



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

1959 · 50 · 2009

FIRST SECTION

CASE OF SATABAYEVA v. RUSSIA

(Application no. 21486/06)

JUDGMENT

STRASBOURG

29 October 2009

FINAL

01/03/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Satabayeva v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 8 October 2009,

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

PROCEDURE

1. The case originated in an application (no. 21486/06) 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 Tamara Satabayeva (“the applicant”), on 11 May 2006.

2. The applicant, who had been granted legal aid, was represented by Mr D. Itsleyev, a lawyer practising in Nazran. The Russian Government (“the Government”) were represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights and subsequently by their new Representative, Mr G. Matyushkin.

3. The applicant alleged that her son had disappeared after being arrested on 23 February 2000. She complained under Articles 2, 5 and 13.

4. By a decision of 11 September 2008 the Court declared the application admissible.

5. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

6. The applicant was born in 1953. She lives in Urus-Martan, the Chechen Republic.

A. Detention and subsequent disappearance of Yusup Satabayev

7. The applicant's son, Yusup Satabayev, born in 1977, lived with her in Urus-Martan at the address 1 Tolstogo Street. The applicant has two other children.

1. The applicant's account

8. On 29 January 2000, following the outbreak of armed conflict in Chechnya, Yusup Satabayev joined one of the paramilitary groups which fought against the federal army. According to the applicant, he stayed with the paramilitary group for less than a month, during which time there were no armed confrontations, and then left. On 23 February 2000 he arrived in Martan-Chu, in the Urus-Martan district, allegedly to surrender to the authorities in order to benefit from the Amnesty Act. However, on the same day he was arrested at his sister's house by servicemen of the Federal Security Service (FSB). After his arrest he voluntarily disclosed to the authorities the hiding place of his personal machine gun and a cache of weapons belonging to the paramilitaries.

9. Yusup Satabayev was then charged in criminal proceedings with participation in an organised armed gang and illegal dealing in firearms (case file no. 59211). He was remanded in custody during the investigation. On 4 March 2000 he was transferred to the pre-trial detention facility in the village of Chernokozovo in Naurskiy district. On 12 March 2000 the applicant visited this detention facility and, although she was not allowed to see him in person, she received his message confirming receipt of her parcel. The applicant then remained in Chernokozovo and regularly sent parcels to her son, each time receiving confirmation of their receipt.

10. In mid-July 2000 legal counsel hired by the applicant, Ms T., visited Yusup Satabayev in the detention facility and ascertained that he was in good health.

11. On 27 July 2000 the criminal proceedings against Yusup Satabayev were discontinued on the following grounds:

“[Yusup Satabayev] has acknowledged having participated in illegal organised gangs, is aware of being guilty of the [criminal offences he is charged with], he is liable to the maximum sanction of five years of imprisonment ..., has voluntarily surrendered [his weapon] and indicated the place where paramilitaries' arms were hidden, and thus should be absolved of criminal liability [for dealing in firearms]; he has not caused any damage to the Armed Forces of the Russian Federation, has no previous criminal record, and has a permanent place of residence, [he is] characterised positively, has voluntarily quit the illegal paramilitary groups, and has therefore ceased to pose a public danger.”

12. Yusup Satabayev was notified of this decision on the same day and he signed the last page of it, as required by law. His release was due on the same day but he remained in custody.

13. The applicant was not aware that the criminal proceedings against her son had been discontinued.

14. On 28 July 2000 the applicant's legal counsel, T., discovered that Yusup Satabayev had been transferred to the detention facility of the Urus-Martan temporary Department of the Interior of the Chechen Republic (VOVD) (*Урус-Мартановский временный отдел внутренних дел Чеченской республики*). The applicant went to Urus-Martan and met investigator O., who was in charge of the criminal case against Yusup Satabayev. He explained that Yusup Satabayev would be detained for another ten days and would then be released. He did not inform her that the criminal case had been discontinued.

15. On the same day the applicant sent a parcel to her son in the detention facility and he confirmed its receipt as usual. Over the following days the applicant routinely spent all the time outside the curfew hours in front of the detention facility, waiting for her son's release. She regularly sent parcels and received confirmations of receipt, and sometimes short notes which he wrote on the receipt form. On 1 August 2000 she met the families of other detainees, Kazbek Vakhayev (*Vakhayeva and Others v. Russia*, application no. 1758/04) and Mr G., who had been arrested earlier that day. From that day onwards they too were regularly in front of the detention facility.

16. On 1-2 August 2000 the applicant sent her son a parcel with a pair of shoes, trousers, and a shirt. He sent her back his used clothes, namely a black jumper, socks, winter shoes and a towel.

17. On 4 August 2000 the applicant visited investigator O. and asked him when her son would be released. He informed her that criminal proceedings against him had been discontinued on 27 July 2000. She then asked him on what grounds Yusup Satabayev was being kept in detention, but O. only said that it "had to be done this way".

18. On 9 August 2000 the applicant met Ms Ch., whose son had been arrested that day, in front of the detention facility.

19. On 13 August 2000 the applicant saw the family of Kazbek Vakhayev submitting a parcel which was then returned to them, on the ground that he was no longer in the facility.

20. At about 2 p.m. on the same day the applicant sent a parcel to her son, but the officer did not give her confirmation of its receipt. At her request he went to get the receipt but did not return.

21. On the morning of 14 August 2000 the applicant, together with the families of the other detainees, visited the head of the Urus-Martan VOVD, Colonel Sh., who told them that Kazbek Vakhayev had been released on 11 August 2000, but that Yusup Satabayev, Mr G., and Mr Ch. had been abducted by the "Shamanovs" (*«Шамановцы»*) and taken to the "force groups". According to the applicant, this meant the federal force group "Zapad" under the command of General Shamanov (*группировка*

федеральных сил «Запад» под командованием генерала Шаманова) then located to the south-west of Urus-Martan. Neither the applicant nor other detainees' families were able to obtain any further information on the matter.

2. The Government's account

22. In their submissions prior to the Court's decision of 11 September 2008 on the admissibility of the application, the Government stated that “[o]n 1 August 2000 officers of the Urus-Martan [VOVD] under Decree of the President of the Russian Federation of 2 November 1993 no. 1815 'On Measures for Prevention of Vagrancy and Mendicancy' apprehended and brought to the said department Y. A. Satabayev, [Mr G.], K.L. Vakhayev and [Mr Ch.]. Subsequently they were released however, their whereabouts [are] still unknown”.

23. In their submissions after the Court's decision of 11 September 2008 on the admissibility of the application, the Government stated that “[o]n 27 July 2000 the criminal proceedings... against Yu. A. Satabayev were discontinued, the measure of restraint in respect of this person was cancelled. As the relevant decision came to [remand prison] IZ-20/2 on 1 August 2000, Yu. A. Satabayev was immediately released. On 4 August 2000 Yu. A. Satabayev, in the absence of identification documents, was detained for committing an administrative offence pursuant to the Decree of the President of the Russian Federation of 2 November 1993 no. 1815 'On Measures for Prevention of Vagrancy and Mendicancy', his detention in the detention ward of the [Urus-Martan VOVD] lasted for ten days until 14 August 2000, on this date Yu. A. Satabayev was released. The detention of Yu. A. Satabayev was sanctioned by the prosecutor of the Urus-Martan district as valid and justified. The applicants have never brought any complaints against this detention before the national courts.”

B. Search for Yusup Satabayev and investigation

1. The applicant's account

24. The applicant instructed her legal counsel, Ms T., to make all official enquiries with the authorities to establish the whereabouts of her son, which Ms T. did.

25. On 19 August 2000 the acting prosecutor of the Urus-Martan district informed the applicant's counsel that “according to the records of the Urus-Martan VOVD, [Yusup Satabayev] was released on 14 August 2000”.

26. On 22 August 2000 the family of Kazbek Vakhayev learned from informal contacts that on 13 August 2000 four young Chechen men had been executed in the military camp near the village of Goy-Chu in the

Urus-Martán district. Apparently the execution had been carried out by servicemen of the Urus-Martán district military commander's office (*Урус-Мартановская районная военная комендатура*) and the bodies had been buried in a shallow grave in the grounds of the military camp. When the camp was dismantled for relocation one of the soldiers told the villagers of Goy-Chu about the grave and asked them to re-bury the dead. In the indicated place the villagers exhumed four corpses with numerous traces of violence and some spent cartridges. They did not identify the bodies but they made a video recording. The bodies were re-buried on the same day, 22 August 2000, in the Goyskoye village cemetery. A member of Kazbek Vakhayev's family, Mr U., came to identify the bodies, but he did not recognise Kazbek Vakhayev among them. The applicant submitted to the Court a copy of the video recording.

27. On 7 September 2000 the head of the Urus-Martán VOVD, Colonel Sh., sent a letter to the applicant's counsel, informing her that "Yusup Satabayev, born in 1976, has neither been arrested by the Urus-Martán VOVD nor detained therein".

28. On 14 September 2000 the acting prosecutor of the Urus-Martán district informed the applicant that her complaint had been forwarded to the Urus-Martán VOVD to open an investigation into the disappearance of Yusup Satabayev. She was also informed that Yusup Satabayev had been detained as a vagrant from 4 to 14 August 2000 on the basis of Presidential Decree no. 1815 of 1993 and then released.

29. On 16 September 2000 the applicant and the mothers of the other missing detainees, Kazbek Vakhayev, Mr G. and Mr Ch., applied to the Prosecutor's Office of the Chechen Republic, complaining about the disappearance of their sons from the detention facility and alleging the use of torture against them.

30. On 18 October 2000 the Urus-Martán District Prosecutor's Office opened a criminal investigation into the abduction of four men, namely Yusup Satabayev, Kazbek Vakhayev, Mr G. and Mr Ch. (criminal case file no. 24048). The decision stated, in particular:

"On 1 August 2000 officers of the Urus-Martán [VOVD] apprehended and brought to the [VOVD] [Mr G.], Kazbek Vakhayev, [Mr Ch.] and Yusup Satabayev, pursuant to Decree no. 1815 of the President of the Russian Federation of 2 November 1993 'On Measures for the Prevention of Vagrancy and Mendicancy'.

On 14 August 2000 the detainees were released and sent to their places of residence.

However, to date [the detainees] have not returned to their places of residence, they are being searched for by their relatives and their whereabouts are not established."

31. On 25 October 2000 the applicant was informed by the Urus-Martán District Prosecutor's Office that a criminal investigation had been instituted.

32. On 1 November 2000 the applicant was granted victim status in case no. 24048. She claims that she was not informed of this decision.

33. The applicant submitted that her flat in Urus-Martan had been subjected to several search raids. She referred in particular to the events of 22 February 2001, when a group of six or seven armed servicemen had broken into the flat at night, apparently searching for “men”. After these raids the applicant decided to leave Chechnya for security reasons.

34. On 23 February 2001 the applicant, with her children, moved to Ingushetiya, where they lived until 2006 in a refugee camp for forced migrants from Chechnya.

35. In March 2001 the applicant was visited in Ingushetiya by Rebart Vakhayeva, the mother of Kazbek Vakhayev. She showed her the video recording of the bodies exhumed on 22 August 2000 and said that one of the dead men was probably Kazbek Vakhayev. The applicant watched the video tape as well and concluded that another exhumed body belonged to Yusup Satabayev. In addition, she recognised the trousers and the shirt which she had sent him in the detention facility on 1-2 August 2000. According to the applicant, all four bodies showed signs of a violent death. Rebart Vakhayeva told the applicant that she had already requested the prosecutor's office to re-exhume the bodies and to conduct a forensic examination and identification.

36. During her stay in Ingushetiya the applicant had no contact with the prosecutor's office: she was never informed about the progress of the investigation in case no. 24048 and no letters were delivered to her address.

37. At the end of March 2006 the applicant returned to Chechnya.

38. On 4 April 2006 she requested the prosecutor's office to provide her with an update on the investigation of case no. 24048.

39. On 6 April 2006 the Urus-Martan District Prosecutor's Office informed the applicant that she had been granted victim status in case no. 24048.

40. The applicant remained in contact with Rebart Vakhayeva and was aware of her attempts to secure the re-exhumation of the four bodies found near Goy-Chu and their identification. In particular, she referred to the judgment of 28 December 2004 given by the Urus-Martan Town Court, which ordered the Urus-Martan District Prosecutor's Office to take measures in relation to these unidentified bodies. According to the applicant, this court order has not been carried out to date.

41. The applicant submitted that there had been no development in the case since.

2. The Government's account

42. Following the applications lodged by the applicant and the mothers of the three other men who had disappeared, the Urus-Martan District Prosecutor's Office conducted a check, following which criminal proceedings under Article 126 of the Criminal Code (abduction) were instituted on 18 October 2000. The case was assigned number 24048.

43. The applicant was granted victim status and questioned on numerous occasions. She submitted that Yusup Satabayev had been a member of a paramilitary group. She had no information about his fate after his release from the Urus-Martan district remand prison in August 2000.

44. Kheda Aydamirova, the wife of Kazbek Vakhayev, Rebart Vakhayeva, Ms Ch. and Ms G. (apparently family members of Mr Ch. and Mr G. respectively) were also granted victim status and questioned. However, they provided no particular information about the disappearance of Yusup Satabayev and their relatives.

45. Witnesses Mr A., Mr B., Mr S., Ms A., Ms Kh., Ms A. V., Ms L. T., Ms Akh. and Ms Z. T. "and others" submitted that they had no information about the apprehension of the disappeared persons by law-enforcement officials. It is not clear who those witnesses were and why their statements could have been relevant.

46. Rebart Vakhayeva filed an application to include in the case file a videotape of four dead bodies, one of which, according to her, was her son. The Urus-Martan District Prosecutor's Office received instructions to establish the circumstances in which the dead bodies had been found and to identify the dead persons.

47. Rebart Vakhayeva also complained to the Urus-Martan District Court about the discontinuation of the criminal proceedings. Her complaint was partially allowed. The same court partially allowed her complaint concerning the necessity to take a procedural decision in respect of the discovery of the four dead bodies.

48. On 4 August 2006 criminal proceedings concerning the discovery of the four dead bodies on 22 August 2000 were separated into a different set of criminal proceedings under Article 105 of the Criminal Code (murder). The Prosecutor's Office of the Chechen Republic gave instructions concerning the additional questioning of the applicant and exhumation of the dead bodies.

49. The investigator instructed the local department of the interior to establish the whereabouts of the disappeared persons. In order to verify whether the officials of the FSB had been involved in the offence, the prosecuting authorities requested information concerning the possible detention of Yusup Satabayev, Mr G., Kazbek Vakhayev and Mr Ch. between 14 August 2000 and 9 October 2003. However, no information about their detention was received.

50. The preliminary investigation in case no. 24048 was repeatedly suspended on account of failure to identify the persons to be charged with the offence. Those who had victim status in the criminal proceedings were duly informed of all the suspensions and resumptions of the investigation and the appeal procedure was clarified for them. After the most recent suspension of the investigation on 21 August 2006, it was resumed on 22 August 2006 by the Urus-Martan District Prosecutor's Office.

51. The following information concerning the progress of the investigation was submitted by the Government after the decision as to the admissibility of the application of 11 September 2008.

52. On 23 September 2006 the investigation was resumed, apparently after having been suspended again after 22 August 2006.

53. On 26 and 27 September 2006 the investigating authorities sent requests for information to the head of the FSB department in the Chechen Republic and the head of Operative-Search Bureau no. 2 at the Ministry of the Interior concerning the possible involvement of Yusup Satabayev, Mr G., Kazbek Vakhayev and Mr Ch. in illegal armed groups and their possible detention by law-enforcement authorities. According to the replies received, those authorities had no relevant information.

54. On 11 October and on 10 November 2006 Kheda Aydamirova, the wife of Kazbek Vakhayev, was questioned. She confirmed her previous statements and identified, on the basis of the video footage, one of the bodies found near the village of Goy-Chu as Kazbek Vakhayev. According to the Government, she refused to indicate his burial place so that the authorities could conduct an exhumation, since that would be in breach of Muslim traditions.

55. On 12 October 2006 the applicant was questioned. She confirmed the account of the events provided in her previous statements and in the statements of Kheda Aydamirova. On the basis of the video footage she identified one of the bodies found near the village of Goy-Chu as Yusup Satabayev, since he had the same stature and was wearing the same clothes.

56. On 13 October 2006 Ms G. was questioned. She submitted that her daughter-in-law had watched the above-mentioned video footage and had identified one of the bodies as Mr G.

57. On 20 and 25 November 2006 and 18 January 2007 numerous inquiries and instructions were sent to various law-enforcement authorities and detention facilities requesting information on the fate of Yusup Satabayev, Mr G., Kazbek Vakhayev and Mr Ch. and on their abductors. According to the replies received, the addressees had no relevant information.

58. On 8 February 2007 the investigating authorities instructed the head of the Urus-Martan District Department of the Interior (ROVD) to locate persons held at the detention facility of the Urus-Martan VOVD simultaneously with Yusup Satabayev, Mr G., Kazbek Vakhayev and Mr Ch. The ROVD located seven persons: Mr A.M., Mr M.M., Mr A.E., Mr Kh.D., Mr S.-A.E., Mr Z.V. and Mr A.Z. It appeared impossible to establish the whereabouts of other detainees because they no longer resided in the Chechen Republic.

59. On 11 February 2007 Mr A.E. was questioned. He submitted that at the beginning of August 2000 he had been detained by officers of the Urus-Martan VOVD because he had had no identity documents. He had

been held for three days in cell no. 4 with his acquaintances Mr G. and Kazbek Vakhayev. He did not know the reasons for their detention. At the time of his release they were still held in cell no. 4. He had never seen them again.

60. On 22 February 2007 Mr M.M. was questioned. He stated that on 1 August 2000 he had been detained by officers of the Urus-Martan VOVD since he had had no identity documents. He had been held in a cell with Mr G. and Kazbek Vakhayev until 11 August 2000. At the time of his release they had remained in detention. He and other detainees had not been subjected to physical or psychological pressure.

61. On 24 February 2007 Mr A.M. was questioned. He made a statement similar to those of Mr A.E. and Mr M.M.

62. Mr Kh.D., Mr A.V., Mr . S. and Mr S.-A.E. were questioned on 13, 15, 18 and 20 February 2007 respectively. They did not provide any relevant information.

63. On 23 April 2008 an inquiry was sent to remand prison IZ-20/2 concerning Yusup Satabayev. According to the reply, Yusup Satabayev had been detained in IZ-20/2 until 1 August 2000, when he was transferred to the detention facility of the Urus-Martan VOVD.

64. On 25 April 2008 the investigating authorities of the Penza district were instructed to question Mr Sh., the former head of the Urus-Martan VOVD.

65. On the same date and on 26 April 2008 the head of the Urus-Martan ROVD was instructed to identify eye-witnesses to the murder and burial of the four corpses near the village of Goy-Chu, and the person who had handed over the video footage of the bodies to Rebart Vakhayeva. The replies received did not contain any relevant information.

66. On 27 June 2008 Kheda Aydamirova was questioned. She confirmed her previous statements, agreed to show the burial place of Kazbek Vakhayev and stated that she had no objections to his exhumation. She also stated that she had never been subjected to any form of pressure in relation to her application before the Court.

67. On 15 September 2008 the investigating authorities decided to apply to a court with requests for the seizure of certain documents and items classified as State secrets, kept in the archives of the FSB, the North-Caucasian Circuit of Internal Forces of the Ministry of the Interior, the Federal Service of Execution of Punishments, Interior Troops and the Ministry of Defence. The requests were granted by an unspecified court on an unspecified date and investigating officials proceeded to effectuate the seizure.

68. On 30 September 2008 a special investigative group was set up. It included officers of the Military Investigation Department of the Investigation Committee of the Prosecutor's Office of the Russian Federation.

69. On 8 October 2008 the investigation was suspended on account of the failure to identify the perpetrators.

70. On 18 October 2008 the investigation was resumed.

C. Court proceedings concerning the inactivity of the investigating authorities

71. On 5 January 2003 Rebart Vakhayeva applied to the Urus-Martán Town Court seeking to have the inaction of the Urus-Martán District Prosecutor declared unlawful. She complained about the absence of an effective investigation and requested the court to order the prosecutor's office to resume criminal proceedings.

72. On 16 April 2003 Rebart Vakhayeva lodged a complaint with the Supreme Court of the Chechen Republic about the town court's failure to examine her claim and requested the Supreme Court to act as a first-instance court in her case. On 14 May 2003 the President of the Supreme Court of the Chechen Republic forwarded this letter to the Urus-Martán Town Court with a notice "to consider it on the merits".

73. On 1 July 2003 Rebart Vakhayeva had a meeting with the President of the Urus-Martán Town Court, who told her that she should have lodged a complaint with the prosecutors' office. She concluded that the court would not consider her claim.

74. On 2 July 2003 Rebart Vakhayeva requested the Supreme Court of the Chechen Republic to act as a court of first-instance in respect of her complaint against the Urus-Martán District Prosecutor's Office.

75. On 21 July 2003 the President of the Supreme Court of the Chechen Republic sent an enquiry to the Urus-Martán Town Court about the progress in the examination of Rebart Vakhayeva's claim.

76. On 30 July 2003 Rebart Vakhayeva requested the President of the Supreme Court of the Chechen Republic to inform her when her claim would be considered.

77. On 15 August 2003 the President of the Urus-Martán Town Court informed the President of the Supreme Court of the Chechen Republic that the investigation in criminal case no. 24048 had been resumed as of 15 July 2003.

78. On 12 September 2003 Rebart Vakhayeva requested the Supreme Court of the Chechen Republic to act as a court of first-instance in her case against the Urus-Martán District Prosecutor's Office.

79. On 7 October 2003 the Deputy President of the Supreme Court of the Chechen Republic informed Rebart Vakhayeva that the criminal investigation in case no. 24048 had been resumed and was to be completed in one month. Her complaint, together with her claims against the Urus-Martán District Prosecutor's Office, were therefore forwarded to the Prosecutor's Office of the Chechen Republic.

80. On 22 July 2004 Rebart Vakhayeva filed a new complaint in the Urus-Martani Town Court against the Urus-Martani District Prosecutor's Office. She challenged their failure to conduct an effective investigation.

81. On 14 September 2004 the Urus-Martani Town Court granted Rebart Vakhayeva's complaint and declared the failure to act on the part of the Urus-Martani District Prosecutor's Office unlawful. The court ordered that her request of 21 May 2004 to bring criminal charges against officers of the Urus-Martani VOVD, exhume the bodies re-buried in Goyskoye and allow her access to the case file be dealt with by the prosecutor's office.

82. On 3 December 2004 Rebart Vakhayeva filed another complaint with the Urus-Martani Town Court against the Urus-Martani District Prosecutor's Office. She challenged their failure to charge the officers of the department of the interior with criminal offences related to the abduction and, possibly, the murder of her son, the failure to give her access to the case file and to take measures to identify the bodies re-buried in Goyskoye.

83. On 28 December 2004 the Urus-Martani Town Court granted her complaint in part and ordered the Urus-Martani District Prosecutor's Office to take measures in relation to the unidentified bodies. The remainder of the complaint was dismissed.

84. On 18 January 2005 Rebart Vakhayeva appealed.

85. On 9 February 2005 the Supreme Court of the Chechen Republic dismissed her appeal and upheld the judgment of 28 December 2004.

D. The Court's request to submit the investigation file

86. Despite the Court's repeated requests, the Government did not submit a copy of the investigation file into the abduction of Yusup Satabayev. They submitted thirty-two pages of case file materials, which contained decisions on the institution, suspension and resumption of the investigation and the decision to grant the applicant victim status. The decisions reiterated that Mr G., Kazbek Vakhayev, Mr Ch. and Yusup Satabayev were apprehended on 1 August 2000. Relying on the information obtained from the Prosecutor General's Office, the Government stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained information of a military nature and personal data concerning the witnesses or other participants in criminal proceedings.

87. Despite the Court's specific request, made after the decision of 11 September 2008 as to the admissibility of the application, to submit copies of all documents related to Yusup Satabayev's arrest on 23 February 2000 and subsequent detention, including the decisions to remand him in custody and to release him and an extract from the detention

facility register confirming his release, the Government submitted no documents.

II. RELEVANT DOMESTIC LAW

88. Until 1 July 2002 criminal-law matters were governed by the 1960 Code of Criminal Procedure of the RSFSR (Russian Soviet Federative Socialist Republic). On 1 July 2002 the old Code was replaced by the Code of Criminal Procedure of the Russian Federation.

89. Article 125 of the new CCP provides for judicial review of decisions by investigators and prosecutors that might infringe the constitutional rights of participants in proceedings or prevent access to a court.

90. Article 161 of the new Code of Criminal Procedure establishes the rule that data from the preliminary investigation cannot be disclosed. Part 3 of the same Article provides that information from the investigation file may be divulged with the permission of a prosecutor or investigator and only in so far as it does not infringe the rights and lawful interests of the participants in the criminal proceedings and does not prejudice the investigation. It is prohibited to divulge information about the private life of the participants in criminal proceedings without their permission.

91. Presidential Decree no. 1815 of 2 November 1993 on Measures for the Prevention of Vagrancy and Mendicancy provided for the reorganisation of the system of “reception and distribution centres” for persons detained by the bodies of the Ministry of the Interior for vagrancy and mendicancy into centres of social rehabilitation for such persons. Section 3 of the Decree provides:

“Placement of persons engaged in vagrancy and mendicancy in centres of social rehabilitation is permitted subject to the prosecutor's authorisation, for a term not exceeding ten days.”

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

92. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies since the investigation of the disappearance of Yusup Satabayev had not yet been completed.

93. The applicant disputed that objection. In her view, the fact that the investigation had been pending for eight years with no tangible results proved that it was an ineffective remedy in this case.

94. In the present case, the Court took no decision about the exhaustion of domestic remedies at the admissibility stage, having found that this question was too closely linked to the merits. It will now proceed to 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).

95. The Court observes that the applicant complained to the law-enforcement authorities shortly after the disappearance of Yusup Satabayev and that an investigation has been pending since 18 October 2000. The applicant and the Government dispute the effectiveness of this investigation.

96. The Court considers that the Government's preliminary objection raises issues concerning the effectiveness of the criminal investigation which are closely linked to the merits of the applicant's complaints. Thus, it considers that these matters fall to be examined below under the substantive provisions of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

97. 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 into the matter. Article 2 provides:

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

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

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

A. Alleged violation of Yusup Satabayev's right to life

1. Arguments of the parties

98. The applicant argued that it was beyond reasonable doubt that Yusup Satabayev had been killed by representatives of the federal forces. He had

disappeared in the hands of the federal forces and the authorities had failed to provide any explanation as to his subsequent fate.

99. The Government submitted that the circumstances of Yusup Satabayev's disappearance were under investigation. The information about his death had not been confirmed. Nor had it been established that any State agents had violated his right to life.

2. The Court's assessment

(a) General principles

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

(b) Establishment of the facts

101. The Court observes that it has developed a number of general principles relating to the establishment of facts in dispute, in particular when faced with allegations of disappearance under Article 2 of the Convention (for a summary of these, see *Bazorkina v. Russia*, no. 69481/01, §§ 103-109, 27 July 2006). The Court also notes that the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25).

102. The applicant maintained that after the criminal proceedings against Yusup Satabayev were discontinued he had not been released, as he should have been. Instead, he had been transferred to the detention facility of the Urus-Martan VOVD. There he had been detained with three other men, including Kazbek Vakhayev. The applicant and relatives of the other detainees had waited every day outside the Urus-Martan VOVD for their release. On 14 August 2000 the head of the Urus-Martan VOVD told them that the detainees had been released on 11 August 2000; however, according

to the applicant, they had never been released. The applicant alleged that Yusup Satabayev had been killed by State agents and that his body had been subsequently discovered near the village of Goy-Chu.

103. Prior to the Court's decision of 11 September 2008 as to the admissibility of the application the Government submitted that Yusup Satabayev had been detained on 1 August 2000 under the Decree on Measures for the Prevention of Vagrancy and Mendicancy, together with Kazbek Vakhayev, Mr G. and Mr Ch. The detainees had been placed in the detention facility of the Urus-Martan VOVD and subsequently released. After the Court's decision as to the admissibility of the application the Government stated that after the discontinuation of the criminal proceedings against Yusup Satabayev on 27 July 2000, detention as the measure of restraint applied to him had been lifted. He had been released as soon as the relevant decision had reached remand prison IZ-20/2, that is, on 1 August 2000. On 4 August 2000 Yusup Satabayev had been detained under the Decree on Measures for the Prevention of Vagrancy and Mendicancy since he had no identification documents. His detention in the detention unit of the Urus-Martan VOVD had lasted for ten days until 14 August 2000, when he was released.

104. The Court observes that it is not disputed between the parties that Yusup Satabayev was arrested on 23 February 2000 in connection with the criminal proceedings instituted against him. The parties also agree that the criminal proceedings against him were discontinued on 27 July 2000 and that he should have been released on that date. However, according to the applicant, he was never released and was eventually killed by State agents. The Government changed their arguments. They first submitted that Yusup Satabayev had been detained for vagrancy and mendicancy on 1 August 2000 and had been subsequently released. Later they admitted that he had not been released on 27 July 2000 but had remained in detention until 1 August 2000. They further stated that he had been subsequently detained on 4 August 2000 for failure to produce identification documents and had been released on 14 August 2000.

105. The Government therefore conceded that Yusup Satabayev had been detained from 23 February 2000 to 1 August 2000 and from 4 to 14 August 2000. It thus remains to be established whether he was released on 1 August 2000 and remained free until 4 August 2000, and whether he was released on 14 August 2000.

106. The Court notes, firstly, that despite its repeated requests for a copy of the investigation file concerning the disappearance of Yusup Satabayev, the Government have failed to produce it, despite having submitted thirty-two pages of case file materials, which contained decisions on the institution, suspension and resumption of the investigation and the decision to grant the applicant victim status. They 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-...).

107. The Court further notes that in response to its direct request to submit copies of all documents related to Yusup Satabayev's arrest on 23 February 2000 and subsequent detention, including an extract from the detention facility register confirming his release, the Government submitted no documents and provided no explanation for such failure.

108. As regards the substance of the Government's submissions, the Court observes that they were contradictory. Whereas they first submitted that Yusup Satabayev had been arrested on 1 August 2000, later they stated that he had been arrested on 4 August 2000. At the same time, in the decision to institute criminal proceedings of 18 October 2000 and subsequent decisions to suspend and resume the investigation which have been made available to the Court, it is stated that Yusup Satabayev and the other three men were arrested on 1 August 2000. However, in the circumstances of the present case, the Court considers that it should not attach weight to the interim findings of the domestic investigation in this respect, for the following reasons. First of all, it is inconsistent with the Government's latest submissions that Yusup Satabayev was arrested on 4 August 2000. Secondly, despite the Court's request the Government submitted neither documents related to Yusup Satabayev's detention, nor any documents from the investigation file which would allow the Court to determine on which basis those interim findings were founded. Moreover, the contention that Yusup Satabayev was released between 1 and 4 August 2000 contradicts the Government's account of the information received from remand prison IZ-20/2, according to which Yusup Satabayev had been held in the remand prison until 1 August 2000, when he was transferred to the detention facility of the Urus-Martan VOVD.

109. Having regard to the contradictory nature of the Government's submissions and to their failure, despite the Court's requests for documents, to provide any proof of Yusup Satabayev's release on either 1 or 14 August 2000, the Court finds it established that he remained in continued detention under State control from 23 February 2000 onwards.

110. The Court has to decide further whether Yusup Satabayev may be presumed dead. The applicant contended that she identified one of the bodies found near the village of Goy-Chu on 22 August 2000 as her son on the basis of the video footage of the bodies before their re-burial. The Government argued that the fact of Yusup Satabayev's death had not been established.

111. The Court notes that no conclusive identification of the bodies found near the village of Goy-Chu was carried out. Accordingly, it can not establish that one of the bodies was that of Yusup Satabayev. At the same time, it observes that Yusup Satabayev disappeared after having been placed

in State custody. There has been no reliable news of him since 14 August 2000. His name has not been found in any official records of detention facilities after that date. Lastly, the Government did not submit any explanation as to what had happened to him during his detention.

112. Having regard to the previous cases concerning disappearances of people in Chechnya which have come before the Court (see, for example, *Imakayeva*, cited above, and *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-...), the Court considers that, in the context of the conflict in the Chechen Republic, when a person is placed in detention without any subsequent acknowledgement of the detention, this can be regarded as life-threatening. The absence of Yusup Satabayev or any news of him for over nine years corroborates this assumption. Furthermore, the Government have failed to provide any explanation of Yusup Satabayev's disappearance and the official investigation in this respect, dragging on for nine years, has produced no tangible results.

113. Accordingly, the Court finds it established that Yusup Satabayev disappeared after 14 August 2000 while he remained in State custody and that he must be presumed dead following his unacknowledged detention.

(c) The State's compliance with Article 2

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

115. The Court has already found it established that the applicant's son must be presumed dead following his placement in State custody. Noting that the authorities do not rely on any ground of justification in respect of the use of lethal force by their agents, or otherwise accounting for his death, it follows that liability for his presumed death is attributable to the respondent Government.

116. Accordingly, the Court finds that there has been a violation of Article 2 in respect of Yusup Satabayev.

B. The alleged inadequacy of the investigation into the abduction

1. Arguments of the parties

117. The applicant argued that the investigation had not met the requirements to be effective and adequate, as required by the Court's case-law on Article 2. She noted that the investigation had been opened belatedly. In particular, the investigation into the discovery of the four unidentified bodies near the village of Goy-Chu had not been opened until after the communication of the present application to the Government. Furthermore, no effective measures were taken to establish what had happened to Yusup Satabayev and the three other detainees. The officers of the Urus-Martan VOVD who had held them in custody had not been questioned. Furthermore, the investigation had been repeatedly suspended and resumed, which had only added to the delay. Finally, the applicant had not been properly informed of the most important investigative steps.

118. The Government submitted that a considerable number of investigative actions had been conducted and persons having victim status in the proceedings had been duly informed of them.

2. The Court's assessment

119. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, *McCann and Others*, cited above, p. 49, § 161, and *Kaya v. Turkey*, 19 February 1998, § 86, *Reports* 1998-I). The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. This investigation should be independent, accessible to the victim's family, carried out with reasonable promptness and expedition, effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances or otherwise unlawful, and afford a sufficient element of public scrutiny of the investigation or its results (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-109, 4 May 2001, and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

120. The Court notes at the outset that all the documents from the investigation 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 parties and the information about its progress presented by the Government.

121. Turning to the facts of the case, the Court notes that, according to the applicant, she applied to the authorities asking for assistance in establishing the whereabouts of Yusup Satabayev within a few days of 14 August 2000. On 19 August 2000 she received a prosecutor's reply to her queries. This information is not contested by the Government. However, an official investigation was not opened until 18 October 2000, that is, approximately two months later. This delay, for which no explanation has been provided, was in itself liable to affect the investigation into a disappearance in life-threatening circumstances, where crucial action must be taken in the first days after the events complained of.

122. The Court observes that on 1 November 2000 the applicant was granted victim status. However, it appears that a number of crucial steps were subsequently delayed and were eventually taken only after the communication of the complaint to the respondent Government, or not at all.

123. In particular, according to the information available to the Court, between October 2000 and September 2006 the investigating authorities questioned the applicant, family members of the other detainees who had disappeared from the Urus-Martan VOVD and a number of other witnesses (see paragraph 45 above) and sent requests for information to the local department of the interior and the FSB. However, the Government have produced no documents, such as transcripts of questioning or copies of the requests and responses, to corroborate their submissions. Accordingly, not only is it impossible to establish how promptly some of those measures were taken, but whether they were taken at all. Furthermore, the Government provided no information as to why statements of the witnesses other than the detainees' relatives could have been relevant for the investigation.

124. The Court further notes that the investigation concerning the discovery of the four dead bodies in the vicinity of the village of Goy-Chu, which the relatives claimed to be the disappeared detainees, was instituted only on 4 August 2006, that is, six years after the bodies had been discovered in August 2000. Such an inexplicable delay could not but considerably affect the efficiency of the investigation.

125. According to the Government, after September 2006 the investigating authorities carried out a substantial number of investigative actions. In particular, they questioned numerous witnesses, including the detainees' cellmates, and sent numerous requests to various State authorities with a view to establishing their whereabouts. The Government have produced no documents to corroborate their submissions in this respect either. Accordingly, the Court cannot establish with sufficient certainty whether those measures were actually taken. However, even assuming that

they were, no explanation has been provided as to why they were taken with a delay of over six years in a situation where active investigative steps had to be taken in the first days after the events under investigation.

126. Furthermore, from the materials available to the Court it appears that a number of essential steps were never taken. Most notably, there is no information that the register of the detention facility of the Urus-Martan VOVD was ever inspected. Nor was there an inspection of the sites where the four bodies were discovered near the village of Goy-Chu and where they were reburied. Moreover, their exhumation has still not been conducted and, consequently, no meaningful measures for their conclusive identification have been taken, despite the decisions of the domestic courts in this respect (see paragraphs 81 and 83 above). Furthermore, there is no evidence that the officers of the Urus-Martan VOVD who held the four detainees in custody were ever questioned.

127. The Court observes that in the present case the investigating authorities not only failed to comply with the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII), but failed to take the most elementary investigative measures.

128. The Court also notes that although the applicant was granted victim status shortly after the institution of the investigation, she was not informed of any significant developments in the investigation apart from several decisions on its suspension and resumption. Accordingly, the Court finds that 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.

129. Finally, the Court notes that the investigation was adjourned and resumed on numerous occasions. Such handling of the investigation could not but have had a negative impact on the prospects of identifying the perpetrators and establishing the fate of Yusup Satabayev.

130. Having regard to the Government's preliminary objection, which was joined to the merits of the complaint, the Court notes that the investigation, having been repeatedly suspended and resumed and plagued by inexplicable delays and long periods of inactivity, has been ongoing for many years and has 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 in this part.

131. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance of Yusup Satabayev, in breach of Article 2 under its procedural head. Accordingly, there has been a violation of Article 2 on this account also.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

132. The applicant further stated that Yusup Satabayev had been detained in violation of the guarantees of Article 5 of the Convention, which, in so far as relevant, provides:

“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;

...

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

...

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.”

1. Arguments of the parties

133. The applicant contended that Yusup Satabayev had been detained on 23 February 2000 following the institution of criminal proceedings against him. However, after the discontinuation of the criminal proceedings on 27 July 2000 he had not been released and had remained in arbitrary and unlawful detention until his death.

134. The Government first submitted that Yusup Satabayev had been detained on 1 August 2000 under the Decree on Measures for the Prevention of Vagrancy and Mendicancy, placed in the detention facility of the Urus-Martan VOVD and subsequently released. After the Court's decision as to the admissibility of the application they stated that after the

discontinuation of the criminal proceedings against Yusup Satabayev on 27 July 2000, detention as the measure of restraint applied to him had been lifted. He had been released as soon as the relevant decision had reached remand prison IZ-20/2, that is, on 1 August 2000. However, on 4 August 2000 he had again been detained under the Decree on Measures for the Prevention of Vagrancy and Mendicancy since he had had no identification documents. His detention in the detention ward of the Urus-Martan VOVD had lasted for ten days until 14 August 2000, when he was released. The Government also pointed out that the applicant had never lodged any complaints concerning Yusup Satabayev's detention before the domestic courts. They concluded that there had been no violation of Article 5 of the Convention in respect of Yusup Satabayev's detention.

2. The Court's assessment

135. Inasmuch as the Government may be understood to raise the plea of non-exhaustion with respect to the present complaint on account of the applicant's failure to challenge the lawfulness of Yusup Satabayev's detention before a court, the Court reiterates that, under Rule 55 of the Rules of Court, any plea of inadmissibility must be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application (see *K. and T. v. Finland* [GC], no. 25702/94, § 145, ECHR 2001-VII, and *N.C. v. Italy* [GC], no. 24952/94, § 44, ECHR 2002-X). However, in their submissions prior to the Court's decision as to the admissibility of the present application the Government did not raise this argument. There are no exceptional circumstances which would have absolved the Government from the obligation to raise their preliminary objection before the adoption of that decision. Consequently, the Government are estopped from raising a preliminary objection of non-exhaustion of domestic remedies in this respect at the present stage of the proceedings.

136. 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).

137. The Court has found it established in paragraphs 109-113 above that Yusup Satabayev was detained by State servicemen on 23 February 2000 and remained in continued detention until his presumed death after 14 August 2000. It is not disputed between the parties that until 27 July 2000 Yusup Satabayev was detained on suspicion of having committed a criminal offence. It is not in dispute either that he should have been released on that date following the discontinuation of the criminal proceedings against him. Accordingly, the Court has to decide whether his

detention after 27 July 2000 was compatible with Article 5 of the Convention.

138. The Court takes note of the Government's latest submissions that Yusup Satabayev was released as soon as the relevant decision had reached remand prison IZ-20/2, that is, on 1 August 2000, as well as of the fact that they have not furnished any proof of Yusup Satabayev's release on that date (see paragraph 109 above). However, as regards the period before 1 August 2000, even assuming that Yusup Satabayev remained in detention due to the fact that the decision on his release had not reached the detention facility with sufficient expedition, the Court reiterates that it must scrutinise complaints of delays in the release of detainees with particular vigilance (see *Nikolov v. Bulgaria*, no. 38884/97, § 80, 30 January 2003). Whereas some delay in implementing a decision to release a detainee is understandable and often inevitable in view of practical considerations relating to the running of the courts and the observance of particular formalities, the national authorities must attempt to keep it to a minimum (see, among other authorities, *Mancini v. Italy*, no. 44955/98, § 24, ECHR 2001-IX).

139. The Court reiterates that administrative formalities connected with release cannot justify a delay of more than several hours (see *Nikolov*, cited above, § 82) and that it is for the Contracting States to organise their legal system in such a way that their law-enforcement authorities can meet the obligation to avoid unjustified deprivation of liberty. In *Matyush v. Russia* (no. 14850/03, § 73, 9 December 2008), the Court found a four-day delay in release to be incompatible with Article 5 § 1 of the Convention.

140. Therefore, assuming that Yusup Satabayev remained in detention for five days from 27 July to 1 August 2000 because of the delay in transmission of the order on his release to the detention facility, it follows that his detention within this period was not covered by sub-paragraph (c) of paragraph 1 of Article 5 and did not fall within the scope of any of the other sub-paragraphs of that provision. There has accordingly been a breach of Article 5 § 1 in this respect.

141. As regards the subsequent period of Yusup Satabayev's detention from 1 to 14 August 2000, the Court has already noted the contradictory nature of the Government's submissions (see paragraph 108 above). Having first submitted that Yusup Satabayev was arrested on 1 August 2000, they later stated that he had been arrested on 4 August 2000. However, in the decision to institute criminal proceedings of 18 October 2000 and subsequent decisions to suspend and resume the investigation which have been made available to the Court, it is stated that Yusup Satabayev and three other men were arrested on 1 August 2000. At the same time, according to the Government's account of the information received from remand prison IZ-20/2, Yusup Satabayev was held in the remand prison until

1 August 2000, when he was transferred to the detention facility of the Urus-Martan VOVD.

142. However, the Court does not consider that it is called upon to resolve the above contradictions, for the following reasons. Should the Court rely on the Government's submission that Yusup Satabayev was detained on 4 August 2000 on the basis of Presidential Decree no. 1815 of 2 November 1993 on Measures for the Prevention of Vagrancy and Mendicancy, this would lead to the conclusion that from 1 to 4 August 2000 he was detained without any legal basis. However, even relying on the Government's initial submissions that Yusup Satabayev's detention pursuant to the Decree began on 1 August 2000, the Court notes, firstly, that it harbours doubts as to whether the Decree in question could in principle constitute a legal basis for his detention, since it does not provide grounds for detention, but establishes the time-limits for placement in rehabilitation institutions. Furthermore, the Court finds it difficult to accept that the Decree could have been applicable in the present circumstances, and that the detention could therefore have fallen within the scope of Article 5 § 1 (e), since it is far from clear how a person can be arrested for vagrancy having already been placed in custody and remained continuously in detention. Yet, even assuming that the Decree could have been applied in the present case and constituted a legal basis for Yusup Satabayev's detention, the Government have failed to submit to the Court a prosecutor's order for his detention which, according to section 3 of the Decree, was a prerequisite for placement in a rehabilitation centre. Thus, Yusup Satabayev's detention from 1 to 14 August 2000 was not in conformity with either the domestic law or with Article 5 § 1 (e) of the Convention (*Bitiyeva and X v. Russia*, nos. 57953/00 and 37392/03, § 115, 21 June 2007).

143. As regards the subsequent period, although the Government alleged that Yusup Satabayev had been released on 14 August 2000, they provided no proof to this effect, such as extracts from the detention facility register.

144. Moreover, according to the reply of the head of the Urus-Martan VOVD of 7 September 2000, which the applicant submitted to the Court, Yusup Satabayev was neither arrested by the Urus-Martan VOVD nor detained therein. Therefore, 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).

145. 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.

146. Consequently, the Court finds that from 27 July 2000 Yusup Satabayev was held in arbitrary 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.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

147. 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.”

148. The applicant argued that the possible effectiveness of domestic remedies had been undermined by the authorities' failure to conduct an effective investigation into Yusup Satabayev's disappearance.

149. The Government contended that the applicant had had effective domestic remedies, as required by Article 13 of the Convention. In particular, she could have had appealed to a court against the actions or omissions of investigating authorities.

150. 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. 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 *Süheylya 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 v. Russia*, nos. 57942/00 and 57945/00, § 183, 24 February 2005).

151. It follows that in circumstances where, as here, the criminal investigation into the disappearance was ineffective and the effectiveness of any other remedy that may have existed, including civil remedies, was consequently undermined, the State has failed in its obligation under Article 13 of the Convention.

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

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

V. OBSERVANCE OF ARTICLE 38 § 1 (a) OF THE CONVENTION

154. The applicant argued that the Government's failure to submit the documents requested by the Court at the communication stage disclosed a failure to comply with their obligations under Article 38 § 1 (a) of the Convention, the relevant part of which provides:

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

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

...”

155. The applicant invited the Court to conclude that the Government's refusal to submit a copy of the entire investigation file in response to the Court's requests was incompatible with their obligations under Article 38 of the Convention.

156. The Government reiterated that the submission of the case file would be contrary to Article 161 of the Code of Criminal Procedure.

157. The Court reiterates that proceedings in certain types of applications do not in all cases lend themselves to a rigorous application of the principle whereby a person who alleges something must prove that allegation and that it is of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications.

158. This obligation requires the Contracting States to furnish all necessary facilities to the Court, whether it is conducting a fact-finding

investigation or performing its general duties as regards the examination of applications. It is inherent in the proceedings relating to cases of this nature, where individual applicants accuse State agents of violating their rights under the Convention, that in certain instances it is only the respondent State that has access to information capable of corroborating or refuting these allegations. A failure on a Government's part to submit such information which is in their possession without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a) of the Convention. In a case where the application raises issues as to the effectiveness of the investigation, the documents of the criminal investigation are fundamental to the establishment of the facts and their absence may prejudice the Court's proper examination of the complaint both at the admissibility and at the merits stage (see *Tanrikulu v. Turkey* [GC], no. 23763/94, § 71, ECHR 1999-IV).

159. The Court notes that despite its repeated requests for a copy of the investigation file opened into the disappearance of the applicant's son, the Government refused to produce such a copy, relying on Article 161 of the Code of Criminal Procedure, having provided only copies of decisions to suspend and resume the investigation and to grant victim status. The Court observes that in previous cases it has already found this reference insufficient to justify refusal (see, among other authorities, *Imakayeva*, cited above, § 123).

160. Referring to the importance of a respondent Government's cooperation in Convention proceedings, and mindful of the difficulties associated with the establishment of facts in cases of such a nature, the Court finds that the Government fell short of their obligations under Article 38 § 1 of the Convention because of their failure to submit copies of the documents requested in respect of the disappearance of Yusup Satabayev.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

161. 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

162. The applicant did not submit any claims for pecuniary damage. As regards non-pecuniary damage, she claimed EUR 100,000 for the suffering she had endured as a result of the loss of her son, the indifference shown by the authorities towards him and the failure to provide any information about his fate.

163. The Government found the amounts claimed to be exaggerated.

164. 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 Court accepts that she has suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the applicant EUR 35,000, plus any tax that may be chargeable thereon.

B. Costs and expenses

165. The applicant also claimed EUR 5,607 and 1,445 roubles (RUB) for the costs and expenses incurred before the Court. She submitted a copy of the contract with her representative and an itemised schedule of costs and expenses, which included interviews with the applicant and the drafting of legal documents submitted to the Court at a rate of EUR 50 per hour. She also submitted an invoice for translation expenses for the amount of EUR 512 and a postal invoice for the amount of RUB 1,445. The applicant also claimed EUR 333 for administrative expenses.

166. The Government disputed the reasonableness and the justification of the amounts claimed under this head. They further pointed out that it had not been shown that the applicant had actually incurred all the expenses claimed. They also objected to the representative's request to transfer the award for legal representation directly into his account.

167. The Court may make an award in respect of costs and expenses in so far that they were actually and necessarily incurred and were reasonable as to quantum (see *Bottazzi v. Italy* [GC], no. 34884/97, § 30, ECHR 1999-V, and *Sawicka v. Poland*, no. 37645/97, § 54, 1 October 2002).

168. Having regard to the details of the contract between the applicant and her representative and the information submitted, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicant's representative. Further, the Court notes that this case was rather complex and required a certain amount of research and preparation. Accordingly, it accepts that the costs and expenses incurred for legal representation were necessary.

169. Furthermore, the Court 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, *Nachova and Others*

v. Bulgaria [GC], nos. 43577/98 and 43579/98, § 175, ECHR 2005-VII, and *Imakayeva*, cited above).

170. Having regard to the details of the claims submitted by the applicant, the Court awards her the amount of EUR 5,640, less EUR 850 received by way of legal aid from the Council of Europe, together with any value-added tax that may be chargeable to the applicant, the net award to be paid into the representative's bank account, as identified by the applicant.

C. Default interest

171. 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

1. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 2 of the Convention in respect of Yusup Satabayev;
3. *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 Yusup Satabayev disappeared;
4. *Holds* that there has been a violation of Article 5 of the Convention in respect of Yusup Satabayev;
5. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
6. *Holds* that no separate issues arise under Article 13 of the Convention in conjunction with Article 5 of the Convention;
7. *Holds* that there has been a failure to comply with Article 38 § 1 (a) of the Convention in that the Government have refused to submit documents requested by the Court;
8. *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 rate applicable at the date of settlement:

- (i) EUR 35,000 (thirty-five thousand euros), plus any tax that may be chargeable, to the applicant in respect of non-pecuniary damage;
- (ii) EUR 4,790 (four thousand seven hundred ninety euros), plus any tax that may be chargeable, in respect of costs and expenses, to be paid into the representative's bank account;
- (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;

9. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President