



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

1959 · 50 · 2009

FIRST SECTION

CASE OF MUTSAYEVA v. RUSSIA

(Application no. 24297/05)

JUDGMENT

STRASBOURG

23 July 2009

FINAL

10/12/2009

This judgment may be subject to editorial revision.

In the case of Mutsayeva 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,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 2 July 2009,

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

PROCEDURE

1. The case originated in an application (no. 24297/05) 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 two Russian nationals, Ms Zara Mutsayeva (also known as Tepsurkayeva) and Mr Abdul-Khamit Tepsurkayev, on 9 June 2005.

2. Ms Zara Mutsayeva and Mr Abdul-Khamit Tepsurkayev were represented before the Court by lawyers of EHRAC/Memorial, a non-governmental organisation with offices in Moscow and London. Mr Abdul-Khamit Tepsurkayev died on 10 January 2006 and Ms Zara Mutsayeva (“the applicant”) decided to pursue the application on behalf of herself and her disappeared son. The Russian Government (“the Government”) were represented by their Agent, Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 1 September 2005 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application.

4. On 11 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 the joint examination of the admissibility and merits of the application. Having considered the Government’s objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1953; she and her husband Mr Abdul-Khamit Tepsurkayev were the parents of Khizir Tepsurkayev, who was born in 1980. The applicant lives in Urus-Martan.

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

A. Disappearance of Khizir Tepsurkayev and subsequent events

1. The applicant's account

8. The applicant did not eyewitness the events. The description of the circumstances surrounding the abduction of Khizir Tepsurkayev is based on the witness accounts provided by the applicant, her husband, Mr A. Ruslanbek and Mr A. Alvi.

9. At about 9 a.m. on 27 August 2001 Khizir Tepsurkayev left his house in Urus-Martan to go to the Town Court, located in the centre of the town. He was supposed to meet there with the chairman of the court to discuss his future employment as a policeman and the chairman's guard. On his way to the centre, at the corner of Pervomaiskaya and Ordzhonikidzevskaya Streets, Khizir Tepsurkayev met his acquaintance A. Said-Arbi. The two men were talking when a VAZ-2107 car pulled up next to them. The driver, B. Mairbek, offered Khizir Tepsurkayev and A. Said-Arbi a lift with him to the centre of town. A. Said-Arbi declined the offer, explaining that he had left his passport at home and that he would need it because a sweeping operation was taking place in the centre. Khizir Tepsurkayev accepted the offer of a lift and got into the car. It appears that Khizir Tepsurkayev was not aware of the fact that B. Mairbek and his car were on the authorities' wanted list.

10. At about 10 a.m. the car approached the building of the former Military Commissariat on Kalanchakskaya Street. There was a group of Russian servicemen there from military unit no. 6779. The group consisted of policemen from Bashkortostan and was stationed on the eastern edge of Urus-Martan. One of Khizir Tepsurkayev's acquaintances, police officer A. Ruslanbek, was with the group. The commander of the group was officer V. Vasiliy. The group, accompanied by military cars and APCs (armoured personnel carriers), was participating in a special operation and was conducting identity checks. The servicemen were stopping and searching every car. Many people were in the area at the time, as the checks were

being carried out next to the local farmers' market. When the soldiers stopped B. Mairbek's car, Khizir Tepsurkayev got out of the car and showed his identity documents. The officers checked them and gave them back. At that moment someone in an APC shouted that the car was on the wanted list and the driver should be arrested. B. Mairbek turned his car around and drove away as the servicemen opened fire.

11. After the car had left, commander V. Vasiliy immediately ordered the soldiers to detain Khizir Tepsurkayev. The soldiers started beating him. One of the soldiers hit Khizir Tepsurkayev on the forehead with the butt of his rifle, causing bleeding. During the beatings Khizir Tepsurkayev called for help. He called the name of his acquaintance, D. Yaragi, who lived nearby. The latter heard him and approached the crowd, but could not get through to Khizir Tepsurkayev because the soldiers started firing over the heads of the crowd. Khizir Tepsurkayev was forced into one of the APCs.

12. Another eyewitness, police officer A. Alvi (also mentioned in the submitted documents under the name of A. Aslan), participated in the special operation with another group of servicemen. He was close to the market when he heard the gunfire. Upon approaching the crowd he was told by bystanders that the officers had taken a young man, beaten him and were about to take him away in an APC. Then a group of officers from the temporary department of the interior of the Urus-Martan District ("the VOVD") arrived in a UAZ ("*tabletki*") vehicle. Khizir Tepsurkayev was taken from the APC and placed into the UAZ car, which drove away. A. Alvi immediately reported Khizir Tepsurkayev's removal to his superiors at the VOVD.

13. After Khizir Tepsurkayev had been taken away, the group under V. Vasiliy's command continued the special operation. The UAZ car which had taken Khizir Tepsurkayev away returned in half an hour. When A. Ruslanbek asked the officers in the car where they had taken Khizir Tepsurkayev, they refused to answer. A. Ruslanbek immediately reported Khizir Tepsurkayev's removal to his superiors at the district department of the interior.

14. Approximately half an hour after Khizir Tepsurkayev was taken away, in the morning of 27 August 2001, a boy came to the applicant's house and told her and her husband that their son had been abducted at the local market. The applicant and her husband immediately started searching for Khizir Tepsurkayev.

15. The applicant and her husband went to the VOVD and inquired about their son. They were told that Khizir Tepsurkayev was not there. The applicant's husband asked an employee of the Urus-Martan administration, Mr G., about his son. The latter was familiar with the situation and told him that B. Mairbek's car was on the wanted list, that Khizir should not have got into the car and that nothing could be done to assist the applicant and her husband in attempting to have their son released.

16. On 28 August 2001 the applicant's husband contacted the former Mayor of Grozny, Mr M., who went with him to the VOVD. An investigator from the department acknowledged that Khizir Tepsurkayev had been detained by the department and that he "would need to work with him".

17. Each day for two months, from morning until evening, the applicant and her husband waited for their son at the entrance to the VOVD. They asked everyone who entered or left the building about Khizir Tepsurkayev. Some of those who had also been detained during the special operation on 27 August 2001 and had been released later on, including the applicant's neighbour, told the applicant and her husband that they had heard the police mention the surname of Khizir Tepsurkayev in the halls of the VOVD.

2. Information submitted by the Government

18. The Government did not challenge most of the facts as presented by the applicant. According to their observations of 3 July 2008 "...the Urus-Martan district prosecutor's office opened criminal case no. 61008 in connection with the abduction in Urus-Martan of Kh. Tepsurkayev. The case was opened under Article 126 § 1 of the Criminal Code upon receipt of information from the office of the Envoy of the President of the Russian Federation for Ensuring Human Rights and Freedoms in the Chechen Republic..."

B. The official investigation into the disappearance

1. Information submitted by the applicant

19. Since 27 August 2001 the applicant and her husband have contacted, both in person and in writing, various official bodies, such as the Envoy of the President of the Russian Federation for Ensuring Human Rights and Freedoms in the Chechen Republic, the Urus-Martan District administration, the Chechen administration, a member of the Russian State Duma, military commanders' offices and prosecutors' offices at different levels, and detention centres in Chechnya and other regions of the Russian Federation, describing in detail the circumstances of their son's abduction and asking for help in establishing his whereabouts. The applicant retained copies of a number of those letters and submitted them to the Court.

20. On the morning of 27 August 2001 the applicant and her husband went in person to the VOVD with a complaint about their son's detention. It appears that on the same day Mr A. Ruslanbek and Mr A. Alvi reported Khizir Tepsurkayev's removal to their superiors.

21. On 1 September 2001 the applicant's husband wrote to the Urus-Martan District prosecutor's office ("the district prosecutor's office")

with a request for assistance in finding his son. He described the circumstances of his son's removal by security forces and stated that his son had been taken away in a military UAZ car to the VOVD.

22. On 3 September 2001 the applicant's husband wrote to the military commander's office of the Urus-Martan District ("the district military commander's office") with a request for assistance in finding his son. He described the circumstances of his son's abduction and stated that his son had been taken away in a military UAZ car to the VOVD.

23. On 8 September 2001 the district prosecutor's office forwarded the request of the applicant's husband to the military prosecutor in Moscow.

24. On 25 January 2002 the district prosecutor's office instituted an investigation into the disappearance of Khizir Tepsurkayev under Article 126 § 1 of the Criminal Code of the Russian Federation (kidnapping) (from the submitted documents it appears that the investigation also referred to Article 126 § 2 of the Criminal Code of the Russian Federation (aggravated kidnapping)). The case file was given number 61008 (in the submitted documents the case file was also referred to under no. 62008).

25. On 14 May 2002 the applicant wrote to the district military commander's office with a request for assistance in finding her son. She complained that her letters to various authorities had produced no results.

26. On 30 June 2002 the Department of Federal Security Service in the Chechen Republic (the Chechnya FSB) informed the applicant that her request of 28 June 2002 had been forwarded for further examination to the military prosecutor's office of military unit no. 20102.

27. On 1 July 2002 the applicant wrote to the Prosecutor General of the Russian Federation. In her letter she stated that on 27 August 2001 her son had been detained by representatives of the Russian federal forces under the command of V. Vasiliy and taken to the VOVD. She stated that her numerous complaints to various State authorities had produced no results and that the authorities had failed to conduct an investigation in the criminal case opened in connection with her son's disappearance. She asked for assistance in establishing the whereabouts of Khizir Tepsurkayev.

28. On 11 and 19 July 2002 the Department of the Prosecutor General's Office in the Southern Federal Circuit informed the applicant that her requests had been forwarded for examination to the Chechnya prosecutor's office.

29. On 24 July 2002 the Chechnya prosecutor's office informed the applicant that the district prosecutor's office was to examine the lawfulness of the decisions taken by the investigative authorities in a number of criminal cases, including the case opened in connection with the disappearance of Khizir Tepsurkayev. The letter stated that the investigation in the case was under the control of the Chechnya prosecutor's office.

30. On 11 September 2002 the Chechnya prosecutor's office informed the applicant that on 25 January 2002 the district prosecutor's office had instituted an investigation into her son's disappearance under Article 126 § 2 of the Russian Criminal Code; that on 25 March 2002 the investigation in the criminal case had been suspended for failure to identify the perpetrators; that concrete measures aimed at identifying the culprits were being taken; and that information concerning the investigation could be obtained from the district prosecutor's office.

31. On 7 October 2002 the Chechnya prosecutor's office again informed the applicant that the district prosecutor's office was to examine the lawfulness of the decisions taken by the investigative authorities in a number of criminal cases, including the case opened in connection with the disappearance of Khizir Tepsurkayev.

32. On 15 November 2002 the district prosecutor's office informed the applicant's husband that the investigating authorities were undertaking search measures in the criminal case concerning his son's disappearance.

33. On 30 November 2002 the military prosecutor's office of the United Group Alignment ("the military prosecutor's office of the UGA") informed the applicant that at her request the office had examined the possibility that the Russian federal forces had been involved in the disappearance of her son and that their involvement in the abduction had not been established.

34. On 10 March 2003 the district prosecutor's office granted the applicant's husband victim status in criminal case no. 61008.

35. On 7 April 2003 the district prosecutor's office informed the applicant's husband that on an unspecified date the investigation in criminal case no. 61008 had been suspended for failure to identify the perpetrators.

36. On 22 July 2003 the Chechnya prosecutor's office informed the applicant that on 25 March 2002 the investigation in the criminal case had been suspended for failure to identify the perpetrators; that on 22 July 2003 the interim prosecutor of the Urus-Martan District had overruled this decision on the ground that the investigation was incomplete; that the investigative authorities had received due instructions from their superiors; and that the investigation's time-limit had been extended until 22 August 2003.

37. On 23 July 2003 the military prosecutor's office of the UGA informed the applicant that her request for help in finding her son had been forwarded to the military prosecutor's office of military unit no. 20102.

38. On 27 April 2004 the district prosecutor's office informed the applicant that her request of 22 April 2004 had been examined. The letter stated that on 25 January 2002 the district prosecutor's office had instituted an investigation in criminal case no. 61008; that during the investigation the authorities had taken all possible measures to identify the perpetrators and establish her son's whereabouts; that on 22 August 2003 the investigation in criminal case no. 61008 had been suspended for failure to identify the

perpetrators; and that the district department of the interior was to step up its search for the culprits.

39. On 28 April 2004 and 27 May 2005 the military prosecutor's office of the UGA informed the applicant that information concerning the investigation could be obtained from the district prosecutor's office.

40. On 17 May 2004 the VOVD informed the applicant that the investigators had forwarded requests for information concerning the whereabouts of Khizir Tepsurkayev to a number of law enforcement agencies. The letter also stated that the applicant would be promptly informed about any developments in the case.

41. On 24 May 2004 the applicant complained to the district prosecutor's office. In her letter she described her son's abduction and pointed out that it had been carried out by representatives of the Russian federal forces under the command of V. Vasiliy. She stated that three employees of the VOVD had witnessed the abduction and provided their statements to the district prosecutor's office. The applicant complained that she had been given no information concerning the investigation in criminal case no. 61008. She requested the prosecutor to resume the investigation in the case, to undertake all possible measures for its completion and to permit her to study the case file materials and make copies of the documents.

42. On 27 May 2004 the Urus-Martan district prosecutor informed the applicant about the examination of her request. The letter stated that the investigating authorities had undertaken all possible measures to identify the perpetrators and establish her son's whereabouts, that the authorities had been undertaking unspecified measures to identify the employees who had witnessed the abduction of her son, and that commander V. Vasiliy had died on 26 May 2003. The letter also stated that the investigation in case no. 61008 had been suspended for failure to identify the perpetrators.

43. On 18 August 2004 the applicant complained to the Urus-Martan district prosecutor. In her letter she stated that her husband had asked the investigators in case no. 61008 to include the accounts of the three employees of the VOVD who had witnessed Khizir Tepsurkayev's abduction in the criminal case file, but that the authorities had ignored his requests. The applicant provided the names of the three witnesses: Mr A. Ruslanbek, Mr A. Aslan and Mr K. Ramzan. She emphasised that the investigative authorities had failed to identify the servicemen of V. Vasiliy's group who had participated in her son's abduction and that the suspension of the investigation in the criminal case was unjustified. The applicant asked the prosecutor to resume investigation in case no. 61008 and to question the three employees of the VOVD as well as other servicemen who had participated in Khizir Tepsurkayev's abduction, to conduct a thorough and unbiased investigation in the case, to request from the VOVD the statements of the three witnesses and to include them in the criminal case file. Finally,

she asked for permission to study the case file materials and to make copies of them.

44. On 6 October 2004 the district prosecutor's office informed the applicant's husband that the investigation in case no. 61008 had been suspended on 6 October 2004 for failure to identify the perpetrators.

45. On 15 November 2005 the applicant requested the district prosecutor's office to provide her with information concerning the criminal investigation into her son's abduction.

46. On 21 November 2005 and 3 March 2006 the district prosecutor's office informed the applicant that the investigation in the criminal case had been suspended for failure to identify the perpetrators.

47. On 7 June 2006 the applicant requested the district prosecutor's office to provide her with information concerning the criminal investigation into her son's abduction and to resume the proceedings if they had been suspended.

48. On 22 October 2007 the applicant complained to the Urus-Martan district prosecutor that the investigation into her son's abduction was incomplete. In particular, she pointed out that the investigators had failed to identify and question the servicemen from the unit under the command of V. Vasiliiy who had witnessed and participated in her son's abduction, as well as the servicemen who had driven the APC.

49. On 14 November 2007 the applicant again complained to the Urus-Martan district prosecutor. She provided a detailed description of the circumstances surrounding her son's abduction and pointed out that he had been taken away in a UAZ vehicle to the VOVD and that the abductors had acted under the command of officer V. Vasiliiy from military unit no. 6779.

50. At some point in 2007 criminal case no. 61008 was transferred to the Achkhoy-Martan inter-district prosecutor's office for further investigation.

51. On 20 May 2008 the investigators questioned the applicant.

52. According to the applicant, by August 2008 she had received no further information about the progress of the investigation into her son's abduction.

2. Information submitted by the Government

53. Without providing the relevant dates or copies of the documents, the Government submitted that the investigators had questioned the applicant's husband, who had also been granted victim status in the criminal case. According to his witness statement, on 27 August 2001 his son had left home to go and get a job. At about 10.30 a.m. a boy had come to his house and told him and his wife that Khizir Tepsurkayev had been detained by military servicemen during a sweeping operation. At some point later the investigators had questioned the applicant's husband again. According to his additional witness statement, at the material time his son had not been employed; early in 2001 he had volunteered at the VOVD and therefore was

acquainted with many police officers. According to the applicant's husband, while searching for his son he had approached a number of the VOVD officers. One of them had told him that on 27 August 2001 Khizir Tepsurkayev had gone to a local judge to obtain employment at the Town Court. On the way to the judge Khizir had met a member of the Wahhabi movement, Mr B. Mairbek, who was killed at some point later in 2002. B. Mairbek had offered the applicant's son a lift to the town centre. The car had been stopped by servicemen from military unit no. 6779 stationed at the time on the outskirts of Urus-Martan. The servicemen had been conducting a special operation. Khizir Tepsurkayev had showed his temporary identification card. During the identity check it had been established that B. Mairbek's car was on the authorities' wanted list. At that time B. Mairbek had driven away from the military servicemen, but the applicant's son had stayed behind. After that Khizir Tepsurkayev had been put in an UAZ vehicle and taken away to an unknown destination. According to the applicant's husband, he had obtained this information from the local police officers who had participated in the special operation with the military servicemen. These police officers had informed the applicant's husband that the military servicemen who had taken away his son were under the command of Lieutenant V. Vasiliy.

54. Referring to the information received from the Main Military Prosecutor's office, the Government further submitted that senior lieutenant of military unit no. 6779 V. Vasiliy had been killed on 26 May 2002. The military servicemen who had been serving in Chechnya on 27 August 2001 had been discharged upon completion of their service.

55. According to the Government, the investigation questioned the duty officer of the VOVD, Mr A. A., who stated that on 27 August 2001 he and officers V.A., R.I. and Yu.I. had driven to participate in the special operation held in Kalanchakskaya Street in Urus-Martan. He was supposed to participate in the operation as a member of a reserve group. On the other side of the road he had seen military servicemen of an unknown military unit and officers from the VOVD. At about 10 a.m. he had heard shooting and had driven towards the sound of the gunfire with other members of the reserve group. According to the witness, he had seen a crowd and a number of armoured vehicles on Kalanchakskaya Street. When he had approached the crowd, one of police officer told him that the military servicemen had stopped a VAZ-2107 car with B. Mairbek and Khizir Tepsurkayev in it. B. Mairbek had left Khizir Tepsurkayev and driven away in spite of the fact that fire had been opened to stop him. According to the eyewitnesses, the military servicemen had put Khizir Tepsurkayev into an APC. Shortly afterwards a UAZ vehicle from the VOVD had arrived at the site. Khizir Tepsurkayev had been taken out of the APC and put in the UAZ, which had driven away to an unknown destination. According to the witness, he had

known Khizir Tepsurkayev since childhood and judged his character positively.

56. According to the Government, the investigators also questioned an officer of the VOVD, Mr R. A., who had provided a statement similar to the one provided by Mr A. A.

57. On an unspecified date the investigators questioned another witness, a senior operational police officer of the VOVD, Mr R.K., who stated that on 27 August 2001 he and a colleague of his had participated in a special operation. The operation had been conducted with military servicemen of an unknown military unit. The military servicemen had stopped a VAZ-2107 car with B. Mairbek and a young man in it. According to the witness, at some point later he had found out that this young man was Khizir Tepsurkayev. During the identity check B. Mairbek had driven away from the military servicemen; one of them, officer Vasiliy V., had tried to stop him by firing over his head. After that the military servicemen had run up to Khizir Tepsurkayev. Then a UAZ car had been ordered to the place, it had arrived and taken Khizir Tepsurkayev away.

58. On an unspecified date the investigators questioned the applicant, who stated that on 27 August 2001 her son Khizir Tepsurkayev had left home to get a job in the Town Court. About an hour later a boy had run up to her yard and informed her and her husband that armed men in an APC, who had been conducting a sweeping operation in Kalanchakskaya Street, had taken their son away. The applicant, her husband and some of their neighbours had rushed to the site but found nobody there. After that they had gone to the VOVD, where they had been told that the VOVD had not taken away their son.

59. The Government submitted that according to the letters received from the military prosecutor's office of the UGA and military unit no. 6779 no special operations had been conducted in Urus-Martan on 27 August 2001.

60. On 6 October 2004 the investigation in the criminal case was suspended for failure to identify the perpetrators. The applicant was informed about this decision.

61. On 22 November 2004 the Urus-Martan Town Court overruled the decision to suspend the investigation as unlawful (see paragraph 68 below).

62. On 8 December 2004 the interim Urus-Martan district prosecutor ordered the investigators to resume the investigation in the criminal case. The applicant was informed about this decision.

63. On 6 July 2005 the investigation in the criminal case was again suspended for failure to identify the perpetrators. The applicant was informed about this decision.

64. On 7 June 2006 the applicant requested the deputy Urus-Martan district prosecutor to resume the investigation in the criminal case. On the

same date the authorities rejected her request and informed her about this decision.

65. The Government further submitted that although the investigation had failed to establish the whereabouts of Khizir Tepsurkayev, it was still in progress. The investigating authorities had sent requests for information to a number of competent State agencies, such as the Chechnya Ministry of the Interior, the Urus-Martan district military commander and military unit no. 6779, and taken other steps to solve the crime. The investigation had found no evidence to support the involvement of military servicemen, the law enforcement officers or other State representatives in the crime. The law enforcement authorities of Chechnya had never arrested or detained Khizir Tepsurkayev on criminal or administrative charges and had not carried out a criminal investigation in his respect. No special operations had been carried out in respect of the applicant's son and his body had not been found.

66. Despite specific requests by the Court the Government did not disclose any documents of criminal case no. 61008. The Government stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Russian Code of Criminal Procedure, since the file contained personal data concerning witnesses or other participants in the criminal proceedings.

C. Proceedings against law enforcement officials

67. On 25 October 2004 the applicant lodged a complaint with the Urus-Martan Town Court ("the Town Court"). She described the events of 27 August 2001 and complained that the suspension of the investigation in criminal case no. 61008 had been unlawful, that the investigative authorities had failed to undertake basic investigative measures and to examine a number of her requests as well as to provide her with access to the criminal case file. The applicant requested a reopening of the investigation and asked that it be conducted in a thorough and unbiased manner. She also requested to be provided with access to the criminal case file.

68. On 22 November 2004 (in the submitted documents the date is also stated as 20 November 2004) the Town Court partially granted her claim. The court's decision stated, *inter alia*, the following:

"...on 27 August 2001, during a sweeping operation in Urus-Martan, officers of the power structures in an APC under the command of the head of the platoon Mr V.V. from military unit no. 6779 detained Khizir Tepsurkayev....

On 18 August 2004 [the applicant] again requested the prosecutor's office to resume the investigation in the criminal case, to question witnesses, namely employees of the Urus-Martan district department of the interior and military servicemen from the platoon of officer V.V. who had participated in her son's detention, and to conduct an effective and objective investigation of the criminal case...[the applicant] believes that the death of officer V.V. should not serve as the

basis for the suspension of the criminal investigation as he had acted [during the abduction] with other military servicemen.... [according to the applicant] the investigation had failed to identify or question the officers who had been in charge of the security operation conducted on 27 August 2001 in Urus-Martan, the heads of all power structures who had participated in the special operation, as well as persons responsible for placement of detainees... and military servicemen from the platoon of officer V.V...

... [the applicant] requests that the prosecutor's office decision to suspend the investigation in criminal case no. 61008 be recognised as unlawful and unjustified; that the Urus-Martan district prosecutor's office be obliged to conduct a full, thorough and effective investigation of the criminal case and provide her with access to the criminal case file

... From the case file materials it follows that the investigation in the criminal case has not been conducted in full. For instance, the investigators failed to take measures to clarify the circumstances provided by Z. Mutsayeva in her request of 18 August 2004. If these circumstances will be confirmed [by the investigation], in accordance with the rules of jurisdiction, the criminal case should be forwarded for further investigation to the military prosecutor's office. Under such conditions the court finds that the applicant's requests for a full and effective investigation are substantiated..."

The court ruled that the investigators' decision to suspend the investigation in the criminal case was unjustified and instructed the authorities to examine the applicant's requests. The remainder of the applicant's claim was rejected.

69. On 2 December 2004 the applicant appealed against the decision of 22 November 2004. In her appeal she referred, *inter alia*, to the case-law of the European Court of Human Rights. On 25 January 2005 the Chechnya Supreme Court upheld the decision of 22 November 2004.

II. RELEVANT DOMESTIC LAW

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

THE LAW

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

A. The parties' submissions

71. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They submitted that the investigation into the disappearance of Khizir Tepsurkayev had not yet been completed. They further argued that it had been open to the applicant to challenge in court any acts or omissions of the investigating or other law enforcement authorities. They also argued that it had been open to the applicant to pursue civil complaints but that she had failed to do so.

72. The applicant contested that objection. She stated that the only supposedly effective remedy in her case, the criminal investigation, had proved to be ineffective and rendered any other possible remedies inadequate and illusory.

B. The Court's assessment

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

74. 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.

75. As regards a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005, and *Estamirov and Others*, cited above, § 77). In the light of the above, the Court confirms that the applicant was not obliged to pursue civil remedies.

76. As regards criminal law remedies, the Court observes that the applicant complained to the law enforcement authorities immediately after the kidnapping of Khizir Tepsurkayev and that an investigation has been

pending since 25 January 2002. The applicant and the Government dispute whether the investigation of the kidnapping is effective.

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

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

A. The parties' arguments

78. The applicant maintained that it was beyond reasonable doubt that the men who had taken away Khizir Tepsurkayev had been State agents. In support of her complaint she referred to the following facts. Urus-Martan had been under the total control of federal troops since December 1999. There had been Russian military checkpoints on the roads leading to and from the town. The armed men who had abducted Khizir Tepsurkayev had driven around in military vehicles, including APCs and UAZ vehicles. The police officers who had witnessed the abduction had confirmed that Khizir Tepsurkayev's abductors were under the command of officer V. Vasilii and were carrying out an identity check. The abductors had fired a number of shots without fear of being heard by law enforcement agencies located in close proximity to the place. All the information provided to the applicant from the criminal case file supported her assertion as to the involvement of State agents in the abduction. Since Khizir Tepsurkayev had been missing for a very lengthy period, he could be presumed dead. That presumption was further supported by the circumstances in which he had been arrested, which should be recognised as life-threatening.

79. The Government submitted that unidentified armed men had kidnapped Khizir Tepsurkayev. 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 further alleged that the applicant's description of the circumstances surrounding the abduction was inconsistent. In particular, the applicant had failed to inform the investigators about the information allegedly received from Mr G. and Mr M. concerning Khizir Tepsurkayev's detention in the VOVD; the applicant had not personally witnessed the abduction and the witnesses to the abduction could not explain whether the UAZ vehicle which had taken

Khizir Tepsurkayev away belonged to the VOVD or to the military. The Government referred to the witness statements made to the domestic investigation; but they did not submit them to the Court.

B. The Court's evaluation of the facts

80. 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*, § 161, Series A no. 25).

81. The Court notes that despite its requests for a copy of the investigation file into the abduction of Khizir Tepsurkayev, the Government did not produce any of the documents from the case file. The Government referred to Article 161 of the Criminal Procedure Code. 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)).

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

83. The applicant alleged that the persons who had taken Khizir Tepsurkayev away on 27 August 2001 and then killed him were State agents. The Government did not dispute the main factual elements underlying the application and did not provide any other explanation of the events.

84. The Court notes that little evidence has been submitted by the applicant, which is rather comprehensible in the light of the investigators' reluctance to provide the parents of the missing man with copies of important investigation documents. Nevertheless, the Court notes that the applicant's allegation is supported by the witness statements collected by her and by the investigation. It finds that the fact that a large group of armed men in uniform in broad daylight, equipped with military vehicles, proceeded to check identity documents and opened fire strongly supports the applicant's allegation that these were State servicemen conducting a security operation. In her applications to the authorities the applicant consistently maintained that Khizir Tepsurkayev had been detained by unknown servicemen and requested the investigation to look into that possibility (see paragraphs 21, 22, 27, 41, 43, 48 and 49 above). The

domestic investigation also accepted factual assumptions as presented by the applicant and took steps to check whether law enforcement agencies were involved in the kidnapping (see paragraph 33 above).

85. The Government questioned the credibility of the applicant's statements, in view of certain discrepancies relating to the exact circumstances of the arrests and the description of the hours immediately following the detention. The Court notes in this respect that no other elements underlying the applicant's submissions of facts have been disputed by the Government. The Government did not provide the Court with the witness statements to which they referred in their submissions. In the Court's view, the fact that over a period of several years the witnesses' recollection of the circumstances of the abduction differed in rather insignificant details does not in itself suffice to cast doubt on the overall veracity of their statements.

86. The Court observes that where an applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to a lack of relevant documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the 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).

87. Taking into account the above elements, the Court is satisfied that the applicant has made a *prima facie* case that her son was abducted by State servicemen. The Government's statement that the investigators had not found any evidence to support the involvement of State representatives in the kidnapping is insufficient to discharge them from the above-mentioned burden of proof. Having examined the documents submitted by the applicant, and drawing inferences from the Government's failure to submit the documents which were in their exclusive possession or to provide another plausible explanation for the events in question, the Court finds that Khizir Tepsurkayev was taken away on 27 August 2001 by State servicemen during an unacknowledged security operation.

88. There has been no reliable news of Khizir Tepsurkayev since the date of the kidnapping. His name has not been found in any official detention facility records. Finally, the Government have not submitted any explanation as to what happened to him after his arrest.

89. Having regard to the previous cases concerning disappearances in Chechnya which have come before it (see, among others, *Bazorkina*, cited above; *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva*, cited above; and *Alikhadzhiyeva v. Russia*,

no. 68007/01, 5 July 2007), the Court finds that in the context of the conflict in the Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgment of the detention, this can be regarded as life-threatening. The absence of Khizir Tepsurkayev or of any news of him for several years supports this assumption.

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

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

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

“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

A. The parties’ submissions

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

93. The applicant argued that Khizir Tepsurkayev 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 effectiveness and adequacy requirements, laid down by the Court’s case-law. The applicant pointed out that by May 2003 the district prosecutor’s office had not taken some crucial investigative

steps, such as questioning of officer V. Vasiliy, and that throughout the entire length of the proceedings the investigators had not questioned any of the military servicemen from military unit no. 6779 who had participated in the abduction of Khizir Tepsurkayev. The investigation into the kidnapping had been opened almost five months after the events and then had been suspended and resumed a number of times – thus delaying the taking of the most basic steps – and that the applicant had not been properly informed of the most important investigative measures. The fact that the investigation had been pending for more than six years without producing any known results was further proof of its ineffectiveness. The applicant also invited the Court to draw conclusions from the Government's unjustified failure to submit the documents from the case file to them or to the Court.

B. The Court's assessment

1. Admissibility

94. 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 77 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 Khizir Tepsurkayev

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

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

96. 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).

97. In the present case, the kidnapping of Khizir Tepsurkayev was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

98. 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 applicant and the information about its progress presented by the Government.

99. The Court notes that the authorities were immediately made aware of the crime by the applicant's submissions. The investigation in case no. 61008 was instituted on 25 January 2002, that is almost five months after Khizir Tepsurkayev's abduction. Such a postponement *per se* was liable to affect the investigation of the 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 significantly delayed or were not taken at all. For instance, as can be seen from the decision of the Town Court of 22 November 2004, by that time the investigators had not established the owners of the APCs and UAZ vehicles which had moved around Urus-Martan on 27 August 2001; they had failed to identify the officers who had been in charge of the security operations conducted in Urus-Martan on that date, as well as the military servicemen who had participated in these operations. 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 delays, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II).

100. Further, a number of essential steps were never taken. Most notably, it does not appear that the investigation ever tried to question officer V. Vasiliy or to identify or question any members of his military unit who had participated in the apprehension of Khizir Tepsurkayev.

101. The Court also notes that even though the applicant's husband was granted victim status in the criminal case concerning the abduction of his son, he and the applicant were only informed of the suspension and resumption of the proceedings, and not of any other significant developments. Accordingly, the investigators failed to ensure that the investigation received the required level of public scrutiny, or to safeguard the interests of the next of kin in the proceedings.

102. Finally, the Court notes that the investigation was suspended and resumed on numerous occasions and that there were lengthy periods of inactivity on the part of the district prosecutor's office when no proceedings

were pending. The Town Court criticised deficiencies in the proceedings and ordered remedial measures. It appears that its instructions were not complied with.

103. The Government argued that the applicant could have sought judicial review of the decisions of the investigating authorities in the context of the exhaustion of domestic remedies. The Court observes that the applicant did in fact make use of that remedy, which eventually led to the resumption of the investigation. Nevertheless, the effectiveness of the investigation had already been undermined in its early stages by the authorities' failure to take necessary and urgent investigative measures. Moreover, the court's instructions to the district prosecutor's office to investigate the crime effectively did not bring any tangible results for the applicant. The investigation was repeatedly suspended and resumed, but it appears that no significant investigative measures were taken to identify those responsible for the kidnapping. In such circumstances, the Court considers that the applicant could not be required to challenge in court every single decision of the district prosecutor's office. Accordingly, the Court finds that the remedy cited by the Government was ineffective in the circumstances and dismisses their preliminary objection as regards the applicant's failure to exhaust domestic remedies within the context of the criminal investigation.

104. 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 Khizir Tepsurkayev, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

105. 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

106. 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.

107. The applicant maintained her submissions.

B. The Court's assessment

1. Admissibility

108. 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

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

110. In the present case the Court notes that the applicant is the mother of the disappeared person. For more than seven years she has not had any news of the missing man. During this period the applicant has made enquiries of various official bodies, both in writing and in person, about her missing son. Despite her attempts, the applicant has never received any plausible explanation or information about what became of him following his detention. The responses she received mostly denied State responsibility for 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.

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

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

112. The applicant further stated that Khizir Tepsurkayev had been detained in violation of the guarantees contained in Article 5 of the Convention, which reads, in so far as relevant:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

A. The parties’ submissions

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

114. The applicant reiterated the complaint.

B. The Court’s assessment

1. Admissibility

115. 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

116. 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).

117. The Court has found that Khizir Tepsurkayev was abducted by State servicemen on 27 August 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).

118. 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.

119. In view of the foregoing, the Court finds that Khizir Tepsurkayev 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

120. 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

121. The Government contended that the applicant had had effective remedies at her disposal as required by Article 13 of the Convention and that the authorities had not prevented her from using them. The applicant had had an opportunity to challenge the acts or omissions of the investigating authorities in court and that she could have claimed damages in civil proceedings. In sum, the Government submitted that there had been no violation of Article 13.

122. The applicant reiterated the complaint.

B. The Court's assessment

1. Admissibility

123. 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

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

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

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

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

127. 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

128. The applicant did not submit any claims in respect of pecuniary damage. As to non-pecuniary damage, she stated that she had lost her son and endured stress, frustration and helplessness in relation to her son's abduction and the authorities' failure to conduct an effective investigation of those events for several years. She left the determination of the amount of compensation to the Court.

129. The Government submitted that finding a violation of the Convention would be adequate just satisfaction in the applicant's case.

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

B. Costs and expenses

131. 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 legal representation amounted to EUR 2,100 (1,404 pounds sterling (GBP)). They submitted the following breakdown of costs:

- (a) GBP 600 for six hours of legal work by a United Kingdom-based lawyer at a rate of GBP 100 per hour;
- (b) GBP 629 for translation costs; and
- (c) GBP 175 for administrative and postal costs.

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

133. 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).

134. Having regard to the details of the submitted documentation, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicant's representatives.

135. Further, the Court notes that this case was rather complex and required a certain amount of research and preparation. The Court thus has no doubts that research was necessary to the extent claimed by the representatives.

136. Having regard to the details of the claims submitted by the applicant's representatives, the Court awards them the amount as claimed of EUR 2,100 together with any value-added tax that may be chargeable to the applicant, the net award to be paid in pounds sterling into the representatives' bank account in the UK, as identified by the applicant.

C. Default interest

137. 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 domestic remedies and rejects it;
2. *Declares* the complaints under Articles 2, 3, 5 and 13 of the Convention admissible;
3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Khizir Tepsurkayev;
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 Khizir Tepsurkayev 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 Khizir Tepsurkayev;
7. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
8. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
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, to be converted into Russian roubles at the date of settlement, save in the case of the payment in respect of costs and expenses:
 - (i) EUR 35,000 (thirty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicant;
 - (ii) EUR 2,100 (two thousand one hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the representatives' bank account in the 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 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President