appeal. The court referred to the conclusions of the expert report of 24 September 2012, according to which the actions of the operational commanders had been in accordance with the relevant field manuals and other instructions and were justified in view of the numerical superiority of the fighters. The court also found that the evidence collected by the investigation justified the conclusions reached as regards each of the points raised by the appeal. As to execution of the *Isayeva* and *Abuyeva and Others* judgments, the court stressed that in accordance with Article 46 of the Convention, and in line with the Resolution of the Plenary of the Supreme Court No. 21 of 27 June 2013, the investigation had been reopened in 2012 and a number of relevant steps had been taken. In particular, a new

expert report had been commissioned and carried out. The Court's position on the ineffectiveness of the previous investigation had therefore been taken into account and the failings had been rectified.

55. The victim appealed. In her appeal of 23 December 2013 it was stressed that the breach of procedural obligations under Article 2 in this case had taken on a lasting character. Pointing to the relevant passages in the *Isayeva* and *Abuyeva and Others* judgments, both cited above, the appeal argued that the following fundamental defects of the investigation, as identified by the Court, had not been corrected in the new round of proceedings: there had been no independent evaluation of the proportionality and necessity of the lethal force used; no individual liability had been established for the aspects of the operation which had led to civilian losses, and these aspects had not been studied and evaluated by an independent body, preferably a judicial one. It was reiterated that the expert report of September 2012, as cited in the decision of 9 March 2013, had simply repeated the findings of two previous expert reports which had already been examined by the Court. Like the previous two, it had not been based on the pertinent facts of the case. Finally, the important question of the total number of victims had still not been resolved, as demonstrated by the failure to include some of the victims' deceased relatives in the total.

56. On 6 March 2014 the Rostov Circuit Military Court examined the appeal. During the hearing, the victim's representative submitted a number of additional points. He concentrated on the relevant precepts of international humanitarian law and the practice of international criminal tribunals which, he argued, should have guided the investigator in his examination of the case. In his view, the decision of 9 March 2013 had failed to take into account the relevant interpretation of these provisions in so far as it concerned the definition of victims as civilians, and the widespread, systematic, indiscriminate and disproportionate attacks on them.

57. The Circuit Military Court dismissed the appeals. It found that the Garrison Court had examined all the relevant evidence and had applied a comprehensive and consistent interpretation thereto. At this stage, the judge was unable to analyse the substance of the question of guilt or innocence, or to evaluate the correctness or sufficiency of the evidence collected. The Circuit Court stressed that the victim's arguments regarding both the incompleteness of the investigation and the failure to take into account the European Court's binding judgments had been thoroughly examined and dismissed.

58. As is apparent from subsequent documents, the victim's Supreme Court cassation appeal was unsuccessful. On 25 September 2014 a judge of the Supreme Court refused to accept the request for review, in view of the detailed and well-reasoned decisions of the military courts. The victim's

argument that the legal position of the Court in the new round of proceedings had not been taken into account was judged to be unfounded.

II. RELEVANT DOMESTIC LAW

59. For the relevant provisions concerning criminal investigation (see *Abuyeva and Others*, cited above, §§ 165-68).

60. The participation in criminal proceedings of victims who are minors is regulated by Section 45 part 2 of the Code of Criminal Procedure of the Russian Federation. It stipulates that their interests in the proceedings must be safeguarded by the mandatory participation of their legal guardian or representative. Section 191 part 1 of the Code, as in force at the relevant time, gave the right to the guardian or representative to be present with the minor victim and/or witness during questioning and other actions.

61. On 10 February 2009 the Plenary Supreme Court of the Russian Federation adopted guidelines (Ruling No. 1) on the practice of the judicial examination of complaints under Section 125 of the Code of Criminal Procedure of the Russian Federation. The Plenary reiterated that any party to criminal proceedings or other person whose rights or freedoms were affected by the action or inaction of the investigating or prosecuting authorities in criminal proceedings can use Section 125 of the Code of Criminal Procedure to challenge a refusal to institute criminal proceedings or a decision to terminate them. The Plenary stressed that, in declaring a law enforcement authority's specific action or failure to act unlawful or unjustified, a judge was not entitled to quash the impugned decision or to order the official responsible to revoke it and could only ask him or her to rectify the shortcomings indicated. Should the authority concerned fail to comply with the court's instructions, an interested party could complain to a court about the authority's failure to act and the court could issue a special ruling ("*частное определение*") drawing the authority's attention to the situation.

62. In Resolution No. 21 of 27 June 2013 "On the Application of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and its Protocols by the courts of general jurisdiction", the Plenary of the Supreme Court of the Russian Federation issued, inter alia, the following explanations to the courts about the execution of judgments of the European Court:

> "2. As it follows from Article 46 of the Constitution, Article 1 of the Federal Law of 30 March 1998 No. 54-FZ 'On ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols' (hereinafter – the Federal Law on Ratification), the legal positions of the European Court of Human Rights (hereinafter – the European Court, or Court) contained in final judgments adopted against the Russian Federation, must be applied by the courts.

In order to ensure effective protection of human rights and freedoms, the courts should take into account legal positions of the European Court, as stated in the final judgments adopted against other states – members of the Convention. Legal positions should be taken into account by the courts so long as the circumstances of the case under consideration are similar to the circumstances of the case examined by the European Court.

...

17. In accordance with the provisions of Article 46 of the Convention, interpreted in the light of the Recommendation of the Committee of Ministers of the Council of Europe R (2000) 2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights (hereafter 'the Recommendation on re-examination'), not every violation of the Convention or its Protocols established by the European Court in respect of the Russian Federation calls for re-examination of the relevant domestic judicial acts in the light of new circumstances.

The courts should bear in mind that a judicial act should be re-examined if the applicant continues to suffer from the negative consequences thereof (for instance, if the person remains in prison in violation of the Convention) and just satisfaction, awarded by the European Court in accordance with Article 41 of the Convention and paid to the applicant, or measures other than re-examination do not ensure the restoration of the violated rights and freedoms.

...

When deciding questions of re-examination, the courts should verify the existence of a causal link between the violations established by the European Court and the negative consequences from which the applicant continues to suffer.

...

20. Article 1 of the Federal Law on Ratification, read in conjunction with Article 46 of the Convention, demands that, when reviewing a judicial act which triggered an application to the European Court, the courts should take into account the legal positions of the European Court as stated in the relevant judgment and the violations of the Convention and its Protocols found by the Court.

21. If the European Court establishes a procedural violation of the rights of the persons who have taken part in the proceedings, or who have been unjustifiably excluded from such proceedings, the court may, when re-examining the judicial decision in question, after ensuring if possible in the circumstances of the case the reparation of the violations of the Convention or its Protocols which have occurred previously, adopt a judicial act which would be similar to the previous one (Article 46 of the Convention, as interpreted in accordance with the Recommendation on re-examination)."

III. INFORMATION CONCERNING THE EXECUTION OF THE *ISAYEVA* AND *ABUYEVA AND OTHERS* JUDGMENTS

63. At the 1144th meeting of the Council of Europe's Committee of Ministers (June 2012, DH), following the *Abuyeva and Others* judgment, the Russian authorities provided information on the third round of the investigation (DH-DD(2012)488 – part 2). They referred to the decision to

terminate proceedings taken on 16 March 2012. The main developments were summarised:

- the new investigation was carried out by the military investigators of the Investigative Committee, a new structure set up in September 2007;

- 139 individuals were granted victim status, that is to say 44 more than in the framework of the previous investigation;

- victims and witnesses from the civilian population were questioned; however, they could not provide any new information given the remoteness of the events;

- the head of the local administration had died in March 2002 and therefore could not be questioned;

- a forensic and tactical examination carried out by the Military Academy concluded that the commanders' actions in relation to the planning and conducting of the operation were reasonable and in compliance with the domestic legislation.

64. At its 1150th meeting (September 2012) (DH), the Committee of Ministers called upon the Russian authorities to ensure that the additional investigation concerning these cases addressed all the shortcomings identified by the Court and invited them to provide detailed information in this respect so as to enable the Committee to ascertain that this investigation had effectively paid due regard to all the Court's conclusions.

65. At its 1193rd meeting (March 2014) (DH), the Committee regretted that no information had been received and insisted that it be provided without delay. Accordingly, the Russian authorities were invited to urgently provide the Committee with the requested information together with copies of relevant decisions. In April 2015, this information had still not been received.

66. In the latest submissions made to the Committee of Ministers in the context of the execution of these judgments (DH-DD(2015)257E of 4 March 2015), the applicants' representatives submitted:

> "4.11 14 years after the attacks in February 2000 and 9 years after the Court's first judgment relating to this attack in 2005 (*Isayeva*), the Russian Government has consistently failed to implement the Court's judgments and specifically to deal with the following key features of the Court's judgment:
>
> a. conduct an independent review of the use of lethal force upon the residents of Katyr-Yurt including the legality of the selection of weapons for the military operation;
>
> b. make a full list of the victims of the attack or of the items destroyed as well as a full list of witnesses;
>
> c. identify all the victims and witnesses of the attack;
>
> d. ask additional questions posed to the military or civilian authorities or servicemen involved at ground level and in particular to question the soldiers who manned the roadblocks at exits from the village;

e. examine the contradictions in the evidence given by different servicemen in relation to the selection of the targets for the attack;

f. examine the extent of the risk to civilians during the military operation and the adequacy of those steps taken (if any) to safeguard civilian life as well as the measures taken to differentiate between legitimate and illegitimate targets; and

g. clearly identify crucial facts for the examination of this case such as the number of illegal fighters in the village of Katyr-Yurt and the number of servicemen, the manner in which the population was informed about the operation, the manner in which roadblocks were operating in the exits from the village, the manner in which the targets of the attack had been selected."

67. Reiterating the request they lodged on 27 July 2012, the representatives repeated their call to the Committee of Ministers to commence infringement proceedings against the Russian Federation, under Rule 11 of the Rules of the Committee of Ministers, pursuant to Article 46 § 4 of the Convention.

IV. RELEVANT COUNCIL OF EUROPE DOCUMENTS

A. Recommendation Rec(2006)8 of the Committee of Ministers

68. On 14 June 2006 the Committee of Ministers of the Council of Europe adopted Recommendation Rec(2006)8 on assistance to crime victims. The Committee of Ministers recommended, in particular, that the governments of member states disseminate and be guided in their internal legislation and practice by a set of relevant principles. These principles included, inter alia:

"**1. Definitions**

...

1.3. Secondary victimisation means the victimisation that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim.

2. Principles

2.1. States should ensure the effective recognition of, and respect for, the rights of victims with regard to their human rights; they should, in particular, respect the security, dignity, private and family life of victims and recognise the negative effects of crime on victims. ...

2.3. The granting of these services and measures should not depend on the identification, arrest, prosecution or conviction of the perpetrator of the criminal act.

3. Assistance

3.1. States should identify and support measures to alleviate the negative effects of crime and to undertake that victims are assisted in all aspects of their rehabilitation, in the community, at home and in the workplace.

3.2. The assistance available should include the provision of medical care, material support and psychological health services as well as social care and counselling. ...

3.3. Victims should be protected as far as possible from secondary victimisation.

3.4. States should ensure that victims who are particularly vulnerable, either through their personal characteristics or through the circumstances of the crime, can benefit from special measures best suited to their situation. ...

4. Role of the public services

4.1. States should identify and support measures to encourage respect and recognition of victims and understanding of the negative effects of crime amongst all personnel and organisations coming into contact with victims.

Criminal justice agencies

4.2. The police and other criminal justice agencies should identify the needs of victims to ensure that appropriate information, protection and support is made available.

4.3. In particular, states should facilitate the referral of victims by the police to assistance services so that the appropriate services may be offered.

4.4. Victims should be provided with explanations of decisions made with regard to their case and have the opportunity to provide relevant information to the criminal justice personnel responsible for making these decisions.

4.5. Legal advice should be made available where appropriate.

...

6. Information

Provision of information

6.1. States should ensure that victims have access to information of relevance to their case and necessary for the protection of their interests and the exercise of their rights.

6.2. This information should be provided as soon as the victim comes into contact with law enforcement or criminal justice agencies or with social or health care services. It should be communicated orally as well as in writing, and as far as possible in a language understood by the victim.

Content of the information

6.3. All victims should be informed of the services or organisations which can provide support and the type and, where relevant, the costs of the support.

...

Information on legal proceedings

6.5. States should ensure in an appropriate way that victims are kept informed and understand:

– the outcome of their complaint;

– relevant stages in the progress of criminal proceedings;

– the verdict of the competent court and, where relevant, the sentence.”

B. Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations

69. On 30 March 2011 the Committee of Ministers adopted Guidelines on eradicating impunity for serious human rights violations. The document started with a declaration of relevant principles, including the following:

> "The Committee of Ministers,
>
> Recalling that those responsible for acts amounting to serious human rights violations must be held to account for their actions;
>
> Considering that a lack of accountability encourages repetition of crimes, as perpetrators and others feel free to commit further offences without fear of punishment;
>
> Recalling that impunity for those responsible for acts amounting to serious human rights violations inflicts additional suffering on victims;
>
> Considering that impunity must be fought as a matter of justice for the victims, as a deterrent to prevent new violations, and to uphold the rule of law and public trust in the justice system, including where there is a legacy of serious human rights violations; ...
>
> Stressing that the full and speedy execution of the judgments of the Court is a key factor in combating impunity; ...
>
> Recalling the importance of the right to an effective remedy for victims of human rights violations, as contained in numerous international instruments ...; ...
>
> Adopts the following guidelines and invites member states to implement. "

70. The set of guidelines thus adopted, included the following relevant recommendations for the States:

> "**I. The need to combat impunity**
>
> 1. These guidelines address the problem of impunity in respect of serious human rights violations. Impunity arises where those responsible for acts that amount to serious human rights violations are not brought to account.
>
> 2. When it occurs, impunity is caused or facilitated notably by the lack of diligent reaction of institutions or state agents to serious human rights violations. In these circumstances, faults might be observed within state institutions, as well as at each stage of the judicial or administrative proceedings.
>
> 3. States are to combat impunity as a matter of justice for the victims, as a deterrent with respect to future human rights violations and in order to uphold the rule of law and public trust in the justice system.
>
> **II. Scope of the guidelines**
>
> 1. These guidelines deal with impunity for acts or omissions that amount to serious human rights violations and which occur within the jurisdiction of the state concerned.
>
> 2. They are addressed to states, and cover the acts or omissions of states, including those carried out through their agents. They also cover states' obligations under the Convention to take positive action in respect of non-state actors.

3. For the purposes of these guidelines, "serious human rights violations" concern those acts in respect of which states have an obligation under the Convention, and in the light of the Court's case law, to enact criminal law provisions. Such obligations arise in the context of the right to life (Article 2 of the Convention), the prohibition of torture and inhuman or degrading treatment or punishment (Article 3 of the Convention), the prohibition of forced labour and slavery (Article 4 of the Convention) and with regard to certain aspects of the right to liberty and security (Article 5, paragraph 1, of the Convention) and of the right to respect for private and family life (Article 8 of the Convention). Not all violations of these articles will necessarily reach this threshold.

4. In the guidelines, the term "perpetrators" refers to those responsible for acts or omissions amounting to serious human rights violations.

5. In the guidelines, the term "victim" refers to a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, caused by a serious human rights violation. The term "victim" may also include, where appropriate, the immediate family or dependants of the direct victim. A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted, and regardless of the familial relationship between the perpetrator and the victim.

6. These guidelines complement and do not replace other standards relating to impunity. In particular, they neither replicate nor qualify the obligations and responsibilities of states under international law, including international humanitarian law and international criminal law, nor are they intended to resolve questions as to the relationship between international human rights law and other rules of international law. Nothing in these guidelines prevents states from establishing or maintaining stronger or broader measures to fight impunity.

III. General measures for the prevention of impunity

1. In order to avoid loopholes or legal gaps contributing to impunity:

- States should take all necessary measures to comply with their obligations under the Convention to adopt criminal law provisions to effectively punish serious human rights violations through adequate penalties. These provisions should be applied by the appropriate executive and judicial authorities in a coherent and non-discriminatory manner.

- States should provide for the possibility of disciplinary proceedings against state officials.

- In the same manner, states should provide a mechanism involving criminal and disciplinary measures in order to sanction behaviour and practice within state authorities which lead to impunity for serious human rights violations.

2. States – including their officials and representatives – should publicly condemn serious human rights' violations.

3. States should elaborate policies and take practical measures to prevent and combat an institutional culture within their authorities which promotes impunity. Such measures should include:

- promoting a culture of respect for human rights and systematic work for the implementation of human rights at the national level;

- establishing or reinforcing appropriate training and control mechanisms;

- introducing anti-corruption policies;

- making the relevant authorities aware of their obligations, including taking necessary measures, with regard to preventing impunity, and establishing appropriate sanctions for the failure to uphold those obligations;

- conducting a policy of zero-tolerance of serious human rights violations;

- providing information to the public concerning violations and the authorities' response to these violations;

- preserving archives and facilitating appropriate access to them through applicable mechanisms.

4. States should establish and publicise clear procedures for reporting allegations of serious human rights violations, both within their authorities and for the general public. States should ensure that such reports are received and effectively dealt with by the competent authorities.

5. States should take measures to encourage reporting by those who are aware of serious human rights violations. They should, where appropriate, take measures to ensure that those who report such violations are protected from any harassment and reprisals.

6. States should establish plans and policies to counter discrimination that may lead to serious human rights violations and to impunity for such acts and their recurrence.

7. States should also establish mechanisms to ensure the integrity and accountability of their agents. States should remove from office individuals who have been found, by a competent authority, to be responsible for serious human rights violations or for furthering or tolerating impunity, or adopt other appropriate disciplinary measures. States should notably develop and institutionalise codes of conduct.

...

V. The duty to investigate

1. Combating impunity requires that there be an effective investigation in cases of serious human rights violations. This duty has an absolute character.

The right to life (Article 2 of the Convention)

The obligation to protect the right to life requires, *inter alia*, that there should be an effective investigation when individuals have been killed, whether by state agents or private persons, and in all cases of suspicious death. This duty also arises in situations in which it is uncertain whether or not the victim has died, and there is reason to believe the circumstances are suspicious, such as in the case of enforced disappearances.

...

4. A decision either to refuse to initiate or to terminate investigations may be taken only by an independent and competent authority in accordance with the criteria of an effective investigation as set out in guideline VI. It should be duly reasoned.

5. Such decisions must be subject to appropriate scrutiny and be generally challengeable by means of a judicial process.

VI. Criteria for an effective investigation

In order for an investigation to be effective, it should respect the following essential requirements:

Adequacy

The investigation must be capable of leading to the identification and punishment of those responsible. This does not create an obligation on states to ensure that the investigation leads to a particular result, but the authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident.

Thoroughness

The investigation should be comprehensive in scope and address all of the relevant background circumstances, including any racist or other discriminatory motivation. It should be capable of identifying any systematic failures that led to the violation. This requires the taking of all reasonable steps to secure relevant evidence, such as identifying and interviewing the alleged victims, suspects and eyewitnesses; examination of the scene of the alleged violation for material evidence; and the gathering of forensic and medical evidence by competent specialists. The evidence should be assessed in a thorough, consistent and objective manner.

Impartiality and independence

Persons responsible for carrying out the investigation must be impartial and independent from those implicated in the events. This requires that the authorities who are implicated in the events can neither lead the taking of evidence nor the preliminary investigation; in particular, the investigators cannot be part of the same unit as the officials who are the subject of the investigation.

Promptness

The investigation must be commenced with sufficient promptness in order to obtain the best possible amount and quality of evidence available. While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities 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. The investigation must be completed within a reasonable time and, in all cases, be conducted with all necessary diligence.

Public scrutiny

There should be a sufficient element of public scrutiny of the investigation or its results to secure accountability, to maintain public confidence in the authorities' adherence to the rule of law and to prevent any appearance of collusion in or tolerance of unlawful acts. Public scrutiny should not endanger the aims of the investigation and the fundamental rights of the parties.

VII. Involvement of victims in the investigation

1. States should ensure that victims may participate in the investigation and the proceedings to the extent necessary to safeguard their legitimate interests through relevant procedures under national law.

2. States have to ensure that victims may, to the extent necessary to safeguard their legitimate interests, receive information regarding the progress, follow-up and outcome of their complaints, the progress of the investigation and the prosecution, the

execution of judicial decisions and all measures taken concerning reparation for damage caused to the victims.

...

5. Where participation in proceedings as parties is provided for in domestic law, states should ensure that appropriate public legal assistance and advice be provided to victims, as far as necessary for their participation in the proceedings.

...

VIII. Prosecutions

1. States have a duty to prosecute where the outcome of an investigation warrants this. Although there is no right guaranteeing the prosecution or conviction of a particular person, prosecuting authorities must, where the facts warrant this, take the necessary steps to bring those who have committed serious human rights violations to justice.

2. The essential requirements for an effective investigation as set out in guidelines V and VI also apply at the prosecution stage.

...

XV. Non-judicial mechanisms

States should also consider establishing non-judicial mechanisms, such as parliamentary or other public inquiries, ombudspersons, independent commissions and mediation, as useful complementary procedures to the domestic judicial remedies guaranteed under the Convention.

XVI. Reparation

States should take all appropriate measures to establish accessible and effective mechanisms which ensure that victims of serious human rights violations receive prompt and adequate reparation for the harm suffered. This may include measures of rehabilitation, compensation, satisfaction, restitution and guarantees of non-repetition."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

71. The applicant alleged that there had been a violation of the right to life in respect of both herself and her relatives who died as a result of the attack. She also complained of the ineffectiveness of the investigation. Article 2 of the Convention reads:

"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."

72. The Government contested that argument.

A. Admissibility

1. The parties' submissions

73. The Government argued that the date on which the applicant was aware of a violation of her rights under Article 2 should be calculated from her letter to the military prosecutor of the UGA - 18 December 2006. Thus, in their opinion, she had complied with the six-month requirement of Article 35 § 1. However, they believed that the applicant had failed to exhaust the domestic remedies available to her as a victim in criminal proceedings since she had failed to appeal against the decision of 14 June 2007. They also conceded that, due to an oversight, the applicant had not been notified of that decision (see paragraph 34 above). The Government finally asked the Court to declare the application manifestly ill-founded.

74. The applicant insisted that she had complied with the admissibility criteria. She stressed that she was only eight years old when she had lost her entire family and had been injured; she remained without legal guardianship until her age of majority. The applicant learnt of the pending investigation in November 2006 and applied to the Court in April 2007, thereby complying with the six-month limit. As to exhaustion of remedies, the applicant argued that she had not been notified of the decision of 14 June 2007 and therefore could not have been expected to appeal against it; that the impugned decision had been appealed against by other victims in the criminal case and that it had led to the same results as previous rounds of proceedings; that the judicial review had turned out to be ineffective in that case and that the authorities of the Russian Federation had been under an obligation to carry out the investigation on their own motion, especially following two previous judgments by the Court.

2. The Court's assessment

75. As to the question of compliance with the six-month limit, the Government have not argued that the applicant has not complied with this requirement. The applicant learnt of the pending investigation in November 2006 and wrote to the prosecuting authorities in December 2006 asking to be admitted into the proceedings. In March 2007 she was interviewed and granted the victim status; it appears that she had neither a legal guardian nor any representative who could have taken up the issue with the authorities at

an earlier stage. In view of the circumstances of the present case, the Court agrees that the applicant has complied with the six-month limit as stipulated in Article 35 § 1 of the Convention.

76. As to the Government's assertion that the applicant had failed to appeal against the June 2007 decision to terminate proceedings, it is unclear how the applicant could have been expected to appeal against it since, as the Government admit, there was a failure on the part of the authorities to notify her of that step. The Court also notes that other victims in the same criminal case obtained judicial review of the prosecutor's decisions of June 2007 and of March 2013 to terminate proceedings, but these appeals had not been successful. The Court has already found that the lack of any progress in the investigation of the grave incident giving rise to the present case should have been apparent to the victims by 2009, when they learnt of the decision of 14 June 2007 (see *Abuyeva and Others*, cited above, § 187). In such circumstances, the applicant was exempted from the requirement to pursue further domestic remedies in this respect.

77. Finally, the Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

78. Relying on the *Isayeva* and *Abuyeva and Others* judgments cited above, the applicant argued that there had been a violation of the right to life in respect of her deceased relatives and, in view of the level of danger, in respect of herself.

79. She further submitted that the investigation into the attack had been ineffective. The military prosecutor's office had systematically and repeatedly failed to address numerous omissions previously noted by the Court. The applicant pointed out a number of grave problems that had not been resolved in the latest rounds of proceedings. Firstly, crucial facts pertinent to the events of 4-7 February 2000 in Katyr-Yurt had not been established. These included the total number and the names of civilians, illegal fighters and servicemen who had died or been injured; the number of illegal fighters and the number of security forces involved; the time when and the manner in which the population had been informed of the operation and the possibility to leave the village; the instructions given to the personnel manning the roadblocks; the selection of targets and ammunition used; the establishment of individual responsibility for the deaths and injuries of the civilians. Secondly, the investigation had failed to resolve a

number of important, paradoxical contradictions contained in the case-file, such as the intelligence behind the choice of targets in the village for the aircraft and artillery. Finally, the investigators had declined to evaluate the legitimacy of the commanders' actions, relying instead on the military experts' conclusions as to the compliance of their actions with the military manuals. The attempts to obtain judicial review had been futile in that the courts have endorsed all the findings of the investigators, disregarding the Court's conclusions.

(b) The Government

80. The Government did not dispute the facts as presented by the applicant. Without referring to a particular provision of Article 2 § 2, they argued that the attack and its consequences resulted from a use of force that had been absolutely necessary for the protection of the population of Katyr-Yurt and that of neighbouring villages, as well as members of the security forces, in the face of unlawful violence. They referred to the conclusions of the criminal investigation that the use of lethal force had been prompted by the active resistance of the illegal armed groups, whose actions had posed a real threat to the life and health of servicemen and civilians, as well as to the general interests of society and the State. This threat could not have been eliminated by other means and the actions of the operation's command corps had been proportionate to the resistance put up by the fighters.

81. The Government reiterated that, although civilian exit corridors had been organised, in the initial stages of the operation this plan had been sabotaged by the actions of the fighters, who had used the residents as a "human shield" and, as a means of avoiding defeat and capture, had prevented them from leaving their village. Pinpoint attacks by artillery and aviation had been directed against specific targets. As a result of the actions of federal forces between 4 and 7 February 2000, the majority of the fighters who had captured the village (several hundred) had been killed, and the village had been liberated.

82. As to the positive obligation to investigate the loss of life, the Government insisted that the investigation in the present case had been in compliance with domestic legislation and Convention standards. It has finally been terminated for want of legal grounds on which to bring charges against anyone.

2. The Court's assessment

(a) The alleged violation of the right to life

83. The Government accepted that the applicant's five family members had died and she had been wounded as a result of use of force by the state agents. It relied, essentially, on the requirement to protect individuals from

unlawful violence, which is provided for by Article 2 § 2 (a) of the Convention.

84. The Court has previously held that the situation that existed in Chechnya at the material time called for exceptional measures by the State in order to regain control over the Republic and to suppress the illegal armed insurgency. Given the context of the conflict in Chechnya at the relevant time, such measures could presumably include the deployment of army units equipped with combat weapons, including military aviation and artillery. The presence of a very large group of armed fighters in Katyr-Yurt and their active resistance to law-enforcement bodies, which is not disputed by the parties, may have justified the use of lethal force by agents of the State, thus bringing the situation within paragraph 2 of Article 2 (see *Isayeva*, § 180 and *Abuyeva and Others*, § 197, both cited above).

85. Accepting that the use of force may have been justified in the present case, it goes without saying that a balance must be achieved between the aim pursued and the means employed to achieve it. In accordance with the requirements of Article 2 § 2, the lethal force used must be "no more than is absolutely necessary" to achieve such aim.

86. The Court found in the *Isayeva* and *Abuyeva and Others* cases that even though the operation was not spontaneous and involved the use of indiscriminate and highly lethal weaponry, the residents of the village were provided with neither sufficient time to prepare to leave nor safe exit routes away from the fighting. The two roads out of the village were controlled by Russian military roadblocks. At one of the roadblocks civilians were prevented from leaving the scene of the fighting, on the orders of the operation's commanders. No effort was made by the military to respect the "safe" exit announced to the civilians and the attack on the village continued with the same intensity despite the presence of the large numbers of people who were trying to leave.

87. Having examined the available information, the Court concluded that the planning and execution of the operation in Katyr-Yurt between 4 and 7 February 2000 has been carried out in blatant violation of the principles of interpretation of Article 2 (see *Isayeva*, §§ 172-78, and *Abuyeva and Others*, § 200, both cited above, with further references). It held that the use of artillery and aviation bombs in a populated area, outside wartime and without the prior evacuation of civilians, was impossible to reconcile with the degree of caution expected from a law-enforcement body in a democratic society. Even when faced with a situation where, as the Government submitted, the population of the village had been held hostage by a large group of well-equipped and well-trained fighters, the primary aim of the operation should have been to protect lives from unlawful violence. The massive use of indiscriminate weapons stood in flagrant contrast to this aim and could not be considered compatible with the standard of care prerequisite to an operation of this kind involving the use of lethal force by

State agents. The Court also found that in view of the level of danger to which they were exposed, there was no difference between the situation of the applicants and their relatives who had been killed (ibid., § 197 and § 200, respectively).

88. The Court examined the grounds on which the criminal investigation had been terminated on 13 March 2002 and 14 June 2007. It found that the conclusions of the military experts that the actions of the command corps had been legitimate and proportionate to the situation were contradicted by the documents submitted to it. In particular, the Court could find no basis for the statements of the military experts that the commanding officers had organised and carried out the evacuation of the population and had chosen a localised method of fire. Equally, the Court found that there was no evidence to support the supposition that the fighters had obstructed the evacuation of the civilians (ibid., § 198 and § 201, accordingly).

89. The Court paid special attention to the military expert reports commissioned by the investigation. It found that both the reports relied on by the military prosecutor in their decisions to terminate proceedings suffered from the same defects. In particular, the Court noted that these documents, although fundamental to the investigation's conclusions, had neither been communicated to the victims nor submitted to the Court in full. As far as could be judged from other documents, the reports appeared to endorse the conclusions concerning the proper organisation of the civilians' evacuation, the correct choice of weapons and the responsibility of the fighters for the failures of the "humanitarian corridor", but these conclusions were not supported by the documents made available to the Court. Moreover, the witness statements reviewed by it stood in direct opposition to these conclusions. In view of these findings, the Court judged the decision to terminate the criminal prosecution in June 2007 on the same grounds as those stated in 2002 to be "at the very least, surprising" (see *Abuyeva and Others*, cited above, § 201).

90. In the present case, the Government did not provide any information about developments in the proceedings after 2007. The applicant provided an update about the proceedings which had taken place since then and had been terminated in March 2014 for essentially the same reasons as in 2002 and 2007.

91. Having examined the submissions of the parties in the present case, the Court finds no reasons to depart from the findings made in the previous judgments. The Court concludes once more that, while the operation in Katyr-Yurt between 4 and 7 February 2000 pursued a legitimate aim, it was not planned and executed with the requisite level of care with respect to the lives of the civilian population. Accordingly, there has been a violation of the respondent State's obligation to protect the right to life of the applicant and her five relatives (parents and siblings) who died during the operation.

(b) The alleged inadequacy of the investigation

92. The Court found in the *Abuyeva and Others* case:

"207. The Court notes that in the *Isayeva* judgment it concluded that the domestic investigation had been inefficient. It criticised a delay of seven months before the opening of the investigation. Once commenced, the investigator was unable or unwilling to compile crucial information about the "safe passage" announced to the civilians and the observance of it by the military. No one responsible for the declaration or the observance of the safety of the evacuation had been identified among the civilian or military authorities. The Court also found that the investigation did not examine the allegation that the inhabitants of Katyr-Yurt had been "punished" for what was perceived as a lack of cooperation with the military, as transpired from statements made by certain high-ranking servicemen. No questions had been put to the soldiers who had manned the roadblocks as to the nature of the instructions that they had received. The head of the civilian administration of Katyr-Yurt had not been properly questioned about these events. Further, the Court criticised the failure of the investigation to draw a comprehensive picture of the human losses and to identify all the victims of the attack. Communication with those who had victim status in the criminal proceedings had been poor and they had not been notified of the most important procedural decision taken in the proceedings. Lastly, the Court found that the expert report of February 2002 – on the basis of which the investigation had been closed – did not appear to tally with the documents contained in the case file (ibid., §§ 217-23).

208. Turning to the period which had elapsed since the adoption of the above-mentioned judgment [in the *Isayeva* case], the Court notes that a new investigation had taken place between 14 November 2005 and 14 June 2007. During this time, a number of additional witnesses were interviewed, including ten of the applicants and some of their relatives. Several people were granted victim status in the proceedings (see paragraph 158 above). The Government argued that these measures, along with the second report by the military experts, had constituted steps sufficient to comply with the requirements of an effective investigation.

209. In relation to the second report by the military experts, the Court has already stated that it has not been provided with a copy of the report and that, in any event, it could not discern any factual basis for the findings therein (as they are noted in the decision of 14 June 2007: see paragraph 202 above).

210. On the basis of the documents reviewed, the Court concludes that all the major flaws of the investigation indicated in 2005 persisted throughout the second set of proceedings, which ended in June 2007. Most notably, it cannot discern any steps taken to clarify the crucial issues of responsibility for the safety of the civilians' evacuation and of the "reprisal" character of the operation against the population of Katyr-Yurt. It does not appear that any additional questions about these aspects of the operation were posed to the military or civilian authorities or to the servicemen involved at ground level. No one was charged with any crime.

211. As the Court has stated on many previous occasions, the essential purposes of a criminal investigation into the loss of life are the effective implementation of the domestic laws which protect the right to life and ensuring the accountability of State agents for deaths occurring under their responsibility. Such an investigation must be effective in the sense that it is capable of leading to a determination of whether the force used in the case at hand was or was not justified in the circumstances (see, for example, *Kaya v. Turkey*, 19 February 1998, § 87, Reports 1998-I) and to the identification and punishment of those responsible (see *Oğur v. Turkey* [GC],

no. 21594/93, § 88, ECHR 1999-III). This is not an obligation of result, but of means. In the circumstances of the present case, the Court considers that these tasks could not be achieved without identifying the individual agents in the military and, possibly, civilian administration, who had borne responsibility for the taking and implementation of the decisions which had entailed such a heavy toll on the civilian population.

212. Furthermore, the Court considers that the decisions to terminate the proceedings – taken by the military prosecutor's office on the basis of the expert reports prepared by army officers – raise serious doubts about the independence of the investigation from those implicated in the events at issue (see *Güleç v. Turkey*, 27 July 1998, §§ 81-82, Reports 1998-IV, and *Oğur*, cited above, §§ 91-92). While it is certainly for the competent domestic authorities to determine issues of the guilt and/or innocence of individuals involved, as well as the applicable provisions of national legislation, the Court finds that the matter at issue in the present case, in view of its extreme seriousness, should have been assessed by the courts, which are the ultimate guardians of the laws laid down to protect the lives of persons. The approach of the military prosecutor's office to the investigation into dozens of deaths and injuries suffered by civilians has made it clearly inadequate to fulfil the role of maintaining public confidence in the authorities' adherence to the rule of law and to prevent any appearance of collusion in, or tolerance of, unlawful acts (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 321, ECHR 2007-..., and *Anguelova v. Bulgaria*, no. 38361/97, § 140, ECHR 2002-IV).

213. Next, the Court notes that, surprisingly, over the seven years after the attack had taken place the investigation failed to compile an exhaustive list of victims. The situation of the twenty-fourth applicant, Mrs Bela Orsamikova, and the deaths of her four relatives had not been taken into account by the time the proceedings were terminated in June 2007, which is even more striking given that her complaint about the present matter had been accepted by the military court in March 2006.

214. Finally, in relation to the need to ensure public scrutiny of the investigation, the Court notes that it does not appear that any substantive information about the proceedings has been communicated to the applicants. The military prosecutor's office failed to inform them about the most important procedural steps taken, in breach of the relevant domestic legislation. The Government did not provide any explanation of this deficiency. The Court considers that this failure constituted a particularly grave breach of the requirement to effectively investigate the use of lethal force by State agents, all the more so given that exactly the same finding was already made by the Court in 2005.

215. To sum up, having examined the investigation carried out after the adoption of the *Isayeva* judgment, the Court finds that it has suffered from exactly the same defects as those identified in respect of the first set of proceedings which had been terminated in 2002. The Court considers that, aside from the issues under Article 2, this raises a matter under Article 46 of the Convention, which it will discuss below."

93. Turning to the present case, the Court notes that the Government, in their observations, referred only to the proceedings that had already been subject to examination by the Court in the two previous judgments. The applicant submitted additional information about the decision of 9 March 2013 and the judicial review thereof, which terminated in March 2014.

94. However, this latest round of proceedings is hardly any different from the two previously examined by the Court. The factual basis and the

reasons cited in the decision of the military investigator of the Investigative Committee of 9 March 2013 are similar to those contained in the military prosecutors' decisions of 13 March 2002 and 14 June 2007. As to the latest expert report cited in the extract of the decision 9 March 2013, no copy of it has ever been submitted by the Government to the Court or to the applicant. Accordingly, once again, the Court cannot evaluate the relevance of this document for the outcome of the investigation, with the exception of the extracts cited.

95. In fact, it appears that since 2007 none of the issues raised in the *Abuyeva and Others* judgment (cited above, §§ 209-14) has been resolved. The names of the victims' deceased relatives have not been recorded by the investigation: the list cited in the decision of 9 March 2013 still failed to include the names of at least ten of the deceased relatives of applicants to this Court who were granted the victim status in the investigation in relation to their deaths (see paragraph 49 above). It is difficult to interpret this attitude as anything other than a disregard for the suffering of the victims and the memory of the deceased.

96. One element distinguishes the present case from the two previous judgments and makes the situation of the present applicant particularly troubling. As a result of the use of force by State agents, the applicant lost her entire family – both parents and three siblings – at the age of eight, and suffered serious injuries resulting in months, if not years, of treatment. She not only suffered from the direct consequences of the tragic events, consisting of the loss of her family members and her own injuries, but was left without parental care and was therefore clearly identifiable as a particularly vulnerable victim (see Recommendation Rec(2006)8, paragraph 68 above). Her situation could not have been entirely unknown to the authorities, given that she and at least one of her siblings, who later died, had been admitted to a municipal hospital. The discharge papers issued by the Nazran hospital referred to the "direct hit on the [family] car"; death certificates for the family members issued by the relevant civil registration office cited splinter wounds and burns as the cause of death (see paragraphs 14-16 above). Finally, in 2001 a witness informed an investigator from the military prosecutor's office of the deaths of six individuals in a Volga car on 4 February 2000 (see paragraph 30 above). Despite that, nothing has been done by the law-enforcement authorities to acknowledge the applicant's situation and to take measures in order to ensure the effective protection of her rights in the course of proceedings. The fate of the applicant's family did not become the subject of investigation until 2007.

97. When, in 2007, the applicant was finally questioned and granted victim status in the criminal case – on her own initiative – this occurred without the participation of a legal guardian or representative, in breach of the domestic legal norms. The applicant, still a minor, and clearly a

particularly vulnerable victim, was not accorded any special protection or the assistance that was due to her. In fact, it appears that she was forgotten about, and in June 2007 – due to mistake, as the Government submitted in 2010 (see paragraph 34 above) – she was not informed of the decision to terminate proceedings. This mistake has been perpetuated over the years, and the decision of March 2013 still failed to name the applicant's deceased relatives among those who had died in Katyr-Yurt on 4-7 February 2000. It is unclear if the applicant has been informed about this latest decision.

98. Overall, the Court cannot but conclude that the inadequacy of the investigation into the deaths and injuries of dozens of civilians, including the deaths of the applicant's family, was not the result of objective difficulties that can be attributed to the passage of time or the loss of evidence, but rather the result of the investigating authorities' sheer unwillingness to establish the truth and punish those responsible (see *Benzer and Others v. Turkey*, no. 23502/06, § 187, 12 November 2013).

99. There has accordingly been a violation of Article 2 of the Convention in its procedural aspect.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

100. The applicant complained that she had been deprived of an effective remedy in respect of the above-mentioned violations, contrary to Article 13 of the Convention, which provides:

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

A. The parties' submissions

101. The Government contended that the applicant had had an effective remedy in so far as she had had the opportunity to challenge the acts or omissions of the investigating authorities in court.

102. The applicant reiterated the complaint.

B. The Court's assessment

1. Admissibility

103. In so far as the applicant complained of a violation of Article 13 in conjunction with Article 2 of the Convention, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

104. The Court reiterates that in circumstances where, as here, a criminal investigation into a lethal attack has been ineffective and the effectiveness of any other remedy that might have existed, including the civil remedies suggested by the Government, has consequently been undermined, the State has failed in its obligation under Article 13 of the Convention (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 183, 24 February 2005, and *Isayeva*, cited above, § 229).

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

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

106. The applicant complained under Article 14 that the above-mentioned violation of her rights had occurred because of her Chechen ethnic origin and residence in Chechnya. Article 14 reads:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

107. The Court observes that no evidence has been submitted showing either that the applicant was treated differently from individuals in an analogous situation without objective and reasonable justification or that she ever raised this complaint before the domestic authorities. It thus finds that this complaint has not been substantiated (see, for example, *Musikhanova and Others v. Russia* (dec.), no. 27243/03, 10 July 2007, and *Abuyeva and Others*, cited above, § 245).

108. It follows that this part of the application is manifestly ill-founded and should be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 46 OF THE CONVENTION

109. Article 46 of the Convention reads:

Article 46

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution. ..."

110. In the *Abuyeva and Others* judgment cited above, the Court concluded under Article 46:

"236. The Court points out that, in the context of the execution of judgments in accordance with Article 46 of the Convention, a judgment in which it finds a breach imposes on the respondent State a legal obligation under that provision to put an end to the breach and to make reparation for its consequences in such a way as to restore, to the fullest extent possible, the situation existing before the breach. If, on the other hand, national law does not allow – or allows only partial – reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate. It follows, inter alia, that a judgment in which the Court finds a violation of the Convention or its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and to make all feasible reparation for its consequences in such a way as to restore, as far as possible, the situation existing before the breach (see *Assanidze v. Georgia* [GC], no. 71503/01, § 198, ECHR 2004-II; *Maestri v. Italy* [GC], no. 39748/98, § 47, ECHR 2004-I; and *Viaşu v. Romania*, no. 75951/01, § 79, 9 December 2008). As the Court's judgments are essentially declaratory, the respondent State remains free, subject to the supervision of the Committee of Ministers, to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII).

237. However, exceptionally, with a view to helping the respondent State to fulfil its obligations under Article 46, the Court will seek to indicate the type of general measure that might be taken in order to put an end to a situation it has found to exist (see, for example, *Broniowski v. Poland* [GC], no. 31443/96, § 194, ECHR 2004-V, and *Burdov v. Russia* (no. 2), no. 33509/04, § 141, ECHR 2009-...). In other exceptional cases, where the very nature of the violation found is such as to leave no real choice between measures capable of remedying it, the Court may decide to indicate only one such measure (see *Abbasov v. Azerbaijan*, no. 24271/05, § 37, 17 January 2008, and *Aleksanyan v. Russia*, no. 46468/06, § 239, 22 December 2008).

238. Turning to the present case, the Court notes, with great dismay, that following the adoption of the *Isayeva* judgment which found a violation of both substantive and procedural aspects of Article 2, the Committee of Ministers opened a procedure aimed at furthering the execution of the judgment. An information document (CM/Inf/DH(2006)32 dated 12 June 2007) was prepared to assist the Committee of Ministers in its supervision of the execution by the Russian Federation of the judgments of the European Court relating to the actions of security forces in the Chechen Republic, including the *Isayeva* case. In respect of the latter case, the document relied on information submitted by the Government that a new investigation had been ordered with a view to examining the proportionality of the lethal force used during the military operation and determining whether measures had been taken to ensure civilians' safety. Subsequent documents issued by the Committee of Ministers in respect of this type of case concerned general, as opposed to individual, measures, as those were considered to be a matter of priority (see, for example, the latest document CM/Inf/DH(2010)26 of 27 May 2010).

239. However, as the Court has found in paragraphs 204 and 210-16 above, the second set of proceedings was plagued by exactly the same defects as those observed in the *Isayeva* judgment. As a result, the Court was once again bound to conclude that no effective investigation capable of leading to a determination of whether the force

used had or had not been justified in the circumstances and to the identification and punishment of those responsible had occurred.

240. The Court does not consider it necessary to indicate general measures required at national level for the execution of this judgment. As regards individual measures, the Court observes that it has so far refused to give any specific indications to a Government that they should, in response to a finding of a procedural breach of Article 2, hold a new investigation (see *Ülkü Ekinci v. Turkey*, no. 27602/95, § 179, 16 July 2002; *Finucane v. the United Kingdom*, no. 29178/95, § 89, ECHR 2003-VIII; *Varnava and Others*, cited above, § 222; *Kukayev v. Russia*, no. 29361/02, §§ 133-34, 15 November 2007; and *Medova v. Russia*, no. 25385/04, §§ 142-43, ECHR 2009-... (extracts)). In taking this approach, the Court has relied on the general principle that the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment. The Court has also noted the practical difficulties arising out of conducting investigations into events that have occurred many years ago which would almost certainly render such investigations unsatisfactory or inconclusive. It has based its approach on the fact that initial failings of an investigation to take essential measures often make it highly doubtful that the situation existing before the breach could ever be restored (see *Finucane*, cited above, § 89, and *Kukayev*, cited above, § 134).

241. In the Court's view, the present case is distinguished by two important features. Firstly, in terms of general principles, the Court notes that the respondent Government manifestly disregarded the specific findings of a binding judgment concerning the ineffectiveness of the investigation. The Court emphasises in this respect that any measures adopted within the execution process must be compatible with the conclusions set out in the Court's judgment (see *Assanidze*, cited above, § 202, with further references).

242. Secondly, in practical terms, the Court notes that the investigation in the present case has compiled a large amount of data about the events that took place in Katyr-Yurt between 4 and 7 February 2000. On the basis of the existing documents, individual omissions appear to be easily rectifiable. As proof of this, the Court notes that the Government did not dispute the circumstances of the deaths and injuries alleged by those applicants who had not been granted victim status in the criminal investigation but who could submit death certificates and corresponding testimonies. However, to this day no independent study of the proportionality and necessity of the use of lethal force has been carried out, nor has there been any attribution of individual responsibility for the aspects of the operation which had caused loss of life and the evaluation of such aspects by an independent body, preferably of a judicial nature.

243. In view of the above, the Court finds that in the context of the present case it falls to the Committee of Ministers, acting under Article 46 of the Convention, to address the issue of what – in practical terms – may be required of the respondent Government by way of compliance. However, it considers it inevitable that a new, independent, investigation should take place. Within these proceedings, the specific measures required of the Russian Federation in order to discharge its obligations under Article 46 of the Convention must be determined in the light of the terms of the Court's judgment in this case, and with due regard to the above conclusions in respect of the failures of the investigation carried out to date."

111. Turning to the new round of proceedings which have taken place since the *Abuyeva and Others* judgment, the Court has concluded that no

previously identified defect of the investigation has been resolved (see paragraph 95 above). The criminal investigation has thus still not succeeded in establishing the relevant factual circumstances concerning the events, including a complete list and causes of the deaths and injuries, or carrying out – on the basis of these factual findings – an independent expert report of the compatibility of the lethal force used with the principle of "absolute necessity", or attributing individual responsibility between the commanders and the civilian authorities for the aspects of the operation which led to the breach of Article 2. This situation gives rise to particular concerns about the continued impunity of the perpetrators of a serious human rights violation (see the Committee of Ministers Guidelines of 30 March 2011, and paragraphs 69–70 above). The Committee of Ministers is still awaiting information about the individual measures (see paragraphs 65-67 above). Accordingly, the obligation to abide by the Court's judgments under Article 46 § 1 means that all previous directions concerning the investigation, its scope and focus, remain valid.

112. The Court also notes that the previously ordered individual measures associated with the criminal investigation have so far failed to bring about the required result of redressing the violations found. As a result, yet another breach of Articles 2 and 13 arises from the same set of facts, albeit for a different affected applicant. This situation raises great concern about impunity with respect to a serious human rights violation (see paragraphs 69-70 above) and thus demands actions over and above those set out in the *Abuyeva and Others* judgment, cited above (§ 240). In the Court's view, such concerns should be addressed by a variety of both individual and general measures consisting of appropriate reactions from the State institutions, aimed at drawing lessons from the past, raising awareness of the applicable legal and operational standards and at deterring new violations of a similar nature. Such measures could include recourse to non-judicial means of collecting information and establishing the truth about these tragic events; public acknowledgement and condemnation of a serious violation of the right to life in the course of security operation; assessing the adequacy of the national legal instruments pertaining to large-scale security operations and the mechanisms governing military-civilian cooperation in such situations; and greater dissemination of information and better training for both military and security personnel in order to ensure strict compliance with the relevant legal standards, including human rights and international humanitarian law. At the same time, and in line with the findings of paragraph 111 above *in fine*, the Court reiterates that the object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective and that impunity for those responsible for gross human rights violations would not be compatible with the States'

obligations under the Convention (see *Marguš v. Croatia* [GC], no. 4455/10, § 127, ECHR 2014 (extracts)).

113. Next, the Court notes that the case at hand provides a compelling example of the need to ensure proper protection of the interests of victims, particularly vulnerable victims. The Russian Federation should take all steps necessary to safeguard the legitimate interests of the applicant, starting by taking into account in all future proceedings the information concerning her family members' deaths, and ensuring that she is fully informed of all relevant procedural steps and is provided with the necessary information and legal advice in sufficiently good time to be able to effectively participate in these proceedings, including commissioning any further expert reports. Independent of the outcome of the criminal investigation, it appears desirable as a matter of urgency to set up and implement an accessible and effective mechanism for the purposes of seeking adequate reparation for the harm suffered by the applicant and other victims in the present case.

114. To sum up, the Court finds that in the context of the present case it is incumbent on the Committee of Ministers, acting under Article 46 of the Convention, to continue to address the issue of what may be required of the respondent Government by way of compliance, through both individual and general measures (see also *McCaughey and Others v. the United Kingdom*, no. 43098/09, § 145, ECHR 2013). Within these proceedings, the specific measures required of the Russian Federation in order to discharge its obligations under Article 46 of the Convention must be determined in the light of the terms of the Court's judgments, and with due regard to the above-mentioned conclusions in respect of the failures of the investigation carried out to date. In the light of the Court's findings, these measures should focus on the continued criminal investigation, but also on non-judicial mechanisms aimed at learning lessons and ensuring the non-repetition of similar occurrences in the future, and ensuring adequate protection of the applicant's rights in any new proceedings, including access to measures for obtaining reparation for the harm suffered.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

115. 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

116. The applicant claimed 12,600 euros (EUR) in respect of pecuniary damage. She argued that she had lost the financial support of her both parents at the age of eight and, with reference to the monthly minimal living standard for Chechnya of 2010, thus calculated the above sum as the amount of the financial support which would have been available to her until the age of majority.

117. The applicant stressed that the violent deaths of her five family members – her entire family – and her own injuries have caused her non-pecuniary damage. She asked to be awarded EUR 500,000 under this heading.

118. The Government questioned the reasonableness of and justification for these claims.

119. The Court notes the reasons advanced by the applicant in respect of her claims of pecuniary damage. It reiterates that there must be a clear causal connection between damages claimed by applicants and a violation of the Convention, and that this may, where appropriate, include compensation in respect of loss of earnings in the event of a violation of Article 2. The Court further finds that the loss of earnings applies to close relatives of the deceased, including spouses, elderly parents and children who are minors (see, among other authorities, *Imakayeva v. Russia*, no. 7615/02, § 213, ECHR 2006-XIII (extracts)). It also reiterates that it has found a violation of Articles 2 and 13 of the Convention in respect of the applicant and her five deceased family members, both in respect of the attack itself and the failure to investigate. It awards the applicant EUR 12,600 in respect of pecuniary damage and EUR 300,000 in respect of non-pecuniary damage.

B. Costs and expenses

120. The applicant also claimed 600 pounds sterling (GBP) for the costs and expenses incurred in the proceedings before the Court. She submitted a detailed breakdown of the legal consultants' work and the rates applied, plus translators' invoices in the amount of GBP 807, and claimed reimbursement of administrative expenses of GBP 160. She asked for the payment in respect of costs and expenses to be made in pounds sterling to EHRAC's account in London.

121. The Government challenged the calculation under this heading.

122. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its

possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,175 covering costs for the proceedings before the Court.

C. Default interest

123. The Court considers it appropriate that the default interest rate 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. *Declares* the complaints under Articles 2 and 13 admissible and the remainder inadmissible;

2. *Holds* that there has been a violation of Article 2 of the Convention in respect of the applicant and her five relatives;

3. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the use of lethal force by State agents;

4. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2;

5. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 12,600 (twelve thousand six hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 300,000 (three hundred thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 2,175 (two thousand one hundred and seventy-five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the representatives' bank account in the UK;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 15 October 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	András Sajó
Registrar	President