



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

FIRST SECTION

CASE OF VAGAPOVA AND ZUBIRAYEV v. RUSSIA

(Application no. 21080/05)

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

JUDGMENT

STRASBOURG

26 February 2009

FINAL

14/09/2009

This judgment may be subject to editorial revision.

In the case of Vagapova and Zubirayev 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 Søren Nielsen, *Section Registrar*,

Having deliberated in private on 5 February 2009,

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

PROCEDURE

1. The case originated in an application (no. 21080/05) 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 the Russian nationals, Ms Zara Shapavna¹ Vagapova and Mr Adnan Abdulreshidovich Zubirayev, born in 1964 and 1957 respectively (“the applicants”), on 17 May 2005.

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, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 1 September 2005 the Court decided to give the case priority (Rule 41 of the Rules of Court).

4. On 13 December 2007 the Court decided 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.

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

¹ Rectified on 27 March 2009: the text was “Ms Zara Shapovna Vagapova...”

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants live in the village of Chechen-Aul, in the Groznenskiy District of the Chechen Republic.

7. The applicants are married. At the material time they lived together with their children at 8 Lenin Street, the village of Chechen-Aul. One of their sons, Mr Alis Adnanovich Zubirayev, was born in 1986.

A. Disappearance of Alis Zubirayev

1. The applicants' account

8. At about 5.15 a.m. on 21 December 2004 someone knocked at the entrance door of the applicants' house. Alis Zubirayev opened the door. Three armed men wearing military uniforms burst inside and beat Alis Zubirayev with machine-gun butts. The men wore no masks. They did not identify themselves but the first applicant inferred that they belonged to the Russian military. At some point three other servicemen entered the house.

9. The first applicant called her husband; when he entered the room, one of the servicemen ordered him to produce identity papers. When the second applicant did so, he saw a serviceman pointing a machine gun at Alis Zubirayev.

10. The servicemen asked Alis's family name, examined his identity papers and said that it was "him". Two of the servicemen twisted the young man's arms behind his back and dragged him to the entrance door. The applicants asked them where they intended to take their son. The servicemen replied that the applicants had no reasons to worry. One of them told the first applicant to give him Alis's jacket and shoes but did not allow Alis to dress.

11. The six servicemen left the house and took Alis to the street. The applicants followed them and saw an all-terrain UAZ vehicle without a registration number parked next to their gates. The servicemen put Alis on the floor of that vehicle and then got in it. The UAZ vehicle drove off. The applicants noticed an armoured personnel carrier ("APC") parked behind UAZ. The APC's registration number was illegible.

12. The UAZ and APC drove down Lenin Street and eventually turned to Partizanskaya Street.

13. After a while the applicants heard a noise and realised that an APC was ramming the gates of a neighbouring house. Later the applicants found out that servicemen had taken away their neighbour, Mr A.K.

14. The applicants have had no news of Alis Zubirayev since 21 December 2004.

2. Information submitted by the Government

15. The Government did not submit their account of the circumstances of Alis Zubirayev's kidnapping.

B. The search for Alis Zubirayev and the investigation

1. The applicants' account

16. At about 9 a.m. on 21 December 2004 the second applicant and relatives of A.K. came to the Groznenskiy District Department of the Interior ("ROVD"). Mr A., the head of the ROVD, told them that four policemen in an all-terrain UAZ vehicle had gone to Chechen-Aul to arrest Aslan Khatatayev and Mr M. and that they had been assisted by Russian military servicemen in APCs. Mr A. further said that the police had had no intention of arresting Alis Zubirayev and that he was unaware of the latter's whereabouts. He suggested that Russian servicemen could have taken Alis to the village of Starye Atagi and confirmed that A.K. was detained in the ROVD.

17. In the afternoon of 21 December 2004 the applicants learned that some villagers had seen two APCs and an UAZ vehicle driving in the direction of Grozny.

18. Two days later A.K. was released from the ROVD and told the applicants the following. On his apprehension he had been first placed in an APC; at some point the servicemen had put a bag on his head and placed him in the UAZ vehicle. He could not tell whether Alis Zubirayev was in that vehicle. The servicemen had taken him to the ROVD. In the evening of 21 December 2004 they had taken the bag off his head and questioned him.

19. According to the applicants, a Russian military unit had its headquarters in a mill in the village of Starye Atagi. The applicants visited the head of Starye Atagi's local administration and asked him to help them to find their son; he went to the mill, met the military servicemen and informed the applicants that Alis had not been kept there.

20. Later Mr A. told the applicants that he had talked to servicemen of the Federal Security Service ("FSB") in Starye Atagi and that they had assured him that Alis Zubirayev had not been detained at the mill.

21. The applicants and their relatives repeatedly complained about Alis's disappearance to various State agencies and officials. In particular, they applied to the Russian and Chechen Presidents, the Prosecutor General, the Plenipotentiary Representative of the Russian President in the Southern Federal Circuit, the Russian Ombudsman, the Chechen Ministry of the

Interior, the State Council of the Chechen Republic, the Committee for Protection of Constitutional Rights of Citizens of the Chechen Republic and the head of the local administration of the Groznenskiy District. Most of the complaints were forwarded to the prosecutors' offices' at different levels.

22. On 28 December 2004 the first applicant requested the prosecutor's office of the Chechen Republic to help her to find her son. On 30 December 2004 her complaint was forwarded to the prosecutor's office of the Groznenskiy District ("the district prosecutor's office").

23. On 6 January 2005 the district prosecutor's office instituted an investigation into Alis Zubirayev's disappearance under Article 126 § 2 of the Russian Criminal Code ("aggravated kidnapping") and informed the applicants of the decision. The case file was assigned the number 44004.

24. On 31 January 2004 the district prosecutor's office granted the second applicant the status of victim of a crime in case no. 44004.

25. On 15 February 2005 the district prosecutor's office informed the first applicant that investigative measures were being taken to solve her son's kidnapping.

26. On 21 February 2005 the first applicant requested the district prosecutor's office to question eyewitnesses to her son's abduction and Mr A.

27. On 6 March 2005 the first applicant requested the prosecutor's office of the Chechen Republic to search for her son more actively.

28. On 6 April 2005 the district prosecutor's office informed the first applicant that the term of preliminary investigation in case no. 44004 had been extended to four months.

29. On 11 April 2005 the first applicant requested the military commander of the Chechen Republic to help her to establish her son's whereabouts.

30. On 19 and 28 April 2005 the military commander of the Chechen Republic ordered the military commander of the Groznenskiy District together with the heads of the ROVD and the FSB department, to carry out an inquiry into the facts complained of by the first applicant.

31. On 27 April 2005 the prosecutor's office of the Chechen Republic informed the first applicant that the preliminary investigation in case no. 44004 was pending.

32. On 29 April and 15 May 2005 the military commander of the Groznenskiy District informed the military commander of the Chechen Republic that the criminal investigation into Alis Zubirayev's kidnapping by unidentified armed men had been instituted and was under way. He also noted that various law-enforcement agencies had not arrested Alis Zubirayev and had no information on his whereabouts.

33. On 23 May and 2 June 2005 the prosecutor's office of the Chechen Republic forwarded the first applicant's complaints to the district prosecutor's office.

34. On 19 July 2005 the military prosecutor's office of military unit no. 20102 informed the first applicant that the investigation in case no. 44004 pending before the district prosecutor's office had been suspended and that military involvement in the crime had not been proven.

35. On 1 September 2005 the Prosecutor General's Office informed the first applicant that the investigation in case no. 44004 had been suspended on 9 August 2005 for failure to identify those responsible and then resumed on 19 August 2005. It was ongoing under their supervision.

36. On 5 October 2005 the district prosecutor's office informed the second applicant that the investigation in case no. 44004 suspended on 18 September 2005 had been resumed.

37. On 26 June 2007 the district prosecutor's office informed the second applicant that the investigation had been resumed for ten days.

38. On 4 July 2007 the district prosecutor's office granted the first applicant victim status.

39. On 16 July 2007 the first applicant requested the district prosecutor's office to resume the investigation into her son's kidnapping and to allow her access to the investigation file.

40. In the autumn of 2007 case no. 44004 was transferred to the Investigative Committee of the Department of the Russian Prosecutor's Office for the Chechen Republic. The applicants were not officially notified of it.

41. On 8 May 2008 the Investigative Committee of the Department of the Russian Prosecutor's Office for the Chechen Republic informed the applicants' representative that no access to the file in case no. 44004 could be granted, as the investigation had not been completed, and that it had been suspended on 1 May 2008.

42. In a written statement addressed to the Court the first applicant noted that on an unspecified date she had participated in a confrontation with A.K. organised by the district prosecutor's office. In the course of the confrontation A.K. had been afraid to admit that he had seen another person in the UAZ on the night of his arrest. The first applicant had reproached him for cowardice and then A.K. had told the investigator that there had been a second detained person in the UAZ but he had not seen his face. A.K. had signed an interview record containing his statement which was kept in the investigation file.

2. Information submitted by the Government

43. On 27 December 2004 the district prosecutor's office received the second applicant's complaint concerning his son's abduction.

44. On 6 January 2005 the district prosecutor's office instituted an investigation of Alis Zubirayev's abduction under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The case file was assigned the number 44004.

45. On unspecified dates the applicants were granted victim status in case no. 44004.

46. On an unspecified date the house at 8 Lenin Street was inspected as a crime scene. The investigators established that there was no mess inside the house and did not seize anything.

47. On an unspecified date the second applicant was questioned. He stated that at about 5.30 a.m. on 21 December 2004 six unknown armed men had entered his courtyard and started knocking at the entrance door of the house. Three of the armed men had gone to Mamed Zubirayev's house located in the same courtyard. Alis Zubirayev had opened the door and three armed men had burst in. They had hit Alis Zubirayev with a machine gun butt and demanded the family members to produce identity papers. Having checked Alis Zubirayev's papers they had taken the young man outside, put him in an UAZ vehicle without registration numbers and driven away. The UAZ was accompanied by an APC with its registration numbers covered with mud. At the time of his son's abduction two other APCs had blocked a road leading out of the village. A.K. had also been abducted by unknown men and taken away in the APC. Two or three days later A.K. had returned home and said that at some point he had been out in the UAZ vehicle in which another detainee had been kept. On the day of his son's abduction the second applicant contacted Mr A., the ROVD head, who had told him that he had sent a UAZ vehicle to the village of Chechen-Aul to arrest Mr S.-M.K and Mr M.A. and that ROVD servicemen had not arrested Alis Zubirayev.

48. The first applicant and several other witnesses made identical statements. During her second interview the first applicant added that the armed men had taken away her son's identity papers and warm clothing that she had given them for Alis Zubirayev.

49. On an unspecified date the head of the local administration was questioned. He stated that on 22 December 2004 he had learned of Alis Zubirayev's abduction from a local policeman. Prior to that date he had not been acquainted with the Zubirayevs. The local administration had not received any complaints about Alis Zubirayev's behaviour before his kidnapping.

50. On an unspecified date A.K. was questioned. He stated that at about 5.30 a.m. on 21 December 2004 police officers had entered his house and asked him to go with them to the ROVD. At first he had been put in an APC and then in an UAZ vehicle in which he had travelled with the policemen. Upon arrival to the ROVD he had been questioned and then released. Having returned home he had learned of Alis Zubirayev's kidnapping. He had been transferred to the ROVD on his own and had not seen Alis Zubirayev on its premises.

51. The investigators questioned several other villagers of Chechen-Aul who made no significant statements.

52. On an unspecified date Mr A., the ROVD head, was questioned. He stated that he was not acquainted with the Zubirayevs. On 21 December 2004 ROVD policemen and servicemen of the military commander's office of the Groznenskiy District had carried out a special operation to arrest S.-M.K. who had escaped. The servicemen had then questioned his brother, A.K., and released him after a check. Alis Zubirayev had not been arrested in the course of the special operation. The ROVD had sent an UAZ vehicle to carry out the special operation while the military commander's office had provided an APC.

53. A number of the ROVD servicemen made similar statements. One of them added that the applicants had contacted him in December 2004 in relation to Alis Zubirayev's kidnapping. The Government did not disclose the servicemen's identities.

54. The investigators sent a number of queries concerning Alis Zubirayev to various State agencies and detention facilities. In reply they were informed that the young man had not been arrested or prosecuted.

55. The investigation in case no. 44004 was pending. The applicants had been duly informed of all decisions taken during the investigation.

56. Despite specific requests by the Court the Government did not disclose any documents of the investigation file in case no. 44004. Relying on the information obtained from the Prosecutor General's Office, 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 information of a military nature and personal data concerning the witnesses or other participants in the criminal proceedings.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. THE GOVERNMENT'S OBJECTION AS TO NON-EXHAUSTION OF DOMESTIC REMEDIES

A. The parties' submissions

58. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation of the disappearance of Alis Zubirayev had not yet been completed. They further argued that it had been open to the applicants to challenge in court or before higher prosecutors any actions or omissions of the investigating authorities, but that the applicants had not availed themselves of that remedy. They also argued that the applicants could have brought civil claims for damages but had failed to do so.

59. The applicants contested that objection. They stated that the criminal investigation and other remedies had proved to be ineffective.

B. The Court's assessment

60. 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. Article 35 § 1 also requires that complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used. However, there is no obligation to have recourse to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI, and *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, no. 41964/98, § 64, 27 June 2006).

61. 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 applicant's complaints and offered

reasonable prospects of success (see *Cennet Ayhan and Mehmet Salih Ayhan*, cited above, § 65).

62. 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.

63. 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, §§ 119-21, 24 February 2005, and *Estamirov and Others v. Russia*, no. 60272/00, § 77, 12 October 2006). In the light of the above, the Court confirms that the applicants were not obliged to pursue civil remedies.

64. As regards the criminal-law remedies provided for by the Russian legal system, the Court observes that the applicants complained to the law-enforcement authorities that Alis Zubirayev had been kidnapped and that an investigation into the incident had been pending since 6 January 2005. The applicants and the Government dispute the effectiveness of this investigation.

65. The Court considers that the Government's objection regarding the criminal-law remedies raises issues concerning the effectiveness of the investigation which are closely linked to the merits of the applicants' complaints and finds therefore that this matter should be joined to the merits and falls to be examined below.

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

A. The parties' arguments

66. The applicants maintained that it was beyond reasonable doubt that the men who had taken away Alis Zubirayev were State agents. In support of their complaint they referred to the following facts. The State authorities had admitted that a special operation had been carried out in Chechen-Aul and the UAZ and APC had been used in its course. The armed men who had abducted Alis Zubirayev had Slavic features and had spoken Russian without an accent, which proved that they were not of Chechen origin. The

men had travelled in an APC, which could only be owned by State agencies. The armed men had arrested A.K. and released him after the interview.

67. The Government denied State responsibility for Alis Zubirayev's disappearance and submitted that most probably he had been kidnapped by unidentified armed men belonging to illegal armed groups. They noted that groups of Ukrainian, Belarusian and ethnic Russian mercenaries had committed crimes in the territory of the Chechen Republic; thus, the fact that the perpetrators had Slavic features and spoke Russian did not prove their attachment to the Russian military.

68. The special operation carried out on 21 December 2004 had concerned only S.-M.K., not the applicants' son. When questioned for the first time, A.K. had not stated before domestic investigators that he had seen any other detainees in the UAZ vehicle. He had changed his deposition under pressure from the first applicant.

69. The Government further observed that a considerable number of weapons and armoured vehicles had been stolen by illegal armed groups from Russian arsenals in the 1990s and that anyone could purchase masks and camouflage uniforms. They also argued that there was no convincing evidence that Alis Zubirayev was dead.

B. The Court's evaluation of the facts

1. General principles

70. In cases in which there are conflicting accounts of events, the Court is inevitably confronted when establishing the facts with the same difficulties as those faced by any first-instance court. When, as in the instant case, the respondent Government have exclusive access to information capable of corroborating or refuting the applicants' allegations, any lack of cooperation by the Government without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Taniş and Others v. Turkey*, no. 65899/01, § 160, ECHR 2005-VIII).

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

72. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Articles 2 and 3 of the Convention, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, Series A no. 336, § 32, and *Avşar*, cited above, § 283) even if certain domestic proceedings and investigations have already taken place.

73. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, such as in cases where persons are under their control in custody, 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 *Tomasi v. France*, 27 August 1992, Series A no. 241-A, pp. 40-41, §§ 108-11, *Ribitsch*, cited above, § 34, and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

74. These principles apply also to cases in which, although it has not been proved that a person has been taken into custody by the authorities, it is possible to establish that he or she entered a place under their control and has not been seen since. In such circumstances, the onus is on the Government to provide a plausible explanation of what happened on the premises and to show that the person concerned was not detained by the authorities, but left the premises without subsequently being deprived of his or her liberty (see *Taniş*, cited above, § 160).

75. Lastly, when there have been criminal proceedings in the domestic courts concerning those same allegations, it must be borne in mind that criminal law liability is distinct from international law responsibility under the Convention. The Court's competence is confined to the latter. Responsibility under the Convention is based on its own provisions, which are to be interpreted and applied on the basis of the objectives of the Convention and in the light of the relevant principles of international law. The responsibility of a State under the Convention, for the acts of its organs, agents and servants, is not to be confused with the domestic legal issues of individual criminal responsibility under examination in the national criminal courts. The Court is not concerned with reaching any findings as to guilt or innocence in that sense (see *Avşar*, cited above, § 284).

2. *Establishment of the facts*

76. The Court notes that despite its requests for a copy of the investigation file into the abduction of Alis Zubirayev, the Government produced no documents from the case file. The Government referred to Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has already found this explanation insufficient to justify

the withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-... (extracts)).

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

78. The applicants alleged that the persons who had taken Alis Zubirayev away on 21 December 2004 and then killed him were State agents.

79. The Government suggested in their submission that the persons who had detained Alis Zubirayev could be members of paramilitary groups. However, this allegation was not specific and they did not submit any material to support it. The Court would stress in this regard that the evaluation of the evidence and establishment of the facts is a matter for the Court, and it is incumbent on it to decide on the evidentiary value of the documents submitted to it (see *Çelikkilek v. Turkey*, no. 27693/95, § 71, 31 May 2005).

80. The Court notes at the outset that the Government confirmed that a special operation had been conducted in Chechen-Aul on the date of Alis Zubirayev's kidnapping. Although they denied that the operation had been related to the applicants' son, the Court considers it plausible that the State agents travelling in the UAZ and APC who had arrested A.K. and the armed men who had abducted Alis Zubirayev were the same persons.

81. The hypothesis that Alis Zubirayev was arrested by State agents is supported by A.K.'s deposition. He informed the investigation that there had been another detainee inside the UAZ in which he had been placed upon his arrest by the ROVD servicemen (see paragraph 42 above). Although A.K. did not see that person's face and thus could not tell whether it was Alis Zubirayev or not, his statement is in line with the applicants' account of events. The Court is not persuaded by the Government's assertion that the first applicant had put pressure on A.K. to force him to make a false statement before the investigator (see paragraph 68 above) as it does not appear that she had had any means or resources to do so.

82. The Court considers it very unlikely that an armoured military vehicle stolen by insurgents from the federal troops in the 1990s could have moved freely through Russian military checkpoints without being noticed. It finds therefore that the fact that a large group of armed men in uniform during curfew travelling in the UAZ and APC at night through military roadblocks proceeded to check identity documents and apprehended two persons at their homes strongly supports the applicants' allegation that these were State servicemen conducting a security operation.

83. The Court observes that where the applicants make out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to a lack of documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicants, or to provide a satisfactory and convincing explanation of how the events in question occurred. The burden of proof is thus shifted to the Government and if they fail in their arguments, issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II).

84. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that their son was abducted by State servicemen. The Government's statement that the investigation did not find any evidence to support the involvement of the special forces in the kidnapping is insufficient to discharge them from the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the documents which were in their exclusive possession or to provide another plausible explanation of the events in question, the Court considers that Alis Zubirayev was abducted on 21 December 2004 by State servicemen during an unacknowledged security operation.

85. There has been no reliable news of Alis Zubirayev since the date of the kidnapping. His name has not been found in any official detention facilities' records. Finally, the Government did not submit any explanation as to what had happened to him after his arrest.

86. Having regard to the previous cases concerning disappearances of persons in the Chechen Republic which have come before the Court (see, among others, *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007), the Court 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 Alis Zubirayev or of any news of him for four years supports this assumption.

87. Accordingly, the Court finds that the evidence available permits it to establish that Alis Zubirayev must be dead following his unacknowledged detention by State servicemen.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

88. The applicants complained under Article 2 of the Convention that their son had disappeared after having been detained 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

89. The Government contended that the domestic investigation had obtained no evidence to the effect that Alis Zubirayev was dead or that any servicemen of the federal law-enforcement agencies had been involved in his kidnapping or alleged killing. The Government claimed that the investigation into the kidnapping of the applicants’ son met the Convention requirement of effectiveness, as all measures envisaged in national law were being taken to identify the perpetrators and that it was pending before an independent and competent civilian prosecutor’s office.

90. The applicants argued that Alis Zubirayev had been detained by State servicemen and should be presumed dead in the absence of any reliable news of him for four years. The applicants also argued that the investigation had not met the requirements of effectiveness and adequacy, as required by the Court’s case-law on Article 2. They also alleged that the proceedings should have been pending before a military prosecutor’s office, not a civilian one. The applicants invited the Court to draw conclusions from the Government’s unjustified failure to submit the documents from the case file to them or to the Court.

B. The Court’s assessment

1. Admissibility

91. The Court considers, in the light of the parties’ submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government’s objection concerning the alleged non-exhaustion of criminal domestic remedies should be joined to

the merits of the complaint (see paragraph 65 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) The alleged violation of the right to life of Alis Zubirayev

92. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-47, Series A no. 324, and *Avşar*, cited above, § 391).

93. The Court has already found it established that the applicants' son must be presumed dead following unacknowledged detention by State servicemen and that the death can be attributed to the State (see paragraph 87 above). In the absence of any justification in respect of the use of lethal force by State agents, the Court finds that there has been a violation of Article 2 in respect of Alis Zubirayev.

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

94. 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 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 and carried out with reasonable promptness and expedition. It should also be effective in the sense that it is capable of leading to a determination of whether the force used in such cases was lawful and justified in the circumstances, and should 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, ECHR 2001-III (extracts), and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

95. In the present case, the kidnapping of Alis Zubirayev was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

96. The Court notes at the outset that none of the documents from the investigation were disclosed by the Government. It therefore has to assess the effectiveness of the investigation on the basis of the few documents submitted by the applicants and the sparse information about its progress presented by the Government.

97. The Court does not consider it necessary to establish whether the fact that the investigation into Alis Zubirayev's kidnapping was not carried out by a military prosecutor's office had any adverse impact on its effectiveness, since in any event it regards the investigation ineffective for the following reasons.

98. The Court notes that, according to the applicants, the authorities were immediately made aware of the crime. The Government contested it and claimed that the district prosecutor's office was notified of the kidnapping in writing only on 27 December 2004. The Court does not deem it necessary to establish whether the investigators had taken cognisance of the incident before 27 December 2004, since in any event the investigation in case no. 44004 was instituted only on 6 January 2005, which is ten days after the official application had been lodged with the district prosecutor's office. The Government offered no explanation to this delay, which in itself was liable to affect the investigation of the kidnapping in life-threatening circumstances, where crucial action needs to be taken in the first days after the event.

99. The Court emphasises that the first applicant, the mother of the missing man who had witnessed his abduction, was granted victim status only on 4 July 2007, which is two years and six months after the commencement of the investigation (see paragraph 38 above). It does not appear from the parties' submissions that she was questioned before that date. Accordingly, this crucial procedural step was significantly delayed, which demonstrates the authorities' failure to act of their own motion and constitutes 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).

100. Owing to the Government's failure to provide information on the time-line of the investigation, the Court is not in a position to establish whether other investigative measures were taken promptly or not. However, drawing inferences from the Government's failure to submit a copy of the investigation file in case no. 44004, it is ready to presume that at least some of those measures were delayed.

101. Moreover, it is plausible to assume that a number of requisite steps have not been taken at all. It does not follow from the Government's submissions that the investigators ever tried to question those servicemen of

the military commander's office of the Groznenskiy District who had taken part in the special operation in Chechen-Aul on 21 December 2004 (see paragraph 52 above).

102. The Court also notes that even though both applicants were eventually granted victim status in case no. 44004, they were not promptly informed of any progress in the investigation. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings (see *Oyur v. Turkey* [GC], no. 21594/93, § 92, ECHR 1999-III).

103. Lastly, the Court notes that it is obvious that the investigation in case no. 44004 was suspended and resumed several times, apparently in order to rectify certain defects.

104. The Court will now examine the limb of the Government's objection that was joined to the merits of the application (see paragraph 65 above). Inasmuch as it concerns the fact that the domestic investigation is still pending, the Court notes that the authorities' failure to take necessary and urgent investigative measures undermined the effectiveness of the investigation in its early stages. Furthermore, the Government mentioned that the applicants had the opportunity to apply for judicial or administrative review of the decisions of the investigating authorities in the context of exhaustion of domestic remedies. The Court observes in this respect that the applicants, having no access to the case file and not being properly informed of the progress of the investigation, could not have effectively challenged the actions or omissions of the investigating authorities before a court or a higher prosecutor. Besides, after a lapse of time some investigative measures that ought to have been carried out promptly could no longer usefully be conducted. Therefore, it is highly doubtful that the remedies relied on would have had any prospects of success. Accordingly, the Court finds that the criminal law remedies relied on by the Government were ineffective in the circumstances of the case and rejects their objection as regards the applicants' failure to exhaust these domestic remedies.

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

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

106. The applicants complained that at the moment of his abduction and after it Alis Zubirayev was subjected to ill-treatment. They further claimed that as a result of their son's disappearance and the State's failure to investigate it properly, they had endured mental suffering. They relied on Article 3 of the Convention, which reads:

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

A. The parties’ submissions

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

108. The applicants maintained their submissions.

B. The Court’s assessment

1. Admissibility

(a) The complaint concerning Alis Zubirayev’s ill-treatment

109. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt” but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, 18 January 1978, § 161 in fine, Series A no. 25).

110. The Court has found it established that Alis Zubirayev was detained on 21 December 2004 by federal forces and that no reliable news of him has been received since. It has also found that, in view of all the known circumstances, he can be presumed dead and that the responsibility for his death lies with the State authorities (see paragraph 87 above). However, the questions of the exact way in which he died and whether he was subjected to ill-treatment during his abduction or while in detention have not been elucidated. The Court considers that the information at its disposal does not enable it to find beyond all reasonable doubt that Alis Zubirayev was ill-treated. It thus finds that this part of the complaint has not been substantiated.

111. It follows that this part of the application is manifestly ill-founded and should be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

(b) The complaint concerning the applicants’ mental suffering

112. The Court notes that this part of the complaint under Article 3 of the Convention 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*

113. 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 v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva*, cited above, § 164).

114. In the present case the Court notes that the applicants are the parents of the missing person who witnessed his abduction. For four years they have not had any news of Alis Zubirayev. During this period the applicants have applied to various official bodies with enquiries about their son, both in writing and in person. Despite their attempts, they have never received any plausible explanation or information as to what became of their son following his kidnapping. The Court’s findings under the procedural aspect of Article 2 are also of direct relevance here.

115. In view of the above, the Court finds that the applicants suffered distress and anguish as a result of the disappearance of their son and their inability to find out what happened to him. The manner in which their complaints have been dealt with by the authorities must be considered to constitute inhuman treatment contrary to Article 3.

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

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

117. The applicants further stated that Alis Zubirayev 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

118. In the Government’s opinion, no evidence was obtained by the investigators to confirm that Alis Zubirayev had been deprived of his liberty in breach of the guarantees set out in Article 5 of the Convention.

119. The applicants reiterated the complaint.

B. The Court’s assessment

1. Admissibility

120. 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

121. 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*, cited above, § 122).

122. The Court has found it established that Alis Zubirayev was abducted by State servicemen on 21 December 2004 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).

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

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

124. The applicants complained that they had been deprived of effective remedies in respect of the aforementioned violations, contrary to Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. The parties' submissions

125. The Government contended that the applicants had had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using them. The applicants had had an opportunity to challenge the actions or omissions of the investigating authorities in court or before higher prosecutors, as well as to claim damages in the course of civil proceedings.

126. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

127. In so far as the complaint under Article 13 concerns the existence of a domestic remedy in respect of the complaint under Article 3 that Alis Zubirayev had been ill-treated during and after his abduction by State agents, the Court notes that this part of the complaint under Article 3 was found unsubstantiated under this head in paragraph 111 above. Accordingly, the applicants did not have an “arguable claim” of a violation of a substantive Convention provision and, therefore, Article 13 of the Convention is inapplicable. It follows that this part of the application should be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

128. In so far as the complaint under Article 13 concerns the existence of a domestic remedy in respect of the complaints under Article 2, Article 3 in respect of the applicants and Article 5, 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

129. 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 *Halford v. the United Kingdom*, 25 June 1997, § 64, *Reports* 1997-III).

130. 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).

131. 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.

132. 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.

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

134. As regards the complaint concerning the applicants' mental suffering, the Court notes that it has found a violation of Article 3 on that account. However, the Court has already found a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention on account of the authorities' conduct that led to the suffering endured by the applicants. The Court considers that, in the circumstances, no separate issue arises in respect of Article 13 in connection with Article 3 of the Convention.

135. As regards the applicants' reference to Article 5 of the Convention, the Court reiterates that according to its established case-law the more specific guarantees of Article 5 §§ 4 and 5, being a *lex specialis* in relation to Article 13, absorb its requirements and in view of its above findings of a violation of Article 5 of the Convention resulting unacknowledged detention, the Court considers that no separate issue arises in respect of Article 13 read in conjunction with Article 5 of the Convention in the circumstances of the present case.

VII. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

136. The applicants relied on Article 14, alleging discrimination on the grounds of their Chechen ethnic origin, and complained under Article 8 that they could no longer enjoy family life with their son after his abduction.

137. Having regard to all the material in its possession, and as far as it is within its competence, the Court finds that the applicants' submissions disclose no appearance of violations of the rights and freedoms set out in

Articles 8 and 14 of the Convention. 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

138. 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

139. The applicants did not submit any claims for pecuniary damage. The applicants claimed 80,000 euros (EUR) each 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.

140. The Government found the amounts claimed exaggerated.

141. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicants' son. The applicants themselves have been found to have been victims of a violation of Article 3 of the Convention. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It finds it appropriate to award the applicants jointly EUR 35,000, plus any tax that may be chargeable thereon.

B. Costs and expenses

142. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews at a rate of EUR 50 per hour and the drafting of legal documents at rates of EUR 50 and EUR 150 per hour. They also claimed international courier mail fees and translation fees, as confirmed by relevant invoices, and administrative expenses unsubstantiated by any evidence. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 8,610.88.

143. The Government disputed the reasonableness and the justification of the amounts claimed under this head. They also submitted that the applicants' claims for just satisfaction had been signed by six lawyers, whereas two of them had not been mentioned in the powers of attorney

issued by the applicants. They also doubted that it had been necessary to send the correspondence to the Registry via courier mail.

144. The Court points out that the applicants had given authority to act to the SRJI and its five lawyers. The applicants' observations and claims for just satisfaction were signed by six persons in total. The names of four of them appeared in the powers of attorney, while two other lawyers worked with the SRJI. In such circumstances the Court sees no reason to doubt that the six lawyers mentioned in the applicants' claims for costs and expenses took part in the preparation of the applicants' observations. Moreover, there are no grounds to conclude that the applicants were not entitled to send their submissions to the Court via courier mail.

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

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

147. Further, 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, owing 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. Moreover, the case involved little documentary evidence, in view of the Government's refusal to submit most of the case file. The Court thus doubts that legal drafting was necessarily time-consuming to the extent claimed by the representatives.

148. Having regard to the details of the claims submitted by the applicants, the Court finds it appropriate to award the applicants' representatives EUR 4,500, plus any tax that may be chargeable to the applicants, the award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

C. Default interest

149. 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 Article 2, Article 3 in respect of the applicants, Article 5 and Article 13 of the Convention in conjunction with Article 2, Article 3 in respect of the applicants and Article 5 of the Convention admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 2 of the Convention in respect of Alis Zubirayev;
4. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Alis Zubirayev had disappeared;
5. *Holds* that there has been a 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 Alis Zubirayev;
7. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with the alleged violation of Article 2 of the Convention;
8. *Holds* that no separate issues arise under Article 13 of the Convention on account of the alleged violations of Article 3 of the Convention in respect of the applicants and of Article 5 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 35,000 (thirty-five thousand euros) in respect of non-pecuniary damage to the applicants jointly, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on this amount;
 - (ii) EUR 4,500 (four thousand five hundred euros), in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands, plus any tax that may be chargeable to the applicants;
 - (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 26 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President