



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

1959 · 50 · 2009

FIRST SECTION

CASE OF USTARKHANOVA v. RUSSIA

(Application no. 35744/05)

JUDGMENT

STRASBOURG

26 November 2009

FINAL

10/05/2010

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 Ustarkhanova 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 5 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 35744/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Ms Khava Ustarkhanova on 3 October 2005.

2. The applicant was represented by lawyers of the Stichting Russian Justice Initiative (“SRJI”), an NGO based in the Netherlands with a representative office in Russia. The Russian Government (“the Government”) were represented by Mr A. Savenkov, First Deputy Minister of Justice, and subsequently by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 18 March 2008 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application and 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.

4. 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

5. The applicant was born in 1955 and lives in Achkhoy-Martan, Chechnya. She is the mother of Balavdi Ustarkhanov, who was born in 1982.

A. Disappearance of Balavdi Ustarkhanov

1. The applicant's account

6. The events described in the application took place in Zakan-Yurt, in the Achkhoy-Martan district of Chechnya. At the material time the village of Zakan-Yurt was under the full control of the Russian federal forces. Military checkpoints manned by Russian servicemen were located on the roads leading to and from the settlement. The area was under a curfew.

7. At the material time the applicant and her son Balavdi Ustarkhanov lived in Achkhoy-Martan, Chechnya. On 31 December 2002 Balavdi Ustarkhanov went to Zakan-Yurt to celebrate the New Year holiday with his friend, Mr Magomed M. On the same day he had a fight with local residents and received several cuts. He was taken to a local hospital where his cuts were treated and a bandage was placed around his head. Balavdi Ustarkhanov subsequently decided to stay with his friend's family in Zakan-Yurt for several days.

8. On the night of 6 to 7 January 2003 (in the submitted documents the date was also referred to as the night of 6 January 2003) Balavdi Ustarkhanov stayed at Mr Magomed M.'s house at 72 Shkolnaya Street in Zakan-Yurt. The household consisted of two dwellings; one belonged to Mr Magomed M. and his family, and the other to the family of his uncle, Mr Makhadi M.

9. At about 6 a.m. a large group of armed men in camouflage uniforms broke into the household. Some of them were wearing masks. Those who were not wearing masks were of Slavic appearance. The men neither introduced themselves nor produced any documents. They spoke unaccented Russian and were equipped with portable radio sets. The residents of the household thought that they were Russian military servicemen.

10. The servicemen told everyone that they were looking for a person who was on the authorities' wanted list. They conducted an identity check and took away the passports of Mr Makhadi M. and Mr Magomed M. On completion of the check the servicemen were about to leave when one of

them asked Balavdi Ustarkhanov why his head was bandaged. The latter explained that he had arrived at his friend's house for the holidays, that he had been hit with a sharp object and that his cuts had been treated at the local hospital. The serviceman then called someone via his portable radio set and reported that there was a man in the house who had not been registered as a resident and that his head was bandaged. The officer was ordered to take Balavdi Ustarkhanov away.

11. When Balavdi Ustarkhanov's friends asked the servicemen why they were taking him away, the officers said that they were just going to check what Balavdi was doing in the house. The servicemen took Balavdi Ustarkhanov outside without shoes or warm clothing. There they put him in one of the military vehicles parked next to the house: there were a military UAZ car, a minivan and an APC (armoured personnel carrier). The vehicles then drove away in the direction of the local checkpoint, manned by the Russian military forces.

12. The passport of Mr Makhadi M., which had been taken away by the abductors, was found some time later in the vicinity of Zakan-Yurt, on the road to Grozny, across the street from the Russian military checkpoint.

13. According to Mr Magomed M.'s neighbour, Mr I.A., who lived across the street, at about 5 a.m. on 7 January 2003 he and his relatives had seen from their windows two vehicles and a large group of armed servicemen, who spoke unaccented Russian. Some of them wore helmets; they were equipped with portable radio sets. The servicemen were standing next to their house and talking. One of the officers noticed the family car parked in the yard and asked Mr I.A.'s granddaughter whose car it was. When the girl responded that the car belonged to her uncle, the son of Mr I.A., the servicemen went into the house, dragged Mr I.A.'s son outside and started beating him with truncheons. Mr I.A. started screaming for help and begging the servicemen not to kill his son. Then one of them called someone via his radio set and said that they had apprehended three men, one of whom was not a local resident. Mr I.A. heard someone on the radio instructing the servicemen to leave the locals alone, to take the stranger with the wounded head and to leave the place. According to Mr I.A., he saw from his house a GAZ vehicle and a UAZ vehicle parked next to the house of his neighbour Mr Magomed M. After the servicemen left, Mr I.A. learned from his neighbours that the servicemen had taken away their guest, Balavdi Ustarkhanov. Mr I.A. was not questioned by the authorities about the events.

14. According to a relative of Mr Magomed M., Ms B.M., at about 5 a.m. on 7 January 2003 she had seen a group of armed military servicemen entering the house of her relative Mr Magomed M., which was situated in the same yard. The servicemen were in camouflage uniforms; they spoke unaccented Russian and used portable radio sets. She heard the servicemen explaining to someone by radio that there was a person in the

house who had not been registered as a resident and that this man had been wounded in the head. The response received by the servicemen was: "Take him and leave". When the servicemen were leaving the house she heard the noise of military vehicles. Many local residents had gathered in the yard shortly after the abduction. Ms B.M. was not questioned by the authorities about the events.

15. According to the applicant, a number of other witnesses to the abduction refused to provide statements to the Court out of fear for their safety and that of their relatives.

16. In support of her statement, the applicant submitted an account by Ms B.M. dated 31 August 2008 and an account by Mr I.A. dated 31 August 2008.

2. Information submitted by the Government

17. The Government did not challenge most of the facts as presented by the applicant. According to their submission "...the reason for the opening of the criminal case was the complaint of Kh. Ustarkhanova received by the Achkhoy-Martan district department of the interior on 7 January 2003, according to which at about 6 a.m. on the night between 6 and 7 January 2003 unidentified armed men in camouflage uniforms and masks had taken away her son B. Ustarkhanov from a house at 72 Shkolnaya Street in Zakan-Yurt in the Achkhoy-Martan district of Chechnya".

B. The search for Balavdi Ustarkhanov and the official investigation into his abduction

1. The applicant's account

18. In the morning of 7 January 2003 Mr Magomed M. informed the applicant about the abduction of Balavdi Ustarkhanov. On the same day the applicant went to the Achkhoy-Martan district department of the interior (the Achkhoy-Martan ROVD) and the Achkhoy-Martan district prosecutor's office (the district prosecutor's office) and complained about her son's abduction.

19. On 21 January 2003 the district prosecutor's office instituted an investigation into the abduction of Balavdi Ustarkhanov under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case file was given number 44011.

20. On 23 January 2003 the district prosecutor's office granted the applicant victim status in the criminal case.

21. On 21 March 2003 the investigators suspended the investigation in the criminal case for failure to establish the identities of the perpetrators.

22. On a number of occasions, that is on 22 March, 13 and 24 June, 17 July and on 25 August 2003, in January, 3 April, 14 May and 7 June 2004 and 16 July 2005 the Chechnya and the district prosecutors' offices informed the applicant that the investigation in the criminal case had been suspended for failure to establish the identities of the perpetrators and that operational-search measures aimed at identifying the culprits were under way.

23. On 12 May 2003 the military prosecutor's office of the United Group Alignment (the military prosecutor's office of the UGA) forwarded the applicant's complaint about Balavdi Ustarkhanov's abduction to the military prosecutor's office of military unit no. 20102.

24. On 7 June and 15 August 2003, 22 April, 31 May and 29 December 2004, 10 June and 22 July 2005 the Chechnya prosecutor's office forwarded the applicant's complaints to the district prosecutor's office for examination.

25. On 11 June and 20 August 2003 the military prosecutor's office of military unit no. 20102 informed the applicant that her complaints did not contain any information demonstrating the involvement of Russian military forces in the abduction of Balavdi Ustarkhanov.

26. On 15 July 2003 the Chief Military Prosecutor's office forwarded the applicant's complaint to the Chechnya prosecutor's office.

27. On 2 February 2004 the military prosecutor's office of the UGA informed the applicant that her complaint had been examined and the theory of the involvement of the Russian military forces in the abduction of Balavdi Ustarkhanov had not been confirmed.

28. Upon the applicant's request, on 24 February 2004 the interim Chechnya military commander requested the military commander of the Achkhoy-Martan district (the district military commander) to take measures to establish the whereabouts of Balavdi Ustarkhanov.

29. On 13 April 2004 the Department of the Prosecutor General's office in the Southern Federal Circuit informed the applicant that her request had been forwarded to the Chechnya prosecutor's office.

30. On 20 November 2004 the applicant wrote to the district prosecutor's office. She stated that her son had been abducted by a group of armed men who arrived in an APC. The applicant expressed her version of the events, stating that those who had abducted her son must have belonged to the State power structures. She requested to be provided with information concerning the progress of the investigation and asked for the proceedings to be resumed.

31. On 11 July 2005 the Chechnya military commander requested the district military commander to take measures to establish the whereabouts of Balavdi Ustarkhanov.

32. According to the applicant, the investigators failed to question the neighbours of Mr Magomed M. who lived across the street from the crime

scene and who had witnessed Balavdi Ustarkhanov being taken away in military vehicles.

2. Information submitted by the Government

33. The Government submitted that on 21 January 2003 the district prosecutor's office had opened criminal case no. 44011 into the abduction of Balavdi Ustarkhanov under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The applicant was informed of this on 23 January 2003.

34. On 21 January 2003 the investigators examined the crime scene at 72 Shkolnaya Street in Zakan-Yurt. Nothing was collected from the scene.

35. On 23 January 2003 the applicant was granted victim status in the criminal case and questioned. She stated that she lived in Achkhoy-Martan. On 30 December 2002 her son Balavdi Ustarkhanov had gone to visit his friends, the family of Mr Magomed M., in Zakan-Yurt. On 3 January 2003 she had been informed that on the night between 31 December 2002 and 1 January 2003 her son had been involved in a fight with local teenagers, as a result of which he had sustained a head injury. On the same date, 3 January 2003, the applicant had gone to Zakan-Yurt and taken her son to a hospital, where it was established that he had sustained concussion. The family of Magomed M. was troubled by the fact that Balavdi had received the head injury while he was their guest and they therefore asked him to stay with them until he felt better. The applicant agreed and returned to Achkhoy-Martan, while her son remained at the friends' house. On 7 January 2003 Mr Makadi M. had arrived at her house and told her about the abduction of Balavdi by unidentified armed men in camouflage uniforms and masks, who had failed to explain the reasons for their actions. The investigators questioned the applicant again on 28 February 2003; no information was submitted by the Government concerning the content of the statement given on that date.

36. On 31 January 2003 the investigators questioned Mr Makhadi M., who stated that he lived at 72 Shkolnaya Street in Zakan-Yurt; the household comprised two dwellings in one yard: his house and the house of his nephew, Mr Magomed M. At the end of December 2002 Balavdi Ustarkhanov had arrived at Magomed M.'s house to celebrate the holidays. On 7 January 2003 a group of about ten unidentified armed men had broken into their yard. The men were wearing camouflage uniforms and masks. At first they went into Magomed M.'s house, and then came into his house. The men, who spoke unaccented Russian, checked everyone's passports and took away his passport. After the identity check the men had left with Balavdi Ustarkhanov in an unknown direction. At some later point he found out that the men had arrived at his house in a grey UAZ vehicle and a tented ZIL lorry. According to the witness, he had complained about the abduction of

Balavdi Ustarkhanov to the Achkhoy-Martan ROVD and informed the latter's mother.

37. On 10 February 2003 the investigators questioned Mr Magomed M., who stated that he lived at 72 Shkolnaya Street in Zakan-Yurt, in the same household as his uncle Mr Makhadi M. In 2000 he had lived temporarily in Achkhoy-Martan as a forced migrant, where he had befriended a local resident, Balavdi Ustarkhanov. At the end of December 2002 Balavdi had arrived at his home for a visit. On the night between 31 December 2002 and 1 January 2003 he and Balavdi had been involved in a fight between local youths. As a result Balavdi had received head injuries from a heavy object. He had asked Balavdi to stay in his house until he felt better. At about 6 a.m. on 7 January 2003 a group of about ten armed men in camouflage uniforms and masks had entered his house. The men refused to introduce themselves; they checked his identity documents and the documents of Balavdi Ustarkhanov. Then, without providing any explanations, they ordered Balavdi Ustarkhanov to follow them; they also took his passport. The armed men then went into his uncle's house, where they also conducted identity checks and took away Mr Makhadi M.'s passport. After the men left the house, he learned that they had driven around in a grey UAZ vehicle and a tented ZIL lorry without registration numbers.

38. On 12 February 2003 the investigators requested that the military prosecutor's office of military unit no. 20102 and the Criminal Search Department of the Ministry of the Interior in the Southern Federal Circuit inform them whether they had arrested or detained Balavdi Ustarkhanov. According to their responses, these agencies had not arrested or detained the applicant's son.

39. On 12 February 2003 the investigators ordered the Achkhoy-Martan ROVD to question staff at the military checkpoints in the vicinity of Zakan-Yurt in order to establish the vehicles which had passed through them on the night of the abduction and to take operational measures to identify the perpetrators of the abduction. According to the ROVD's reply of 19 February 2003, no information concerning the abductors' vehicles was available at the checkpoints and no information concerning the identities of the abductors had been obtained.

40. On the same date, 12 February 2003, the investigators requested that the Operational Group of the Ministry of the Interior provide information on whether they had conducted a special operation on 7 January 2003 and whether they had detained Balavdi Ustarkhanov. According to the response of 25 April 2003, this agency had neither conducted any special operations on 7 January 2003 nor detained the applicant's son.

41. On 15 February 2003 the investigators forwarded a number of requests to various prosecutors' offices in Chechnya, requesting information about the possible arrest and detention of Balavdi Ustarkhanov and the

discovery of his corpse. According to the responses received from those offices, no such information was available.

42. On 20 February 2003 the investigators ordered the Achkhoy-Martan ROVD to establish the witnesses of the abduction and question the neighbours of Mr Magomed M. about the circumstances of the crime.

43. According to the Government, between 22 and 25 February 2003 the investigators questioned nine residents of Zakan-Yurt, who provided similar statements concerning the abduction. None of them had witnessed the events; all of them had learnt from fellow villagers that at about 7 a.m. on 7 January 2003 a group of armed masked men in camouflage uniforms had abducted a young man who had been visiting Mr Magomed M. and that this man had been taken away in a UAZ vehicle and a ZIL lorry without registration numbers.

44. On 27 February 2003 the investigators requested that the Achkhoy-Martan district department of the Federal Security Service (the Achkhoy-Martan department of the FSB) inform them whether they had any information which discredited Balavdi Ustarkhanov. According to their reply of 20 March 2003, no such information was available.

45. On 27 February 2003 the investigators forwarded a number of information requests to various detention centres in the Northern Caucasus. According to their responses, Balavdi Ustarkhanov was not detained on their premises.

46. Between 5 and 19 March 2003 the investigators questioned eight residents of Achkhoy-Martan and on unspecified dates they questioned a further twenty residents of Achkhoy-Martan, all of whom provided similar statements concerning the abduction. None of them had witnessed the abduction; all of them had found out from their fellow villagers and Khava Ustarkhanova that at about 7 a.m. on 7 January 2003 a group of armed masked men in camouflage uniforms had abducted the applicant's son, who had been visiting his friend in Zakan-Yurt.

47. On an unspecified date the investigators obtained information that the applicant had been approached by an intermediary, who had offered to assist her in establishing the whereabouts of Balavdi Ustarkhanov and obtain his release in exchange for 6,000 US dollars. During an informal confidential conversation with the investigators the applicant confirmed that she had been approached by the intermediary, but refused to provide his name saying that in the search for her son she and her relatives had resorted to the help of military servicemen and civilians who could have had information about the whereabouts of Balavdi Ustarkhanov.

48. On 1 March 2008 the investigators again questioned the applicant, who stated that some time after her son's abduction a man had come to her house. He had refused to introduce himself and told her that if she paid 6,000 US dollars, he would bring her son home. The applicant had agreed to pay the sum only after her son had been returned. Three days later the man

had come over again, but she had not been at home. The applicant had never seen this man again.

49. On 14 March 2008 the investigators suspended the investigation in the criminal case for failure to establish the identities of the perpetrators and informed the applicant of this.

50. On 4 May 2008 the decision to suspend the investigation was overruled by the supervising prosecutor, the proceedings were resumed and the investigators were provided with instructions on the steps to be taken in the proceedings.

51. According to the Government, although the investigation failed to establish the whereabouts of Balavdi Ustarkhanov, it was under way and all measures envisaged by national law were being taken. The investigation was suspended and resumed on several occasions, and has so far failed to identify those responsible for the abduction of the applicant's son.

52. Despite specific requests by the Court the Government did not disclose any documents from criminal case no. 44011. They 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 personal data concerning the witnesses or other participants in the criminal proceedings.

II. RELEVANT DOMESTIC LAW

53. 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

54. 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 Balavdi Ustarkhanov had not yet been completed.

55. 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

56. 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).

57. As regards the criminal-law remedies provided for by the Russian legal system, the Court observes that the applicant complained to the law-enforcement authorities immediately after the kidnapping of Balavdi Ustarkhanov and that an investigation has been under way since 21 January 2003. The applicant and the Government dispute the effectiveness of the investigation of the kidnapping.

58. 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

59. The applicant maintained that it was beyond reasonable doubt that the men who had taken away Balavdi Ustarkhanov had been State agents. In support of her complaint she referred to the following facts. At the material time Zakan-Yurt had been under the total control of federal troops. There had been Russian military checkpoints on the roads leading to and from the settlement. The armed men who had abducted Balavdi Ustarkhanov had Slavic features and spoken Russian without an accent, which proved that they were not of Chechen origin. The men had arrived in the vehicles commonly used by the military, late at night, which indicated that they had been able to circulate freely past curfew. The men had carried out an identity check and taken away two passports, one of which was later found in the vicinity of the local checkpoint of the Russian federal forces. They were wearing specific camouflage uniform, were armed and had portable radio sets. Since Balavdi Ustarkhanov 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.

60. The Government submitted that unidentified armed men had kidnapped Balavdi Ustarkhanov. They further contended that the investigation of the incident was under way, 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 raised a number of objections to the applicant's presentation of facts. The fact that the perpetrators of the abduction spoke unaccented Russian and were wearing camouflage uniforms did not mean that these men could not have been members of illegal armed groups, criminals pursuing mercenary goals or the men with whom Balavdi Ustarkhanov had fought on the night of 31 December 2002 to 1 January 2003. The Government further alleged that the applicant's description of the circumstances surrounding the abduction was inconsistent. In particular, referring to the statements provided by the applicant and other witnesses to the domestic investigation, the Government stressed that they had not seen in person Balavdi Ustarkhanov being taken away in a grey UAZ vehicle and a ZIL lorry, and that therefore this information was unsubstantiated; that the applicant had failed to inform the investigators about Mr Magomed M.'s neighbours across the street, who had witnessed the abduction, and that she had failed to provide the investigators with the name of the intermediary who had approached her with an offer to assist in obtaining the release of her son. In addition, the applicant had not informed the investigators that on 3 January 2003 she had gone to Zakan-Yurt to take her son to the hospital. The Government did not submit to the Court the statements it referred to in its submissions.

B. The Court's evaluation of the facts

61. The Court observes that in its extensive case-law 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).

62. The Court notes that despite its requests for a copy of the investigation file into the abduction of Balavdi Ustarkhanov, the Government produced none of the documents from the case file. The Government referred to Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has already found this explanation insufficient to justify the withholding of key information requested by the

Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-... (extracts)).

63. 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.

64. The applicant alleged that the persons who had taken Balavdi Ustarkhanov away on 7 January 2003 and then presumably killed him had been State agents.

65. The Government suggested in their submissions that the abductors of Balavdi Ustarkhanov may have been members of paramilitary groups, criminals pursuing mercenary goals or the men with whom Balavdi Ustarkhanov had fought on the night of 31 December 2002 to 1 January 2003. However, this allegation was not specific and the Government did not submit any material to support it. The Court would stress in this regard that the evaluation of the evidence and the establishment of the facts is a matter for the Court, and it is incumbent on it to decide on the evidentiary value of the documents submitted to it (see *Çelikbilek v. Turkey*, no. 27693/95, § 71, 31 May 2005).

66. The Court notes that the applicant's allegation is supported by the witness statements collected by the applicant and by the investigation. It finds that the fact that a large group of armed men in uniform was able to move freely through military roadblocks during curfew hours and proceeded to check identity documents strongly supports the applicant's allegation that these were State servicemen conducting a security operation. In her application to the authorities the applicant expressed her concerns that Balavdi Ustarkhanov had been detained by unknown servicemen and requested the investigation to look into that possibility (see paragraph 30 above). The domestic investigation also accepted the factual assumptions as presented by the applicant and took measures to check whether federal forces were involved in the kidnapping (see paragraph 27 above), but it does not appear that any serious steps had been taken in that direction.

67. The Government questioned the credibility of the applicant's statements in view of certain discrepancies relating to the exact circumstances of the arrest and the circumstances following it. 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 to the Court those witness statements to which they referred in their submissions. In the Court's view, the fact that over a period of several years the applicant's recollection of an extremely traumatic and stressful event differed in rather insignificant details does not in itself suffice to cast doubt on the overall veracity of her statement.

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

69. Taking into account the above elements, the Court is satisfied that the applicant has made a *prima facie* case that her son was apprehended by State servicemen. The Government's statement that the investigators had not found any evidence to support the involvement of the special forces in the kidnapping is insufficient to discharge them from the above-mentioned burden of proof. 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 Balavdi Ustarkhanov was arrested on 7 January 2003 by State servicemen during an unacknowledged security operation.

70. There has been no reliable news of Balavdi Ustarkhanov 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.

71. 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 Chechen 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 Balavdi Ustarkhanov or of any news of him for several years supports this assumption.

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

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

73. 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

74. The Government contended that the domestic investigation had obtained no evidence to the effect that Balavdi Ustarkhanov 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.

75. The applicant argued that Balavdi Ustarkhanov 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 the investigation had failed to take some crucial investigative steps, such as questioning the neighbours of Mr Magomed M. and members of his family who had witnessed the abduction, or questioning representatives of local law-enforcement and military structures who could have had information about the events in question. The investigation into Balavdi Ustarkhanov's abduction had been opened fourteen days after the events, and had then 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 under way for such a long period of time 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 her or to the Court.

B. The Court's assessment

1. Admissibility

76. 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 58 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 Balavdi Ustarkhanov

77. 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 Balavdi Ustarkhanov.

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

78. 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).

79. In the present case, the kidnapping of Balavdi Ustarkhanov was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

80. 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.

81. The Court notes that the authorities were immediately made aware of the crime by the applicant's submissions. The investigation in case no. 44011 was instituted on 21 January 2003, that is, fourteen days after Balavdi Ustarkhanov'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 a number of essential steps were subsequently either delayed or were not taken at all. For instance, the Court notes that although, according to the Government, the domestic investigation questioned a number of persons about the circumstances of the abduction, it appears that the vast majority of them were residents of Achkhoy-Martan (see paragraph 46 above) and not of Zakan-Yurt, where the abduction had taken place; that the eight residents of Zakan-Yurt questioned by the investigators had not witnessed the events (see paragraph 43 above); that the investigators also failed to question the neighbour of Mr Magomed M. who lived across the street and those relatives of Mr Madomed M. who were present during the abduction (see paragraphs 13 and 14 above). Further, the Court observes that the investigators did not identify or question any representatives of law-enforcement agencies or the military who could have had information about the group driving around in Zakan-Yurt during the curfew hours, or that they identified and questioned the servicemen who had manned the checkpoints in the vicinity of Zakan-Yurt. 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).

82. The Court also notes that although the applicant was granted victim status in the criminal case, she was 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.

83. Finally, the Court notes that from the submitted materials it follows that the investigation was suspended in March 2003 and then resumed in March 2008, that is, the investigation was inactive for almost five years, which was acknowledged in May 2008 by the supervising prosecutor who instructed the investigators to take certain steps (see paragraph 50 above). It is unclear whether his instructions were complied with.

84. Having regard to the limb of the Government's preliminary objection that was joined to the merits of the complaint, inasmuch as it concerns the fact that the domestic investigation is still pending, the Court notes that the investigation, having being repeatedly suspended and resumed and plagued by inexplicable delays, has been under way 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.

85. 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 Balavdi Ustarkhanov, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

86. 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

87. 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.

88. The applicant maintained her submissions.

B. The Court's assessment

1. Admissibility

89. 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

90. 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).

91. In the present case the Court notes that the applicant is the mother of the disappeared person. For more than six years she has not had any news of the missing man. During this period the applicant has made enquiries to 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 the investigation was ongoing. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

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

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

93. The applicant further stated that Balavdi Ustarkhanov 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

94. The Government asserted that no evidence had been obtained by the investigators to confirm that Balavdi Ustarkhanov 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.

95. The applicant reiterated the complaint.

B. The Court's assessment

1. Admissibility

96. 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

97. 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).

98. The Court has found that Balavdi Ustarkhanov was apprehended by State servicemen on 7 January 2003 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).

99. 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.

100. In view of the foregoing, the Court finds that Balavdi Ustarkhanov 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 8 OF THE CONVENTION

101. The applicant alleged that the disappearance of her son after his detention by the State authorities caused her distress and anguish which had amounted to a violation of their right to family life. She referred to Article 8 of the Convention, which as far as relevant provides:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence...”

102. The applicant's complaint concerning her inability to enjoy family life with her son Balavdi Ustarkhanov concerns the same facts as those examined above under Articles 2 and 3 of the Convention. Having regard to its above findings under these provisions, the Court considers that this complaint should be declared admissible. However, it finds that no separate issue arises under Article 8 of the Convention in this respect (see, *mutatis mutandis*, *Ruianu v. Romania*, no. 34647/97, § 66, 17 June 2003; *Laino v. Italy* [GC], no. 33158/96, § 25, ECHR 1999-I; and *Canea Catholic Church v. Greece*, 16 December 1997, § 50, *Reports of Judgments and Decisions* 1997-VIII).

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

103. 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

104. 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 did not prevent her from using them. The applicant had had an opportunity to lodge a civil claim for compensation and challenge the actions or omissions of the investigating authorities in court. In sum, the Government submitted that there had been no violation of Article 13.

105. The applicants reiterated their complaint.

B. The Court's assessment

1. Admissibility

106. 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

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

108. As regards the complaint of lack of effective remedies in respect of the applicant's complaint under Article 2, the Court emphasises that, given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and infliction of treatment contrary to Article 3, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-162, ECHR 2002-IV, and *Süheyla Ayдын 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).

109. In view of the Court's above findings with regard to Article 2, this complaint is clearly “arguable” for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). The applicant should accordingly have been able to avail herself of effective and practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation for the purposes of Article 13.

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

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

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

113. As for the complaint under Article 13 in conjunction with Article 8 concerning the right to family life, the Court notes that in paragraph 102 above it found that no separate issue arises under that provision. Therefore, it considers that no separate issue arises under Article 13 in this respect either.

VIII. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

114. The applicant complained that she had been discriminated against in the enjoyment of her Convention rights, as the violations of which she complained had taken place because of her being a resident of Chechnya and her ethnic background as Chechen. This was contrary to Article 14 of the Convention, which provides:

“The enjoyment of the right and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

115. In her observations on admissibility and merits of the application the applicant stated that she no longer wished her complaints under Article 14 of the Convention to be examined.

116. The Court, having regard to Article 37 of the Convention, finds that the applicant does not intend to pursue this part of the application, within the meaning of Article 37 § 1 (a). The Court also finds no reasons of a general character affecting respect for human rights as defined in the Convention which require the further examination of the present complaints by virtue of Article 37 § 1 of the Convention *in fine* (see, for example, *Chojak v. Poland*, no. 32220/96, Commission decision of 23 April 1998; *Singh and Others v. the United Kingdom* (dec.), no. 30024/96, 26 September 2000; and *Stamatios Karagiannis v. Greece*, no. 27806/02, § 28, 10 February 2005).

117. It follows that this part of the application must be struck out in accordance with Article 37 § 1 (a) of the Convention.

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

118. 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. Pecuniary damage

119. The applicant made a claim in respect of Balavdi Uruskhanov's loss of earnings. She claimed a total of 431,484 Russian roubles (RUB) under this head (12,300 euros (EUR)).

120. The applicant submitted that she was financially dependent on her son Balavdi Uruskhanov, and that she would have benefited from his financial support in the above amount. The applicant's calculations were based on the provisions of the Russian Civil Code and the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department in 2007 (“Ogden tables”).

121. The Government regarded these claims as unsubstantiated.

122. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention, and that this may, in an appropriate case, include compensation in respect of loss of earnings. Having regard to its above conclusions, it finds that there is a direct causal link between the violation of Article 2 in respect of the applicant's son and the loss by her of the financial support which he could have provided. Having regard to the applicant's submissions and the absence of any documents substantiating the earnings of Balavdi Uruskhanov at the time of the abduction, the Court awards the applicant EUR 10,000 in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

123. The applicant claimed EUR 70,000 in respect of non-pecuniary damage for the suffering she had endured as a result of the loss of her family member, the indifference shown by the authorities towards her and the failure to provide any information about the fate of her son.

124. The Government found the amounts claimed excessive.

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

C. Costs and expenses

126. The applicant was represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews in Chechnya and Moscow, at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic authorities, at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff and experts. The aggregate claim in respect of costs and expenses related to the legal representation of the applicant amounted to EUR 6,075.

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

128. 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).

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

130. As to whether the costs and expenses were necessary, the Court notes that this case was rather complex and required a certain amount of research and preparation. It notes at the same time, that due to the application of Article 29 § 3 in the present case, the applicant's representatives submitted their observations on admissibility and merits in one set of documents. The Court thus doubts that legal drafting was necessarily time-consuming to the extent claimed by the representatives. In addition, the case involved little documentary evidence, in view of the Government's refusal to submit documents from the case file. Therefore, the Court doubts that research was necessary to the extent claimed by the representatives.

131. Having regard to the details of the claims submitted by the applicant and acting on an equitable basis, the Court awards her the amount of EUR 5,500 together with any value-added tax that may be chargeable to the applicant, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicant.

D. Default interest

132. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (a) of the Convention in so far as it concerns the complaints lodged under Article 14 of the Convention;
2. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;
3. *Declares* the complaints under Articles 2, 3, 5, 8 and 13 of the Convention admissible;
4. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Balavdi Ustarkhanov;
5. *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 Balavdi Ustarkhanov disappeared;
6. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant;
7. *Holds* that there has been a violation of Article 5 of the Convention in respect of Balavdi Ustarkhanov;
8. *Holds* that no separate issues arise under Article 8 of the Convention regarding the applicant's right to respect for family life;
9. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
10. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3, 5 and 8;
11. *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 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage to the applicant;
 - (ii) EUR 35,000 (thirty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicant;
 - (iii) EUR 5,500 (five thousand five 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 Netherlands;
- (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;

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

Done in English, and notified in writing on 26 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President