



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

FIRST SECTION

CASE OF MOVSAYEVY v. RUSSIA

(Application no. 20303/07)

JUDGMENT

*This version was rectified on 26 April 2012
under Rule 81 of the Rules of Court*

STRASBOURG

14 June 2011

FINAL

28/11/2011

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

In the case of Movsayevy v. Russia,

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

Nina Vajić, *President*,

Anatoly Kovler,

Peer Lorenzen,

Elisabeth Steiner,

Khanlar Hajiyeu,

George Nicolaou,

Julia Laffranque, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 24 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 3678/06) 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 two Russian nationals, Ms Kisa Movsayeva and Mr Khozh-Akhmed Dashayevich Movsayev¹ (“the applicants”), on 23 April 2007.

2. The applicants were represented by lawyers from the Stichting Russian Justice Initiative (“SRJI”), an NGO based in the Netherlands with a representative office in Russia. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged that their relative, Mr Salambek Movsayev, had been abducted and killed by State servicemen in Chechnya in February-March 2006. They complained, in particular, under Articles 2 and 13 of the Convention.

4. On 27 August 2009 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application and to give notice of the application to the Government. Under the provisions of former Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. The Government objected to the joint examination of the admissibility and merits of the application. Having considered the Government’s objection, the Court dismissed it.

¹ Rectified on 26 April 2012: the text was “Mr Khozh-Magomed Movsayev”.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1965 and 1946 respectively. They live in Chechen-Aul in the Grozny district, Chechnya. The first applicant is the wife of Salambek (also known as Aslambek) Movsayev, who was born in 1966; the second applicant is his brother.

A. Abduction of Salambek Movsayev and subsequent events

1. Information submitted by the applicants

(a) Background information

7. At some point in the 1990s the first applicant, her husband Salambek Movsayev and their son moved from Chechen-Aul in Chechnya to Ingushetia. At the material time they lived in Achaluki, Ingushetia, and occasionally visited their relatives in Chechnya. The second applicant lived in Chechen-Aul, which had been under the full control of the Russian federal forces since 2000; checkpoints manned by military servicemen were on the roads leading to and from the settlement.

8. The applicants' and Salambek Movsayev's relative, Mr T.M., was suspected of active membership in illegal armed groups and had been on the authorities' wanted list since 2000. Officers of local law-enforcement agencies, including a district police officer, Mr S., had visited the second applicant's house on a number of occasions looking for Mr T.M.

(b) Abduction of Salambek Movsayev

9. On 24 February 2006 the first applicant, Salambek Movsayev and their twelve-year-old son visited the second applicant in Chechen-Aul. After the visit, at about 2 p.m. on the same day, they got into their VAZ-2104 car and drove to a repair shop in Chechen-Aul. Salambek Movsayev stopped at the shop to inquire whether a tape recorder belonging to him had been fixed. After spending just a few minutes there, he got back in the car and the family continued driving in the direction of Grozny.

10. The family was driving down Ordzhonikidze Street, about three houses away from the repair shop, when their car was stopped by two men in uniform, who had gotten out of a white VAZ-2107 car and a light-coloured VAZ-21010 car parked on the right side of the road.

11. One of the men, who was holding a gun, approached the driver's window. The other one was standing on the other side of the car. The man

with the gun asked Salambek Movsayev's name; the latter told him that his name was Aslambek. Then the man grabbed him by the collar and dragged him out of the car. Without providing any explanations or asking for documents he dragged Salambek over to the two cars parked nearby and pushed him into one of them. Meanwhile, another seven or eight armed men got out of the two cars. Two or three of them were in spotted camouflage uniforms; the rest were in black ones. None of them were wearing masks; some of them were of Slavic appearance.

12. When the first applicant saw her husband being forced into one of the cars, she and her son got out of their vehicle and ran after him. One of the armed men pointed his gun at her and told her in Chechen to get out of the way. After that the abductors drove away with Salambek Movsayev in the direction of Grozny. According to the applicants, a number of local residents witnessed the abduction of Salambek Movsayev. However, they did not provide the Court with any witness statements concerning the events.

(c) Events following the abduction

13. Immediately after her husband's abduction, the first applicant and her son drove back to the second applicant's house. They informed him about the abduction. The applicants called the district police officer Mr S., who had visited the second applicant's house looking for Mr T.M., and asked him about the whereabouts of Salambek Movsayev. The officer promised to help them find Salambek, but the applicants never heard from him again.

14. On the following morning, 25 February 2006 (in the submitted documents the date was also referred to as 24 February 2006), the applicants complained about the abduction of Salambek Movsayev to the Grozny district prosecutor's office and the Grozny district department of the interior ("the Grozny ROVD").

15. From 25 February to 13 March 2006 the applicants complained about the abduction to various law-enforcement agencies in Chechnya and requested to be provided with information about the whereabouts of their relative; however, the State authorities denied their involvement in the abduction of Salambek Movsayev and promised to assist the applicants in their search.

(d) Discovery of Salambek Movsayev's body

16. On 13 March 2006 the body of Salambek Movsayev was found in the Oktyabrskiy district of Grozny. The body was found by local boys in the vicinity of the fire station, in busy streets, not far from the Oktyabrskiy district department of the interior ("the Oktyabrskiy ROVD") and the checkpoint of the Russian military forces.

17. Police officers arrived at the site and found Salambek Movsayev's passport on the body. They informed a female relative of the applicants who lived in the Oktyabrskiy district of Grozny about the discovery and she informed the applicants about it.

18. Salambek Movsayev's documents for the car, his watch, a ring and money were missing. The clothing on the corpse was torn, but it was dry and relatively clean. Taking into account that eighteen days had passed since the abduction and that it had rained in the meantime, the state of Salambek Movsayev's clothing suggested to the applicants that he had been kept alive in a room and had been murdered shortly prior to the discovery of his body.

19. Some time later, after the police had handed over the body to the applicants, the second applicant inspected it. According to him, it was covered with bruises, the teeth were knocked out, and there were two gunshot wounds to the head, one of them in the left temporal area. The second applicant concluded that prior to his death Salambek Movsayev must have been tortured. The applicants neither took photographs of the body nor submitted it for a forensic examination.

20. On 29 March 2006 the Chechen-Aul village hospital issued certificate no. 110 confirming the death of Salambek Movsayev. The document stated that the cause of his death had been a gunshot wound to the head.

21. On 30 March 2006 the Grozny district department of registration of civil acts ('ЗАГС') issued official death certificate no. 570259 confirming the death of Salambek Movsayev on 13 March 2006.

22. In support of their submissions the applicants submitted the following documents: a statement by the first applicant dated 16 February 2007; two statements by the second applicant dated 7 April 2006 and 16 February 2007; a copy of medical certificate no. 110 dated 29 March 2006 and a copy of Salambek Movsayev's death certificate.

2. Information submitted by the Government

23. The Government did not dispute the circumstances of Salambek Movsayev's abduction and the subsequent discovery of his corpse. However, in their observations on the admissibility and merits of the application of 20 January 2010 they pointed out that in her statements to the investigative authorities the first applicant had mentioned that the abductors had been a group of seven or eight men, whereas in her submission to the Court she had stated that the group had comprised nine or ten persons. The Government also stressed that only in her submission to the Court had the first applicant stated that some of the abductors had been of Slavic appearance, whereas she had never mentioned this to the domestic investigating authorities.

B. The investigation of the abduction and the killing

1. Information submitted by the applicants

24. On 24 or 25 February 2006 the applicants complained about the abduction of Salambek Movsayev to the Grozny district prosecutor's office and the Grozny ROVD. The applicants did not retain a copy of their written complaints to the authorities.

25. On 13 March 2006 the Grozny district prosecutor's office instituted an investigation into the abduction of Salambek Movsayev under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case file was given the number 54020.

26. On the same date, that is, 13 March 2006, in connection with the discovery of the body of Salambek Movsayev, the Oktyabrskiy district prosecutor's office instituted an investigation into his murder. The criminal case file was given the number 52059.

27. At some point after 13 March 2006 the investigators visited the applicants in Chechen-Aul. They questioned the first applicant and her son. The second applicant took them to the crime scene; they examined the site and questioned an employee of the repair shop.

28. On 27 March 2006 the Oktyabrskiy district prosecutor's office granted the first applicant victim status in criminal case no. 52029.

29. On 13 June 2006 the Oktyabrskiy district prosecutor's office informed the first applicant that the investigation into the murder of her husband had been suspended for failure to establish the identities of the perpetrators.

30. On 16 February 2007 the first applicant complained about the ineffectiveness of the investigation into her husband's abduction and murder to the Grozny district prosecutor's office. She stated that for almost a year the investigation had failed to produce any results and no explanations for its ineffectiveness had been provided. She requested that the investigation be resumed and that she be provided with access to the criminal case file. No reply was given to this complaint.

31. According to the applicants, the authorities failed to provide them with information on the progress of the investigation into Salambek Movsayev's abduction and murder.

2. Information submitted by the Government

32. On 2 March 2006 the first applicant complained about Salambek Movsayev's abduction to the Grozny ROVD.

33. On 2 March 2006 the investigators from the Grozny district prosecutor's office conducted a crime scene examination at the site of Salambek Movsayev's abduction. Nothing was collected from the scene.

34. On 4 March 2006 the Grozny district prosecutor's office received the case file with information concerning Salambek Movsayev's abduction from the Grozny ROVD.

35. On 7 March 2006 the investigators of the Grozny district prosecutor's office requested the supervising prosecutor to grant them ten days, that is, until 14 March 2006, to conduct a preliminary inquiry into the information provided by the Grozny ROVD in order to decide whether to initiate a criminal investigation into the abduction.

36. From the transcript of the witness interview furnished by the Government it follows that between 9.16 a.m. and 9.50 a.m. on 13 March 2006 the investigators from the Oktyabrskiy district prosecutor's office questioned the second applicant, who stated that he had learnt about the circumstances of Salambek's abduction from the first applicant. The witness further stated that prior to the discovery of Salambek Movsayev's corpse on 13 March 2006 he and his relatives had searched for Salambek in various law-enforcement agencies, including the town and district departments of the interior (the OVD), but to no avail. The applicant also stated that Salambek's murder "could have somehow been related" to the illegal armed activities of their relative Mr T.M.

37. From the documents submitted by the Government it follows that at 12.10 p.m. on 13 March 2006 Salambek Movsayev's body was found in the Oktyabrskiy district of Grozny.

38. Between 12.50 p.m. and 2.50 p.m. on 13 March 2006 the investigators from the Oktyabrskiy district prosecutor's office conducted a crime scene examination at the site of the discovery of Salambek Movsayev's body. Salambek Movsayev's passport was collected from the scene.

39. At 2.50 p.m. on 13 March 2006 the Oktyabrskiy district prosecutor's office opened criminal case no. 52029 under Article 105 § 1 of the Criminal Code (murder) in connection with the discovery of Salambek Movsayev's body with penetrating gunshot wounds to the torso and the head.

40. On the same date, 13 March 2006, the investigators from the Oktyabrskiy district prosecutor's office ordered a forensic expert examination of Salambek Movsayev's body.

41. At 3 p.m. on 13 March 2006 the Grozny district prosecutor's office opened criminal case no. 54020 in connection with the abduction on 24 February 2006 of Salambek Movsayev under Article 126 § 2 of the Criminal Code (aggravated kidnapping).

42. On the same date, 13 March 2006, the Grozny district prosecutor's office forwarded requests for assistance in establishing the whereabouts of Salambek Movsayev to the Grozny ROVD, the Grozny Search Bureau-2 of the Ministry of the Interior ("OPB-2") and the Grozny district department of the Federal Security Service (the Grozny FSB).

43. On 15 March 2006 the investigators from the Oktyabrskiy district prosecutor's office questioned the brother of Salambek Movsayev, Mr A.M., who provided them with a description of the circumstances surrounding the abduction of Salambek Movsayev based on what the first applicant had told him.

44. On 17 March 2006 the investigations in criminal cases no. 54020 and no. 52029 were joined under the number 52029. It was decided that the joined investigation should be carried out by the Oktyabrskiy district prosecutor's office.

45. On 27 March 2006 the first applicant was granted victim status in the criminal case and questioned. The applicant described the circumstances of the abduction. In particular, she stated that her husband Salambek Movsayev had been taken away by a group of seven or eight armed men in camouflage uniforms who had driven a white VAZ-2107 car and a VAZ-21012 car. The abductors who had dragged Salambek out of his car had been in black military uniforms and armed with "Stechkin" pistols, whereas the other abductors had been wearing green camouflage uniforms and armed with machineguns. The applicant also stated that her husband had not participated in illegal armed groups, whereas his nephew Mr T.M. had been sought by the authorities for the active participation in illegal armed activities and that the local military had often visited her house looking for him.

46. On 27 March, 23 and 25 April and 7 June 2006 the investigators requested that the Grozny ROVD, the Oktyabrskiy ROVD, Grozny Search Bureau-2 and the Chechnya FSB take a number of steps to identify eyewitnesses to Salambek Movsayev's abduction and murder, and check whether Salambek Movsayev had applied for medical help and whether he had participated in illegal armed groups.

47. On 11 April 2006 the investigators questioned Mr S.M., who stated that at about 11 a.m. on 13 March 2006 he had seen a crowd gathered around a corpse with gunshot wounds. In the crowd he had spoken to a shepherd who had tended the cattle next to Novopromyslovskaya Street in the Oktyabrskiy district of Grozny, and the latter had told him that he had found the corpse.

48. On 13 April 2006 the investigators decided to terminate the criminal investigation of the abduction and continue the investigation of Salambek Movsayev's murder.

49. On 23 April 2006 the investigator in charge of the criminal case requested information from the Chechnya Ministry of the Interior ("the Chechnya MVD"). The text of the letter included the following:

"... the preliminary investigation of the criminal case established that at about 2.30 p.m. on 24 February 2006 Salambek Movsayev had been detained at the corner of the Pervomayskaya and Ordzhonikidze Streets in Chechen-Aul by representatives of one of the Chechen power structures and taken to an unknown destination.

In connection with this, I request you to inform me whether your employees detained Salambek Movsayev on the above date ...”

50. On 2 May 2006 the investigators questioned Mr D.S., who stated that at about 10 a.m. on 13 March 2006 he had found a male corpse next to Novopromyslovskaya Street in the Oktyabrskiy district of Grozny. The hands and legs had been bound with adhesive tape.

51. On 4 May 2006 the Oktyabrskiy ROVD informed the investigators that Salambek Movsayev

“... [had] assisted members of illegal armed groups with transportation of firearms and ammunition, supplied them with food and transported in his personal vehicle his nephew Mr T.M. and the members of the latter’s illegal armed group ...”

52. On an unspecified date in May 2006 the investigators received the report of the forensic expert evaluation of Salambek Movsayev’s body. According to the report, numerous gunshot wounds were found on it, including two gunshot wounds to the head, which must have been the cause of death.

53. On 10 May 2006 the investigators requested that the Chechnya bureau of forensic expert examinations carry out an examination of three bullets extracted from Salambek Movsayev’s body. On 25 May 2006 the bureau carried out the tests and informed the investigators that the three bullets could have been fired either from a “Makarov” or a “Stechkin” pistol.

54. On 11 May 2006 the Chechnya MVD informed the investigators that on 24 February 2006 they had not conducted any special operations in respect of Salambek Movsayev.

55. On 12 June 2006 the investigators questioned Mr B.Sh., who stated that in February 2006 Salambek Movsayev had asked him to repair a radio and that a few days later he had arrived to pick it up. On the following day Mr B.Sh. had learnt from the first applicant about Salambek’s abduction by unidentified armed men in camouflage uniforms.

56. On 20 December 2006 the Chechnya bureau of forensic expert examinations forwarded the three bullets for further tests and tracing of the firearm to the federal bullet and cartridge centre (“пулегиљзотека”). The letter also stated that the pistol from which the three bullets had been fired was not registered as having been used for the commission of other crimes.

57. On 13 June 2006 the Oktyabrskiy district prosecutor requested the head of the Oktyabrskiy ROVD to take disciplinary measures in respect of the police officers for their failure to execute the orders given by the investigators of Salambek Movsayev’s murder.

58. On 13 June 2006 the investigators suspended the investigation in the criminal case for failure to identify the perpetrators and informed the applicants about this decision.

59. On 14 October 2009 the supervising prosecutor ordered the investigators of the criminal case to resume the proceedings and take a number of steps. The document stated, *inter alia*, the following:

“... it is necessary to take the following steps ...

2. Question the son of Salambek Movsayev, who had eyewitnessed the abduction, as well as the brother of the abducted man, his nephew and niece ... about the circumstances of the criminal case.

3. Identify and question the district police officer Mr S. who, according to the applicants, had visited them on several occasions with representatives of law-enforcement agencies seeking to arrest Mr T.M.

4. Identify and question Salambek Movsayev’s female cousin who, according to the applicants, found his corpse.

5. Question [the first applicant] K. Movsayeva again in order to clarify the information concerning the number of the abductors and the vehicles used by them ...”

60. At the request of the Court the Government disclosed “the full contents” of criminal case file no. 52029 running up to 157 pages of copies of documents.

II. RELEVANT DOMESTIC LAW

61. For a summary of relevant domestic law see *Akhmadova and Sadulayeva v. Russia* (no. 40464/02, §§ 67-69, 10 May 2007).

THE LAW

I. THE GOVERNMENT’S OBJECTION AS TO THE EXHAUSTION OF DOMESTIC REMEDIES

A. Arguments of the parties

62. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the abduction and subsequent murder of Salambek Movsayev had not yet been completed. The Government further argued that it had been open to the applicants to challenge in court any actions or omissions of the investigating authorities and that it was open to them to pursue civil remedies, but they had failed to do so.

63. The applicants contested that objection. With reference to the Court's practice, they argued that they had not been obliged to lodge civil claims in order to exhaust domestic remedies. They stated that the only effective remedy in their case – the criminal investigation – had proved to be ineffective.

B. The Court's assessment

64. The Court notes that the Russian legal system provides, in principle, two avenues of recourse for the victims of illegal and criminal acts attributable to the State or its agents, namely, civil and criminal remedies.

65. As regards a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention. A civil court is unable to pursue any independent investigation and is incapable, without the benefit of the conclusions of a criminal investigation, of making any meaningful findings regarding the identity of the perpetrators of fatal assaults or disappearances, still less of establishing their responsibility (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005, and *Estamirov and Others*, 60272/00, § 77, 12 January 2007). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies. The preliminary objection in this regard is thus dismissed.

66. As regards criminal law remedies, the Court observes that the applicants complained to the law enforcement authorities after the abduction of Salambek Movsayev and that an investigation has been pending since 13 March 2006. The applicants and the Government dispute the effectiveness of this investigation.

67. The Court considers that this limb of the Government's objection raises issues concerning the effectiveness of the criminal investigation which are closely linked to the merits of the applicants' complaints. Thus, it considers that these matters should be joined to the merits and fall to be examined below under the substantive provisions of the Convention.

II. THE COURT'S ASSESSMENT OF THE EVIDENCE AND THE ESTABLISHMENT OF THE FACTS

A. The parties' arguments

68. The applicants maintained that it was beyond reasonable doubt that the men who had abducted and subsequently killed Salambek Movsayev had been State agents. In support of their complaint they stressed the

following: at the material time Chechen-Aul had been under the full control of the authorities; the local law-enforcement agencies had had motives for the detention of Salambek Movsayev as the head of the Oktyabrskiy ROVD had stated in his letter that Salambek had been suspected of aiding his nephew Mr T.M. in illegal armed activities (see paragraph 51 above); the documents from the criminal case file demonstrated that the investigation had established that Salambek Movsayev had been detained by law-enforcement agencies (see paragraph 49 above) and finally, Salambek Movsayev's body was found in the vicinity of the Oktyabrskiy ROVD.

69. The Government denied the involvement of State agents in the abduction and killing of Salambek Movsayev. In particular, they contended that the applicants had never mentioned to the investigators at the domestic level that they had suspected the involvement of law-enforcement agencies in the events and that they had raised this issue only in their application to the Court. The Government further submitted that the applicants had not provided any evidence to prove their allegations of the alleged involvement of State agents in the abduction and killing and pointed out that there were discrepancies between the statements the first applicant made in the context of the domestic investigation and those she provided to the Court (see paragraph 23 above). Finally, they stated in general terms that the abduction and killing of Salambek Movsayev could have been perpetrated by members of illegal armed groups.

B. The Court's evaluation of the facts

70. The Court points out that a number of principles have been developed in its case-law as regards cases where it is faced with the task of establishing facts on which the parties disagree. As to the facts that are in dispute, the Court reiterates that it has adopted the standard of proof "beyond reasonable doubt" in its assessment of evidence (see *Avjyar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII (extracts)). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (see *Taniş and Others v. Turkey*, no. 65899/01, § 160, ECHR 2005-VIII).

71. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Articles 2 and 3 of the Convention, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December

1995, § 32, Series A no. 336; and *Avjyar*, cited above, § 283) even if certain domestic proceedings and investigations have already taken place.

72. The Court reiterates that it has noted the difficulties applicants have in obtaining the necessary evidence in support of allegations in cases where only the respondent Government are in possession of the relevant documentation. Where the applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to the lack of such documentation, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicants, or to provide a satisfactory and convincing explanation of how the events in question occurred. The burden of proof is thus shifted to the Government and if they fail in their arguments, issues will arise under Article 2 and/or Article 3 (see *Tojcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II).

73. The Court notes that upon its requests for a copy of the investigation file into the abduction and killing of Salambek Movsayev, the Government produced “the full contents” of the criminal case file, running up to 157 pages.

74. The applicants alleged that in February 2006 Chechen-Aul had been under the full control of the federal forces and that therefore the abduction of Salambek Movsayev could have been perpetrated only by State agents. In a number of cases concerning enforced disappearances in Chechnya the Court has found the Russian State authorities responsible for extra-judicial executions or disappearances of civilians in the Chechen Republic, even in the absence of final conclusions from the domestic investigation (see *Khashiyev and Akayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-XIII (extracts); *Estamirov and Others*, cited above; and *Baysayeva v. Russia*, no. 74237/01, 5 April 2007). It has done so primarily on the basis of documents attesting to the circumstances of each particular case: it has relied on references to military vehicles and equipment, on witness accounts, on other information on security operations and on the undisputed effective control of the areas in question by the Russian military. On that basis, it has concluded that the areas in question were “within the exclusive control of the authorities of the State” in view of military or security operations being conducted there and the presence of servicemen (see, *mutatis mutandis*, *Akkum v. Turkey*, cited above, § 211, and *Zubayrayev v. Russia*, no. 67797/01, § 82, 10 January 2008).

75. However, in the present case the Court has little evidence on which to draw such conclusions as the account of the events submitted by the applicants is based only on the first applicant’s statement. In addition, from the submitted materials it follows that the applicants had not raised the issue of the possible involvement of State agents in their relative’s abduction and killing with the domestic investigative authorities and they had done that

only in their application to the Court. Further, the mere fact that the abductors were armed and were wearing two different types of camouflage uniforms (see paragraph 11 above) does not necessarily mean that they were State servicemen. The first applicant's statement to the Court did not contain any indication to the effect that the uniforms worn by the abductors bore any insignia of the type that should normally appear on the uniforms of State agents, or that during the abduction the perpetrators had acted as an organised group with a chain of command. It appears that camouflage uniforms with no insignia could have been obtained by persons not belonging to the military via various, possibly illegal, channels. Besides, it should be also noted that the abductors were armed with pistols, which made it easier for them to conceal their weapons, which would not have been the case with machine guns often used by military servicemen during special operations.

76. The Court also notes that the abductors' vehicles were typical civilian cars used by many residents of Russia (see paragraph 10 above). The applicants have never alleged, either before the domestic investigation or before the Court, that anyone saw any military vehicles in the vicinity of the crime scene with his or her own eyes. Given that the perpetrators used regular civilian vehicles, the Court considers that they could have moved around the town unbeknown to the authorities with greater ease than, for example, a group of armed men riding in a military vehicle. Further, the perpetrators who spoke Chechen abducted Salambek Movsayev from the street and during the day (see for a similar situation, *Tovsultanova v. Russia*, no. 26974/06, §§ 77-80, 17 June 2010, where no State responsibility for the abduction was found), unlike abductors in many other disappearance cases, in which the victims were taken from home or military checkpoints and primarily at night during curfew hours. Nor could it be unequivocally said that the abductors' actions had been typical of security operations conducted by State agents, where the soldiers would, for example cordon off the area in question, check the residents' documents, search the premises and so on. It does not appear either that they operated as a group within a clear chain of command, receiving orders or reporting about their actions to superior officers.

77. Accordingly, the information in the Court's possession does not suffice to establish that the perpetrators belonged to the security forces or that a security operation had been carried out in respect of Salambek Movsayev.

78. To sum up, it has not been established to the required standard of proof – "beyond reasonable doubt" – that State agents were implicated in the abduction and subsequent killing of Salambek Movsayev; nor does the Court consider that the burden of proof can be entirely shifted to the Government.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

79. The applicants complained under Article 2 of the Convention that Salambek Movsayev had been abducted and subsequently killed by State agents and that the domestic authorities had failed to carry out an effective investigation into the matter. Article 2 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.”

A. The parties’ submissions

80. The Government contended that the domestic investigation had not obtained any evidence that the perpetrators of Salambek Movsayev’s abduction and killing had been State agents. The Government claimed that the investigation of the events met the Convention requirement of effectiveness, as all measures available in national law were being taken to identify the perpetrators.

81. The applicants argued that Salambek Movsayev had been abducted and killed by State agents. They also argued that the investigation had not met the requirements of effectiveness and adequacy, as required by the Court’s case-law on Article 2.

B. The Court’s assessment

1. Admissibility

82. The Court considers, in the light of the parties’ submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government’s objection concerning the alleged non-exhaustion of criminal domestic remedies should be joined to the merits of the complaint (see paragraph 67 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. *Merits*

(a) **The alleged violation of the right to life of Salambek Movsayev**

83. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-147, Series A no. 324, and *Avşar*, cited above, § 391).

84. As noted above, the domestic investigation failed to produce any tangible results as to the identities of the persons responsible for the alleged kidnapping and subsequent killing of Salambek Movsayev. The applicants have not submitted persuasive evidence to support their allegations that State agents were the perpetrators of such a crime. The Court has already found above that, in the absence of relevant information, it is unable to find “beyond reasonable doubt” that State agents were implicated in the abduction and subsequent killing of Salambek Movsayev (see paragraph 78 above).

85. In such circumstances the Court finds no State responsibility, and thus no violation of the substantive limb of Article 2 of the Convention.

(b) **The alleged inadequacy of the investigation into the abduction and subsequent killing**

86. The applicants argued that the investigation had not been effective and adequate, as required by the Court’s case-law on Article 2. They noted that it had been suspended and reopened a number of times and thus the taking of the most basic steps had been protracted, and that they had not been properly informed about the most important investigative steps. The applicants argued that the fact that the investigation had been pending for more than four years without producing any known results was further proof of its ineffectiveness.

87. The Government claimed that the investigation into the abduction and killing of Salambek Movsayev met the Convention requirement of effectiveness, as all measures envisaged in national law were being taken to identify the perpetrators.

88. The Court has on many occasions stated that the obligation to protect the right to life under Article 2 of the Convention also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. It has developed a number of guiding principles to be followed for an

investigation to comply with the Convention's requirements (for a summary of these principles see *Bazorkina*, cited above, §§ 117-119).

89. In the present case, an investigation into the abduction and the killing was carried out. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

90. The Court notes at the outset that the documents from the investigation file were disclosed by the Government.

91. Turning to the facts of the case, the Court notes that the authorities were made aware of the abduction through the applicants' submissions at the latest on 2 March 2006 (see paragraph 32 above). The investigation was opened on 13 March 2006 that is seventeen days after the abduction and eleven days after the applicants' official complaint about it. Moreover, as it follows from the submitted documents, the investigation was opened only after the authorities received the information about the discovery of Salambek Movsayev's corpse (see paragraphs 38 and 41 above). Further, the first applicant, being the key witness to the abduction, was only questioned two weeks after the commencement of the investigation. Such a delay in itself was liable to affect the investigation of a crime as serious as abduction in life-threatening circumstances, where crucial action has to be taken in the first hours or days after the event or immediately after the crime is reported to the authorities. In spite of the fact that within the first two weeks of the investigation the crime scene was inspected and a few witnesses were questioned, after that a number of crucial steps were not taken at all, even in order to verify the information obtained as a result of the questionings.

92. In particular, the Court notes that the investigators did not make any attempts to question the district police officer Mr S. or to try to identify the abductors' vehicles and their owners; they did not question the first applicant's son, who had eyewitnessed the abduction, and they failed to elucidate the discrepancies pointed out by the supervising prosecutor (see paragraph 59 above). It does not appear that the investigators took any steps to question the employees of the Oktyabrskiy ROVD or the servicemen of the military checkpoint in the vicinity of which the body of Salambek Movsayev was found.

93. It is obvious that these measures, if they were to produce any meaningful results, should have been taken immediately after the crime had been reported to the authorities, and as soon as the investigation had commenced. These delays, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious matter (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII).

94. The Court also notes that, even though the first applicant was granted victim status, she was only informed about the suspension and

reopening of the proceedings, and not about any other significant developments. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings.

95. Finally, the Court notes that the investigation was suspended and resumed a number of times and that the supervising prosecutor overruled the decision to suspend the proceedings and ordered basic investigative steps to be taken. However, it appears that those instructions were not complied with.

96. The Government raised the possibility for the applicants to apply for a judicial review of the decisions of the investigating authorities in the context of exhaustion of domestic remedies. The Court observes that the applicants, having no access to the case file and not having been properly informed about the progress of the investigation, could not have effectively challenged the actions or omissions of the investigating authorities before a court. Furthermore, the investigation had been resumed by the prosecuting authorities themselves a number of times owing to the need to take additional investigative steps. However, they still failed to properly investigate the applicants' allegations. Moreover, owing to the time that had elapsed since the events complained of took place, certain investigative measures that ought to have been carried out much earlier could no longer usefully be conducted. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and dismisses their preliminary objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

97. In the light of the foregoing, the Court dismisses the Government's preliminary objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation, and holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the abduction and the death of Salambek Movsayev, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

98. The applicants further stated that Salambek Movsayev had been detained in violation of the guarantees of Article 5 of the Convention, which reads, in so far as relevant:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having

committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

A. The parties’ submissions

99. The Government asserted that no evidence had been obtained by the investigators to confirm that Salambek Movsayev had been deprived of his liberty by State agents in breach of the guarantees set out in Article 5 of the Convention.

100. The applicants reiterated the complaint.

B. The Court’s assessment

101. The Court has previously noted the fundamental importance of the guarantees contained in Article 5 to secure the right of individuals in a democracy to be free from arbitrary detention. It has also stated that unacknowledged detention is a complete negation of these guarantees and discloses a very grave violation of Article 5 (see *Çiçek v. Turkey*, no. 25704/94, § 164, 27 February 2001, and *Luluyev and Others*, cited above, § 122).

102. Nevertheless, the Court has not found it established “beyond reasonable doubt” that Salambek Movsayev was detained and killed by State agents (see paragraph-85 above). Nor is there any basis to presume that he was ever placed in unacknowledged detention under the control of State agents.

103. The Court therefore considers that this part of the application should be dismissed as being manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

104. The applicants complained that they had been deprived of effective remedies in respect of the aforementioned 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

105. The Government contended that the applicants had had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using those remedies. The applicants had had an opportunity to challenge any acts or omissions on the part of the investigating authorities in court and to bring civil claims for damages. In sum, the Government submitted that there had been no violation of Article 13.

106. The applicants reiterated the complaint.

B. The Court’s assessment

107. The Court observes that the complaint made by the applicants under this Article has already been examined in the context of Article 2 of the Convention. Having regard to the findings of a violation of Article 2 in its procedural aspect (see paragraph 97 above), the Court considers that, whilst the complaint under Article 13 taken in conjunction with Article 2 is admissible, there is no need for a separate examination of this complaint on its merits (see, *Khumaydov and Khumaydov*, cited above, § 141; *Zakriyeva and Others*, cited above, § 108; and *Shaipova and Others v. Russia*, no. 10796/04, § 124, 6 November 2008).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

108. 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. Pecuniary damage

109. The first applicant claimed damages in respect of the loss of her husband Salambek Movsayev's earnings. She claimed a total of 405,645 Russian roubles (RUB) under this head (10,235 euros (EUR)). Her calculations were based on the provisions of the Russian Civil Code and the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department in 2007 ("the Ogden tables").

110. The Government regarded these claims as unsubstantiated and based on supposition.

111. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention, and that this may, in an appropriate case, include compensation in respect of loss of earnings. Having regard to its above conclusions that there has been no violation of Article 2 in its substantive aspect, the Court finds that there is no direct causal link between the alleged violation of Salambek Movsayev's right to life and the loss by the first applicant of the financial support which he could have provided. Accordingly, it makes no award under this head.

B. Non-pecuniary damage

112. The applicants claimed a total of EUR 100,000 in respect of non-pecuniary damage. The applicants submitted that they had lost their close relative and endured stress, frustration and helplessness in relation to Salambek Movsayev's abduction and subsequent killing, aggravated by the authorities' inactivity in the investigation of those events for several years.

113. The Government submitted that the applicants were not entitled to claim compensation under this heading as the State was not responsible for the abduction and the killing of Salambek Movsayev.

114. The Court has found a violation of Article 2 in its procedural aspect. It thus accepts that the applicants have suffered non-pecuniary damage. It finds it appropriate to award the first applicant EUR 15,000 and the second applicant EUR 9,000 under this heading, plus any tax that may be chargeable to the applicants on that amount.

C. Costs and expenses

115. The applicants were represented by SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews in Ingushetia and Moscow, at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic

authorities, at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff and experts. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 5, 572.

116. The Government disputed the reasonableness and the justification of the amounts claimed under this head. They submitted that the documents provided by the applicants could not serve as confirmation that the legal services had indeed been provided and that those services had been necessary and reasonable.

117. The Court has to establish whether the costs and expenses indicated by the applicants' representatives were actually incurred and whether they were necessary (see *McCann and Others*, cited above, § 220).

118. Having regard to the details of the information submitted, the Court is satisfied that the rates are reasonable and reflect the expenses actually incurred by the applicants' representatives.

119. As to whether the costs and expenses were necessary, the Court notes that this case was rather complex and required a certain amount of research and preparation. It notes at the same time that, due to the application of former Article 29 § 3 in the present case, the applicants' representatives submitted their observations on admissibility and the merits in a single set of documents. The Court thus doubts that the legal drafting was necessarily as time-consuming as the representatives claimed. Furthermore, the Court notes that it has rejected part of the application and found no violation in respect of the substantive element of Article 2 of the Convention.

120. Having regard to this and the details of the claims submitted by the applicants, the Court finds it appropriate to award the applicants' representatives EUR 2,000, plus any tax that may be chargeable to the applicants, the award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

121. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection regarding non-exhaustion of criminal domestic remedies and rejects it;

2. *Declares* the complaints under Articles 2 and 13 admissible and the remainder of the application inadmissible;
3. *Holds* that there has been no violation of Article 2 of the Convention in its substantive limb in respect of Salambek Movsayev;
4. *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 abduction and subsequent killing of Salambek Movsayev;
5. *Holds* that no separate issue arises under Article 13 in conjunction with Article 2 of the Convention;
6. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the date of settlement, save in the case of the payment in respect of costs and expenses:
 - (i) EUR 15,000 (fifteen thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage to the first applicant;
 - (ii) EUR 9,000 (nine thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage to the second applicant;
 - (iii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representatives' bank account;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 14 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President