



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

FIRST SECTION

CASE OF AYUBOV v. RUSSIA

(Application no. 7654/02)

JUDGMENT

STRASBOURG

12 February 2009

FINAL

05/06/2009

This judgment may be subject to editorial revision.

In the case of Ayubov 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 Hajiyev,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 22 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 7654/02) 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, Mr Dusid Ayubov (“the applicant”), on 31 January 2002.

2. The applicant, who had been granted legal aid, was represented by lawyers of the Memorial Human Rights Centre (Moscow) and the European Human Rights Advocacy Centre (London). The Russian Government (“the Government”) were represented first by Mr P. Laptev and then by Ms V. Milinchuk, both former Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that his son had disappeared following his unacknowledged detention and that there had been no adequate investigation into the matter. He also complained of the destruction of his property and the lack of effective remedies in respect of those violations. The applicant referred to Articles 2, 5 and 13 of the Convention and Article 1 of Protocol No. 1.

4. On 29 August 2004 the President of the First Section decided to grant priority to the application under Rule 41 of the Rules of Court.

5. By a decision of 5 July 2007, the Court declared the application admissible.

6. The applicant and the Government each filed further written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1926 and lived in Grozny, the Chechen Republic. On 9 January 2003 the applicant died and his wife, Ms Ashat Ayubova, expressed her intention to pursue the application before the Court on the applicant's behalf in letters of 31 January and 26 December 2005.

A. The facts

8. The applicant and his wife, Ms Ashat Ayubova, are the parents of Mr Adam Ayubov, born in 1959. They lived in Grozny in their privately owned house at 17 Narvskaya Street with other family members. In the winter of 1999-00 the applicant and other members of his family left Grozny because of the hostilities. Adam Ayubov remained in Grozny to guard the house and property. He was married and had two children. Before the unrest in Chechnya he had served in the elite troops of the Ministry of the Interior and had held the highest sport title of the USSR.

1. Events of 19 January 2000

9. On 19 January 2000, during daylight hours, a group of armed men in camouflage uniforms arrived at Narvskaya Street in a Ural military truck. The applicant, who did not witness his son's detention, referred to eyewitness statements of his neighbours to the effect that they were federal servicemen. According to the Government, they were "unidentified armed men in camouflage uniforms".

10. The men checked the residents' documents and ordered three men – Adam Ayubov, Mr Sh. and a man named Oleg or Vladimir – to get into the truck. The neighbours who were present in the street tried to intervene, and for about 20 minutes obstructed the vehicle, asking the men in camouflage uniforms to release the three men and saying that they had not been involved in anything illegal. Despite their efforts the applicant's son and the two other men were taken away.

11. The applicant submitted with reference to his neighbours' statements that about an hour later the same Ural truck with the same armed men in camouflage uniforms had returned and destroyed the house at 17 Narvskaya Street and two cars in the courtyard with a flame-thrower. The applicant produced photographs of his destroyed house and burnt cars and a list of his destroyed possessions (see paragraphs 40 and 41 below).

12. Mr Sh. and the man named Oleg or Vladimir were released later that day. They stated that they had been detained by a detachment of the police special force from Novosibirsk.

13. The applicant and his family have had no news of Adam Ayubov since that date.

14. The applicant's wife corroborated the above account of the events with two eyewitness statements made by Mr G. and Ms Kh. They both confirmed that on 19 January 2000 they had seen Adam Ayubov being detained by servicemen and taken away in a military Ural truck, and that the servicemen had returned later on 19 January and then on 20 January 2000 and had taken property from the Ayubovs' house and burned a Volga car and a Niva car in the courtyard of the house. The applicant's wife also submitted a written statement of one of her representatives to the effect that he had on several occasions approached Mr Sh. with a request to give a written statement concerning the events of 19 January 2000. Mr Sh. had confirmed the circumstances of that incident orally, but had refused to make any written statements out of fear for his security, stating that he had been warned by law-enforcement officials to refrain from describing that incident to any human rights organisations.

15. According to Adam Ayubov's sister, Ms Liza Azimova, on 19 January 2000 the Russian TV channel NTV showed an interview with Russian servicemen concerning the military actions in Grozny, which was recorded in the vicinity of the Ayubov family domicile. One of the servicemen mentioned the capture of a Chechen sniper, "a master of sports in shooting", briefly showed a passport with that man's photograph and stated that the sniper's name was Arsanov [rather than Ayubov]. Ms Azimova insisted that she had recognised her brother's photograph in the passport and that he had been the only master of sports in shooting in the Northern Caucasus, and that therefore the servicemen had been describing the arrest of Adam Ayubov. A copy of the aforementioned interview has been submitted to the Court.

2. The applicant's search for Adam Ayubov

16. As soon as the applicant learned of his son's detention, he and other members of the family started searching for him. On numerous occasions, both in person and in writing, they applied to prosecutors at various levels, to the Ministry of the Interior, to the administrative authorities in Chechnya. He also personally visited military commander's offices and pre-trial detention centres in Chechnya and further afield in the region. In the letters addressed to the authorities the applicant stated the facts of Adam Ayubov's detention and asked for assistance and details on the investigation.

17. The applicant was given no substantive information from official bodies about the investigation into his son's disappearance. On several

occasions he received copies of letters stating that his requests had been forwarded to the different prosecutors' services.

18. According to the applicant, he had first applied to a prosecutor's office in April 2000.

19. In letters of 10 and 16 June 2000 the prosecutor's office of the Chechen Republic (*прокуратура Чеченской Республики* – "the republican prosecutor's office") forwarded the applicant's complaints to the Grozny prosecutor's office (*прокуратура г. Грозного*).

20. On 3 July 2000 the Memorial Human Rights Centre wrote on the applicant's behalf to the republican prosecutor's office. They stated the facts of Adam Ayubov's detention, listed the neighbours who had witnessed it and asked for information about his whereabouts.

21. On 8 August 2000 the Grozny prosecutor's office forwarded the applicant's complaint to the temporary district office of the interior of the Staropromyslovskiy District of Grozny. The letter instructed the district office to "conduct a full and thorough verification of the applicant's complaint, in accordance with Article 109 of the Code of Criminal Procedure" which obliged investigative bodies to verify facts stated in a complaint and to decide within three days whether a criminal investigation should be opened.

22. On 10 August 2000 the republican prosecutor's office forwarded one of the applicant's letters to the Chechen Department of the Interior for "organisation of a search for a missing person" and another to the Grozny prosecutor's office.

23. On 18 January 2001 the Department of Justice of the Republic of Ingushetia, in reply to a request of Adam Ayubov's brother concerning the whereabouts of Adam Ayubov who had been detained by servicemen on 19 January 2000, stated that they had requested the Ministry of Justice to check whether Adam Ayubov was being kept in any detention centre.

24. On 28 March 2001 the applicant's family submitted to the Zavodskoy District Administration of Grozny a request to investigate his son's disappearance, co-signed by eight of his neighbours. The neighbours described Adam Ayubov as a good-natured man who had no links with any illegal groups and who had on many occasions risked his own life to help his neighbours during the hostilities in the winter of 1999-00.

25. On the same day the Zavodskoy District Administration wrote to the Memorial Human Rights Centre, asking them to help the applicant to find his son, "who had been taken from his home on 19 January 2000 by the servicemen of the Novosibirsk OMON during a "sweeping" operation

26. On 6 April 2001 the Memorial Human Rights Centre wrote to the Prosecutor General's Office on the applicant's behalf. Referring to their letter of 3 July 2000, they stated the known facts of Adam Ayubov's detention and summarised the correspondence maintained by the applicant. They enquired whether a criminal investigation had been opened into Adam

Ayubov's disappearance, and requested an update on the proceedings. It does not appear that any answer was received to that letter.

3. *Official investigation*

27. Referring to the information provided by the Prosecutor General's Office, the Government submitted that on 14 November 2000 the Grozny prosecutor's office had instituted a criminal investigation into the abduction of the applicant's son as well as misappropriation and intentional infliction of damage by setting fire to the property of the Ayubov family. The case file was assigned the number 12275.

28. It also appears that at some point the case was transferred to the prosecutor's office of the Zavodskoy District (*Заводская районная прокуратура* – "district prosecutor's office").

29. According to the Government, in the context of those proceedings on 21 November 2000 an investigator of the prosecutor's office had inspected the house of the Ayubov family. The applicant had been granted the status of victim of a crime and questioned on 24 November 2000. Following the applicant's death in 2003, his wife, Adam Ayubov's mother, had been declared a victim and questioned on 3 January 2005. The investigating authorities had also questioned Adam Ayubov's brother on 6 and 10 January 2005, granted him the status of a victim on 10 January 2005 and declared him a civil claimant in the criminal case on 11 January 2005. The latter had produced photographs of the burnt property which had been included in the file of criminal case no. 12275.

30. In their observations on the admissibility of the present application the Government stated that the investigating authorities had also questioned nine witnesses, the applicant's neighbours and relatives, who "[had] confirmed the circumstances of Adam Ayubov's abduction and stated that they had no information concerning his whereabouts". According to the Government, it was not possible to identify other witnesses in the case.

31. After the present application had been declared admissible, the Government refused to provide transcripts of any witness interviews despite the Court's specific request to that end, stating that they had reproduced the contents of those interviews in their observations on the merits of the present case. They submitted in particular that Mr Sh. had stated in his witness interview of 12 January 2001 that on 19 January 2000 armed men in camouflage uniforms and masks had taken him, his neighbour Adam Ayubov and a man named Vladimir away and delivered them in a truck to the location of an unknown military unit, and that the next day he, Vladimir and a man named Akhmed had been taken to the village of Alkhan-Kala and released there. According to the Government, during that interview Mr Sh. also stated that there had been no identifying signs on the truck in which he, Vladimir and the applicant's son had been taken away; however during his

subsequent interviews he submitted that the truck had borne the inscription “Novosibirsk”.

32. Mr Z. stated during a witness interview of 26 November 2001 that on 19 January 2000 servicemen had taken away three men, namely Sh., Adam Ayubov and the latter’s acquaintance, for an identity check and that later Mr Sh.’s mother had told him that Mr Sh. had been released.

33. Ms Kh. who was questioned as a witness on 2 January 2005 submitted that on 19 January 2000 Adam Ayubov, his acquaintance and Sh. had been taken away by servicemen. She also described in detail the appearance of a man who, in her opinion, had been in command of that operation and indicated his insignia. Ms Kh. further stated that the registration plates of a Ural truck in which the three men had been taken away had been black with white letters and figures on them, including figures “2” and “6” and a letter “G”, and that she did not remember whether there had been any identification signs on the truck.

34. During witness interviews on 7 January 2005 Mr Sh.’s mother gave oral evidence similar to that of Mr Sh., and Ms Z. stated that she did not remember the events of 19 January 2000.

35. The Government also stated that the investigating authorities had sent a number of queries to various State bodies on 1 May, 30 August and 26 November 2000, 5, 8, 9, 11 and 12 January and 20 April 2005 and undertaken other investigative measures, but did not specify what those measures had been.

36. Finally, the Government submitted that the investigation had been suspended and resumed on several occasion, but had failed to identify those responsible so far.

B. Evidence submitted by the parties

1. Evidence submitted by the applicant

37. Among other documents, the applicant’s wife submitted several documents relating to the claims concerning the destruction of property.

38. A certificate of right to inherit dated 21 May 2004 confirms that the applicant’s property after his death in 2003 was inherited by his son, and that that property consists of a destroyed house situated on a plot of land measuring 469 square metres, which was held by the applicant under a contract of a building lease.

39. A handwritten plan of the household at 17 Narvskaya Street represents a courtyard with the gates, two car boxes adjacent to a house, a summer kitchen and awning, and the house consisting of a lobby, a corridor, a kitchen, a boiler room, a bathroom, two living rooms and two bedrooms. There is no indication of any dimensions or general surface of the house or of any of premises depicted in the plan.

40. A handwritten document dated 10 June 2005 and signed by the applicant's wife lists articles of property destroyed on 19 and 20 January 2000 and indicates their value in United States dollars (USD). These are a VAZ Niva car (USD 5,000), a Volga car (USD 4,000), living room furniture (USD 6,000), bedroom furniture (USD 4,000), kitchen furniture (USD 2,000), twenty carpets (USD 3,500), two refrigerators (USD 1,500), video equipment and TV set (USD 800), chandeliers (USD 500), crockery (USD 3,000), lobby furniture (USD 1,000), a boiler (USD 400), sanitary equipment (USD 500), two gas cookers (USD 700), car spare parts and tools (USD 1,000), two air-conditioners (USD 600), current generator (USD 1,000), jewels (USD 10,000), clothes for all family members (USD 10,000), and household appliances (USD 2,000).

41. Four photographs represent two burnt cars and a burnt house at 17 Narvskaya Street. According to the applicant's wife, she was unable to submit documents for the cars, as they had been kept in the house and burnt there.

42. The applicant's wife also submitted a DVD with records of various family events in 1995 and 1996, showing the cars and some furnishings inside the house.

2. Documents submitted by the Government

(a) The Court's requests for the investigation file

43. In November 2004, when the application was communicated to them, the Government were invited to produce a copy of the investigation file in a criminal case opened into the abduction of the applicant's son. Relying on the information obtained from the Prosecutor General's Office, the Government replied 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 information of a military nature and personal data concerning the witnesses. At the same time, the Government suggested that a Court delegation could have access to the file at the place where the preliminary investigation was being conducted, with the exception of "the documents [disclosing military information and personal data concerning the witnesses], and without the right to make copies of the case file or transmit it to others". In April 2005 the Court reiterated its request and suggested that Rule 33 § 3 of the Rules of Court be applied. In reply, the Government again refused to produce any documents from the file for the aforementioned reasons.

44. In their additional memorial of 30 January 2007, however, the Government submitted copies of several documents which included:

(a) procedural decisions of 20 May 2005, 28 September and 4 November 2006 and 19 January 2007 suspending and reopening the investigation in case no. 12275;

(b) investigators' decisions of 4 October 2006 and 19 January 2007 to take up case no. 12275;

(c) letters issued in 2005-07 informing the applicant's wife and her other son, Adam Ayubov's brother, of the suspension and reopening of the investigation in criminal case no. 12275.

45. On 5 July 2007 the application was declared admissible. At that stage the Court once again invited the Government to submit the investigation file and to provide information concerning the progress of the investigation after January 2007. It also put a number of factual questions to the Government. The Court enquired, in particular, which units of the federal armed forces and/or security agencies had been stationed in the vicinity of the Ayubov family's domicile at the period described in the statement of facts; whether the federal armed forces and/or security agencies had carried out any special operations in the vicinity of the Ayubov family's domicile in January 2000, and, in particular, on 19 January 2000, and whether the possible involvement of the personnel of the Novosibirsk OMON in Adam Ayubov's removal had been verified during the investigation in criminal case no. 12275. The Government were also furnished with a copy of the video material submitted by the applicant's wife, and were requested to comment on it, in particular, to indicate whether the passport shown in that material belonged to Adam Ayubov (see paragraph 15 above).

46. In reply, the Government refused to submit any documents from the case file other than those produced earlier and remained silent as regards the Court's question relating to the progress in the investigation. They further stated that "there was no information concerning units of the federal armed forces and/or security agencies stationed in the vicinity of the Ayubov family's domicile at the relevant period" and that, "according to the replies from competent State bodies, no special operation had been carried out by the federal armed forces and/or security agencies in the vicinity of the Ayubov family's domicile in January 2000". The Government also stated that the version concerning the possible involvement of the Novosibirsk OMON in Adam Ayubov's apprehension had been checked, and that no such involvement had been established. In particular, according to a letter of the acting head of the Main Department of the Interior of the Novosibirsk Region dated 26 May 2005 in reply to a query by an investigator of the prosecutor's office of the Zavodskoy District, "there [had been] no personnel of the Novosibirsk OMON in the territory of the Chechen Republic on 19 January 2000". The Government did not produce a copy of this letter. As regards the Court's question concerning the video material, the Government stated that neither Ms Liza Azimova nor Ms Ayshat Ayubova had informed the investigating authorities of the existence of any video record of the interview of 19 January 2000 referred to by Ms Azimova, and that therefore that piece of evidence had not been

examined and included in the investigation file in proper time. According to the Government at present the prosecutor of the Zavodskoy District had been instructed “to take measures aiming at identification of persons possessing that material and its seizure”. They remained silent as to the Court’s question whether the passport shown in that material belonged to Adam Ayubov.

(b) Letters from domestic courts

47. The Government also enclosed a number of letters from various higher courts in Russia, stating that the applicant had never made complaints regarding his son’s detention, the destruction of his property or the authorities’ inactivity with the respective courts or sought compensation of the damaged inflicted on his property.

II. RELEVANT DOMESTIC LAW

48. For a summary of the relevant domestic law see *Kukayev v. Russia*, no. 29361/02, §§ 67-69, 15 November 2007 and *Musayeva and Others v. Russia*, no. 74239/01, §§ 62-63, 26 July 2007.

THE LAW

I. THE GOVERNMENT’S PRELIMINARY OBJECTION

A. Submission by the parties

49. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies since the investigation into the abduction of the applicant’s son and the infliction of damage on his property had not yet been completed. They also contended that by virtue of relevant provisions of the Russian Constitution, the Russian Code of Criminal Procedure, the Russian Civil Code and other legal instruments it had been open to the applicant to make a court complaint to it about the allegedly unlawful detention of his son, or to challenge in court any actions or omissions of the investigating or other law-enforcement authorities. They also submitted that the applicant had been granted the status of a civil claimant in the criminal proceedings, and therefore could have made a court complaint or claim concerning the destruction of his property. The Government insisted that the applicant could have applied directly to the Supreme Court of Russia. However, he had not availed

himself of any such remedy. In support of their argument, the Government referred to the letters from the Russian courts which they had submitted to the Court (see paragraph 47 above).

50. The applicant's wife, on his behalf, contested the Government's objection. She first stated that in 2000 it had been impossible to make effective use of any remedy within the territory of the Chechen Republic, as the courts and law-enforcement agencies had not been functioning properly there.

51. The applicant's wife further argued that the fact that the investigation into the circumstances of her son's disappearance was still pending cast doubt upon its effectiveness rather than indicating that the applicant's complaints were premature.

52. She also contended that the Government had failed to demonstrate the effectiveness of the domestic remedies relied on by them. In particular, she pointed out that under relevant provisions of national law the applicant would have only had the standing to challenge before a court the detention of his son if the latter had been a minor, which clearly was not the case, and that in any event in the absence of any information concerning the place of his son's detention, the applicant had been deprived of the opportunity, even theoretically, of applying to a court which would have territorial jurisdiction over such a complaint.

53. The applicant's wife argued that it was impossible to bring any civil claim for compensation until those responsible for the crime had been identified in course of criminal proceedings. She also referred to the cases of *Isayeva, Yusupova and Bazayeva v. Russia* (nos. 57947/00, 57948/00 and 57949/00, judgment of 24 February 2005, § 149); *Yaşa v. Turkey* (judgment of 2 September 1998, *Reports of Judgments and Decisions* 1998-VI, § 74); and *Selçuk and Asker v. Turkey* (judgment of 4 April 1998, *Reports* 1998-II, § 96) and argued that the applicant had not been obliged to pursue any civil remedy as this would only lead to an award of damages and not to the identification and punishment of those responsible, as required by the Court's settled case-law in relation to complaints such as his ones. She contended that in any event by virtue of a relevant provision of the Russian Civil Code, in the absence of any meaningful findings made by the domestic investigation, a court would suspend the consideration of any civil claim pending the outcome of the investigation.

B. The Court's assessment

54. The Court notes that, in its decision of 5 July 2007, it considered that the question of exhaustion of domestic remedies was closely linked to the substance of the present application and that it should be joined to the merits. It will now proceed to assess the parties' arguments in the light of the Convention provisions and its relevant practice.

55. The Court reiterates that the rule of exhaustion of domestic remedies under Article 35 § 1 of the Convention obliges applicants to use first the remedies which are available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain both in theory and in practice, failing which they will lack the requisite accessibility and effectiveness. There is no obligation to have recourse to remedies which are inadequate or ineffective. It is incumbent on the respondent Government claiming non-exhaustion to indicate to the Court with sufficient clarity the remedies to which the applicants have not had recourse and to satisfy the Court that the remedies were effective and available in theory and in practice at the relevant time, that is to say that they were accessible, were capable of providing redress in respect of the applicants' complaints and offered reasonable prospects of success (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, §§ 51-52; *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, § 65-68; and, most recently, *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, no. 41964/98, § 64-65, 27 June 2006).

56. In the present case, in so far as the Government argued that the applicant had not lodged a court complaint about his son's detention, the Court observes that after Adam Ayubov had been apprehended the applicant had actively attempted to establish his whereabouts and applied to various official bodies (see paragraphs 16, 20, 24 and 26 above), whereas the authorities had never acknowledged that they had detained the applicant's son. In such circumstances, and in particular in the absence of any proof to confirm the very fact of the detention, even assuming that the remedy referred to by the Government was accessible to the applicant, it is more than questionable whether a court complaint about the unacknowledged detention of the applicant's son by the authorities would have had any prospects of success. Moreover, the Government have not demonstrated that the remedy indicated by them would have been capable of providing redress in the applicant's situation – in other words, that the applicant's recourse to this remedy would have led to the release of Adam Ayubov, and to the identification and punishment of those responsible (see *Musayeva and Others*, cited above, § 69, or *Kukayev*, cited above, § 78). In the light of the foregoing, the Court considers that it has not been established with sufficient certainty that the remedy advanced by the Government would have been effective within the meaning of the Convention. The Court finds that the applicant was not obliged to pursue that remedy, and that this limb of the Government's preliminary objection should therefore be dismissed.

57. To the extent the Government argued that the investigation was still pending and that the applicant had not complained to a court about the actions or omissions of the investigating or other law-enforcement authorities during the investigation, the Court firstly observes that the

Government did not indicate which particular actions or omissions of the investigators the applicant should have challenged before a court. It further notes that the Russian Code of Criminal Procedure referred to by the Government became operative on 1 July 2002 and that the applicant was clearly unable to have recourse to the remedy invoked by the Government prior to that date. As regards the period thereafter, the Court considers that this limb of the Government's preliminary objection raises issues which are closely linked to the question of the effectiveness of the investigation, and it would therefore be appropriate to address the matter in the examination of the substance of the applicant's complaints under Article 2 of the Convention.

58. As regards the Government's argument that the applicant did not bring a court complaint concerning the destruction of his property, or claim for compensation, the Court considers that this limb of the Government's preliminary objection raises issues which are closely linked to the question of the availability at the national level of effective remedies. It is therefore appropriate to address this point in the Court's examination of the substance of the applicant's complaint under Article 13, in conjunction with Article 1 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

59. The applicant complained of a violation of the right to life in respect of his son, Adam Ayubov, and the absence of effective investigation into the matter. He relied on Article 2 of the Convention, which states as follows:

"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. Alleged failure to protect the right to life

1. Submissions by the parties

60. The applicant's wife contended that it was beyond reasonable doubt that Adam Ayubov had been detained by representatives of the federal forces, this fact having been confirmed by eyewitness statements. She further stressed that Adam Ayubov had been apprehended in life-endangering circumstances, given that his apprehension had been effected by a group of armed men who had arrived in military vehicles and had not produced any documents to authorise their actions. In this respect she referred to a Human Rights Watch document reporting on a widespread practice of forced disappearances during the period in question. She thus argued that, in view of the above and given that her son remained missing for several years, he may be presumed dead even in the absence of any formal evidence confirming his death. The applicant's wife also invited the Court to draw inferences from the Government's failure to provide any plausible explanation as to her son's fate and from their refusal to submit the file of the criminal investigation.

61. The Government relied on the information provided by the Prosecutor General's Office and argued that the investigation had not obtained any evidence that Adam Ayubov was dead, or that representatives of the federal military or security agencies had been involved in his abduction or alleged killing. They contested the oral evidence given by witnesses during interviews by the investigating authorities as unreliable, stating that witness statements had been controversial and that the investigating authorities had checked the information given by the witnesses by sending queries to law-enforcement agencies and power structures, but that information had not been confirmed. The Government argued therefore that there were no grounds to claim that Adam Ayubov's right to life secured by Article 2 of the Convention had been breached.

2. The Court's assessment

62. The Court reiterates that, in the light of the importance of the protection afforded by Article 2, it 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. It has held on many occasions that, where an individual is taken into police custody in good health and is found to be injured on release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused. The obligation on the authorities to account for the treatment of an individual within their control 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).

63. In the present case, the Court observes that although the Government denied the State's responsibility for the abduction and disappearance of the applicant's son, they acknowledged the specific facts underlying the applicant's version of events. In particular, it is common ground between the parties that Adam Ayubov was taken away from his home by men in camouflage uniforms armed with automatic firearms during the daylight hours on 19 January 2000. It has therefore first to be established whether the armed men belonged to the federal forces.

64. The Court notes at the outset that despite its repeated requests for a copy of the investigation file concerning the abduction of Adam Ayubov, the Government refused to produce it, referring to Article 161 of the Russian 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 it (see, for example, *Imakayeva v. Russia*, no. 7615/02, § 23, ECHR 2006-... (extracts)). In view of the foregoing and bearing in mind the principles cited above, the Court finds that it can draw inferences from the Government's conduct in this respect.

65. It further considers that the applicant and subsequently his wife presented a coherent and consistent picture of Adam Ayubov's detention on 19 January 2000, the applicant's wife having corroborated this account with two eyewitness statements (see paragraph 14 above). The applicant and his wife stated that the perpetrators had acted in a manner similar to that of a security operation. In particular, they had arrived in a group in a military truck during daylight hours, had checked the identity papers of the residents and had taken away three men. They had also spoken Russian without accent. Moreover, according to eyewitness statements submitted by the applicant's wife, the intruders returned later that day and the next day and destroyed her family's property. In the Court's opinion, the fact that a group of armed men in camouflage uniforms, equipped with a military truck and able to move freely in broad daylight during at least two days in a row and to apprehend several persons at their home in a city area strongly supports the applicant's allegation that they were State agents.

66. The Court observes that where the applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to the lack of such 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).

67. Taking into account the above elements, the Court is satisfied that the applicant has made a *prima facie* case that his son was detained by State agents. The Court also notes in this connection that the Government, on their part, cited statements of several witnesses, including Mr Sh. who had been detained together with the applicant's son, to the effect that on the date in question Adam Ayubov and two other men had been taken away by a group of servicemen who had arrived in a Ural military truck. The Government's subsequent statement that the investigation did not find any evidence to support the involvement of federal servicemen or special forces in the abduction is insufficient to discharge them from the above-mentioned burden of proof.

68. In the light of the foregoing and drawing inferences from the Government's failure to submit the documents from the criminal investigation file which were in their exclusive possession or to provide another plausible explanation of the events in question, the Court finds it established that Adam Ayubov was detained on 19 January 2000 by State agents.

69. The Court further notes that there has been no reliable news of the applicant's son since that date. His name has not been found in the official records of any detention facilities. The domestic investigation into Adam Ayubov's disappearance, dragging on for almost eight years, has not made any meaningful findings regarding his fate. Lastly, the Government did not submit any explanation as to what had happened to him after he had been apprehended.

70. Having regard to the previous cases concerning disappearances of people in Chechnya which have come before the Court (see, for example, *Imakayeva*, cited above, and *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts)), the Court considers that, in the context of the conflict in the Chechen Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgement of the detention, this can be regarded as life-threatening. The absence of Adam Ayubov or any news of him for over seven years corroborates this assumption. In the light of these considerations and having regard to the particular circumstances of the case, and more specifically the considerable lapse of time since the day on which Adam Ayubov went missing, the Court finds that he must be presumed dead following unacknowledged detention by State agents.

71. In the absence of any plausible explanation on the part of the Government as to the circumstances of Adam Ayubov's death, the Court further finds that the Government have not accounted for the death of the applicant's son during his detention and that the respondent State's responsibility for this death is therefore engaged.

72. Accordingly, there has been a violation of Article 2 of the Convention in this connection.

B. Alleged inadequacy of the investigation

1. Submissions by the parties

73. The applicant's wife further argued that the investigation in the present case had fallen short of the requirements of domestic law and the Convention standards. She pointed out that the investigation had not been commenced before 14 November 2000, ten months after her son's arrest and disappearance. It was then discontinued and was not reopened until the present application was communicated to the respondent Government. According to the applicant's wife, the investigating authorities had failed to take essential steps, and namely to inspect the scene of the incident and to take photographs of the burnt property, to obtain expert opinions, to question witnesses to the incident, and in particular the head of the Novosibirsk OMON, to examine the custody records of that detachment, and to establish which other forces had been operating in the area at the time. The investigation had by now been pending for several years, but had failed to identify those responsible.

74. The Government advanced no arguments regarding their compliance with the procedural obligation under Article 2 of the Convention.

2. The Court's assessment

75. 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", 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, in particular by agents of the State. The investigation must be effective in the sense that it is capable of leading to the identification and punishment of those responsible (see *Oğur v. Turkey* [GC], no. 21594/93, § 88, ECHR 1999-III). In particular, there must be an implicit requirement of promptness and reasonable expedition (see *Yaşa*, cited above, § 102-04, and *Mahmut Kaya v. Turkey*, no. 22535/93, ECHR 2000-III, §§ 106-07). It must be accepted that there may be obstacles or

difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating the use of lethal force may generally be regarded as essential in maintaining public confidence in the maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts. For the same reasons, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *Shanaghan v. the United Kingdom*, no. 37715/97, §§ 91-92, 4 May 2001).

76. In the instant case, the Court observes that some degree of investigation was carried out into the disappearance of the applicant's son. It must assess whether that investigation met the requirements of Article 2 of the Convention. The Court notes in this connection that its knowledge of the criminal proceedings at issue is rather limited in view of the respondent Government's refusal to submit the investigation file (see paragraphs 43 - 46 above). Drawing inferences from the respondent Government's conduct when evidence was being obtained (see *Ireland v. the United Kingdom* judgment of 18 January 1978, Series A no. 25, pp.64-65, § 161), the Court will assess the merits of this complaint on the basis of the available information in the light of these inferences.

77. The Court observes that whilst the authorities were made aware of Adam Ayubov's disappearance in June 2000 at the latest (see paragraph 19 above), the official investigation in that connection was not commenced until 14 November 2000, which is more than four months later. The Court sees no reasonable explanation for such a long delay where prompt action was vital.

78. It further does not appear that once opened the investigation was carried out with any diligence. The Court notes that the Government did not submit any documents from the criminal investigation file pertaining to the period prior to May 2005, and provided very scarce information on the investigative actions taken during that period. Assuming that the information provided by the Government is accurate, it appears that during the first weeks, or even months after the investigation was commenced the authorities confined themselves to the inspection of the scene of the incident on 21 November 2000 and granting victim status and interviewing the applicant on 24 November 2000 (see paragraph 29 above). The Court also observes that, in the Government's submission, in 2000 the authorities sent certain enquiries to State agencies, and namely on 1 May, 30 August and 26 November 2000 (see paragraph 35 above). However, given that the criminal proceedings in connection with the events of 19 January 2000 were

commenced on 14 November 2000, the enquiries of 1 May and 30 August 2000 clearly could not be sent in the context of those proceedings.

79. The Court further observes that in 2000 after the beginning of the investigation the authorities questioned only the applicant, and it was not until two months later, in January 2001, that they interviewed Mr Sh., who had been detained along with the applicant's son, and obviously could have provided valuable information concerning the events of 19 January 2000. Moreover, one more witness, a neighbour of the Ayubov family, was questioned in November 2001, whilst several other neighbours were not questioned until January 2005 (see paragraphs 31-34 above). The Government did not explain why those interviews, particularly with Mr Sh., could not have taken place earlier.

80. Moreover, despite the fact that a number of eyewitnesses, and above all Mr Sh., whose statements were referred to by the Government, pointed out that Adam Ayubov had been apprehended by federal servicemen and even indicated that those might have been special police forces from Novosibirsk, it does not appear that any meaningful efforts were made to investigate the possible involvement of the aforementioned personnel in the abduction of the applicant's son. In this respect, the Court is sceptical about the Government's argument that the possible implication of the Novosibirsk special police forces in the incident of 19 January 2000 had been verified and that no such involvement had been established. In the Court's opinion, the authorities' steps in this connection were at best formalistic, since as can be ascertained from the Government's submissions they were confined to sending an enquiry in 2005, which was five years after the events in question, and receiving a reply to the effect that "there had been personnel of the Novosibirsk OMON in the territory of the Chechen Republic on 19 January 2000". It does not appear, and the Government did not provide any documentary evidence or information to that end, that any fair attempts were made to find out whether any units of the federal armed forces or security agencies had been stationed in the vicinity of the Ayubov family's domicile and if so which units, or to find any witnesses among military personnel, as suggested by the applicant's wife (see paragraph 73 above).

81. The Court also notes that the Government did not provide any information as to which investigative measures had been taken between November 2001 and January 2005, which leads the Court to the conclusion that during this period, that is for over three years, the investigation remained suspended. It further notes the Government's submission that the investigation had been suspended and reopened on several occasions (see paragraph 36 above).

82. Lastly, it does not appear that the applicant who, according to the Government, was recognised as a victim on 24 November 2000, ever received any information on the conduct of the investigation. After the applicant's death in 2003, starting with 2005 his next of kin were only

informed of decisions suspending and reopening of the proceedings in the case but were not given any details of the investigation (see paragraph 44 above). In such circumstances, the Court cannot but find that the applicant and subsequently his wife were excluded from the criminal investigation into their son's disappearance.

83. The Court thus notes in respect of the Government's argument concerning the alleged failure of the applicant or his wife to appeal to a court against the omissions of the investigators that in a situation where the effectiveness of the investigation was undermined from a very early stage by the authorities' failure to take necessary and urgent investigative measures, where the investigation was pending for several years being repeatedly suspended and reopened but made no meaningful findings, and where the applicant or his wife were not properly informed of the progress of the investigation, it is highly doubtful that the remedy relied on by the Government would have had any prospects of success. Moreover, the Government have not demonstrated that this remedy would have been capable of providing redress in the applicant's situation – in other words, that it would have rectified the shortcomings in the investigation and would have led to the identification and punishment of those responsible for the abduction of his son. The Court thus considers that in the circumstances of the case it has not been established with sufficient certainty that the remedy advanced by the Government would have been effective within the meaning of the Convention. The Court finds that neither the applicant nor subsequently his wife were obliged to pursue that remedy, and that this limb of the Government's preliminary objection should therefore be dismissed.

84. In the light of the foregoing, and with regard to the inferences drawn from the respondent Government's submission of evidence, the Court further concludes that the authorities failed to carry out a thorough and effective investigation into the circumstances surrounding the disappearance of Adam Ayubov. It accordingly dismisses the Government's preliminary objection in so far as they referred to the fact that the investigation was still pending and holds that there has been a violation of Article 2 of the Convention on that account.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

85. The applicant complained that the provisions of Article 5 of the Convention as a whole, relating to the lawfulness of detention and guarantees against arbitrary detention, had been violated in respect of his son. The respective Article in its relevant parts provides as follows:

“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.”

86. The applicant’s wife claimed that her son’s detention had not satisfied any of the conditions set out in Article 5 of the Convention, had had no basis in national law and had not been in accordance with a procedure established by law or been formally registered.

87. In the Government’s submission, there was no evidence to confirm that the applicant’s son had been detained in breach of the guarantees set out in Article 5 of the Convention. Adam Ayubov was not listed among the persons being kept in detention centres, and there was no information that any decision to remand him in custody had ever been taken. According to the Chechen Department of the Federal Security Service, no special operations had ever been carried out in his respect.

88. The Court has frequently emphasised the fundamental importance of the guarantees contained in Article 5 for securing the rights of individuals in a democracy to be free from arbitrary detention at the hands of the authorities. In that context, it has repeatedly stressed that any deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law but must equally be in keeping with the very purpose of Article 5, namely to protect the individual from arbitrary detention. To minimise the risks of arbitrary detention, Article 5 provides a corpus of substantive rights intended to ensure that the act of deprivation of liberty is amenable to independent judicial scrutiny and secures the accountability of the authorities for that measure. The unacknowledged detention of an individual is a complete negation of these guarantees and

discloses a most grave violation of Article 5 (see, among other authorities, *Çakıcı*, cited above, § 104).

89. It has been established above that Adam Ayubov was detained on 19 January 2000 by State agents 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).

90. The Court further considers that the authorities should have been alert to the need to investigate more thoroughly and promptly the applicant's complaints that his son had been detained and taken away 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 prompt and effective measures to safeguard Adam Ayubov against the risk of disappearance.

91. Consequently, the Court finds that Adam Ayubov was held in unacknowledged detention in complete disregard of the safeguards enshrined in Article 5, and that this constitutes a particularly grave violation of his right to liberty and security enshrined in Article 5 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

92. The applicant complained that he had had no effective remedies in respect of his complaints under Articles 2 and 5 of the Convention and Article 1 of Protocol No. 1, contrary to Article 13 of the Convention, which reads as follows:

"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."

93. The applicant's wife maintained the complaint, alleging that the domestic remedies usually available had proved to be ineffective in their case, given that the investigation had been pending for several years without any progress and that most of the applications lodged by the applicant or by her to public bodies had remained unanswered or had only produced standard replies.

94. The Government contended that the applicant had had effective domestic remedies, as required by Article 13 of the Convention, and the Russian authorities had not prevented him or his wife from using them. They submitted that Adam Ayubov's relatives had been granted the status of victim and had received reasoned replies to all their requests made in the context of the investigation. Also, the applicant, and after his death his other son, were recognised as civil claimants in the criminal proceedings which were instituted, *inter alia*, in connection with the destruction of the Ayubovs' property, and therefore they could have made a civil claim for compensation for the damage inflicted. In the Government's submission, Adam Ayubov's relatives could also have lodged a court complaint against the actions of the investigating authorities, in accordance with Article 125 of the Russian Code of Criminal Procedure, or if the applicant or Adam Ayubov's other relatives had considered that any action or omission of public officials had caused them damage, they could have sought compensation for that damage in court by virtue of relevant provisions of the Russian Civil Code. In support of this argument, the Government referred to a decision of the Supreme Court of the Republic of Karachayevo-Cherkessia dated 19 October 2004, by which a plaintiff had been awarded a certain amount in respect of non-pecuniary damage inflicted by the unlawful actions of a prosecutor's office, and a decision of the Kanavinskiy District Court of Nizhniy Novgorod dated 28 February 2006 by which a plaintiff had been awarded a certain amount in respect of pecuniary and non-pecuniary damage caused by the unlawful actions of police officers. The Government did not enclose copies of those decisions.

95. 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. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by acts or omissions by the authorities of the respondent State (see *Aksoy*, cited above, § 95).

96. 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, 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, §§ 161-162, ECHR 2002-IV; *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, § 117; 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 *Orhan*, cited above, § 384).

97. In view of the Court's findings above with regard to Article 2, the applicant's complaint was clearly "arguable" for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52). The applicant should accordingly have been able to avail himself 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.

98. The Court has held in a number of similar cases that in circumstances where, as in the present case, the criminal investigation into the death was ineffective and the effectiveness of any other remedy that may have existed, including the civil remedies, was consequently undermined, the State has failed in its obligation under Article 13 of the Convention (see, among other authorities, *Musayeva and Others*, cited above, § 118, or *Kukayev*, cited above, § 117). It therefore rejects the Government's argument that the applicant had effective remedies afforded him by criminal or civil law and finds that there has been a violation of Article 13 of the Convention in connection with Article 2 of the Convention.

99. As regards the applicant's reference to Article 5 of the Convention, the Court refers to its findings of a violation of this provision set out above. It considers that no separate issues arise in respect of Article 13 read in conjunction with Article 5 of the Convention, which itself contains a number of procedural guarantees related to the lawfulness of detention.

100. Lastly, in so far as the applicant relied on Article 13 of the Convention in conjunction with Article 1 of Protocol No. 1, the Court firstly refers to its decision on admissibility of 5 July 2007 in which the applicant's complaint under Article 1 of Protocol No. 1 was declared admissible. Thus, he had an arguable claim for the purpose of Article 13 of the Convention. It further observes that the authorities denied involvement in the alleged destruction of the applicant's property and that the domestic investigation does not appear to have made any meaningful findings on this matter. The Court also takes note of the applicant's argument that under national procedural law a civil claim would have been stayed pending the results of the investigation. In such circumstances, it does not appear that the remedy advanced by the Government would have had any prospects of success or would have provided the applicant with any redress. The Court therefore dismisses the Government's preliminary objection in its relevant part and finds that the applicant did not have any effective domestic remedy in

respect of the alleged infringement of his property rights. Consequently, there has been a violation of Article 13 in conjunction with Article 1 of Protocol No. 1 to the Convention.

V. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

101. The applicant complained about the destruction of his property referring to Article 1 of Protocol No. 1 which provides as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

102. The applicant’s wife insisted that her family’s house with various belongings in it and two cars in the courtyards had been set on fire by the same armed men who had taken away her son, and therefore the State’s responsibility under Article 1 of Protocol No. 1 was engaged. She argued that the infliction of damage on the property had constituted an unjustified interference with the applicant’s property rights.

103. The Government argued that the investigation had not established who had destroyed the applicant’s property, and therefore there were no grounds to claim that representatives of the federal forces had been involved in that offence.

104. The Court observes first of all that the applicant’s wife submitted a certificate attesting that the applicant’s property inherited by his son consisted of a destroyed house. She also submitted photographs of two burnt cars and a record showing a number of household belongings. The Government did not call into question the applicant’s title to the house at 17 Narvskaya Street or to any other possessions. The Court is therefore satisfied that the applicant had property rights in respect of the house, the cars and household belongings.

105. The Court further observes that although the Government denied responsibility for the alleged violations of the applicant’s rights under Article 1 of Protocol No. 1, they conceded that the men who had abducted Adam Ayubov had also damaged the applicant’s property. They submitted, in particular, that a criminal investigation had been opened into the abduction of the applicant’s son as well as misappropriation and inflicting damage on his property by setting it on fire (see paragraph 27 above) and that photographs of the burnt property submitted by the applicant’s other

son had been included in the investigation file (see paragraph 29 above). Against this background and in view of its above finding that the men who took Adam Ayubov away on 19 January 2000 were State agents, the Court finds that the actions of the aforementioned men constituted an interference with the applicant's rights secured by Article 1 of Protocol No. 1. It further notes the absence of any justification on the part of the State for its agents' actions in that regard. The Court accordingly finds that there has been a violation of the applicant's property rights under Article 1 of Protocol No. 1.

VI. COMPLIANCE WITH ARTICLES 34 AND 38 § 1 (a) OF THE CONVENTION

106. The applicant's wife complained on his behalf that the Government's refusal to submit a file in criminal case no. 12275 was in breach of the State's obligations under Articles 34 and 38 § 1 of the Convention. The relevant parts of these Articles provide:

Article 34

"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

Article 38

"1. If the Court declares the application admissible, it shall

(a) pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities;

..."

107. The applicant's wife invited the Court to conclude that the Government's refusal to submit a copy of the entire investigation file in response to the Court's requests was incompatible with their obligations under Articles 34 and 38 § 1 (a) of the Convention.

108. The Government reiterated that the submission of the entire case file would be contrary to Article 161 of the Russian Code of Criminal Procedure. They also submitted that they had taken into account the possibility to request confidentiality under Rule 33 of the Rules of Court, but noted that the Court provided no guarantees that once in receipt of the investigation file, the applicant's wife or her representatives would not disclose these materials to the public. According to the Government, in the

absence of any sanctions in respect of the applicant's wife for a disclosure of confidential information and materials, there were no guarantees of the compliance by the applicant with the Convention and the Rules of Court.

109. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 70, ECHR 1999-IV). This obligation requires the Contracting States to furnish all necessary facilities to the Court, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of applications. Failure on a Government's part to submit such information which is in their hands, without a satisfactory explanation, may not only give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a) of the Convention (see *Timurtaş v. Turkey*, no. 3531/94, § 66, ECHR 2000-VI). In a case where the application raises issues of the effectiveness of an investigation, the documents of the criminal investigation are fundamental to the establishment of facts and their absence may prejudice the Court's proper examination of the complaint both at the admissibility stage and at the merits stage (see *Tanrıkulu*, cited above, § 70).

110. The Court observes that it has on several occasions requested the Government to submit a copy of the file on the investigation opened in connection with the disappearance of the applicant's son. The evidence contained in that file was regarded by the Court as crucial to the establishment of the facts in the present case. In reply, the Government produced only copies of procedural decisions instituting, suspending and reopening criminal proceedings, those of investigators' decisions taking up the criminal case and letters informing the applicant's wife and her other son of the suspension and reopening of the criminal proceedings in the case. They refused to submit any other documents, such as transcripts of witness interviews, reports on investigative actions and others, with reference to Article 161 of the Russian Code of Criminal Procedure.

111. The Court further notes that the Government did not request the application of Rule 33 § 2 of the Rules of Court, which permits a restriction on the principle of the public character of the documents deposited with the Court for legitimate purposes, such as the protection of national security and the private life of the parties, and the interests of justice. The Court further notes that the provisions of Article 161 of the Russian Code of Criminal Procedure, to which the Government referred, do not preclude disclosure of the documents from the file of an ongoing investigation, but rather set out the procedure for and limits to such disclosure. The Government failed to specify the nature of the documents and the grounds on which they could

not be disclosed (see, for similar conclusions, *Mikheyev v. Russia*, no. 77617/01, § 104, 26 January 2006). The Court also notes that in a number of comparable cases that have been reviewed by the Court, the Government submitted documents from the investigation files without reference to Article 161 (see, for example, *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 46, 24 February 2005, or *Magomadov and Magomadov v. Russia*, no. 68004/01, §§ 36 and 82, 12 July 2007), or agreed to produce documents from the investigation files even though they had initially relied on Article 161 (see *Khatsiyeva and Others v. Russia*, no. 5108/02, §§ 62-63, 17 January 2008). For these reasons, the Court considers the Government's explanations concerning the disclosure of the case file insufficient to justify withholding the key information requested by the Court.

112. Having regard to the importance of cooperation by the respondent Government in Convention proceedings and the difficulties associated with establishment of the facts in cases such as the present one, the Court finds that the Russian Government fell short of their obligations under Article 38 § 1 (a) of the Convention on account of their failure to submit copies of the documents requested in respect of the disappearance of the applicant's son.

113. In view of the above finding, the Court considers that no separate issue arises under Article 34 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

114. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

1. Pecuniary damage

115. The applicant's wife, Adam Ayubov's mother, sought compensation in the amount of 149,317.79 United Kingdom pounds sterling (GBP – approximately 190,000 euros (EUR)) in respect of the loss of the financial support her son would have provided for her and for his wife and their two minor children. She submitted that, although not officially employed, Adam Ayubov worked as a cab driver and re-sold used cars and that his monthly earnings amounted to USD 1,500. The applicant's wife based her calculations on the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government

Actuary's Department in 2004 ("the Ogden tables"), with reference to the absence of any equivalent methods of calculation in Russia. The applicant's wife further claimed under this head USD 43,100, which represented the total amount of the property listed in the handwritten document of 10 June 2005 (see paragraph 40 above), and USD 40,000 for the destroyed house. In the latter respect, the applicant's wife relied on internet publications reporting the increase in real estate prices in the Chechen Republic and announcements concerning purchase and sale of real estate in Grozny, from which it could be ascertained that a five-room house in Grozny was offered for sale for USD 36,986.

116. The Government contested these claims as unsubstantiated. They argued that at the time of his disappearance Adam Ayubov had not been officially employed and that the amount of USD 1,500 which he had allegedly earned monthly was speculative. They also submitted that Adam Ayubov's relatives could obtain compensation for the loss of a breadwinner and the destroyed property at the domestic level.

117. As regards the lost financial support, the Court reiterates that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention, and that this may, in appropriate cases, include compensation in respect of loss of earnings (see, among other authorities, *Çakıcı*, cited above, § 127). It further finds that there is a direct causal link between the violation of Article 2 in respect of Adam Ayubov and the loss by his mother of the financial support which he could have provided for her. The Court cannot, however, take into account the claim of the applicant's wife in respect of Adam Ayubov's other relatives since they are not applicants in the present case (see *Kaplanova v. Russia*, no. 7653/02, § 144, 29 April 2008). The Court is further not convinced that the amount claimed is reasonable, given in particular that Adam Ayubov had not been formally employed at the time of his disappearance, and that the allegation of his mother that he earned USD 1,500 monthly is unsubstantiated. On the other hand, the Court would not exclude that Adam Ayubov had some earnings and that his mother could have benefited from a certain share of them. In view of these considerations the Court considers it reasonable to award her EUR 5,000 for the lost financial support which her son could have provided for her.

118. In so far as the applicant's wife sought compensation for the destroyed property, the Court notes firstly that there is a direct causal link between a violation of Article 1 of Protocol No. 1 and the pecuniary damage sustained by the applicant and his wife. However, it is not convinced that her claims in their entirety were substantiated. Having regard to the evidence submitted by the applicant and her argument regarding difficulties in obtaining documents in support of her claims (see paragraphs 39 - 42 above), the Court finds it reasonable to award EUR 30,000 in respect of the damaged property.

119. Accordingly, the Court awards the applicant's wife the total amount of EUR 35,000 in respect of pecuniary damage, plus any tax that may be chargeable to her on that amount.

2. Non-pecuniary damage

120. The applicant's wife claimed EUR 100,000 for herself and Adam Ayubov's wife and minor children in respect of non-pecuniary damage for the fear, anguish and distress which they had suffered as a result of their relative's disappearance.

121. The Government considered this claim to be excessive.

122. The Court firstly notes that it has held above that it cannot take into account the claim of the applicant's wife in respect of Adam Ayubov's other relatives since they are not applicants in the present case. It further observes that it has found a violation of Articles 2, 5, and 13 of the Convention and Article 1 of Protocol No. 1 on account of the unlawful detention and disappearance of Adam Ayubov, the breach of property rights and the absence of effective remedies to secure domestic redress for those violations. The Court has also found a violation of Article 38 § 1 (a) of the Convention on account of the Government's failure to submit the materials requested by the Court. The applicant and his wife must have suffered anguish and distress as a result of all these circumstances, which cannot be compensated by a mere finding of a violation. Having regard to these considerations, the Court awards, on an equitable basis, EUR 35,000 to the applicant's wife for non-pecuniary damage, plus any tax that may be chargeable to her on this amount.

B. Request for an investigation

123. The applicant's wife also requested, referring to Article 41 of the Convention, that "an independent investigation which would comply with the requirements of the Convention be conducted into her son's abduction". She relied in this connection on the case of *Assanidze v. Georgia* ([GC], no. 71503/01, §§ 202-203, ECHR 2004-II).

124. The Government argued that the investigation into the abduction of Adam Ayubov had been carried out in full compliance with domestic law.

125. The Court reiterates that, in the context of the execution of judgments in accordance with Article 46 of the Convention, a judgment in which it finds a breach imposes on the respondent State a legal obligation under that provision to put an end to the breach and to make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (*restitutio in integrum*). However, its judgments are essentially declaratory in nature and, in general, it is primarily for the State concerned to choose the means to be used in its domestic legal order in order to discharge its legal obligation under Article 46 of the Convention,

provided that such means are compatible with the conclusions set out in the Court's judgment (see, among other authorities, *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2001-I; *Akdivar and Others v. Turkey* (Article 50), judgment of 1 April 1998, *Reports* 1998-II, pp. 723-24, § 47; and *Marckx v. Belgium*, judgment of 13 June 1979, Series A no. 31, p. 25, § 58). This discretion as to the manner of execution of a judgment reflects the freedom of choice attached to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (Article 1) (see, *mutatis mutandis*, *Papamichalopoulos and Others v. Greece* (Article 50), judgment of 31 October 1995, Series A no. 330-B, pp. 58-59, § 34).

126. In the Court's opinion, the present case is distinguishable from the one referred to by the applicant's wife. In particular, the *Assanidze* judgment ordered the respondent State to secure the applicant's release so as to put an end to the violations of Article 5 § 1 and Article 6 § 1. The Court further notes its above finding that in the present case the effectiveness of the investigation had already been undermined at the early stages by the domestic authorities' failure to take essential investigative measures (see paragraphs 77 - 79 and 83 above). It is therefore very doubtful that the situation existing before the breach could be restored. In such circumstances, having regard to the established principles cited above, the Court finds it most appropriate to leave it to the respondent Government to choose the means to be used in the domestic legal order in order to discharge their legal obligation under Article 46 of the Convention (see *Kukayev*, cited above, § 134).

C. Costs and expenses

127. The applicant's wife claimed GBP 934.41 (approximately EUR 1,200) for the fees and costs she had incurred before the Court. These amounts included GBP 533 for Mr Philip Leach, a lawyer of the European Human Rights Advocacy Centre and GBP 401.41 for administrative and translation costs. The applicant's wife requested that the amount sought be transferred directly into his representatives' account.

128. The Government did not dispute this claim as such, but noted that "according to the Court's well-established law the applicants [were] entitled to reimbursement of their costs and expenses only in so far it [had] been shown that they [had] been actually incurred and [were] reasonable as to quantum".

129. The Court reiterates that costs and expenses will not be awarded under Article 41 unless it is established that they have been actually and necessarily incurred, and are also reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR

2000-XI). The Court observes that in November 2001 the applicant, and subsequently in December 2005 his wife, gave authority to the lawyers of the Memorial Human Rights Centre and the European Human Rights Advocacy Centre to represent their interests in the proceedings before the European Court of Human Rights and that these lawyers acted as their representatives throughout the proceedings. The applicant's wife also submitted invoices from translators. The Court is therefore satisfied that her claims in this part were substantiated.

130. The Court further notes that this case was not particularly complex, but nevertheless required a certain amount of research work. Having regard to the amount of research and preparation claimed by the applicant's representatives, the Court does not find these claims excessive.

131. In these circumstances, the Court awards the applicant's wife the overall amount of EUR 1,200, less EUR 715 already received by way of legal aid from the Council of Europe, together with any tax that may be chargeable to the applicant's wife. The amount awarded in respect of costs and expenses shall be payable to the representatives directly.

D. Default interest

132. 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. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 2 of the Convention as regards the disappearance of Adam Ayubov;
3. *Holds* that there has been a violation of Article 2 of the Convention on account of the authorities' failure to carry out an adequate and effective investigation into the circumstances surrounding the disappearance of Adam Ayubov;
4. *Holds* that there has been a violation of Article 5 of the Convention in respect of Adam Ayubov;
5. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention and Article 1 of Protocol No. 1 to the Convention;

6. *Holds* that no separate issue arises under Article 13 of the Convention in respect of the alleged violation of Article 5 of the Convention;
7. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
8. *Holds* that there has been a failure to comply with Article 38 § 1 (a) of the Convention in that the Government refused to submit the documents requested by the Court;
9. *Holds*
 - (a) that the respondent State is to pay the applicant's wife, 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 35,000 (thirty-five thousand euros), to be converted into Russian roubles at the rate applicable at the date of settlement, in respect of pecuniary damage;
 - (ii) EUR 35,000 (thirty-five thousand euros), to be converted into Russian roubles at the rate applicable at the date of settlement, in respect of non-pecuniary damage;
 - (iii) EUR 485 (four hundred eighty-five euros), in respect of costs and expenses, to be converted into United Kingdom pounds sterling at the rate applicable at the date of settlement and paid to the applicant's representatives' bank account in the United Kingdom;
 - (iv) any tax, including value added tax, that may be chargeable to the applicant's wife on the above amounts;
 - (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* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President