

## Paras 1 to 59

**N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents.** Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: Case of Isayeva v. Russia, European Court of Human Rights, Application no. 57950/00, Judgement, Strasbourg, 24 February 2005; footnotes omitted; available on <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-68381>]

## CASE OF ISAYEVA v. RUSSIA (Application no. 57950/00)

### JUDGMENT

**STRASBOURG 24 February 2005**

In the case of Isayeva v. Russia,

The European Court of Human Rights (Former First Section), sitting as a Chamber [...]

Having deliberated in private on 14 October 2004 and 27 January 2005, Delivers the following judgment, which was adopted on the last-mentioned date:

### PROCEDURE

1. The case originated in an application (no. 57950/00) against the Russian Federation lodged with the Court under [...] the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Ms Zara Adamovna Isayeva (“the applicant”), on 27 April 2000. [...]
2. The applicant alleged that she was a victim of indiscriminate bombing by the Russian military of her native village of Katyr-Yurt on 4 February 2000. As a result of the bombing, the applicant’s son and three nieces were killed. She alleged a violation of Articles 2 [right to life] and 13 [effective remedy]

before a national authority] of the Convention. [...]

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE [...]

#### A. The facts [...]

##### 1. The attack on Katyr-Yurt

1. In autumn 1999 Russian federal military forces launched operations in Chechnya. In December 1999 rebel fighters (“*boyeviki*”) were blocked by the advancing federal forces in Grozny, where fierce fighting took place.
2. The applicant submits that at the end of January 2000 a special operation was planned and executed by the federal military commanders in order to entice the rebel forces from Grozny. Within that plan, the fighters were led to believe that a safe exit would be possible out of Grozny towards the mountains in the south of the republic. Money was paid by the fighters to the military for information about the exit and for the safe passage. Late at night on 29 January 2000 the fighters left the besieged city and moved south. They were allowed to leave the city. However, once they had left the city they were caught in minefields and the artillery and air force bombarded them along the route. [...]
3. A significant group of Chechen fighters – ranging from several hundred to four thousand persons – entered the village of Katyr-Yurt early on the morning of 4 February 2000. According to the applicant, the arrival of the fighters in the village was totally unexpected and the villagers were not warned in advance of the ensuing fighting or about safe exit routes.
4. The applicant submitted that the population of Katyr-Yurt at the relevant time was about 25,000 persons, including local residents and internally displaced persons (IDPs) from elsewhere in Chechnya. She also submitted that their village had been declared a “safe zone”, which attracted people fleeing from fighting taking place in other districts of Chechnya.
5. The applicant submitted that the bombing started suddenly in the early hours of 4 February 2000. The applicant and her family hid in the cellar of their house. When the shelling subsided at about 3 p.m. the applicant and her family went outside and saw that other residents of the village were packing their belongings and leaving, because the military had apparently granted safe passage to the village’s residents. The applicant and her family, together with their neighbours, entered a Gazel minibus and drove along Ordzhonikidze road, heading out of the village. While they were on the road, the planes reappeared, descended and bombed cars on the road. This occurred at about 3.30 p.m.
6. The applicant’s son, Zelimkhan Isayev (aged 23) was hit by shrapnel and died within a few minutes. Three other persons in the vehicle were also wounded. During the same attack the applicant’s three nieces were killed: Zarema Batayeva (aged 15), Kheda Batayeva (aged 13) and Marem (also spelled Maryem) Batayeva (aged 6). The applicant also submitted that her nephew, Zaur Batayev, was wounded on that day and became handicapped as a result. [...]
7. The applicant submitted that the bombardment was indiscriminate and that the military used heavy and indiscriminate weapons, such as heavy aviation bombs and multiple rocket launchers. In total, the applicant submits that over 150 people were killed in the village during the bombing, many of whom were displaced persons from elsewhere in Chechnya. [...]

8. According to the Government, at the beginning of February 2000 a large group of Chechen fighters, headed by the field commander Gelayev and numbering over 1,000 persons forced their way south after leaving Grozny. On the night of 4 February 2000 they captured Katyr-Yurt. The fighters were well-trained and equipped with various large-calibre firearms, grenade- and mine-launchers, snipers' guns and armoured vehicles. Some of the population of Katyr-Yurt had already left by that time, whilst others were hiding in their houses. The fighters seized stone and brick houses in the village and converted them into fortified defence points. The fighters used the population of Katyr-Yurt as a human shield. [...]
9. The federal troops gave the fighters an opportunity to surrender, which they rejected. A safe passage was offered to the residents of Katyr-Yurt. In order to convey the information about safe exit routes, the military authorities informed the head of the village administration. They also used a mobile broadcasting station which entered the village and a Mi-8 helicopter equipped with loudspeakers. In order to ensure order amongst the civilians leaving the village, two roadblocks were established at the exits from the village. However, the fighters prevented many people from leaving the village.
10. Once the residents had left, the federal forces called on the air force and the artillery to strike at the village. The designation of targets was based on incoming intelligence information. The military operation lasted until 6 February 2000. The Government submitted that some residents remained in Katyr-Yurt because the fighters did not allow them to leave. This led to significant civilian casualties – 46 civilians were killed, [...].
11. According to the Government's observations on the admissibility of the complaint, 53 federal servicemen were killed and over 200 were wounded during the assault on Katyr-Yurt. The Government also submitted that, as a result of the military operation, over 180 fighters were killed and over 240 injured. No information about combatant casualties on either side was contained in their observations on the merits. The criminal investigation file reviewed by the Court similarly contains no information on non-civilian casualties.
12. The events at the beginning of February 2000 were reported in the Russian and international media and in NGO reports. Some of the reports spoke of serious civilian casualties in Katyr-Yurt and other villages during the military operation at the end of January – beginning of February 2000.

## **2. The investigation of the attack [...]**

1. On 24 August 2002 the military prosecutor of military unit no. 20102 replied to the NGO Memorial's enquiry about a criminal investigation. The letter stated that a prosecutor's review had been conducted following the publication on 21 February 2000 in the Novaya Gazeta newspaper of article entitled "167 Civilians Dead in Chechen Village of Katyr-Yurt". The review established that between 3 and 7 February 2000 a special military operation aimed at the destruction of illegal armed groups had taken place in Katyr-Yurt. The Western Alignment of the army and the interior troops had performed the operation according to a previously prepared plan: the village had been blocked and civilians had been allowed to leave through a corridor. The command corps of the operation had assisted the villagers to leave the village and to remove their possessions. Once the commanders were certain that the civilians had left the village, missiles had been deployed against Katyr-Yurt. Other means had also been employed to destroy the fighters. No civilians had been harmed as a result of the operation, as confirmed by the commandant of the security area of the Urus-Martan district. On the basis of the above, on 1 April 2000 the prosecutors refused to open an investigation into the alleged deaths of civilians due to the absence of *corpus delicti*. The criminal investigation file reviewed by the Court contained no reference to this set

of proceedings. [...]

2. In their further submissions the Government informed the Court that on 16 September 2000 a local prosecutor's office in Katyr-Yurt, acting on complaints from individuals, had opened criminal case no. 14/00/0003-01 to investigate the deaths of several persons from a rocket strike in the vicinity of the village. The case concerned the attack on the Gazel minibus on 4 February 2000, as a result of which three civilians died and two others were wounded. In December 2000 the case file was forwarded to the office of the military prosecutor in military unit no. 20102. Later in 2001 the case-file was transferred for investigation to the military prosecutor of the Northern Caucasus Military Circuit in Rostov-on-Don.
3. The investigation confirmed the fact of the bombing of the village and the attack on the Gazel minivan, which led to the deaths of the applicant's son and three nieces and the wounding of her relatives. It identified and questioned several dozen witnesses and other victims of the assault on the village. The investigation identified 46 civilians who had died as a result of the strikes and 53 who had been wounded. In relation to this, several dozen persons were granted victim status and recognized as civil plaintiffs. The investigators also questioned military officers of various ranks, including the commanders of the operation, about the details of the operation and the use of combat weapons. The servicemen who were questioned as witnesses gave evidence about the details of the operation's planning and conduct. No charges were brought (see Part B below for a description of the documents in the investigation file).
4. The investigation also checked whether the victims had been among the insurgents or if members of the unlawful armed groups had been implicated in the killings.
5. On 13 March 2002 the investigation was closed due to a lack of corpus delicti. [...]

***e) Identification and questioning of other victims [...]***

1. Roza D. testified that their house on the edge of the village was bombed on the morning of 4 February 2000. The first explosion occurred in her courtyard and wounded her two year old son, who died of his wounds early in the morning on 6 February. She remained in a cellar until 6 February, when she, with some other people, attempted to leave for Valerik. However, the roadblock was closed and the soldiers told them that they had an order from General Shamanov not to let anyone out. They remained in the cellar of an unfinished house on the edge of the village, near the exit to Valerik, for one more day, and on 8 February she returned home. [...]

## **Paras 66 to 110**

***g) Statement by Major-General Shamanov***

1. On 8 October 2001 the investigation questioned Major-General Vladimir Shamanov, who at the material time had headed the operations centre (OC) of the Western Zone Alignment in Chechnya, which had included the Achkhoy-Martan district [...].
2. On the morning of the day on which the operation started (Mr Shamanov could not recall the exact date) the fighters had attacked the federal forces. They were well-equipped and armed with automatic weapons, grenade-launchers and fire-launchers, and used trucks armoured with metal sheets. He stated:

“Realising that the identity check in the village could not be conducted by conventional means without entailing heavy losses among the contingent, Nedobitko, absolutely correctly from a military point of view, decided to employ army aviation and ground attack air forces, artillery and mine-launchers against the fortified positions of the fighters entrenched in the village. Failure to employ these firm and drastic measures in respect of the fighters would have entailed unreasonably high losses among the federal forces in conducting the special operation and a failure to accomplish the operative task in the present case. All this would have demonstrated impotence on the part of the federal authorities, would have called into question the successful completion of the counter-terrorist operation and the reinstatement of constitutional order in Chechnya. Failure to accomplish these tasks would threaten the security of the Russian Federation. Besides, our indecisiveness would have attracted new supporters to the illegal armed groups, who had adopted a wait-and-see attitude at the relevant time. This would have indefinitely extended the duration of the counter-terrorist operation and would have entailed further losses among the federal forces and even higher civilian casualties.”

1. He stated that the fire-power employed had been directed at the fighters' positions “on the edges of the village and in its centre, near the mosque”. Civilians were allowed to leave the village. The fighters were offered surrender, with a guarantee of personal safety, which they refused. They thus used the villagers as a human shield, entailing high civilian casualties.
2. In his opinion, the population of Katyr-Yurt should have prevented the fighters' entry into the village. Had they done so, as had happened earlier in the village of Shalazhi, there would have been no need to conduct such a “severe mopping-up operation” and to deploy aviation and artillery, and thus the unfortunate civilian losses could have been avoided. The losses among fighters, in his estimation, were about 150 persons. The rest escaped from the village at night, under cover of thick fog.
3. He was asked what measures were taken to ensure maximum security of the civilians during the operation in Katyr-Yurt. In response, Mr Shamanov responded that Nedobitko used a Mi-8 helicopter equipped with loud-speakers to inform civilians about the safe exit routes he had established. [...]

#### ***h) Statement by Major-General Nedobitko [...]***

1. [...]

“From Shamanov I learnt that a large group of fighters, having escaped from Lermontov-Yurt, had entered Katyr-Yurt. Shamanov ordered me to conduct a special operation in Katyr-Yurt in order to detect and destroy the fighters.

I drew up a plan of the special operation, which defined units of isolation, units of search, rules of fire in case of enemy fire, positions of ... roadblocks... Two roadblocks were envisaged – one at the exit towards Achkhoy-Martan, another – towards Valerik. ... The involvement of aviation was foreseen should the situation deteriorate. The artillery actions were planned ... in advance in order to target the possible bandit groups' retreat routes and the lines of arrival of reserves to assist the besieged groups. The artillery were only to be involved in the event of enemy fire against the search groups.

This plan was drawn up the night before the operation. On the evening of the same day Shamanov called me to the command headquarters of the Western Zone to discuss the details of the operation. We foresaw the presence of refugees and fighters, and planned to check documents. Early in the morning on the following day I was returning to our position with two APCs. On the eastern side of the village, towards Valerik, there had been an exchange of fire. An Ural truck was on fire, three dead bodies lay on the ground and there were a few wounded. These were OMON [special police force units] from Udmurtia. We were also attacked from the village.

We descended and fired back. Then, under cover of the APCs, we moved south toward our command point. I immediately informed Shamanov about the deterioration in the situation. He authorised me to conduct the special operation in accordance with my plan.

Colonel R., commander of ... regiment, informed me that he had met with the head of administration of Katyr-Yurt, who stated that there were no fighters in the village, just a small 'stray' group who had had a skirmish with OMON forces. I did not know the number of fighters in the village, so I ordered that the search be carried out by previously determined groups of special forces from the interior troops, without artillery or aviation support. If there were few fighters, they could be destroyed by the search groups. If their number was substantial, they could be destroyed by tanks shooting directly at specific points, i.e. by pinpoint attacks. And if it was a very big bandit grouping, then it would be impossible to avoid the use of artillery and aviation, because otherwise the personnel losses would be too high.

The search groups moved out ... they were attacked... and I ordered them to retreat. One group could not withdraw... Realising that the use of artillery and aviation could not be avoided, I ordered colonel R. to organise evacuation of the civilians from the village, which he did through the head of the village administration. For that purpose colonel R. used a vehicle equipped with loudspeakers, through which he was able to inform the population of the houses on the edge of the village about the need to leave. The civilians were leaving the village through the pre-established roadblocks." [...]

***i) Testimony by servicemen in the ground forces [...]***

1. Servicemen from the special forces of the Samara interior troops gave evidence about their participation in the Katyr-Yurt operation. One of two testimonies was disclosed by the Government. Serviceman B. testified that his unit was on mission in Chechnya in January – March 2000. On some date at the beginning of February they were deployed to Katyr-Yurt. Their unit was attacked near the river. He understood that civilians had been given three days to leave the village. From their positions they could clearly distinguish fighters from civilians, based on the presence of firearms and beards. [...]

***j) Testimony by servicemen from the air force, helicopters and tank battalion***

1. Two pilots from the army air force were questioned in relation to the attack on Katyr-Yurt. They were identified by the Government as pilot no. 1 and pilot no. 2. Both pilots stated that their unit took part in

the bombardment of Katyr-Yurt on 4 February 2000. The mission sortie was between 12 and 2 p.m. on two SU-25 planes, each carrying six FAB-250 bombs. They dropped the bombs from a height of about 600 metres. The weather conditions were quite bad, and normally in such conditions they would not fly, but on that day the ground troops were in serious need of support. The targeting was done by a ground air controller who was positioned at the operation centre near the village. He indicated the targets and later reported to them that the bombing had been successful. In response to the question of whether they had seen any civilians or civilian vehicles in the streets of the village, the pilots either responded that the visibility was so bad – because of clouds and the smoke from burning houses – that they could not see anything, or that they did not see civilians or civilian transport. [...]

2. When asked if he was aware of a plan to evacuate civilians, the air-controller responded that on the first day of his arrival Nedobitko mentioned that his initial plan had been to offer the fighters a chance to surrender or for the civilians to leave, but once the OMON forces had been attacked he had called in fighter jets.
3. Several helicopter pilots were questioned. They testified about taking part in the Katyr-Yurt operation. They employed non-guided missiles against the area targets indicated to them by forward air-controllers. They did not see any civilians or civilian vehicles in the village, only fighters who attacked them with machine-guns. [...]

**k) Other documents from the military [...]**

1. The military aerodrome submitted information to the effect that the horizontal fragment dispersion of a high explosion aviation bomb FAB-250 was 1,170 metres.

**l) Military experts' report**

1. On 26 November 2001 the investigator requested an expert opinion from the Combined Armed Services Military Academy in Moscow. Six questions were posed to the experts, who were given access to the investigation file. The questions concerned the accuracy of planning and conducting of the operation, the kind of documents and orders that should have been issued and the question of compliance of the operation in Katyr-Yurt with internal military rules. The experts were also asked to evaluate the propriety of Major-General Nedobitko's decision to deploy aviation and artillery against the fighters' positions; another question was to evaluate whether all necessary measures had been taken by the command corps of the OC of the Western Zone Alignment to minimize civilian victims in Katyr-Yurt.
2. On 11 February 2002 six of the Academy's professors, with military ranks from lieutenant-colonel to major-general, produced their report. They had had access to military documents, such as the operational orders of the United Group Alignment, of the OC of the Western Zone Alignment, log-books etc. They also used six legal acts as a basis for their report, the titles of which were not disclosed to the Court. The report found as a fact that the decision to employ aviation and artillery was taken by Major-General Nedobitko after the forces under his command had been attacked when they tried to enter the village. Aviation and artillery fire power was involved from 8.30 a.m. on 4 February until 6 February 2000.
3. The expert report concluded that the actions of the officers of the internal troops involved in the special operation to eliminate illegal armed groups in Katyr-Yurt on 4-6 February 2000 were in conformity with the Army Field Manual and the Internal Troops Field Manual. Analysis of the operative and tactical

situation, as well as a videotape reviewed, permitted the experts to conclude that the decision to involve aviation and artillery had been a correct and well founded one. This conclusion was further reinforced by reference to article 19 of the Army Field Manual, which states: "The commanding officer's resolve to defeat the enemy should be firm and should be accomplished without hesitation. Shame on the commander who, fearing responsibility, fails to act and does not involve all forces, measures and possibilities for achieving victory in a battle".

4. As to minimising civilian losses, the report concluded that certain measures were taken to that effect: the commanding officers organised and carried out an exodus of the population from the village, and chose a localised method of fire. The administration and the population of the village were informed about the need to leave the area of the operation and the necessary time was provided for this. A roadblock was established at the village's western exit, equipped with a filtration point and manned by servicemen from the Ministry of the Interior and the Federal Security Service, located away from the area of the combat operations. The report further suggested that the losses could have been further minimised if additional time had been allocated for the civilians' departure. However, that same time could have been used by the fighters to prepare more thoroughly for defence of the village, which could have entailed additional losses among federal forces. Finally, the experts reported that it was not possible to reach any definite conclusions about what had prevented the village's entire population from leaving safely, but that it was probably the fighters. [...]

## **2. Additional witness statements submitted by the applicant [...]**

1. The applicant submitted five additional testimonies by witnesses and victims about the attack on Katyr-Yurt. Witness A. testified that by the beginning of February 2000 the village was under the firm control of the federal forces and that there were about eight to ten thousand IDPs, because people thought there would be no fighting in Katyr-Yurt. There were military roadblocks around the village and a commandatura in its centre. The aviation strike at 9 a.m. on 4 February 2000 was totally unexpected. The witness tried to leave the village between 4 and 5 p.m. on 4 February, but the car he was travelling in was shot at from a helicopter and he and his relatives were wounded. He escaped on 5 February, having lost two relatives. On the road he saw many dead people and burnt cars. The road was covered with debris from destroyed houses. The road towards Achkhoy-Martan was filled with people trying to leave, and the soldiers would not allow anyone through, even the wounded. The witness received no assistance from the State. He stated that when he went to the head of the village administration to report the deaths of his relatives he saw a list with the names of 272 civilians who had been killed. Witnesses B., C. and D. gave evidence about heavy bombing on 4 and 5 February 2000, which involved aviation, helicopters, artillery and Grad multiple missile-launchers. They also testified about General Shamanov's arrival at the roadblock, when he allegedly ordered the soldiers not to let people out of the village. They cited his orders to "filter out" all men, but these orders were not enforced by the interior troops. [...]

## **Paras 116 to 200**

### **II. RELEVANT DOMESTIC LAW AND PRACTICE**

#### **a) *The Constitutional provisions***

1. Article 20 of the Constitution of the Russian Federation protects the right to life.
2. Article 46 of the Constitution guarantees the protection of rights and liberties in a court of law by providing that the decisions and actions of any public authority may be appealed to a court of law. Section 3 of the same Article guarantees the right to apply to international bodies for the protection of human rights once domestic legal remedies have been exhausted.
3. Articles 52 and 53 provide that the rights of victims of crime and abuse of power shall be protected by law. They are guaranteed access to the courts and compensation by the State for damage caused by the unlawful actions of a public authority.
4. Article 55 (3) provides for the restriction of rights and liberties by federal law, but only to the extent required for the protection of the fundamental principles of the constitutional system, morality, health, rights and lawful interests of other persons, the defence of the country and the security of the state.
5. Article 56 of the Constitution provides that a state of emergency may be declared in accordance with federal law. Certain rights, including the right to life and freedom from torture, may not be restricted.

#### ***b) The Law on Defence***

1. Section 25 of the Law on Defence of 1996 [...] provides that “supervision of adherence to the law and investigations of crimes committed in the Armed Forces of the Russian Federation, other Forces, military formations and authorities shall be exercised by the General Prosecutor of the Russian Federation and subordinate prosecutors. Civil and criminal cases in the Armed Forces of the Russian Federation, other forces, military formations and authorities shall be examined by the courts in accordance with the legislation of the Russian Federation.”

#### ***c) The Law on the Suppression of Terrorism***

1. The 1998 Law on the Suppression of Terrorism [...] provides as follows:

##### *“Section 3. Basic Concepts*

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

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

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

‘zone of a counter-terrorist operation’ shall refer to an individual land or water surface, means of transport, building, structure or premises with adjacent territory where a counter-terrorist operation is conducted; ...

##### *Section 13. Legal regime in the zone of an anti-terrorist operation*

1. In the zone of an anti-terrorist operation, the persons conducting the operation shall be entitled:

2. to check the identity documents of private persons and officials and, where they have no identity documents, to detain them for identification;
3. to detain persons who have committed or are committing offences or other acts in defiance of the lawful demands of persons engaged in an anti-terrorist operation, including acts of unauthorised entry or attempted entry to the zone of the anti-terrorist operation, and to convey such persons to the local bodies of the Ministry of the Interior of the Russian Federation;
4. to enter private residential or other premises ... and means of transport while suppressing a terrorist act or pursuing persons suspected of committing such an act, when a delay may jeopardise human life or health;
5. to search persons, their belongings and vehicles entering or exiting the zone of an anti-terrorist operation, including with the use of technical means; ...

#### *Section 21. Exemption from liability for damage*

In accordance with and within the limits established by the legislation, damage may be caused to the life, health and property of terrorists, as well as to other legally-protected interests, in the course of conducting an anti-terrorist operation. However, servicemen, experts and other persons engaged in the suppression of terrorism shall be exempted from liability for such damage, in accordance with the legislation of the Russian Federation.” [...]

#### **f) *Situation in the Chechen Republic***

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

#### **THE LAW [...]**

##### **A. The alleged failure to protect life**

##### **1. Arguments of the parties**

###### **a) *The applicant***

1. The applicant submitted that the way in which the military operation in Katyr-Yurt had been planned, controlled and executed constituted a violation of Article 2. She submitted that the use of force which resulted in the death of her son and nieces and the wounding of herself and her relatives was neither absolutely necessary nor strictly proportionate.
2. The applicant stated that the commanders of the Russian federal forces must have been aware of the route taken by the rebel forces out of Grozny and could have reasonably expected their arrival at Katyr-Yurt, and either prevented it or warned the civilian population. Moreover, there is evidence to suggest that they had knowingly and intentionally organised a passage for the rebels which drew them into villages, including Katyr-Yurt, where they were attacked.
3. Once the rebels were in the village, the military used indiscriminate weapons such as “Grad” multiple

missile-launchers, FAB-250 and FAB-500 heavy aviation bombs with a destruction radius exceeding 1,000 metres and “Buratino” thermobaric, or vacuum, bombs. In the applicant's view, the latter are prohibited by international law on conventional weapons. These weapons cannot be regarded as discriminate, nor as appropriate for the declared aim of “identity checks”. No safe passage was provided for the civilians. Civilians who left the village did so under fire and were detained at the roadblock. As to the military advantage gained by the operation, the applicant referred to the absence of any specific data to that effect in the investigation file. It was not disputed that most of the rebels, together with their commanders, had escaped the village despite the heavy bombardment. There was no exact information about the number or descriptions of the fighters killed or captured during the operation, a description or list of weapons seized etc.

4. The applicant submitted that the military experts based their conclusion about the appropriateness of the attack on legal acts which permitted or even incited the use of indiscriminate weapons, such as Article 19 of the Army Field Manual, which ordered commanding officers to make use of any available weapons in order to achieve victory.
5. The applicant also referred to the third party submissions made in the cases of *Isayeva v. Russia*, *Yusupova v. Russia* and *Bazayeva v. Russia* (nos. 57947/00, 57948/00 and 57949/00) [[available on www.echr.coe.int/](http://www.echr.coe.int/)], in which Rights International, a USA-based NGO, summarised for the Court the relevant rules of international humanitarian law governing the use of force during attacks on mixed combatant/civilian targets during a non-international armed conflict.
6. The applicant pointed to the Government's failure to produce all the documents contained in the case-file related to the investigation of the attack. In her opinion, this should lead the Court to draw inferences as to the well-foundedness of her allegations.

#### **b) The Government**

1. The Government did not dispute the fact of the attack or the fact that the applicant's son and her three nieces had been killed and that the applicant and her other relatives had been wounded.
2. The Government argued that the attack and its consequences were legitimate under Article 2 para. 2 (a), i.e. they had resulted from the use of force absolutely necessary in the circumstances for protection of a person from unlawful violence. The use of lethal force was necessary and proportionate to suppress the active resistance of the illegal armed groups, whose actions were a real threat to the life and health of the 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 by the operation's command corps had been proportionate. The combat weapons were specifically directed against previously-designated targets.
3. The Government further submitted that the applicant and other civilians were properly informed about the ensuing assault and the need to leave the village, for which purpose the military used a helicopter and a mobile broadcasting station equipped with loudspeakers. Military checkpoints were placed at the two exits from Katyr-Yurt. However, the federal forces' attempts to organise a safe exit for the population were sabotaged by the actions of the fighters, who prevented the residents from leaving and provoked fire from the federal forces, using them as a “human shield”. The documents of the criminal investigation file demonstrated, in the Government's opinion, that the majority of the civilian casualties had been sustained at the initial stage of the special operation, i.e. on 4 February 2000, and in the centre of the village, where the most severe fighting between the federal troops and the insurgents

occurred.

## **2. The Court's evaluation [...]**

### ***b) Application in the present case [...]***

1. 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. The Court will now consider whether the actions in the present case were no more than absolutely necessary for achieving the declared purpose. [...]
2. At the outset it has to be stated that the Court's ability to make an assessment of how the operation was planned and executed is hampered by the lack of information before it. The Government did not disclose most of the documents related to the military action. No plan of the operation, no copies of orders, records, log-book entries or evaluation of the results of the military operation have been submitted and, in particular, no information has been submitted to explain what was done to assess and prevent possible harm to civilians in Katyr-Yurt in the event of deployment of heavy combat weapons. [...]
3. The applicant submits that the military must have known in advance about the very real possibility of the arrival of a large group of fighters in Katyr-Yurt, and further submits that they even incited such an arrival. The Court notes a substantial amount of evidence which seems to suggest that the fighters' arrival was not so unexpected for the military that they had no time to take measures to protect the villagers from being caught up in the conflict. [...]
4. In contrast, the applicant and other villagers questioned stated that they had felt safe from fighting due to the substantial military presence in the district, roadblocks around the village and the apparent proclamation of the village as a "safety zone". An OMON detachment was stationed directly in Katyr-Yurt. The villagers' statements describe the arrival of fighters and the ensuing attack as something unexpected and not foreseen (see paras 15, 59, 110 above).
5. The Court has been given no evidence to indicate that anything was done to ensure that information about these events was conveyed to the population before 4 February 2000, either directly or through the head of administration. However, the fact that the fighters could have reasonably been expected, or even incited, to enter Katyr-Yurt clearly exposed its population to all kinds of dangers. Given the availability of the above information, the relevant authorities should have foreseen these dangers and, if they could not have prevented the fighters' entry into the village, it was at least open to them to warn the residents in advance. The head of the village administration, whose role in communicating between the military and the residents of the village appears to have been perceived as a key one, was questioned only once and no questions were put to him about the circumstances of the fighters' arrival or about the organisation of a safe exit for residents.
6. Taking into account the above elements and the reviewed documents, the Court concludes that the military operation in Katyr-Yurt was not spontaneous. The operation, aimed at either disarmament or destruction of the fighters, was planned some time in advance. [...]
7. Once the fighters' presence and significant number had become apparent to the authorities, the operation's commanders proceeded with the variant of the plan which involved a bomb and missile strike at Katyr-Yurt. Between 8 and 9 a.m. on 4 February 2000 Major-General Nedobitko called in fighter

jets, without specifying what load they should carry. The planes, apparently by default, carried heavy free-falling high-explosion aviation bombs FAB-250 and FAB-500 with a damage radius exceeding 1,000 metres. According to the servicemen's statements, bombs and other non-guided heavy combat weapons were used against targets both in the centre and on the edges of the village [...].

8. The Court considers that using this kind of weapon in a populated area, outside wartime and without prior evacuation of the civilians, is impossible to reconcile with the degree of caution expected from a law-enforcement body in a democratic society. No martial law and no state of emergency has been declared in Chechnya, and no derogation has been made under Article 15 of the Convention [...]. The operation in question therefore has to be judged against a normal legal background. Even when faced with a situation where, as the Government submit, 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 be to protect lives from unlawful violence. The massive use of indiscriminate weapons stands in flagrant contrast with this aim and cannot be considered compatible with the standard of care prerequisite to an operation of this kind involving the use of lethal force by State agents.
9. During the investigation, the commanders of the operation submitted that a safe passage had been declared for the population of Katyr-Yurt; that the population has been properly informed of the exit through the head of administration and by means of a mobile broadcasting station and a helicopter equipped with loudspeakers; and that two roadblocks were opened in order to facilitate departure.
10. The documents reviewed by the Court confirm that a measure of information about a safe passage had [...] been conveyed to the villagers. Several servicemen gave evidence about the steps taken, although these submissions are not entirely consistent. One resident confirmed having seen a helicopter equipped with loudspeakers in the morning of 4 February 2000, although she could not make out the words because of the fighting around [...]. The applicant and numerous other witnesses stated that they had learnt, mostly from their neighbours, that the military would permit civilians to exit through a humanitarian corridor. Although no document submitted by the military and reviewed by the Court indicated the timing of this pronouncement, the villagers indicated the timing at about 3 p.m. on 4 February 2000. It thus appears that the declaration of the corridor became known to the residents only after several hours of bombardment by the military using heavy and indiscriminate weapons, which had already put the residents' lives at great risk. [...]
11. Once the information about the corridor had spread, the villagers started to leave, taking advantage of a lull in the bombardments. The presence of civilians and civilian cars on the road leading to Achkhoy-Martan in the afternoon of 4 February 2000 must have been fairly substantial. One of the witnesses submitted that many cars were lined up in Ordzhonikidze Street when they were leaving. The applicant stated that their neighbours were leaving with them at the same time [...]. Colonel R. stated that on the first day of bombing the villagers left Katyr-Yurt *en masse* by the road to Achkhoy-Martan [...]. The soldiers manning the roadblock leading to Achkhoy-Martan must have seen people escaping from the fighting. This must have been known to the commanders of the operation and should have led them to ensure the safety of the passage. [...]
12. The applicant submitted that the existing domestic legal framework in itself failed to ensure proper protection of civilian lives. She made reference to the only disclosed legal act on which the conclusions of the military experts based their report, namely, the Army Field Manual. The Court agrees with the applicant that the Government's failure to invoke the provisions of any domestic legislation governing the use of force by the army or security forces in situations such as the present one, whilst not in itself sufficient to decide on a violation of the State's positive obligation to protect the right to life, is, in the

circumstances of the present case, also directly relevant to the Court's considerations with regard to the proportionality of the response to the attack [...].

13. To sum up, accepting that the operation in Katyr-Yurt on 4-7 February 2000 was pursuing a legitimate aim, the Court does not accept that it was planned and executed with the requisite care for the lives of the civilian population. [...]

## Discussion

1. a. Does the Court apply IHL? Could it do so under the European Convention of Human Rights (ECHR)?  
b. If the Court had applied IHL, would it have made the same balancing test as it did in paras 181-199 of the judgement?
2. How would you qualify the fighting between the Chechen fighters and the Russian federal forces in February 2000? Does the Court classify the conflict? When the Court writes in para. 191 that the weapons were used "outside wartime", does this mean that there was no armed conflict in Chechnya?
3. Is Article 19 of the Army Field Manual referred to in paras 97 and 166 (and considered by the Court in para. 199 to be an insufficient legal framework) contrary to IHL? Sufficient under IHL?

*[N.B.: From here on, when rules applicable to international armed conflicts are referred to, please discuss whether and why they may also apply in a non- international armed conflict.]*

1. If the village had been declared a "safe zone", as claimed by the appellant, should it have been granted special protection under IHL? Did the arrival of the Chechen fighters change this? (See by analogy, GC IV, Arts 14 and 15; P I, Art. 60; **See also** ICRC, Customary International Humanitarian Law [**See** Rules 35 and 36])
2. a. Was the plan described in para. 13 compatible with IHL? If the Russian federal forces had "knowingly and intentionally organised a passage for the rebels which drew them into villages", is this a violation of IHL?  
b. Under IHL, should government armed forces have informed the local population earlier about the possible arrival of rebel fighters (as the Court decided in para. 187, under the ECHR)? (**See** by analogy, P I, Art. 57; **See also** ICRC, Customary International Humanitarian Law [**See** Rule 20])
3. a. Did the rebel fighters violate IHL by entering the village? By intermingling with the civilian population? By using civilians as shields? By hindering civilians from leaving the village? (**See** by analogy, GC IV, Arts 28, 35 and 48; P I, Arts 51(7) and 58; **See also** ICRC, Customary International Humanitarian Law [**See** Rules 22-24])  
b. Under IHL, should the population have prevented the fighters from entering the village? Had they the right, as civilians, to prevent fighters from entering the village?
4. Were the methods used to inform the population of the "safe passage" (by notifying the head of the village administration and using a helicopter equipped with loudspeakers) sufficient? Was it lawful to attack the village indiscriminately (para. 26: "the federal forces called on the air force and the artillery to strike at the village") after such "free passage" was granted? Even if some civilians actually had not left? Even if some civilians had not left of their own free will? Is General Nedobitko correct in holding that "if it was a very big bandit grouping, then it would be impossible to avoid the use of artillery and aviation, because otherwise the personnel losses would be too high" (para. 74)? (**See** by analogy, P I, Arts

- 51(4), (5), (7) and (8); **See** also ICRC, Customary International Humanitarian Law [**See** Rules 15-21])
5. a. If there was an evacuation of the civilians through the “safe passage” as claimed by Major-General Nedobitko (para. 74), would the attack on the civilian vehicles trying to leave in this way be a violation of IHL? What about attacks on civilians trying to leave differently? What if there was no “safe passage”? (**See** GC I-IV, Art. 3; P II, Arts 4(1) **and** 13; by analogy, P I, Art. 51(2) **See also** ICRC, Customary International Humanitarian Law [**See** Rule 1])  
b. If General Shamanov did order that no one should pass the roadblocks during the attack, was it a violation of IHL?
  6. Under IHL, would the government forces have had to establish and keep the records mentioned in para. 182? Would such records be useful to implement the proportionality rule and the obligation of an attacker to take precautionary measures? (**See** by analogy, P I, Art. 57; **See also** ICRC, Customary International Humanitarian Law [**See** Rules 15-18])
  7. What do you think of the choice of weapons? What are the relevant rules of IHL? Do they appear to have been respected? Under IHL, should General Nedobitko have specified what munitions the air force should have used? (P II, Art. 13; by analogy, P I, Arts 35, 51(4) and 57; **See also** ICRC, Customary International Humanitarian Law [**See** Rules 15, 17, 70 and 71])
  8. What do you think of the Russian investigation of the attack, and the conclusions drawn? Did Russia have an obligation to investigate the allegations and punish those responsible for crimes? Assuming that it did, did this investigation fulfil that obligation? (**See** by analogy, GC I , Art. 49; GC II , Art. 50; GC III , Art. 129; GC IV, Art. 146; P I, Art. 85(1); **See also** ICRC, Customary International Humanitarian Law [**See** Rules 156 and 158])
  9. Is the exemption from liability of servicemen conducting anti-terrorist operations compatible with IHL? (**See** by analogy, HR, Art. 3; P I, Art. 91; **See also** ICRC, Customary International Humanitarian Law [**See** Rule 150])