



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

FIRST SECTION

CASE OF ALAUDINOVA v. RUSSIA

(Application no. 32297/05)

JUDGMENT

STRASBOURG

23 April 2009

FINAL

06/11/2009

This judgment may be subject to editorial revision.

In the case of Alaudinova v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 2 April 2009,

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

PROCEDURE

1. The case originated in an application (no. 32297/05) 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 a Russian national, Ms Lipa Aliyevna Alaudinova (“the applicant”), on 5 August 2005.

2. The applicant was represented by lawyers of EHRAC/Memorial, a non-governmental organisation with offices in Moscow and London. The Russian Government “the Government” were represented by Mrs V. Milinchuk, the former Representative of the Russian Federation at the European Court of Human Rights and subsequently by their new representative, Mr G. Matyushkin.

3. On 7 March 2008 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application.

4. On 7 March 2008 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 priority treatment of the application and to the joint examination of its admissibility and merits. Having considered the Government’s objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1942 and lives in Urus-Martan, Chechnya. She is the mother of Bekkhan Alaudinov, who was born in 1976.

7. The facts of the case, as submitted by the parties, may be summarised as follows.

A. Disappearance of Bekkhan Alaudinov and subsequent events

1. The applicant's account

8. In November 2001 the town of Urus-Martan, Chechnya, was under the full control of the Russian military forces. A curfew was imposed in the area. All roads to and from the town were blocked by Russian military checkpoints.

9. On the night of 8 November 2001 the applicant and her sons Bekkhan and Aslanbek Alaudinov were in their house at 30 Proletarskaya Street, in Urus-Martan, Chechnya.

10. At about 4.30 a.m. someone knocked at the door of the applicant's house. When the applicant asked who was there, she was told that it was the police. After she opened the door, three armed men in camouflage uniform entered the house. Two of them were wearing masks; the third one did not have a mask and had a Slavic appearance. The men neither introduced themselves nor produced any documents. They spoke Russian without an accent and behaved like an organised group with a chain of command. The applicant thought that they were Russian military servicemen.

11. The servicemen demanded identity documents. One of them ordered the applicant and her sons to get dressed and took Bekkhan and Aslanbek Alaudinov outside. Meanwhile, the other servicemen conducted a search of the applicant's house and yard.

12. The serviceman took Bekkhan and Aslanbek Alaudinov to their uncle's house, which was situated nearby. When the Alaudinov brothers walked into the yard they saw a large group of servicemen. One of the officers pointed at Aslanbek Alaudinov and said "this is the Bearded Aslanbek" (*Бородатый Асланбек*). Aslanbek Alaudinov denied that and said that the man known as "the Bearded Aslanbek", an active member of illegal armed groups, had used to live in the neighbourhood, but had left the place some time ago. Then the servicemen left Aslanbek in his uncle's yard and one of them took Bekkhan Alaudinov back to his house.

13. Back at the house Bekkhan Alaudinov was asked to provide his passport. When the applicant handed over his passport, the serviceman took the document along with the money he found in it. The serviceman took Bekkhan Alaudinov outside. When the applicant attempted to follow them, the officer threatened to shoot her. In spite of that the applicant followed her son.

14. On the road, about a hundred metres away from the house, the applicant saw two military URAL lorries, a military UAZ car (“таблетка”) and a VAZ 2121 car (“Нива”). When the applicant approached the vehicles she saw the servicemen putting her son in one of the URAL vehicles. When the applicant called her son’s name, the servicemen opened gunfire over her head. The applicant had to hide in a ditch. After that the soldiers got into the vehicles and drove away in the direction of the town centre.

15. A few minutes later Aslanbek Alaudinov found his mother and they returned home. Upon arrival at their house, about ten to fifteen minutes later, they heard the sound of gunshots. The applicant decided to go to the town centre to find out whether the military vehicles she had seen were parked next to the buildings of local law enforcement agencies.

16. On her way to the centre the applicant was stopped by representatives of the Urus-Martan district department of the interior (the ROVD). They ordered the applicant to return home due to the curfew and walked her back to the house.

17. At some point after the events the applicant’s neighbours told her that on the night of 8 November 2001 several other residents of Urus-Martan had been apprehended and that one of them had been killed during the apprehension.

18. On 11 November 2001 the applicant and her son Aslanbek saw the Russian officer who had participated in the abduction of Bekkhan Alaudinov. The applicant tried to stop him, but he went into the building of the local military commander’s office. The applicant waited for him at the entrance to the building for several hours, but the officer did not come out.

19. In support of her submissions, the applicant provided the following witness accounts: a statement by the applicant dated 27 July 2007; a statement by Mr A.A. dated 2 July 2007; a statement by Ms Ya. A. dated 28 June 2007; a statement by Ms K. M. dated 27 June 2007; a statement by Ms Kh. M. dated 27 June 2007 and a statement by Ms R. M. dated 27 June 2007.

2. Information submitted by the Government

20. The Government did not challenge most of the facts as presented by the applicant. According to the Urus-Martan district prosecutor’s office “at about 4.20 a.m. on 8 November 2001 unidentified persons in camouflage uniform armed with automatic weapons entered the house at

30 Proletarskaya Street in Urus-Martan, kidnapped Bekkhan Vakhayevich Alaudinov, who was born in 1976, and took him away in an unknown direction”.

B. The search for Bekkhan Alaudinov and the investigation

1. The background information concerning the investigation

21. Since 8 November 2001 the applicant has repeatedly applied in person and in writing to various public bodies. She has been supported in her efforts by NGO Memorial. In her letters to the authorities the applicant referred to her son's abduction and asked for assistance and details of the investigation. Most of these enquiries have remained unanswered, or purely formal replies have been given in which the applicant's requests have been forwarded to various prosecutors' offices. The applicant submitted some of the letters to the authorities and the replies to the Court. These documents are summarised below.

22. In the morning of 8 November 2001 the applicant went to the ROVD where she was told that Bekkhan Alaudinov was not listed among their detainees. The applicant also went to the Urus-Martan district military commander's office (the district military commander's office) and the local administration but could not obtain any information concerning the whereabouts of her son.

23. On 29 November 2001 the applicant complained in writing about her son's abduction to the Urus-Martan district prosecutor's office (the district prosecutor's office). She stated that he had been abducted by a group of armed military servicemen in camouflage uniform.

24. On 12 December 2001 the district prosecutor's office instituted an investigation into the disappearance of Bekkhan Alaudinov under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case file was assigned number 25157. In the submitted documents the case file was also referred to under no. 61033 and no. 34046.

25. On 21 January 2002 the Chechnya prosecutor's office forwarded the applicant's complaint about her son's abduction to the district prosecutor's office for examination.

26. On 12 February 2002 the investigation in criminal case no. 25157 was suspended owing to the failure to establish the perpetrators.

27. On 20 May 2002 the applicant wrote to the district military commander's office. She described the circumstances of her son's abduction and complained that her requests to the State authorities had not produced any results. She requested assistance in the search for Bekkhan Alaudinov.

28. On 20 May 2002 the applicant complained to the head of the ROVD. She described the circumstances of her son's abduction, complained that her

requests to the State authorities had not produced any results and asked for assistance in the search for Bekkhan Alaudinov.

29. On 21 August 2002 the Chechnya department of the interior (the Chechnya UVD) forwarded the applicant's request for assistance in the search for her son to the ROVD.

30. On 24 September 2002 the military prosecutor's office of the North-Caucasus military circuit informed the applicant that her complaint about the abduction of Bekkhan Alaudinov had been forwarded to the military prosecutor's office of military unit no. 20102 for examination.

31. On 21 October 2002 the ROVD informed the applicant that in connection with the abduction of Bekkhan Alaudinov they had opened operational-search file no. 081355.

32. On 28 October 2002 the district prosecutor's office informed the applicant that on an unspecified date they had suspended the investigation in criminal case no. 25157.

33. On 6 November 2002 the military prosecutor's office of the North-Caucasus military circuit informed the applicant that her complaint about the abduction of Bekkhan Alaudinov had been forwarded to the military prosecutor's office of the United Group Alignment (the military prosecutor's office of the UGA).

34. On 17 February 2003 the military prosecutor's office of military unit no. 20102 informed the applicant that the district prosecutor's office had been investigating criminal case no. 61033 and the investigation had not confirmed the theory of the involvement of the Russian military servicemen in the abduction of Bekkhan Alaudinov.

35. On 11 April 2003 the district prosecutor's office granted the applicant victim status in criminal case no. 25157.

36. On 21 April 2003 the applicant wrote to a number of State authorities, including the Prosecutor General. In her letter she described the circumstances of her son's abduction, complained that her requests to the State authorities had not produced any results and requested assistance in the search for Bekkhan Alaudinov.

37. On 1 August 2003 the applicant wrote to the Chechnya prosecutor. In her letter she stated that the State authorities had denied their involvement in the abduction of her son and that the investigation had failed to examine the evidence demonstrating that Bekkhan Alaudinov had been abducted by representatives of the Russian military forces. The applicant stated that her son's abductors had been under the command of the district military commander General G.; that one of the perpetrators had been seen in the building of the district military commander's office and the vehicles which had taken away her son had been provided with an unobstructed passage through the Russian military checkpoints. Referring to the European Convention on Human Rights and the Russian Criminal Procedure Code the applicant requested that the prosecutor undertake the

following measures: resume the investigation in criminal case no. 25157; question the officers who had been on duty at the checkpoint between Urus-Martan and the village of Gekhi on the night of the abduction; question the officers who had been stationed in the building of the district military commander's office in November 2001; summon the officers who had been stationed at the district military commander's office at the material time to take part in an identification procedure so the applicant could identify those who had participated in the abduction of her son; and, finally, transfer the investigation to the military prosecutor's office if necessary.

38. On 22 August 2003 the Chechnya prosecutor's office informed the applicant that on the same date the prosecutor's office had resumed the investigation in criminal case no. 25157.

39. On 29 September 2003 the Chief Military Prosecutor's office forwarded the applicant's request to the military prosecutor's office of the UGA for examination.

40. On 22 October 2003 the Chechnya prosecutor's office forwarded additional information they had received from the applicant concerning the circumstances of her son's abduction to the district prosecutor's office for examination. The letter did not specify the nature of the additional information.

41. On 10 December 2003, in response to the applicant's complaint, the Chechnya military commander requested the district military commander's office to undertake measures to establish the whereabouts of Bekkhan Alaudinov.

42. On 9 April 2004 the applicant wrote to the district military commander requesting assistance in the search for her son. She pointed out that she had seen the officer who had participated in her son's abduction going into the district military commander's office and complained that her numerous letters to the State authorities had not produced any results.

43. On 28 June 2007 the applicant requested that the investigators allow her to familiarise herself with the case file in criminal case no. 25157, inform her about the status of the criminal investigation and undertake additional investigative measures. In her letter she provided a detailed account of the circumstances surrounding her son's abduction and expressed her opinion that the abductors had belonged to the local law enforcement agencies.

44. On 1 July 2007 the district prosecutor's office replied to the applicant, stating that her request for access to the criminal case file and information about the investigation had been rejected as she, had, *inter alia*, failed to specify the exact measures to be taken by the investigators.

2. Information submitted by the Government

45. On 29 November 2001 the applicant complained to the district prosecutor's office about her son's abduction.

46. On 12 December 2001 the district prosecutor's office instituted an investigation into Bekkhan Alaudinov's abduction under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping). The case file was assigned number 25157.

47. On an unspecified date and on 3 November 2003 the investigators questioned the applicant, who stated that on the night of 8 November 2001 she and her sons had been sleeping at home. At about 4.30 a.m. a group of men had knocked at the door. They had introduced themselves as "the police". When the applicant had opened the door, four men had entered the house. One of them was not wearing a mask; they were wearing camouflage uniforms and were armed with machine-guns. One of the men had told the applicant that they were looking for Bekkhan. The applicant had thought that he was a Chechen as he spoke Russian with a Chechen accent. Then the men had taken the applicant's son outside. The applicant had followed the man and Bekkhan for about one block when she had seen a VAZ -2121 ("*Huša*") car, a blue UAZ car and an armoured URAL lorry. Bekkhan had been placed into the URAL and the vehicle had driven away in the direction of the town market located on Merzoyeva Street in Urus-Martan. According to the applicant, at about noon on 13 November 2001 she had been waiting for someone next to the building of the local military commander's office located across the street from the building of the Urus-Martan district administration when one of the men who had participated in her son's abduction had left the building of the administration. The officer had been walking with two guards. The applicant had recognised him at once as he had been the one who had not been wearing a mask on the night of her son's abduction. When she had asked him where her son had been taken, he had replied "we took him and that's all". After that the officer and his guards had entered the building of the military commander's office.

48. On two unspecified dates the investigators questioned the applicant's other son, Mr Aslanbek Alaudinov. On the first occasion he stated that on the night of 8 November 2001 he, his brother Bekkhan and their mother had been at home. At about 4 a.m. some men had knocked at their door and introduced themselves as "the night police". Three men in camouflage uniform, armed with machine-guns and without masks, had entered the house. The group had consisted of about twenty armed men, the majority of whom had remained in the yard. Those who entered the house had requested the family members to produce their passports. Then the witness and his brother Bekkhan had been taken to the yard and made to stand against the wall for a search. During the search one of the men had asked the witness' name. When the latter had told him that his name was Aslanbek, the man had asked him whether he was "the Bearded Aslanbek". The witness had told him that he was not. After that the men had taken Bekkhan back in the house for 10-15 minutes. After that they had left the house and had taken Bekkhan with them. The armed men had told the witness and his mother

that they were supposed to obtain information about Bekkhan from the Oktyabrskiy district department of the interior (the Oktyabrskiy ROVD). According to the witness, his mother had run after the perpetrators, but the latter had opened gunfire over her head and she had returned home. At some point later the investigators questioned the witness for the second time. He additionally stated that when he and his brother Bekkhan had been taken to the yard by the armed men, one of them had told him to get down on his knees. The man had spoken Russian with a Chechen accent. When the witness had told him that he had a problem with his legs and that he was unable to get on his knees, the man had threatened to shoot him. When the witness' mother had asked the men where they were taking Bekkhan, they had told her that she would need to contact the Leninskiy ROVD or the Zavodskoy ROVD to obtain such information. According to the witness, he would be able to identify one of the men who had abducted his brother. The abductors, who did not have any insignia on their uniforms, had left in a white VAZ-2121 car and URAL and ZIL vehicles without registration numbers. According to the witness, his brother Bekkhan had been abducted in connection with the investigation he had been conducting concerning the death of their uncle in 2000. On a number of occasions unidentified persons had placed notes threatening Bekkhan with retaliation if he persisted in his investigation. The witness also stated that a man named Rustam had informed him that for three days he had been detained in the local military commander's office together with Bekkhan Alaudinov. According to the witness, his brother had not participated in illegal armed groups. No other information has been submitted in respect of the second questioning.

49. On an unspecified date the investigators questioned the applicant's neighbour, Mrs Z.S., who stated that on the night of 8 November 2001 she had been at home. At about 4 a.m. she had heard gunshots outside. From her window she had seen an APC (armoured personnel carrier) driving by her house. After that the witness had gone out to the yard and heard screams from the yard of her neighbours, the Alaudinovs. She had been afraid to leave the house as the town had been under a curfew. On the following morning she had found out that Bekkhan Alaudinov had been taken away.

50. On an unspecified date the investigators questioned the applicant's neighbour, Mr S.M. who stated that on the night of 8 November 2001 he had been at home. At about 4 a.m. he had heard gunshots and screams coming from the direction of the Alaudinovs' house. The following morning he had found out that Bekkhan Alaudinov had been taken away.

51. On an unspecified date the investigators questioned the applicant's neighbour, Mrs A.M. who stated that on the night of 8 November 2001 she had been at home. At about 4.30 a.m. she had been woken up by screams coming from outside. The witness had heard her neighbour, Mrs L. Alaudinova crying and saying that her son Bekkhan Alaudinov had been taken away. Then the witness had heard an APC passing by her house

and gunshots. She had been afraid and decided not to leave the house due to the curfew. In the morning she had found out that Bekkhan Alaudinov had been taken away.

52. On 28 August and 15 September 2004 the investigators requested that the Urus-Martan ROVD identify the VAZ-2121, UAZ and URAL vehicles which had been used in the abduction of Bekkhan Alaudinov and the identity of the unmasked officer who had participated in the abduction. According to the ROVD's replies of 6 September and 11 October 2004, it was impossible to identify the vehicles or the officer.

53. The Government submitted that on unspecified dates the investigators had sent 33 queries to various State bodies requesting information as to whether these agencies had arrested or detained Bekkhan Alaudinov and whether any special operations had been conducted in respect of him. According to the responses received on various dates from the Urus-Martan ROVD, various district prosecutors' offices and district military commanders' offices in Chechnya, the military commander's office of the security zone in the Urus-Martan district, departments of the Chechnya Ministry of the Interior (the Chechnya MVD) and the Russian Ministry of the Interior in the Southern Federal Circuit, the Urus-Martan district department of the Federal Security Service (the FSB), military unit no. 6779, military unit no. 90567, the head of the United Group Alignment (the UGA) in the village of Khankala, Chechnya, and the head of detention centre IZ-20/2 in Chernokozovo, Chechnya, Bekkhan Alaudinov had not been apprehended by these agencies, special operations in respect of him had not been conducted, he had not been suspected of participation in illegal armed groups, no criminal investigation had been conducted into his activities, he had not been arrested or detained and his body had not been found.

54. On 27 September 2004 the investigation in criminal case no. 25157 was suspended owing to the failure to identify the perpetrators.

55. On 25 April 2008 the investigation in the criminal case was resumed and the investigators were instructed to take the following investigative actions: to identify the officer whom the applicant had identified as one of her son's abductors; to request information concerning the officers who had manned the checkpoint in Urus-Martan; to identify and question the officers of the district military commander's office who had worked there in November 2001; to request information concerning the hours of the curfew and how long it had been in place at the material time in Urus-Martan; to request information about officers who had worked in the local law enforcement agencies in November 2001; to additionally question the applicant and the witnesses; to identify the military vehicles which had been used during the abduction; and to request from various departments of the interior and detention centres information concerning any criminal charges

against Bekkhan Alaudinov or his possible detention on suspicion of committing a crime.

56. The investigation failed to establish the whereabouts of Bekkhan Alaudinov or identify the perpetrators. At the same time, the investigation found no evidence to support the involvement of State agents in the abduction of the applicant's son.

57. According to the Government, the investigation into the abduction of Bekkhan Alaudinov was suspended and resumed on several occasions owing to the failure to identify the culprits. The applicant had been duly informed of all decisions taken during the investigation.

58. Despite specific requests by the Court the Government did not disclose any documents from criminal case no. 25157. 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 the disclosure of which would damage the interests of the State and of the participants in the criminal proceedings.

C. Proceedings against law-enforcement officials

59. On an unspecified date in 2004 the applicant lodged a complaint with the Urus-Martan town court. She complained about the failure of the authorities to conduct a thorough and effective investigation into her son's abduction. She sought a ruling obliging the prosecutor's office to conduct an effective and thorough investigation into the abduction, to grant her the status of civil plaintiff in the criminal case and provide her with access to the case file materials.

60. On 13 August 2004 the town court allowed her complaint in part. The court instructed the authorities to conduct an effective and thorough investigation in criminal case no. 25157. The court stated, *inter alia*:

“...it follows from the criminal case file that the investigation was not conducted thoroughly. For instance, the investigators failed to undertake measures to identify the military vehicles which were used in the abduction of Bekkhan Alaudinov; they failed to question the chief officers of the Urus-Martan district military commander's office ... and failed to identify and question the officer whom L. Alaudinova identified as one of her son's abductors.

In these circumstances the court finds that the applicant's request for an effective and thorough investigation is substantiated ...”

The remainder of the applicant's complaint was rejected.

61. On 27 September 2004 the applicant lodged a request for an extension of the time limit for appeal against the decision of 13 August 2004. On 12 November 2004 the town court rejected her request.

62. On 14 March 2005 the applicant lodged a new complaint with the Urus-Martan town court. She complained that in spite of the court's decision of 13 August 2004 the authorities had failed to conduct a thorough and effective investigation into the abduction of her son. She sought a ruling obliging the prosecutor's office to conduct an effective investigation of the criminal case and provide her with access to the criminal case file.

63. On 16 March 2005 the town court rejected her complaint. On 11 May 2005 the Chechnya Supreme Court upheld this decision on appeal.

II. RELEVANT DOMESTIC LAW

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

THE LAW

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

A. The parties' submissions

65. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the disappearance of Bekkhan Alaudinov had not yet been completed. They further argued that the applicant had lodged a court complaint challenging the omissions of the investigators, that this complaint had been granted in part and that the absence of a desirable outcome for the applicant did not mean that these domestic remedies had been ineffective.

66. The applicant contested this objection. She stated that the only effective remedy in her case had been the criminal investigation into her son's abduction; however, this remedy had proved to be ineffective.

B. The Court's assessment

67. As regards criminal-law remedies provided for by the Russian legal system, the Court observes that the applicant complained to the lawenforcement authorities after the kidnapping of Bekkhan Alaudinov and that an investigation into his abduction has been pending since 12 December

2001. The applicant and the Government dispute the effectiveness of the investigation.

68. Furthermore, the Court considers that the Government's objection raises issues concerning the effectiveness of the investigation which are closely linked to the merits of the applicant's complaint under Article 2. Thus, it considers that the objection should be joined to the merits and falls to be examined below under the relevant substantive provisions of the Convention.

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

A. The parties' arguments

69. The applicant maintained that it was beyond reasonable doubt that the men who had taken away Bekkhan Alaudinov had been State agents. In support of her complaint she referred to the following facts. At the material time Urus-Martan had been under the total control of federal troops. The area was under a curfew. There had been Russian military checkpoints on the roads leading to and from the town. The armed men who had abducted Bekkhan Alaudinov had arrived in military vehicles late at night, which indicated that they had been able to circulate freely during the curfew. The men had acted in a manner similar to that of special forces carrying out identity checks. A few days after the abduction the applicant had recognised one of her son's abductors as he was entering the local military commander's office.

70. The Government submitted that unidentified armed men had kidnapped Bekkhan Alaudinov. They further contended that the investigation of the incident was pending, that there was no evidence that the men had been State agents and that there were therefore no grounds for holding the State liable for the alleged violations of the applicant's rights. They further argued that there was no convincing evidence that the applicant's son was dead. The Government also stated that the abduction could have been committed by unidentified criminals as retaliation for Bekkhan Alaudinov's attempts to investigate his uncle's murder or that it could have been a result of a blood feud. At the same time the Government pointed out that the applicant's submissions concerning the factual circumstances of her son's abduction were inconsistent. They pointed out that the applicant and the witnesses had not been consistent as to the number and type of military vehicles used during the abduction and that the applicant had not informed the investigators about seeing one of her son's abductors going into the military commander's office until two years after the events.

B. The Court's evaluation of the facts

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

72. The Court notes that despite its requests for a copy of the investigation file on the abduction of Bekkhan Alaudinov, the Government did not produce any of the 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)).

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

74. The applicant alleged that the persons who had taken Bekkhan Alaudinov away on 8 November 2001 and then killed him had been State agents.

75. The Government suggested in their submission that the persons who had abducted Bekkhan Alaudinov could have been criminals or that he could have been kidnapped as a result of a blood feud. However, these allegations were not specific and the Government did not submit any material to support them. The Court would stress in this regard that the evaluation of the evidence and the 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).

76. The Court notes that the applicant's allegation is supported by the witness statements collected by the applicant and by the investigation. It finds that the fact that a large group of armed men in uniform, equipped with military vehicles, was able to move freely through military roadblocks during curfew hours and proceeded to check identity documents strongly supports the applicant's allegation that these were State servicemen conducting a security operation. In her complaints to the authorities the applicant consistently maintained that Bekkhan Alaudinov had been detained by unknown servicemen and requested the investigation to look

into that possibility (see paragraphs 23, 37, 42 above). The domestic investigation also accepted the version of the facts presented by the applicant and took steps to check whether law enforcement agencies or military servicemen had been involved in the kidnapping (see paragraphs 34, 41 above), but it does not appear that any serious steps were taken in that direction.

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

78. The Government appear to raise doubts as to the credibility of the applicant's and witnesses' statements concerning the factual circumstances surrounding Bekkhan Alaudinov's abduction (see paragraph 70 above). The Court notes in this connection that the crucial elements underlying the applicant's submissions as to the facts have not been disputed by the Government. The Government did not dispute that the abduction of the applicant's son had actually been committed by a group of armed men in military vehicles at the time stated by the applicant. This fact was confirmed by the official investigation conducted by the district prosecutor's office and by the local court (see paragraphs 52, 55, 60 above). The Court finds that the inconsistencies pointed out by the Government in the applicant's description of the events are so insignificant that they cannot cast doubt on the overall credibility of the applicant's submission.

79. Taking into account the above elements, the Court is satisfied that the applicant has made a *prima facie* case that her son was apprehended 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 Bekkhan Alaudinov was apprehended on 8 November 2001 by State servicemen during an unacknowledged security operation.

80. There has been no reliable news of Bekkhan Alaudinov since the date of his abduction. 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.

81. Having regard to the previous cases concerning disappearances of people in Chechnya which have come before the Court (see, among others, *Bazorkina*, cited above; *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) in the context of the conflict in the Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgment of the detention, this can be regarded as life-threatening. The absence of Bekkhan Alaudinov or of any news of him for several years supports this assumption.

82. The Court further notes that, regrettably, it has been unable to benefit from the results of the domestic investigation, owing to the Government's failure to disclose the documents from the file (see paragraph 58 above). Nevertheless, it is clear that the investigation did not identify the perpetrators of the kidnapping.

83. Accordingly, the Court finds that the evidence available permits it to establish that Bekkhan Alaudinov must be presumed dead following his unacknowledged detention by State servicemen.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

84. The applicant complained under Article 2 of the Convention that her 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

85. The Government contended that the domestic investigation had obtained no evidence to the effect that Bekkhan Alaudinov was dead or that any servicemen of the federal law-enforcement agencies had been involved

in his kidnapping or alleged killing. The Government claimed that the investigation into the kidnapping of the applicant's son met the Convention requirement of effectiveness, as all measures envisaged in national law were being taken to identify the perpetrators.

86. The applicant argued that Bekkhan Alaudinov had been detained by State servicemen and should be presumed dead in the absence of any reliable news of him for several years. The applicant 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. The applicant pointed out that by 25 April 2008 the district prosecutor's office had not taken certain crucial investigative steps, such as identification of the servicemen who had manned the checkpoint in Urus-Martan, identification and questioning of the employees of the military commander's office, identification of the military vehicles which had been used in the abduction of Bekkhan Alaudinov and questioning of their drivers. The investigation into Bekkhan Alaudinov's kidnapping had been opened more than a month after the events and had then been suspended and resumed a number of times – thus delaying the taking of the most basic steps – and the applicant had not been properly informed of the most important investigative measures. The fact that the investigation had been pending for almost seven years without producing any tangible results was further proof of its ineffectiveness. The applicant invited the Court to draw conclusions from the Government's unjustified failure to submit the documents from the case file to her or to the Court.

B. The Court's assessment

1. Admissibility

87. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, the Court has already found that the Government's objection concerning the alleged non-exhaustion of domestic remedies should be joined to the merits of the complaint (see paragraph 68 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 Bekkhan Alaudinov

88. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from

which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, §§ 146-147, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)).

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

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

90. The Court has on many occasions stated that the obligation to protect the right to life under Article 2 of the Convention also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. It has developed a number of guiding principles to be followed for an investigation to comply with the Convention's requirements (for a summary of these principles see *Bazorkina*, cited above, §§ 117-119).

91. In the present case, the kidnapping of Bekkhan Alaudinov was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

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

93. The Court notes that the authorities were made aware of the crime by the applicant. The investigation in case no. 25157 was instituted on 12 December 2001, that is, one month and four days after Bekkhan Alaudinov's abduction. Such a postponement *per se* was liable to affect the investigation of a kidnapping in life-threatening circumstances, where crucial action has to be taken in the first days after the event. It appears that after that a number of essential steps were delayed and were eventually taken only after the communication of the complaint to the respondent Government, or not at all (see paragraph 55). Furthermore, the Court notes that, as can be seen from the decision of the domestic court, the investigators failed to identify and question the chief officers of the Urus-Martan district military commander's office; failed to establish the owner of the military vehicles which had moved around Urus-Martan on the night of the abduction; and failed to identify and question the officer whom the applicant had identified as one of her son's abductors (see paragraph 60

above). It is obvious that these investigative measures, if they were to produce any meaningful results, should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation commenced. Such failures, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II).

94. The Court also notes that even though the applicant was granted victim status in criminal case no. 25157, she was only informed of the suspensions and resumptions of the proceedings, and not of any other significant developments. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings.

95. Finally, the Court notes that the investigation in case no. 25157 was suspended and resumed several times and that there were lengthy periods of inactivity on the part of the district prosecutor's office when no proceedings were pending. For instance, no proceedings whatsoever were pending between 27 September 2004 and 25 April 2008. The local court criticised the deficiencies in the proceedings and ordered remedial measures (see paragraph 60). It appears that its instructions were not complied with.

96. Having regard to the limb of the Government's preliminary objection that was joined to the merits of the complaint, inasmuch as it concerns the fact that the domestic investigation is still pending, the Court notes that the investigation, having been repeatedly suspended and resumed and plagued by inexplicable delays, has been pending for many years having produced no tangible results. Accordingly, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and dismisses their preliminary objection.

97. 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 Bekkhan Alaudinov, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

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

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

A. The parties' submissions

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

100. The applicant maintained her complaint.

B. The Court's assessment

1. Admissibility

101. The Court notes that this 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

102. 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 applicant 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).

103. In the present case the Court notes that the applicant is the mother of the disappeared person and witnessed his abduction. For more than seven years she has not had any news of Bekkhan Alaudinov. During this period the applicant has applied to various official bodies with enquiries about her son, both in writing and in person. Despite her attempts, the applicant has never received any plausible explanation or information as to what became of her son following his kidnapping. The responses received by the applicant mostly denied that the State was responsible for his arrest or simply informed her that an investigation was ongoing. The Court’s

findings under the procedural aspect of Article 2 are also of direct relevance here.

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

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

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

106. The applicant further stated that Bekkhan Alaudinov 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

107. In the Government's opinion, no evidence was obtained by the investigators to confirm that Bekkhan Alaudinov had been deprived of his liberty in breach of the guarantees set out in Article 5 of the Convention.

108. The applicant reiterated her complaint.

B. The Court's assessment

1. Admissibility

109. 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

110. 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).

111. The Court has found that Bekkhan Alaudinov was apprehended by State servicemen on 8 November 2001 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).

112. The Court further considers that the authorities should have been more alert to the need for a thorough and prompt investigation of the applicant's complaints that her 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 him against the risk of disappearance.

113. In view of the foregoing, the Court finds that Bekkhan Alaudinov 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

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

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

A. The parties’ submissions

115. The Government contended that the applicant had had effective remedies at her disposal as required by Article 13 of the Convention and that the authorities had not prevented her from using them. The applicant had had the opportunity to challenge the actions or omissions of the investigating authorities in court. In sum, the Government submitted that there was no violation of Article 13.

116. The applicant reiterated her complaint.

B. The Court’s assessment

1. Admissibility

117. 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

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

119. As regards the complaint of lack of effective remedies in respect of the applicant's 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, §§ 161-162, 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).

120. 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*, judgment of 27 April 1988, Series A no. 131, § 52). The applicant should accordingly have been able to avail herself 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.

121. 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.

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

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

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

124. 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

125. The applicant did not submit any claims for pecuniary damage. As to non-pecuniary damage, the applicant stated that she had lost her son and endured years of stress, frustration and helplessness as a result of his disappearance and the authorities' passive attitude. She claimed compensation in respect of non-pecuniary damage, but left the determination of the amount to the Court.

126. The Government considered that no damages should be awarded to the applicant in the absence of conclusive evidence of fault by the State authorities in her son's disappearance and when the investigation was ongoing.

127. The Court has found a violation of Articles 2, 5 and 13 of the Convention on account of the unacknowledged detention and disappearance of the applicant's son. The applicant herself has been found to have been the victim of a violation of Article 3 of the Convention. The Court thus accepts that she has suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards to the applicant 35,000 euros (EUR) plus any tax that may be chargeable thereon.

B. Costs and expenses

128. The applicant was represented by lawyers from the NGO EHRAC/Memorial Human Rights Centre. The aggregate claim in respect of costs and expenses related to the applicant's legal representation amounted to EUR 1,280 or 855 pounds sterling (GBP)) . They submitted the following breakdown of costs:

(a) EUR 900 (GBP 600) for 6 hours of research, drafting legal documents submitted to the Court and the domestic authorities at a rate of GBP 100 per hour;

(b) EUR 380 (GBP 255) for administrative and postal costs.

129. The Government did not dispute the details of the calculations submitted by the applicant.

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

131. Having regard to the details of the information in its possession, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicant's representatives.

132. Further, it has to be established whether the costs and expenses incurred for legal representation were necessary. The Court notes that this case was rather complex and required a certain amount of research and preparation. The Court also notes that it is its standard practice to rule that

awards in relation to costs and expenses are to be paid directly into the applicant's representatives' accounts (see, for example, *Toğcu*, cited above, § 158; *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 175, ECHR 2005-VII; and *Imakayeva v. Russia*, no. 7615/02, ECHR 2006-...).

133. In these circumstances, and having regard to the details of the claims submitted by the applicant, the Court awards EUR 1,280 plus any tax that may be chargeable on that amount to be paid into the representatives' bank account in the United Kingdom, as identified by the applicants.

C. Default interest

134. 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 concerning the non-exhaustion of criminal domestic remedies, and rejects it;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 2 of the Convention in respect of Bekkhan Alaudinov;
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 Bekkhan Alaudinov disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Bekkhan Alaudinov;
7. *Holds* that there has been a violation of Article 13 of the Convention in respect of the violations of Article 2 of the Convention;
8. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the violations of Articles 3 and 5;

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), plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement, in respect of non-pecuniary damage to the applicant;

(ii) EUR 1,280 (one thousand two hundred and eighty euros), plus any tax that may be chargeable to the applicant, to be converted into British pounds sterling, at the rate applicable at the date of settlement in respect of costs and expenses, to be paid into the representatives' bank account in the UK;

(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;

Done in English, and notified in writing on 23 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President