



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

FIRST SECTION

CASE OF SAMBIYEVA v. RUSSIA

(Application no. 20205/07)

JUDGMENT

STRASBOURG

8 November 2011

FINAL

08/03/2012

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

In the case of Sambiyeva 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,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 18 October 2011,

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

PROCEDURE

1. The case originated in an application (no. 20205/07) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Ms Gizhan Sambiyeva (“the applicant”), on 20 April 2007.

2. The applicant was represented by lawyers of 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. On 9 March 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.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1954. She is the mother of Said-Emin (also known as Said-Ali) Sambiyev, who was born in 1978. At the material time she lived in Tevzan; she currently lives in Grozny, Chechnya.

A. Disappearance of Said-Emin Sambiyev

1. The applicant's account

(a) Abduction of Said-Emin Sambiyev and his colleague

5. At the material time the applicant's son Said-Emin Sambiyev worked for the Security Service of the Chechen President.

6. On 13 August 2003 Said-Emin Sambiyev and his colleague Mr V.M. were in a taxi going from the village of Ulus-Kert to the village of Makkhety. Their vehicle was stopped in the village of Tevzan (in the submitted documents the place was also referred to as Tevzani and Kirov-Yurt), in the Veden district, at a checkpoint manned by servicemen of military unit no. 28337-A (in the submitted documents also referred to under the number 28337).

7. Said-Emin Sambiyev and Mr V.M. were detained at the checkpoint by the servicemen and taken to the location of the 45th Airborne Forces Regiment in the village of Khatuni (also spelled Khattuni), in the Veden district of Chechnya.

8. The abduction of the two men was witnessed by Mr I.G., whose car was also stopped at the checkpoint in Tevzan. He saw that two young men were being detained by servicemen at the checkpoint; he recognised one of them as Said-Emin Sambiyev, who worked for the Security Service. Mr I.G. asked the servicemen about the reasons for the arrest, but the officers refused to answer and told him that the two young men would be taken for an identity check to the 45th regiment's base, in the military base in Khatuni.

(b) Subsequent events

9. On 25 August 2003 Mr V.M. was released from detention in Khatuni. That day a number of his relatives as well as two of his colleagues from the Security Service and the head of the Service, Mr S.Kh., waited for his release at the 45th regiment's base. Mr I.G. picked him up in Khatuni and drove to Shali. In the car Mr V.M. told Mr I.G. that during his detention in Khatuni he had seen Said-Emin Sambiyev twice. Said-Emin Sambiyev had been beaten up and could barely speak. According to Mr I.G., the officers in Khatuni promised to release Said-Emin Sambiyev one day after the release of Mr V.M.

10. On the same date the applicant met Mr V.M. and asked him about her son. Mr V.M. told her that he and Said-Emin Sambiyev had been detained in separate pits in the ground which were situated not far from each other. During the detention Mr V. M. had had a sack over his head. At some point he had called the name of Said-Emin Sambiyev and the latter had responded, his voice was weak and muffled as if he also had a sack over his head. After that the two men had been questioned together; during the

questioning both of them had sacks over their heads. Shortly before his release Mr V. M. had seen the applicant's son. Said-Emin Sambiyev had been wearing different clothing, galoshes and tracksuit bottoms. When the applicant asked Mr V. M. how he had managed to get released, he told her: "I was just trying to save my life" and did not explain anything further. According to Mr V. M., he had been told by the abductors that Said-Emin Sambiyev would be released the day after him.

11. According to the applicant, in the autumn of 2003 Mr V. M. moved to Moscow and then to Austria.

12. In support of her statements the applicant submitted the following documents: her own statement dated 7 July 2006; a statement by Mr V.M., undated, a statement by Mr I.G. dated 8 July 2006 and copies of the documents received from the authorities.

2. Information submitted by the Government

13. The Government did not challenge the matter as presented by the applicant. According to their observations of 1 July 2009, it was established that on 13 August 2003 Mr S.-E. Sambiyev and Mr V.M. were, with an unidentified person, travelling in a car from Ulus-Kert in the Shatoi district to Makhkety in the Vedenno district. They had been stopped by military servicemen in armoured personnel carriers. After that the two men had been taken to the location of the military unit stationed in Khatuni. Eleven days later Mr V.M. had been released, while the whereabouts of Mr S.-E. Sambiyev has not been established since.

B. The search for Said-Emin Sambiyev and the investigation

1. The applicant's account

14. According to the applicant, she contacted, both in person and in writing, various official bodies asking for help in establishing the whereabouts of her son Said-Emin Sambiyev. The applicant did not retain copies of her written requests lodged with various State authorities from August to October 2003; however, she kept copies of a number of her further complaints and submitted them to the Court. An official investigation was opened by the local prosecutor's office. The relevant information is summarised below.

15. Upon the applicant's complaint of 2 October 2003 about her son's abduction, on the same date, 2 October 2003 the Vedenno district prosecutor's office (the district prosecutor's office) opened an investigation into the disappearance of Said-Emin Sambiyev under Article 126 § 2 (in the submitted documents also stated as Article 126 § 1) of the Criminal Code

(aggravated kidnapping). The case file was given the number 24074 (in the submitted documents the number was also referred to as 24984).

16. On 25 March 2004 the military prosecutor's office of military unit no. 20116 informed the applicant that they had not conducted a special operation on 13 August 2003 on the site of the abduction.

17. On 19 April 2004 the Chechnya prosecutor's office forwarded the applicant's complaint about her son's abduction to the district prosecutor's office for examination.

18. On 14 April 2005 the military prosecutor's office of the Northern Caucasus Military Circuit informed the applicant that she should forward her requests for assistance in the search for her son to the military prosecutor's office of the United Group Alignment ("the UGA").

19. On 27 April 2005 the military prosecutor's office of military unit no. 20102 informed the applicant that they were conducting an inquiry into the matters described in her complaint.

20. On 9 May 2005 the Chechnya Ministry of the Interior ("the Chechnya MVD") informed the applicant that her complaint had been forwarded to the Vedeno district department of the interior ("the ROVD").

21. On 20 May 2005 the Chechnya military commander informed the applicant that the ROVD and the local department of the Federal Security Service ("the FSB") would establish her son's whereabouts.

22. On 28 May and 17 June 2005 the military prosecutor's office of the UGA informed the applicant that they had forwarded her complaints about her son's disappearance to the military prosecutor's office of military unit no. 20116 for examination.

23. On 18 June and 8 July 2005 the military prosecutor's office of military unit no. 20116 informed the applicant of the following:

"... as a result of the inquiry conducted in military unit no. 28337-A stationed in Khatuni in the Vedeno district, Chechnya, it was established that there was no information [in the registry of the military unit] concerning special operations carried out on 13 August 2003 by that military unit and the detention of Mr Said-Emin Sambiyev and Mr V.M., because the officers who were serving [in the unit] in August 2003 had gone back to their places of their permanent service in Kubinka, in the Odintsovo district in the Moscow Region on completion of their mission, along with all [relevant] documentation for the year of 2003".

24. On 19, 30 June and 23 August 2005 the military prosecutor's office of the UGA informed the applicant that their inquiry had not confirmed the involvement of Russian military servicemen in the abduction of her son and that the applicant should request information from the district prosecutor's office.

25. On 21 June 2005 the Prosecutor General's office informed the applicant that they had forwarded her request for assistance in the search for her son to the Chechnya prosecutor's office. On 28 July 2005 the latter forwarded it to the district prosecutor's office.

26. On 24 June 2005 the military prosecutor's office of military unit no. 20116 informed the applicant that they had forwarded information requests to various law-enforcement agencies, including the FSB, the military commander's office, the UGA and, in connection with the re-location of military unit no. 28337, to the Odintsovo military garrison in the Moscow Region.

27. On 30 June 2005 the district military commander's office informed the applicant that on an unspecified date the investigation in criminal case no. 24984 had been suspended, but that the operational-search measures to establish the whereabouts of Said-Emin Sambiyev were under way.

28. On 4 July and 27 September 2005 the Department of the Military Intelligence of the FSB informed the applicant that they had no information concerning either the whereabouts of her son or the witnesses to his abduction.

29. On 12 July 2005 the ROVD informed the applicant about the following:

“... in connection with the abduction of Said-Emin Sambiyev on 13 August 2003 by unidentified servicemen of the 45th regiment stationed in Khatuni, the Veden district prosecutor's office had opened criminal case no. 24074 ...at present the investigation is suspended; the ROVD ...had forwarded requests to the district military commander asking for information on special operations conducted on 13 August 2003 in the village of Kirov-Yurt in the Veden district ...”

30. On 29 July 2005 the military prosecutor of the Odintsovo military garrison informed the applicant that her complaint about the abduction of Said-Emin Sambiyev on 13 August 2003 by servicemen of military unit no. 28337 had been forwarded to the military prosecutor's office of the UGA as “the events took place in the Veden district and a criminal case in this respect is being investigated there”.

31. On 6 and 10 September 2005 the Chechnya FSB and the Criminal Police Department of the Chechnya MVD in Khankala informed the applicant that they had not arrested her son and had no information concerning his whereabouts.

32. On 30 September 2005 the military prosecutor's office of the UGA informed the applicant that they had forwarded her complaint to the district prosecutor's office for examination.

33. On 28 February 2006 the applicant again complained to the district prosecutor. She reiterated that her son had been abducted by servicemen of the 45th regiment, stationed in Khatuni. She pointed out that Mr V.M. had been released on 25 August 2003 and that a number of persons, including his relatives and colleagues, had been waiting at the regimental base for his release. Further, the applicant complained about lack of information about the investigation and requested to be provided with an update on its progress.

34. On 14 September 2006 the applicant's representatives wrote to the district prosecutor and the Chechnya prosecutor. They described the circumstances of Said-Emin Sambiyev's disappearance and stated that he had been taken away by servicemen of the 45th regiment and detained for at least ten days at the regiment's base in Khatuni. They requested that the investigators provide the following information: whether any progress had been made by the investigation; whether the investigators had identified the perpetrators and the witnesses to the abduction; whether the registry records of military unit no. 28337-A had been requested and examined; whether the applicant had been granted victim status in the criminal case, and whether she could be provided with access to the investigation file. Finally, they requested the investigators to resume the investigation in the criminal case and to provide the applicant with copies of procedural decisions.

35. On 13 October 2006 the district prosecutor's office informed the applicant that they had taken all possible investigative measures; that on 26 May 2005 they had suspended the investigation in the criminal case; and that on 13 October 2006 the deputy district prosecutor had overruled this decision and the investigation had been resumed. According to the letter, the applicant was allowed to familiarise herself only with those documents from the case file which reflected investigative steps taken with her participation.

36. On 25 January 2007 the applicant's representatives reiterated their requests for information of 14 September 2006 to the district prosecutor and the Chechnya prosecutor. In response, on 12 February 2007 the Chechnya prosecutor's office forwarded her request to the district prosecutor's office for examination.

37. On 14 February 2007 the district prosecutor's office informed the applicant that on 13 December 2006 they had suspended the investigation in the criminal case for failure to identify the perpetrators.

38. On 20 February 2007 the district prosecutor's office informed the applicant that they could not establish the truth of what had happened with the abduction of Said-Emin Sambiyev by servicemen of military unit no. 28337, as the key witness in the case, Mr V.M., had absconded to Europe. The letter also stated:

"... there is information provided by the FSB about the involvement of Sambiyev and Mr V.M. in the activities of a criminal group in the Shatoi district of Chechnya and their participation in the attack on Ulus-Kert in May 2003... in connection with the complaints of Sambiyev's mother [the applicant], the investigation in the criminal case had been resumed on several occasions... today it is possible for the investigation to establish the identity of those who had been involved in the unlawful detention of Said-Emin Sambiyev; relevant investigative measures have been planned and would be taken by the prosecutor's office ..."

39. The applicant received no further information from the authorities concerning the investigation into her son's disappearance.

2. Information submitted by the Government

40. On 2 October 2003 the applicant complained about her son's abduction to the district prosecutor's office.

41. On the same date the district prosecutor's office opened an investigation into the disappearance of Said-Emin Sambiyev.

42. On the same date, 2 October 2003, the investigators granted the applicant victim status in the criminal case and questioned her. She stated that at about 3 p.m. on 15 August 2003 Ms R.M. had arrived at her house and told her that their sons, S.-E. Sambiyev and V.M., had been arrested by military servicemen at a checkpoint next to Tevzan. Then both women had gone to Mesker-Yurt to the Security Service of the Chechen President, where the applicant's son had worked. The commander of S.-E. Sambiyev, Mr S. Kh., had informed them that their sons had gone to Makhkety to visit V.M.'s relatives. On the following day, 16 August 2003, the applicant with her son's colleague Mr Kh. had gone to Tevzan. From the local residents she had learnt that on 13 August 2003 on the road leading to Vedeno military servicemen in APCs had stopped a car and two young men had got out of it. From the descriptions of the local residents the applicant had understood that these two young men were her son and Mr V.M. Some of the local residents had approached the men and asked them whether they needed any help. S.-E. Sambiyev and V.M. had told them that they did not need any help. Having spoken with the locals the applicant and Mr Kh. had gone to the military unit in Khatuni. The servicemen at the entrance checkpoint had refused to speak to them. On 24 August 2003 Mr V.M. had returned home and told the applicant that on 13 August 2003 he and her son had been detained by military servicemen on the road next to Tevzan. The servicemen had taken away their service guns and identification documents. Then they had taken the men to the regimental base in Khatuni. Mr V.M. had spent eleven days there. Throughout this time he had seen the applicant's son on two occasions; most of the time both of them had black sacks over their heads which had been removed by the abductors when the two men had been taken out for interrogations. S.-E. Sambiyev and Mr V.M. had been beaten and tortured with electric shocks. After speaking with Mr V.M. the applicant had gone to her son's commander Mr S.Kh. The latter had told her that the military servicemen had handed her son over to the Grozny FSB. On several occasions the applicant had asked officers at the Grozny FSB about her son, but they had denied arresting him or having him transferred to their office.

43. On 9 October 2003 the investigators granted Mr V.M. victim status in the criminal case and questioned him. He stated that from May 2003 he had worked as an officer (an intelligence agent) in the Security Service of the Chechen President. On 13 August 2003 he and S.-E. Sambiyev had driven to Dutz-Khutor in a private car. They had been on an intelligence mission to find a storage facility built by illegal armed groups in the vicinity

of the village of Selmetkhauzen. Between Makkhety and Khatuni, their car had been stopped by masked armed military servicemen in two APCs. Without giving any explanation the servicemen had taken away their identity documents and service guns. After that they had taken the two men to the military base in Khatuni, where they had placed the men separately in two pits with water in them. According to the witness, he had spent three days in the pit; he had frequently been beaten, tortured and questioned by the servicemen about the places where members of illegal armed groups lived and stored their firearms. He had told them everything he knew. After that they had taken him by helicopter to a place where the military servicemen had found and collected a number of mobile phones, satellite radio devices, ammunition and firearms. This operation had been carried out by a group of servicemen of various ethnic backgrounds. One of them, who had beaten Mr V.M. the most, had teeth made from yellow metal. Mr V.M. had not seen his face as the officer had been masked. The man in charge of the group was nicknamed “the American” (“*Американец*”), he was around thirty years old and dressed in a clean uniform with red, black, blue and white camouflage patterns on it. On 24 August 2003 the witness had seen the applicant’s son, when the latter was being taken out of an APC. S.-E. Sambiyev had been beaten; he had been accused of murdering a police officer and pressurised to confess to blowing up an APC two or three days prior to his arrest. After Mr V.M. had been released, the military officers had not returned his service machine gun, identity documents and thirty bullets. As a result of the beatings during the detention Mr V.M. had had to undergo outpatient medical treatment until 10 September 2003.

44. In the autumn of 2003 Mr V.M. went to live permanently in Europe.

45. On 9 October 2003 the investigators questioned Mr S.Kh., the head of a special platoon of the Security Service of the Chechen President. The applicant’s son had served in his platoon as an intelligence officer. At some point he had been informed that S.-E. Sambiyev and Mr V.M. had been detained by military servicemen. He had immediately gone to the military unit SSG-10 (“*Специальная Сводная Группа-10*”) stationed in Khatuni, whose commander Mr M. had told him that the two men had been detained on the site of a special division of the military unit under the command of a man nicknamed “the American”. After that the witness had gone to the military unit stationed in Khatuni to speak with its command, but to no avail. On 25 August 2003 the witness, with the assistance of Mr M., had managed to release Mr V.M.; the latter had had traces of beatings on his body, and his hands had the marks of handcuffs. As for the applicant’s son, the witness had been told that S.-E. Sambiyev was suspected of killing two police officers in the Shatoi district and in connection with this he had been handed over from the military unit to the Chechnya FSB for an investigation of the killings.

46. On 2 December 2003 the investigators suspended the investigation in the criminal case for failure to identify the perpetrators. The applicant was informed about this decision.

47. On 11 May 2004 the interim district prosecutor ordered the investigators to resume the investigation and take the following investigative steps within fifteen days:

“... At the moment it is necessary to take a number of investigative steps in order to forward the criminal case for further investigation to the military prosecutor’s office in accordance with the rules of jurisdiction:

...

- to question Mr V.M. again about the circumstances of the case ...;
- to identify local residents who witnessed the arrest;
- to identify the service guns of S.-E. Sambiyev and Mr V.M. [which were taken away by the abductors];
- to identify whether the guns were put on the search list or whether they were confiscated from illegal armed groups ...”

48. On 24 May 2004 the investigation of the abduction was resumed. The applicant was informed about the decision.

49. On 24 May and 4 June 2004 the investigators forwarded a number of requests for information to various prosecutors’ offices in Chechnya and the Vedeno ROVD concerning the possible whereabouts of the applicant’s son. According to the replies, he had not been detained by law-enforcement agencies, was not being detained and his corpse had not been found.

50. On 24 May 2004 the investigators forwarded requests to the UGA, the district military commander and the Chechnya MVD, asking for information about the commander of the military unit in Khatuni.

51. On 24 June 2004 the investigation in the criminal case was suspended for failure to identify the perpetrators. The applicant was informed about this decision.

52. On 26 April 2005 the supervising prosecutor ordered the investigators to resume the investigation and take a number of investigative steps. The prosecutor also ordered that the investigation should be conducted by a group of investigators including an investigator from the military prosecutor’s office.

53. On 11 May 2005 the investigators forwarded requests for information to comply with the prosecutor’s orders of 11 May 2004 (see paragraph 47 above).

54. On 26 May 2005 the investigation in the criminal case was suspended for failure to identify the perpetrators. The applicant was informed about this decision.

55. On 13 October 2006 the supervising prosecutor ordered the investigators to resume the investigation and take a number of steps.

56. On various dates in October and November 2006 the investigators forwarded a number of requests to various law-enforcement agencies asking whether the latter had detained the applicant's son, opened criminal proceedings against him, or whether they had any negative information about him.

57. On 12 December 2006 the investigators again questioned the applicant who confirmed her statement given on 2 October 2003 (see paragraph 42 above).

58. On 13 December 2006 the investigation in the criminal case was suspended for failure to identify the perpetrators. The applicant was informed about this decision.

59. On 23 December 2006 the Chechnya FSB informed the investigators that according to their database S.-E. Sambiyev was a member of an illegal armed group, that on 25 May 2003 he had participated in an attack on the village of Ulus-Kert; that on 29 July 2003 he had surrendered and on 5 August 2003 he had been pardoned by the authorities.

60. On 9 January 2007 the Vedeno ROVD informed the investigators that Mr V.M. had left Russia and was living in Europe, and that they had no information confirming any involvement of the applicant's son or Mr V.M. in illegal armed groups.

61. On 14 March 2007 the supervisory prosecutor ordered the investigators to resume the investigation and take a number of investigative steps. The applicant was informed about this decision.

62. On 22 March and 3 April 2007 the investigators forwarded requests to military unit no. 20102 and the Chechnya FSB asking for information about the military unit SSG-10 which had been stationed in Khatuni between 1 and 31 August 2003 and its commander Mr M. They also requested information about the commander of the special group with the nickname "the American". In reply the FSB informed the investigators that they did not have any relevant information.

63. On 22 March and 3 April 2007 the investigators forwarded a request to military unit no. 45807 asking for information about the military servicemen of this unit who had been stationed in Khatuni between 1 and 31 August 2003 and their current addresses.

64. On 24 March 2007 the investigators again questioned Mr S.Kh. who stated that he did not know for sure whether Mr M. had been the commander of the military unit SSG-10, but that he had seen him on the site of the military unit.

65. On 29 March 2007 the investigators questioned Mr A.A., who stated that in 2003 he was working as a taxi driver. On an unspecified date in August 2003 a man had asked him to pass on to the relatives of Said-Emin

Sambiyev and Mr V.M. that the two men had been arrested at the checkpoint.

66. On 5 April 2007 the investigators questioned Ms R.M., the mother of Mr V.M., who stated that in the summer of 2003 her son and Said-Emin Sambiyev had been working somewhere in Mesker-Yurt and that their commander's name was Mr S.Kh. At some point later, residents of Ulus-Kert had told her that her son and S.-E. Sambiyev had been detained by military servicemen. She had gone to the applicant and told her about it. Then both women had gone to Mesker-Yurt to see their sons' commander. After that the women had gone to the military unit in Khatuni, but they had not been allowed to enter its premises. About seven or eight days later Mr S.Kh. had brought home her son, Mr V.M. She had not asked him where he had been detained. On the following day Mr S.Kh. had told her that Said-Emin Sambiyev had confessed to killing a Russian woman in Grozny. In the summer of 2004 her son, Mr V.M. had left Russia.

67. On 14 April 2007 the investigation in the criminal case was suspended for failure to identify the perpetrators. The applicant was informed about this decision.

68. On 24 March 2008 the supervisory prosecutor ordered the investigators to resume the investigation and take a number of investigative steps.

69. On 24 April 2008 (in the submitted documents the date was also referred to as 24 April 2007) the investigation in the criminal case was suspended for failure to identify the perpetrators. The applicant was informed about this decision.

70. On 7 May 2008 the supervisory prosecutor ordered the investigators to resume the investigation and take a number of investigative steps.

71. The Government further submitted that although the investigation had failed to establish the whereabouts of Said-Emin Sambiyev, it was still in progress. The authorities took all possible steps to have the crime resolved. The law-enforcement authorities had never arrested or detained Said-Emin Sambiyev on criminal or administrative charges, and had not carried out a criminal investigation against him. No special operations had been carried out in respect of the applicant's son.

72. Despite specific requests by the Court the Government did not disclose most of the contents of the investigation file in criminal case no. 24074, providing mainly copies of responses to information requests forwarded by the investigators to various law-enforcement agencies, running up to fifteen pages. They stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained personal data concerning witnesses or other participants in criminal proceedings.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. ISSUE CONCERNING THE EXHAUSTION OF DOMESTIC REMEDIES

A. The parties' submissions

74. The Government submitted that the investigation into the disappearance of Said-Emin Sambiyev had not yet been completed. They further argued, in relation to the complaint under Article 13 of the Convention, that it had been open to the applicant to lodge court complaints about any acts or omissions of the investigating authorities. Besides, she could have applied for civil damages. They also added that the applicant, having officially complained to the prosecutor's office only one month and nineteen days after the abduction, had undermined the efficiency of the investigation.

75. The applicant contested the Government's submission. She stated that the only effective remedy, the criminal investigation, had proved to be ineffective.

B. The Court's assessment

76. The Court will examine the arguments of the parties in the light of the provisions of the Convention and its relevant practice (for a relevant summary, see *Estamirov and Others v. Russia*, no. 60272/00, §§ 73 and 74, 12 October 2006).

77. 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.

78. 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 (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005, and

Estamirov and Others, cited above, § 77). In the light of the above, the Court confirms that the applicant was not obliged to pursue civil remedies. The Government's objection in this regard is thus dismissed.

79. As regards criminal-law remedies, the Court observes that the applicant complained to the law-enforcement authorities after the kidnapping of Said-Emin Sambiyev, and that an investigation has been pending since 2 October 2003. The applicant and the Government dispute the effectiveness of the investigation of the kidnapping.

80. The Court considers that the Government's objection raises issues concerning the effectiveness of the investigation which are closely linked to the merits of the applicant's complaints. Thus, it decides to join this objection to the merits of the case and considers that the issue falls to be examined below.

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

A. The parties' arguments

81. The applicant maintained that it was beyond reasonable doubt that the men who had taken away Said-Emin Sambiyev were State agents. In support of her complaint she referred to the fact that the Government did not dispute her account of the matter, that they had acknowledged that her son had indeed been abducted by a group of armed men, and had simply denied that these men were Russian military servicemen. She pointed out that numerous documents from the investigation file confirmed her theory that the perpetrators of the abduction were federal servicemen (see paragraphs 29, 38, 42 and 45 above). She further stated that her son had been missing for more than six years and that therefore he could be presumed dead. That presumption was further supported by the circumstances in which he had been arrested, which should be recognised as life-threatening.

82. The Government submitted that unidentified armed men had kidnapped Said-Emin Sambiyev. They further contended that the investigation of the incident was pending, that there was no evidence that the men were State agents and that there were therefore no grounds for holding the State liable for the alleged violations of the applicant's rights. They further argued that there was no convincing evidence that the applicant's son was dead.

B. The Court's evaluation of the facts

83. The Court observes that in its extensive jurisprudence it has developed a number of general principles relating to the establishment of matters in dispute, in particular when faced with allegations of disappearance under Article 2 of the Convention (for a summary of these, see *Bazorkina v. Russia*, no. 69481/01, §§ 103-109, 27 July 2006). The Court also notes that the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25).

84. The Court notes that despite its requests for a copy of the investigation file into the abduction of Said-Emin Sambiyev, the Government produced only a few documents from the case file. The Government referred to Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has already found this explanation insufficient to justify the withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-XIII (extracts)).

85. In view of this, and bearing in mind the principles referred to above, the Court finds that it can draw inferences from the Government's conduct in respect of the well-foundedness of the applicant's allegations. The Court will thus proceed to examine crucial elements in the present case that should be taken into account when deciding whether the applicant's son can be presumed dead and whether his death can be attributed to the authorities.

86. The applicant alleged that the persons who had taken Said-Emin Sambiyev away on 13 August 2003 and then killed him were State agents. The Government did not dispute any of the factual elements underlying the application and did not provide any other explanation of the events.

87. The Court notes that little evidence has been submitted by the applicant, which is rather comprehensible in the light of the investigators' reluctance to provide her with copies of important investigation documents. Nevertheless, the Court notes that the applicant's allegation is supported by the witness statements collected by the investigation (see paragraphs 42, 43, 45 and 66 above). The domestic investigation also accepted the factual assumptions presented by the applicant, and took steps to check whether military servicemen were involved in the kidnapping (see paragraphs 23, 38, 47, 62 and 63 above), but it does not appear that any serious steps were taken to that end. Finally, the Court also notes that in its submission on the admissibility and merits of the application of 1 July 2009 the Government stated that the applicant's son had been detained by military servicemen and taken to the military unit in Khatuni (see paragraph 13 above).

88. The Court observes that where the applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to a lack of relevant documents, it is for the Government to argue conclusively

why the documents in question cannot serve to corroborate the allegations made by the applicant, 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 *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II (extracts)).

89. Taking into account the above elements, the Court is satisfied that the applicant has made a *prima facie* case that her son was abducted by State servicemen. The Government's statement that the investigators had not found any evidence to support the involvement of the State agents in the kidnapping is insufficient to discharge them from the above-mentioned burden of proof. Having examined the documents submitted by the parties, and drawing inferences from the Government's failure to submit the remaining documents which were in their exclusive possession or to provide another plausible explanation for the events in question, the Court finds that Said-Emin Sambiyev was arrested on 13 August 2003 by State servicemen during an unacknowledged security operation.

90. There has been no reliable news of Said-Emin Sambiyev since the date of the kidnapping. His name has not been found in any official detention facility records. The Government have not submitted any explanation as to what happened to him after his arrest.

91. Having regard to previous cases concerning disappearances in Chechnya which have come before it (see, among others, *Bazorkina*, cited above; *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-XIII (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007), the Court finds that in the context of the conflict in the Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgment of the detention, this can be regarded as life-threatening. The absence of Said-Emin Sambiyev or of any news of him for more than six years supports this assumption.

92. Accordingly, the Court finds that the evidence available permits it to establish that Said-Emin Sambiyev must be presumed dead following his unacknowledged detention by State servicemen.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

93. The applicant complained under Article 2 of the Convention that her son had been deprived of his life by Russian servicemen and that the domestic authorities had failed to carry out an effective investigation of 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

94. The Government contended that the domestic investigation had obtained no evidence to the effect that Said-Emin Sambiyev was dead or that any servicemen of the federal law-enforcement agencies had been involved in his kidnapping or alleged killing. The Government claimed that the investigation into the kidnapping of the applicant’s son met the Convention requirement of effectiveness, as all measures available under national law were being taken to identify those responsible.

95. The applicant argued that Said-Emin Sambiyev had been detained by State servicemen and should be presumed dead in the absence of any reliable news of him for more than six years. The applicant also alleged that the investigation had not met the effectiveness and adequacy requirements, laid down by the Court’s case-law. She pointed out that the investigators had not taken some crucial investigative steps, such as questioning any of the military servicemen from the military unit in Khatuni who might have participated in the abduction or witnessed her son’s subsequent detention there. The investigation of the kidnapping had been suspended and resumed a number of times – thus delaying the taking of the most basic steps – and that she had not been properly informed of the most important investigative measures. The fact that the investigation had been pending for more than six years without producing any known results was further proof of its ineffectiveness. The applicant also invited the Court to draw conclusions from the Government’s unjustified failure to submit the documents from the case file to her or to the Court.

B. The Court's assessment

1. Admissibility

96. 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 issue of the effectiveness of the investigation should be joined to the merits of the complaint (see paragraph 80 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 Said-Emin Sambiyev

97. The Court has already found that the applicant's son must be presumed dead following unacknowledged detention by State servicemen. In the absence of any justification put forward by the Government, the Court finds that his death can be attributed to the State and that there has been a violation of Article 2 in respect of Said-Emin Sambiyev.

(b) The alleged inadequacy of the investigation of the kidnapping

98. 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).

99. In the present case, the kidnapping of Said-Emin Sambiyev was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

100. The Court notes at the outset that most of the documents from the investigation were not disclosed by the Government. It therefore has to assess the effectiveness of the investigation on the basis of the few documents submitted by the parties and the information about its progress presented by the Government.

101. The Court notes that, as can be seen from the numerous decisions of the supervising prosecutors (see paragraphs 47, 52, 61, 68 and 70 above) the investigators had failed to take a number of essential investigative steps. A number of such necessary measures as identifying the witnesses to the abduction from the local residents, identifying the APCs involved in the events, identifying and questioning the relatives and colleagues of the

abducted men who were present during the release of one of the abductees from the military base (see paragraph 9 above), or following up on the detailed information provided by the witnesses about the abductors and their stationing in Khatuni (see paragraphs 42, 43 and 45 above) should have been taken immediately or as soon as possible after the investigation had been initiated. From the submitted documents it is clear that even after the prosecutors' orders these steps were not taken at all or that some other important steps were taken with significant delays (see paragraphs 47 and 53 above). Such 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).

102. The Court also notes that even though the applicant was granted victim status in the investigation concerning her son's abduction, she was only informed of the suspension and resumption of the proceedings, and not of 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.

103. Finally, the Court notes that the investigation was suspended and resumed at least six times and that there were lengthy periods of inactivity on the part of the district prosecutor's office when no proceedings were pending. The supervising prosecutors criticised deficiencies in the proceedings and ordered remedial measures, but it does not appear that their orders were complied with.

104. The Government alleged that the applicant could have sought judicial review of the decisions of the investigating authorities in the context of the exhaustion of domestic remedies. They further argued that the applicant, having belatedly complained to the prosecutor's office about the abduction, had undermined the efficiency of the investigation. The Court observes that the applicant, having no access to the case file and not being properly informed of the progress of the investigation, could not have effectively challenged acts or omissions of investigating authorities before a court. Furthermore, the Court emphasises in this respect that while the suspension or reopening of proceedings is not in itself a sign that the proceedings are ineffective, in the present case the decisions to suspend were made without the necessary investigative steps being taken, which led to numerous periods of inactivity and thus unnecessary protraction. Moreover, owing to the time that had elapsed since the events complained of, certain investigative measures that ought to have been carried out much earlier could no longer usefully be conducted. Therefore, it is highly doubtful that the remedy relied on would have had any prospects of success. Further, as for the argument concerning the applicant's allegedly belated complaint about the abduction, the Court notes that prior to the lodging of

her official written complaint with the prosecutor's office, the applicant complained to the authorities, such as her son's commander S. Kh. and the Grozny FSB (see paragraphs 42 and 45 above) in person. In their submission to the Court the Government did not contest this information. Therefore, it is doubtful that the authorities had been completely unaware of the incident and that the delay between the date of the abduction and the official complaint to the prosecutor's office could have significantly undermined the remedy referred to by the Government. Accordingly, the Court finds that this remedy was ineffective in the circumstances and dismisses the preliminary issue as regards the applicant's failure to exhaust domestic remedies within the context of the criminal investigation.

105. In the light of the foregoing, the Court holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance of Said-Emin Sambiyev, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

106. The applicant relied on Article 3 of the Convention, submitting that as a result of her son's disappearance and the State's failure to investigate it properly she had endured mental suffering in breach of Article 3 of the Convention. Article 3 reads:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. The parties' submissions

107. The Government disagreed with these allegations and argued that the investigation had not established that the applicant had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention.

108. The applicant maintained her submissions.

B. The Court's assessment

1. Admissibility

109. The Court notes that this complaint under Article 3 of the Convention is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. *Merits*

110. The Court has found on many occasions that in a situation of enforced disappearance close relatives of the victim may themselves be victims of treatment in violation of Article 3. The essence of such a violation does not mainly lie in the fact of the “disappearance” of the family member but rather concerns the authorities’ reactions and attitudes to the situation when it is brought to their attention (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva*, cited above, § 164).

111. In the present case the Court notes that the applicant is the mother of the disappeared person. For more than six years she has not had any news of her missing son. During this period the applicant has made enquiries of various official bodies, both in writing and in person, about her missing son. Despite her attempts, she has never received any plausible explanation or information about what became of him following his detention. The responses she received mostly denied State responsibility for her son’s arrest or simply informed her that the investigation was ongoing. The Court’s findings under the procedural aspect of Article 2 are also of direct relevance here.

112. The Court therefore concludes that there has been a violation of Article 3 of the Convention in respect of the applicant.

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

113. The applicant further stated that Said-Emin Sambiyev had been detained in violation of the guarantees contained in 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

114. The Government asserted that no evidence had been obtained by the investigators to confirm that Said-Emin Sambiyev had been deprived of his liberty. He was not listed among the persons kept in detention centres and none of the regional law-enforcement agencies had information about his detention.

115. The applicant reiterated the complaint.

B. The Court’s assessment

1. Admissibility

116. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that the complaint is not inadmissible on any other grounds and must therefore be declared admissible.

2. Merits

117. The Court has previously noted the fundamental importance of the guarantees contained in Article 5, which 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*, cited above, § 122).

118. The Court has found that Said-Emin Sambiyev was detained by State servicemen on 13 August 2003 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and there exists no official trace of his subsequent whereabouts or fate. In accordance with the Court’s practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records noting such matters as the date, time and location of detention and the name of the detainee, as well as the reasons for the detention and the name of the person effecting it, must be seen as

incompatible with the very purpose of Article 5 of the Convention (see *Orhan*, cited above, § 371).

119. The Court further considers that the authorities should have been more alert to the need for a thorough investigation of the applicant's complaints that her son had been abducted in life-threatening circumstances. However, the Court's findings above in relation to Article 2 and, in particular, the conduct of the investigation leave no doubt that the authorities failed to take effective measures to safeguard him against the risk of disappearance.

120. In view of the foregoing, the Court finds that Said-Emin Sambiyev was held in unacknowledged detention without any of the safeguards contained in Article 5. This constitutes a particularly grave violation of the right to liberty and security enshrined in Article 5 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

121. The applicant complained that she 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

122. The Government contended that the applicant had had effective remedies at her disposal as required by Article 13 of the Convention and that the authorities had not prevented her from using them. The applicant had had an opportunity to challenge the acts or omissions of the investigating authorities in court as well as claim damages in civil proceedings.

123. The applicant reiterated the complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

125. The Court reiterates that in circumstances where, as here, a criminal investigation into the disappearance has been ineffective and the effectiveness of any other remedy that might have existed, including civil remedies suggested by the Government, has consequently been undermined, the State has failed in its obligation under Article 13 of the Convention (see *Khashiyev and Akayeva*, cited above, § 183).

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

127. As regards the applicant's reference to Articles 3 and 5 of the Convention, the Court considers that, in the circumstances, no separate issue arises in respect of Article 13, read in conjunction with Articles 3 and 5 of the Convention (see *Kukayev v. Russia*, no. 29361/02, § 119, 15 November 2007, and *Aziyevy v. Russia*, no. 77626/01, § 118, 20 March 2008).

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

128. 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

129. The applicant claimed damages in respect of loss of earnings by her son after his arrest and subsequent disappearance. The applicant claimed a total of 617,698 Russian roubles (RUB) under this heading (15,440 euros (EUR)).

130. She claimed that she was unable to obtain salary statements for her son and that in such cases the calculation should be made on the basis of the subsistence level established by national law. She calculated his earnings for the period, taking into account an average inflation rate of 13.63%. Her calculations were also based on the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department in 2007 (“Ogden tables”).

131. The Government regarded these claims as based on supposition and unfounded. They also pointed to the existence of domestic statutory machinery for the provision of a pension for the loss of the family breadwinner.

132. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicant's son and the violation of the Convention, and that this may, in an appropriate case, include compensation

in respect of loss of earnings. The Court further finds that the loss of earnings also applies to the elderly parents and that it is reasonable to assume that Said-Emin Sambiyev would eventually have had some earnings from which the applicant would have benefited (see, among other authorities, *Imakayeva*, cited above, § 213). Having regard to its above conclusions, it finds that there is a direct causal link between the violation of Article 2 in respect of the applicant's son and the loss by the applicant of the financial support which he could have provided. Having regard to the applicant's submissions, the Court awards EUR 12,000 to the applicant in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

133. The applicant claimed EUR 50,000 in respect of non-pecuniary damage for the suffering she had endured as a result of the loss of her son, the indifference shown by the authorities towards her and the failure to provide any information about the fate of her family member.

134. The Government found the amounts claimed excessive and stated that finding a violation of the Convention would be an adequate just satisfaction in the applicant's case.

135. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicant's son. The applicant herself has been found to have been victim of a violation of Article 3 of the Convention. The Court thus accepts that she has suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the applicant EUR 50,000 as claimed, plus any tax that may be chargeable thereon.

C. Costs and expenses

136. The applicant was represented by the 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. The aggregate claim in respect of costs and expenses related to the applicant's legal representation amounted to EUR 4,815.

137. The Government did not dispute the reasonableness of and justification for the amounts claimed under this heading.

138. The Court has to establish first whether the costs and expenses indicated by the applicant's representatives were actually incurred and,

second, whether they were necessary (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 220, Series A no. 324).

139. Having regard to the details of the information and legal representation contract submitted by the applicant, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicant's representatives.

140. 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.

141. Having regard to the details of the claims submitted by the applicant, the Court awards her the amount as claimed of EUR 4,815 together with any value-added tax that may be chargeable to the applicant, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicant.

D. Default interest

142. 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 issue as to exhaustion of criminal domestic remedies and rejects it;
2. *Declares* the application admissible;
3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Said-Emin Sambiyev;
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 circumstances in which Said-Emin Sambiyev disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Said-Emin Sambiyev;

7. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
8. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5 of the Convention;
9. *Holds*
 - (a) that the respondent State is to pay, within three months of 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 on the date of settlement, save in the case of the payment in respect of costs and expenses:
 - (i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage to the applicant;
 - (ii) EUR 50,000 (fifty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicant;
 - (iii) EUR 4,815 (four thousand eight hundred and fifteen euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands;
 - (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;
10. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 November 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President