



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

FIRST SECTION

CASE OF SAMBIYEV AND POKAYEVA v. RUSSIA

(Application no. 38693/04)

JUDGMENT

This version was rectified on 27 July 2009
under Rule 81 of the Rules of the Court

STRASBOURG

22 January 2009

FINAL

05/06/2009

This judgment may be subject to editorial revision.

In the case of Sambiyev and Pokayeva v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 16 December 2008,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 38693/04) 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, Mr Sharfudin¹ Saydkhasanovich Sambiyev and Mrs Rukiyat Supyanovna Pokayeva (“the applicants”), on 8 October 2004.

2. The applicants were 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 Ms V. Milinchuk, the former Representative of the Russian Federation at the European Court of Human Rights and subsequently by their new representative, Mr G. Matyushkin.

3. On 21 January 2008 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 Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

¹ Rectified on 27 July 2009: the text was “Mr Sharpudin Saydkhasanovich Sambiyev...”

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1955 and 1958 respectively. They live in Stariye Atagi, the Chechen Republic. They are the parents of Mr Anzor Sambiyev (also known as Anzor Pokayev), born in 1980.

A. Death of Mr Anzor Sambiyev

1. The applicants' account

5. According to the applicants, after the disappearance of their other son, Mr Amir Pokayev, in March 2002 (see *Arzu Akhmadova and Others v. Russia*, no. 13670/03), the second applicant sent Mr Anzor Sambiyev to live with her sister in Nazran where she believed him to be safe. Servicemen often enquired after his whereabouts and asked for his photographs, although they never explained why. The second applicant never told them where he was and removed all his photographs.

6. On 8 April 2004 Mr Anzor Sambiyev came to Stariye Atagi to visit his family.

7. On 10 April 2004 at approximately 9 p.m. the second applicant and Mr Anzor Sambiyev were at home. Suddenly armed servicemen of federal troops wearing camouflage uniform rushed into the yard of the house. There were about fifty servicemen who had arrived in armoured personnel carriers (APCs) and a “Ural” vehicle. Some of them surrounded the house. The second applicant told Mr Anzor Sambiyev to jump out of the window into the garden. After he did, she went to the yard and asked the servicemen what was wrong and what they were looking for. They told her to step out of the house. When she refused, they forced her into the yard. At that moment she heard shooting.

8. The second applicant was not allowed to enter her house for approximately half an hour while the servicemen were inside. She went into her neighbours' yard. While she remained there she heard the neighbours' children, who managed to see something through the fence, saying: “They killed someone, they are dragging someone”.

9. When the servicemen left, the second applicant returned home and found that everything had been thrown around the house. She noticed that they had taken the first applicant's passport, driving licence, medical certificate and a car certificate.

10. In the morning the next day the applicants went to the head of the village administration and told him about the events of the previous

evening. At the same time a body was found on the outskirts of the village of Prigorodnoye, which was identified as Mr Anzor Sambiyev. At approximately 10 a.m. his body was brought to Stariye Atagi and buried. He had a large wound near his heart, his arm was broken and there was a bullet mark on his watch.

2. The Government's account

11. According to the Government, on 10 April 2004 at around 9 p.m. unidentified men wearing camouflage uniform and masks, and armed with automatic weapons, approached the house at 91 Nasrudilova Street in Stariye Atagi in an Ural vehicle. Mr Anzor Sambiyev, who was inside the house, jumped out of the window, and his mother, the second applicant, did not want to leave the house but was forced to by the armed men. After a short time she heard shooting and went out to the yard, where one of her neighbours told her that Mr Anzor Sambiyev had been taken away in the Ural vehicle. The neighbours also told her that they had seen two APCs.

12. On 11 April 2004 at around 9 a.m. the body of Mr Anzor Sambiyev, showing signs of having died a violent death, was found on the left-hand side of the Grozny – Shatoy road in the direction of Shatoy within 20 metres of the turning to the village of Prigorodnoye in the Grozny District.

B. Official investigation

13. On 11 April 2004 the Grozny District Prosecutor's Office opened criminal investigation no. 34046 into Mr Anzor Sambiyev's abduction and murder.

14. During an inspection of the place where the body had been found, conducted on the same date, a cartridge case of 5.45 mm calibre was found under the body. According to the report no. 526/K of the forensic ballistic examination conducted on 9 May 2004, the cartridge could have been fired either from a Kalashnikov assault rifle or from a Kalashnikov light machine gun.

15. On 13 and 19 April 2004 the applicants applied to the head of the Grozny District Police Department, the Grozny District Prosecutor's Office, the head of the village administration and the internal passport authority (*паспортный стол*) with a description of the circumstances leading to the death of Mr Anzor Sambiyev. They sought the identification and punishment of those responsible for their son's murder and the return of the documents stolen from their house during the search.

16. The forensic report no. 156 of 6 May 2004 recorded the following injuries on Mr Anzor Sambiyev's body: two perforating bullet wounds to the chest and stomach and two perforating bullet wounds to the right forearm. The report described the perforating bullet wounds to the chest and stomach as life-threatening and said that death could have been caused by either of

them. The report no. 156 was drawn up on the basis of a previous report of an examination of the body on 11 April 2004.

17. On 15 May 2004, during an inspection of their house, a cartridge case of 5.45 mm calibre was found in their garden. According to the report no. 580/K of the forensic ballistic examination conducted on 22 May 2004, the cartridge could have been fired either from a Kalashnikov assault rifle or from a Kalashnikov light machine gun

18. On 15 May 2004 the applicants were granted victim status in the criminal proceedings.

19. The second applicant was questioned on 15 May 2004, 15 May 2005 and 13 March 2008. She submitted that on 10 April 2004 she had been at home with her son, Mr Anzor Sambiyev. At approximately 9 p.m. he had said that "Russians" had come. She had told him to try to escape through their neighbours' garden, which he had tried to do, having jumped out of the window. Then she had gone out to the yard where there had been a lot of men in camouflage uniform and masks armed with automatic weapons. In the street, behind the gates, she had seen an Ural vehicle. At that moment she had heard shooting. She had tried to enter the house, but the armed men would not let her. After a while she had entered the neighbours' yard and somebody had told her that Anzor had been taken away in the Ural vehicle. At the back of the yard, within approximately 10 metres of the window out of which Mr Anzor Sambiyev had jumped she had noticed a spot of blood and traces of a body being dragged from the window to the place where the Ural vehicle had been parked.

20. The first applicant was questioned on 15 May 2004 and 13 March 2008. He submitted that on the date in question he had been away and had learned from the second applicant what had happened.

21. Mr S., a relative of the Sambiyevs, was questioned on 15 May 2004 and 29 February 2008. He stated that on 11 April 2004 at 7 a.m. he had left for Grozny and on the road, within six kilometres from Grozny, he had noticed a group of residents and a body lying on the edge of the road wrapped in polyethylene. After the residents had unwrapped the body, he had realised that it was his relative, Mr Anzor Sambiyev.

22. Mr A. S., Mr Anzor Sambiyev's uncle, was questioned on 15 May 2004 and 22 January 2005. He submitted that on 10 April 2004, while at home, he had heard shooting. In the evening of that day he had learned that men in camouflage uniform had abducted his nephew, whose body had been found the next day with multiple wounds.

23. The investigating authorities also questioned other residents of Stariye Atagi, in particular: Ms Ya. S. on 14 May 2004, Mr R. A. and Mr A. Ch. on 12 January 2005, Ms M.Ch., Mr M.A., Mr Z. D and Mr I. Ch on 16 January 2005, and Ms R. S. and Ms Z. Ch. on 22 January 2005. They all stated that they had seen a group of armed men arrive at the village in two

APCs and two Ural vehicles. Otherwise their submissions had been identical to those of Mr A. S.

24. On 15 July 2004 the Grozny District Prosecutor's Office issued the applicants with the following certificate:

“...[O]n 11 April 2004 the Grozny District Prosecutor's Office instituted a criminal case no. 34046 ... in respect of the following fact[s]:

On 10 April 2004 at approximately 9 p.m. a group of persons wearing camouflage and masks and armed with automatic weapons and accompanied by two APCs and two “Ural” vehicles abducted Mr Anzor Sharpudinovich Pokayev, born in 1980, from his house at 91, Kh. Nuradilova Street in the village of Stariye Atagi, the Grozny District, the Chechen Republic.

On 11 April 2004 at approximately 9 a.m. on the left-hand side of the Grozny to Shatoy road, in the direction of Shatoy, within twenty metres from the turning to the village of Prigorodnoye, in the Grozny District, A. Sh. Pokayev's body was found. [The] body had multiple shotgun and stab wounds.

In the course of the preliminary investigation victim status was granted to the parents of A. Sh. Pokayev.”

25. On 5 and 16 July 2004 and 2 November 2005 the SRJI applied, on behalf of the first applicant, in writing to the Grozny District Prosecutor's Office asking for information on the progress of the investigation and on the measures taken in order to identify the culprits.

26. On 26 November 2005 the Grozny District Prosecutor's Office replied to the SRJI that the investigation was being suspended, but that certain investigative measures were nevertheless being carried out. It further stated that, as had been noted in previous correspondence, should the first applicant wish to study the case file, he should come to the Grozny District Prosecutor's Office on any weekday from 9 a.m. to 6 p.m.

27. On 24 December 2004 the investigating authorities questioned Mr Sh., an officer of the Grozny Department of the Interior (ROVD). He submitted that on 11 April 2004 he had been informed that a body with shotgun wounds had been found on the edge of the Grozny – Shatoy road which had been identified by relatives as Mr Anzor Sambiyev.

28. On 25 December 2004 and 18 January 2005 the investigating authorities questioned six officers of the Grozny ROVD. They stated that they had information to the effect that Mr Anzor Sambiyev was a member of an illegal armed group and had been involved in a number of killings.

29. According to the Government, the Grozny ROVD obtained information from the villagers to the effect that Mr Anzor Sambiyev had been a member of an illegal armed group under the command of Magomed, born in Stariye Atagi, nicknamed “Nasrula”. Magomed, in turn, was under the command of emir Isa Sadayev who headed an illegal armed group called “Dzhamat”. Isa Sadayev was wanted for the commission of particularly grave offences. The group of which Mr Anzor Sambiyev had formed part

was conducting terrorist acts against the federal forces, officers of the Ministry of the Interior and representatives of the local authorities. In particular, Mr Anzor Sambiyev was suspected of complicity in the murder of four officials of the department of the Federal Security Service (FSB) in the Chechen Republic in Stariye Atagi in 2002. Mr S. K., a member of the illegal armed group under the command of “Nasrula”, submitted that apart from him Mr Anzor Sambiyev and eight other residents of Stariye Atagi formed part of the group.

30. In order to establish the circumstances of the case, the investigating authorities sent numerous requests for information to other law-enforcement authorities, in particular: to the FSB department in the Grozny District on 12 April and 20 December 2004, and on 4 and 27 February and 3 March 2008; to Bureau no. 2 of the Investigation and Search Department of the Ministry of the Interior on 12 April and 2 May 2004; to the Grozny ROVD on 17 May, 8 June and 18 December 2004, 1 April 2005, and on 4 and 6 February 2008; to the Main Information Centre of the Ministry of the Interior on 21 August 2004; to the Directorate on Combating Organised Crime of the Ministry of the Interior and the Temporary Alignment of Departments of the Ministry of the Interior on 4 and 27 February and 3 March 2008.

31. In order to establish whether a special operation had been conducted in Stariye Atagi on 10 and 11 April 2004, the investigating authorities sent the following requests for information: to the archive of the North Caucasia military district of internal troops of the Ministry of the Interior and to the archive of the North Caucasia military district of the Ministry of Defence on 2 May 2004; to the military prosecutor of military unit no. 20102 on 18 May, 8 June and 25 August 2004 and 18 December 2005; to the FSB department in the Grozny District on 20 January 2005; to the Temporary Alignment of Departments of the Ministry of the Interior on 20 January 2005.

32. According to the information received, no special operations had been conducted in Stariye Atagi on 10 and 11 April 2004. At the same time, it was confirmed that Mr Anzor Sambiyev had been a member of the illegal armed group “Dzhamat” and since 1999 had been involved in military actions against federal servicemen under the nickname “Dzhandula”.

33. The Government submitted that the investigation in the case had been suspended and resumed a number of times on account of the failure to identify a person to be charged with the offence. The most recent decision suspending the investigation of 15 March 2008 was quashed on 17 March 2008 and the investigation was resumed.

C. The Court's request for the investigation file

34. Despite a specific request by the Court, the Government did not submit a copy of the entire file of the investigation into the abduction of Mr Anzor Sambiyev. However, they submitted sixty-four pages of case-file materials containing copies of expert reports, records of questioning and various procedural decisions. The Government 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 the witnesses or other participants in the criminal proceedings.

II. RELEVANT DOMESTIC LAW

35. 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 REGARDING NON-EXHAUSTION OF DOMESTIC REMEDIES

A. The parties' submissions

36. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that it had been open to the applicants to challenge in court any actions or omissions of the investigating or other law-enforcement authorities, but that the applicants had not availed themselves of that remedy. They also argued that it had been open to the applicants to pursue civil complaints but they had failed to do so.

37. The applicants contested that objection. Referring to the other cases concerning abductions in the Chechen Republic reviewed by the Court, they also alleged that the existence of an administrative practice of non-investigation of crimes committed by State servicemen in the Chechnya rendered any potentially effective remedies inadequate and illusory in their case. Also with reference to the Court's case-law, they argued that they had not been obliged to apply to the courts with a civil claim in order to exhaust domestic remedies.

B. The Court's assessment

38. 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, § 73-74, 12 October 2006).

39. 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.

40. 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*, cited above, § 77). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies. The Government's objection in this regard is thus dismissed.

41. As regards criminal-law remedies, the Court observes that the investigation into the abduction and killing of Mr Anzor Sambiyev has been pending since 11 April 2004. The applicants and the Government dispute the effectiveness of the investigation.

42. The Court considers that this limb of the Government's preliminary 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 fall to be examined below under the substantive provisions of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

43. The applicants complained under Article 2 of the Convention that their relative had been abducted and killed 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

44. The Government submitted that the domestic investigation had obtained no evidence to the effect that any servicemen of the federal law-enforcement agencies had been involved in Mr Anzor Sambiyev's abduction or killing. They pointed out, firstly, that no special operation had been conducted in Stariye Atagi on the dates in question. Secondly, no witness statements had been obtained by the applicants themselves. Furthermore, the witnesses questioned by the investigation had merely said that the men who had abducted Mr Anzor Sambiyev had spoken Russian, had been wearing camouflage uniform and had arrived in two APCs and two Ural vehicles. However, no more precise description of those men had been provided. In particular, there was no information about any military insignia which would permit it to be established to which particular troops belonged those men if they were indeed servicemen. The Government further submitted that both camouflage uniform and weapons could easily have been available to paramilitary groups in Chechnya. They referred to a number of domestic decisions in respect of members of illegal armed groups who had committed crimes dressed in camouflage uniform and had identity documents of law-enforcement or other State authorities. The Government further noted that, as had been established by the domestic investigation, Mr Anzor Sambiyev had been a member of an illegal armed group. They alleged that he could have been killed by other members of the illegal armed group so as to prevent a possible information leak or by other persons on account of a feud for instance. The Government also claimed that the domestic investigation had met the Convention requirement of effectiveness, as evidenced by the questioning of witnesses by the investigating authorities and requests sent by them to other State agencies.

45. The applicants argued that Mr Anzor Sambiyev had been abducted and killed by State servicemen, which was confirmed by statements of other residents who stated that on the date in question they had seen servicemen arrive at the village in military vehicles. They further argued that the investigation had not met the requirements of effectiveness and adequacy required by the Court's case-law on Article 2. The applicants noted that the investigation had been adjourned and reopened a number of times, thus delaying the taking of the most basic steps, and that they had not been properly informed of the most important investigative measures.

B. The Court's assessment

1. Admissibility

46. 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 domestic remedies in the part related to criminal remedies should be joined to the merits of the complaint (see paragraph 42 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) The alleged violation of Mr Anzor Sambiyev's right to life

i. General principles

47. The Court reiterates that, in the light of the importance of the protection afforded by Article 2, it must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Detained persons are in a vulnerable position and the obligation on the authorities to account for the treatment of a detained individual is particularly stringent where that individual dies or disappears thereafter (see, among other authorities, *Orhan v. Turkey*, no. 25656/94, § 326, 18 June 2002, and the authorities cited therein). Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in detention, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Çakıcı v. Turkey* [GC], no. 23657/94, § 85, ECHR 1999-IV).

ii. Establishment of the facts

48. The Court observes that it has developed a number of general principles relating to the establishment of facts 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).

49. The applicants alleged that in the evening of 10 April 2004 their son, Mr Anzor Sambiyev, had been apprehended by Russian servicemen and then disappeared. The second applicant witnessed servicemen arriving at their house, which was supported by statements by several other witnesses. According to the applicants, the fact that his dead body had been found the next morning proved that he had been killed by the servicemen.

50. The Government conceded that Mr Anzor Sambiyev had been abducted by unknown armed men on 10 April 2004 and subsequently killed by them. However, they denied that any special operations had been carried out in Stariye Atagi on that date. The Government referred to the absence of reliable evidence which, in their view, would support the conclusion that servicemen had been involved in the offence. In particular, the applicants had failed to obtain any witness statements themselves and, furthermore, the mere fact that the abductors had been armed and had been wearing camouflage was not sufficient to reach the above conclusion.

51. The Court observes that the Government did not deny that Mr Anzor Sambiyev had been abducted by armed men; however, they denied that those men were State agents. It notes that the second applicant was an eyewitness to the events and that her account had been confirmed by statements of ten other residents of Stariye Atagi questioned in the course of the investigation. They all stated, in particular, that they had seen a group of armed men arrive at the village in two APCs and two Ural vehicles. The Court thus considers that the applicants have presented a coherent and convincing picture of their son's abduction on 10 April 2004.

52. The Court further notes that, according to the applicants and other witnesses to the events, not only had Mr Anzor Sambiyev's abductors been armed and dressed in camouflage uniform, but they had arrived in two Ural vehicles and two APCs, which could not have been available to paramilitary groups. This fact strongly supports the applicants' allegation that they were State servicemen. In their application to the authorities the applicants consistently maintained that Mr Anzor Sambiyev had been detained by unknown servicemen and requested the investigating authorities to look into that possibility. It notes in addition that after four years the domestic investigation has produced no tangible results.

53. The Court further observes that, although the Government refused to provide a copy of the entire investigation file, they submitted a significant part of the case file containing key elements that considerably facilitated the examination of the present case by the Court. Thus, from the materials available it can be established that, although the investigation has not rendered any conclusive results, the applicants' account of the events as supported by witness statements was largely accepted by the investigating authorities. In particular, on 15 July 2004 the Grozny District Prosecutor's Office issued the applicants with a certificate stating that on 10 April 2004 a group of persons wearing camouflage and masks armed with automatic

weapons and accompanied by two APCs and two “Ural” vehicles abducted Mr Anzor Sambiyev. However, the investigating authorities failed to establish the identity of Mr Anzor Sambiyev's abductors. In the Court's view, the information obtained by the investigation to the effect that no special operations had been conducted in Stariye Atagi on the dates in question is not sufficient to refute the allegations that these were servicemen. The supposition that, being a member of an illegal armed group, he could have been abducted by other members or by unrelated persons, is likewise too vague to disprove them.

54. Accordingly, on the basis of the body of evidence submitted by the parties, the Court finds that on 10 April 2004 Mr Anzor Sambiyev was apprehended by servicemen at his house in Stariye Atagi.

55. The Court further notes that in the morning of 11 April 2004 his dead body, with bullet wounds, was found on the edge of the Grozny-Shatoy road. Taking into account that no information has been submitted by the Government concerning Mr Anzor Sambiyev's possible release or escape following his apprehension by servicemen in the evening of 10 April 2004 and no other explanation has been provided as to his subsequent death, and having regard to the general principles cited in paragraph 47 above, the Court finds that Mr Anzor Sambiyev was killed by State servicemen between 10 and 11 April 2004.

56. Accordingly, the Court finds that the evidence available permits it to establish to the requisite standard of proof that on 10 April 2004 Mr Anzor Sambiyev was apprehended by State servicemen and that he was killed by them between 10 and 11 April 2004.

iii. The State's compliance with Article 2

57. 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, to 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, §§ 146-47, Series A no. 324, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

58. The Court has already found it established that the applicants' son was killed by State servicemen following his apprehension. Noting that the authorities do not rely on any ground of justification in respect of the use of lethal force by their agents, it follows that liability for his presumed death is attributable to the respondent Government.

59. Accordingly, the Court finds that there has been a violation of Article 2 in respect of Mr Anzor Sambiyev.

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

60. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", 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 (see, *mutatis mutandis*, *McCann and Others*, cited above, § 161, and *Kaya v. Turkey*, 19 February 1998, § 86, *Reports* 1998-I). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. This investigation should be independent, accessible to the victim's family, carried out with reasonable promptness and expedition, effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances or otherwise unlawful, and afford a sufficient element of public scrutiny of the investigation or its results (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-09, 4 May 2001, and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

61. Turning to the facts of the present case, the Court notes that the authorities were immediately notified of the discovery of Mr Anzor Sambiyev's body in the morning of 11 April 2004. The investigation was instituted on the same date and the inspection of the place where the body had been found was carried out. Accordingly, the Court is satisfied that the authorities' reaction was sufficiently prompt.

62. The Court further notes that significant investigative steps were taken by the authorities between 11 April 2004 and May 2005. In particular, several forensic examinations were conducted, the applicants and other numerous witnesses were questioned and a large number of requests were sent to various state authorities which could have provided relevant information in respect of the events in question. A substantial amount of information was obtained by the investigation as a result of these measures.

63. However, the Court notes a subsequent period of inactivity of almost three years until February 2008, when certain witnesses were again questioned and certain requests were re-sent. The Court notes that a period of inactivity that long, for which no explanation has been provided, may not as such be considered compatible with the requirement of "reasonable promptness" of the investigation. Furthermore, it could only be detrimental to the prospects of establishing the circumstances of the case and ensuring the accountability of those responsible. The Court further notes that it has no information about any efforts to trace the APCs and the Ural vehicles after they had left Stariye Atagi. The Court considers that the above failures

of the investigating authorities constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II).

64. As regards the interests of the next of kin, the Court notes that the applicants were granted victim status on 14 May 2004, that is, less than one month following the institution of the investigation. It takes note of the applicants' allegation that they had not been informed about the investigative measures taken. However, in the letter of 26 November 2005 the Grozny District Prosecutor's Office invited the first applicant to study the case file. From the text of the letter it appears that the invitation was contained in previous correspondence as well. No evidence has been submitted by the applicants indicating that their right to study the case file was subsequently denied or restricted. In the absence of such information, the Court finds that the investigators took sufficient measures to safeguard the interests of the next of kin in the proceedings.

65. Having regard to the limb of the Government's preliminary objection that was joined to the merits of the complaint, the Court observes that the investigation was resumed by the prosecuting authorities themselves a number of times, presumably due to the need to take additional investigative steps. However, they still failed to investigate the applicants' allegations properly. 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. 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.

66. In the light of the foregoing, the Court holds that the authorities failed to carry out an effective criminal investigation into the circumstances of the abduction and killing of Mr Anzor Sambiyev, in breach of Article 2 in its procedural aspect.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF THE APPLICANTS

67. The applicants relied on Article 3 of the Convention, submitting that as a result of their son's abduction and killing and the State's failure to investigate it properly, they had endured mental suffering in breach of Article 3 of the Convention. They also stated that it was highly probable that Mr Anzor Sambiyev had been subjected to treatment contrary to Article 3 of the Convention, which reads as follows:

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

A. The parties' submissions

68. The Government accepted that the applicants must have suffered as a result of their son's killing. However, since the involvement of State agents in his abduction or killing had not been established, the State could not be held responsible for their suffering. They also stated that the investigation had not established that Mr Anzor Sambiyev had been subjected to treatment prohibited by Article 3 of the Convention.

69. In their observations on the admissibility and merits of the application the applicants submitted that they no longer wished to have the complaint regarding alleged ill-treatment of Mr Anzor Sambiyev examined. They further reiterated the complaint concerning the mental suffering endured.

B. The Court's assessment

1. Admissibility

(a) The complaint concerning the alleged ill-treatment of Mr Anzor Sambiyev

70. The Court, having regard to Article 37 of the Convention, finds that the applicants do not intend to pursue this part of the application, within the meaning of Article 37 § 1 (a). The Court also finds no reasons of a general character, affecting respect for human rights, as defined in the Convention, which require further examination of the present complaints by virtue of Article 37 § 1 of the Convention *in fine* (see, for example, *Chojak v. Poland*, no. 32220/96, Commission decision of 23 April 1998, unpublished; *Singh and Others v. the United Kingdom* (dec.), no. 30024/96, 26 September 2000; and *Stamatios Karagiannis v. Greece*, no. 27806/02, § 28, 10 February 2005).

71. It follows that this part of the application must be struck out in accordance with Article 37 § 1 (a) of the Convention.

(b) The complaint concerning the applicants' mental suffering

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

2. Merits

73. The Court observes that the question whether a member of the family of a “disappeared person” is a victim of treatment contrary to Article 3 will depend on the existence of special factors which give the suffering of the applicants a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation. Relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries. The Court would further emphasise that 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. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities' conduct (see *Orhan*, cited above, § 358, and *Imakayeva v. Russia*, no. 7615/02, § 164, ECHR 2006-... (extracts)).

74. In the present case the Court notes that the applicants are the parents of Mr Anzor Sambiyev, who was abducted in the evening of 10 April 2002 and whose dead body was found in the morning of the next day. It observes that this case is distinct from the majority of other cases concerning disappearances in the Chechen Republic that have come before the Court in that the applicants' son could be considered a “disappeared person” for no more than several hours. It further notes that its findings under the procedural aspect of Article 2 (see paragraph 64 above) to the effect that the investigators took sufficient steps to safeguard the interests of the next of kin in the proceedings are also of direct relevance here. In view of the above, the Court considers that in the present case no separate issues arise under this Convention provision beyond those already examined under Article 2 of the Convention and Article 13 of the Convention (below) (see *Tangiyeva v. Russia*, no. 57935/00, § 104, 29 November 2007).

75. In these circumstances, while the Court does not doubt that the death of their son caused the applicants profound suffering, it nevertheless finds no basis for finding a violation of Article 3 of the Convention in this context.

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

76. The applicants further stated that Mr Anzor Sambiyev 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

77. In the Government's opinion, no evidence was obtained by the investigators to confirm that Mr Anzor Sambiyev had been deprived of his liberty by State agents in breach of the guarantees set out in Article 5 of the Convention.

78. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

80. 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 v. Russia*, no. 69480/01, § 122, ECHR 2006-... (extracts)).

81. The Court has found it established that Mr Anzor Sambiyev was apprehended by State servicemen on 10 April 2004. His dead body was found the next day. 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 and 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).

82. In view of the foregoing, the Court finds that Mr Anzor 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.

V. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

83. The applicants complained that under national law they were barred from filing a civil claim to obtain compensation for their relative's unlawful detention or death pending the outcome of the criminal investigation. They relied on Article 6 § 1 of the Convention, the relevant parts of which provide:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

A. The parties' submissions

84. The Government disputed this allegation.

85. The applicants made no further submissions.

B. The Court's assessment

1. Admissibility

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

2. Merits

87. The Court finds that the applicants' complaint under Article 6 concerns essentially the same issues as those discussed under the procedural aspect of Article 2 and, below, under Article 13. In these circumstances, the Court finds that no separate issues arise under Article 6 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

88. The applicants complained that they had been deprived of effective remedies in respect of the violation of Article 2 of the Convention, 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

89. The Government submitted that the applicants could actively participate in the investigation and appeal against actions or omissions of the investigating authorities in court, which they had failed to do. Furthermore, they could file claims in respect of non-pecuniary damage, which they had not done either. The Government argued that the applicants thus had effective domestic remedies in respect of their complaints. They referred, in particular, to several decisions by courts of the Chechen Republic delivered in other cases upholding complaints concerning certain actions of investigating authorities or awarding non-pecuniary damages.

90. The applicants argued that in their case the State had failed to conduct an adequate investigation into the abduction and killing of their son, which undermined the effectiveness of other possible remedies.

B. The Court's assessment

1. Admissibility

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

2. Merits

92. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. According to the Court's settled case-law, the effect of Article 13 of the Convention is to require the provision of a remedy at national level allowing the competent domestic authority both to deal with the substance of a relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their obligations under this provision. However, such a remedy is only required in respect of grievances which can be regarded as “arguable” in terms of the Convention (see, among many other authorities, *Halford v. the United Kingdom*, 25 June 1997, § 64, *Reports of Judgments and Decisions* 1997-III).

93. As regards the complaint of lack of effective remedies in respect of the applicants' complaint under Article 2, the Court emphasises that, given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and infliction of treatment contrary to Article 3, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-62, ECHR 2002-IV, and *Süheyla Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005). The Court further reiterates that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see *Khashiyev and Akayeva*, cited above, § 183).

94. In view of the Court's above findings with regard to Article 2, this complaint is clearly “arguable” for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). The applicants should accordingly have been able to avail themselves of effective and practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation for the purposes of Article 13.

95. It follows that in circumstances where, as here, the criminal investigation into the disappearance has been ineffective and the effectiveness of any other remedy that may 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.

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

VII. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

97. The applicants alleged that they had been discriminated against in the enjoyment of their Convention rights, since the violations of which they complained had taken place on account of their being resident in Chechnya and their ethnic background as Chechens. This was contrary to Article 14 of the Convention, which reads as follows:

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

A. The parties' submissions

98. The Government argued that the allegations were unsubstantiated.

99. The applicants maintained the complaint.

B. The Court's assessment

100. The Court observes that no evidence has been submitted to it that suggests that the applicants were treated differently from persons in an analogous situation without objective and reasonable justification, or that they have ever raised this complaint before the domestic authorities. It thus finds that this complaint has not been substantiated.

101. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

102. 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

103. The applicants claimed that they had sustained damage in respect of the loss of their son's earnings following his apprehension and subsequent killing. The first applicant claimed 176,745.77 roubles (RUR) (approximately 4,995 euros (EUR)) and the second applicant claimed RUR 180,153.47 (approximately EUR 5,090) under this head.

104. The applicants claimed that Mr Anzor Sambiyev had been temporarily unemployed due to the situation in Chechnya. Having regard to the provisions of the Civil Code on the calculation of lost earnings, they claimed that the amount of an unemployed person's earnings should be equal to the average remuneration of a person with similar qualifications and could not be based on an amount lower than the subsistence level determined by federal laws. They submitted that they were dependent on their son and would have benefited from the latter's financial support in the amounts indicated above, that is, 10% of his earnings in respect of each applicant. Their calculations were based on provisions of the 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”).

105. The Government argued that no compensation for pecuniary damage should be awarded to the applicants since it had not been established that State agents had been involved in his abduction and death. Furthermore, the Government contested the applicants' use of the Ogden tables arguing that the calculations should be based on the national legislation. They also pointed out that the applicants should have applied to the domestic courts with a claim for compensation for damage caused by the death of the family's breadwinner.

106. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention. Furthermore, under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”. The Court finds that there is indeed a direct causal link between the violation of Article 2 in respect of the applicants' son and the loss by them of the financial support which he

could have provided. It further notes that Mr Anzor Sambiyev was unemployed. Nevertheless, the Court finds it reasonable to assume that he would eventually have had some earnings and that the applicants would have benefited from them. Having regard to the applicants' submissions, the Court awards them jointly EUR 5,000 in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

107. The applicants claimed EUR 250,000 jointly in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their son and the indifference shown by the authorities towards them.

108. The Government found the amount claimed exaggerated.

109. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and killing of the applicants' son. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the applicants jointly EUR 35,000, plus any tax that may be chargeable thereon.

C. Costs and expenses

110. The applicants were 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. They also claimed postal expenses in the amount of EUR 59.99, translation expenses in the amount of EUR 64.80, as certified by invoices, and administrative expenses in the amount of EUR 450.45. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 7,010.24.

111. The Government did not dispute the details of the calculations submitted by the applicants, but pointed out that they should be entitled to the reimbursement of their costs and expenses only in so far as it had been shown that they had been actually incurred and were reasonable as to quantum (see *Skorobogatova v. Russia*, no. 33914/02, § 61, 1 December 2005).

112. The Court has to establish first whether the costs and expenses indicated by the applicants were actually incurred and, second, whether they were necessary and reasonable (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

113. Having regard to the details of the information available, the Court is satisfied that these rates are reasonable and reflect the expenses actually

incurred by the applicants' representatives. As regards the necessity of the costs and expenses incurred for legal representation, 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 Article 29 § 3 in the present case, the applicants' representatives submitted their observations on admissibility and merits in one set of documents. The Court thus doubts that the legal drafting was necessarily time-consuming to the extent claimed by the representatives.

114. Having regard to the details of the claims submitted by the applicants and acting on an equitable basis, the Court awards them EUR 6,000, together with any value-added tax that may be chargeable, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

115. 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 as to non-exhaustion of criminal domestic remedies and *rejects* it;
2. *Declares* the complaints under Articles 2, 3, 5, 6 and 13 of the Convention admissible, *decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (a) of the Convention in so far as it concerns the applicants' complaint under Article 3 of the Convention in respect of Mr Anzor Sambiyev, and *declares* the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 2 of the Convention in respect of Mr Anzor 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 abduction and killing of Mr Anzor Sambiyev;
5. *Holds* that there has been no violation of Article 3 of the Convention in respect of the applicants;

6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Mr Anzor Sambiyev;
7. *Holds* that no separate issues arise under Article 6 of the Convention;
8. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violation of Article 2 of the Convention;
9. *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:
 - (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement, in respect of pecuniary damage to the applicants jointly;
 - (ii) EUR 35,000 (thirty-five thousand euros), plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement, in respect of non-pecuniary damage to the applicants jointly;
 - (iii) EUR 6,000 (six 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 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 22 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Registrar

Christos Rozakis
President