



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

FIRST SECTION

CASE OF SERIYEVY v. RUSSIA

(Application no. 20201/05)

JUDGMENT

STRASBOURG

8 April 2010

FINAL

04/10/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Seriyevy 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 18 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 20201/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Russian nationals, Mr Abdula (also spelled as Abdulla) Seriyev and Ms Maret Seriyeva (“the applicants”), on 2 June 2005.

2. The applicants were represented by lawyers of the Stichting Russian Justice Initiative (“SRJI”), an NGO based in the Netherlands with a representative office in Russia. The Russian Government (“the Government”) were represented by their Agent, Mr G. Matyushkin.

3. On 25 April 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. The President of the Chamber acceded to the Government's request not to make publicly accessible the documents from the criminal investigation file deposited with the Registry in connection with the application (Rule 33 of the Rules of Court).

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 applicants, who are father and daughter, were born in 1936 and 1975 respectively. They are the husband and the daughter of Bilkis Askhabayeva, who was born in 1942, and the father and sister of Sarali Seriyev, who was born in 1980. At the material time the applicants and their relatives lived in Belgatoy, Chechnya; the applicants currently live in Shali, Chechnya.

A. Events related to the death of Bilkis Askhabayeva as submitted by the applicants

1. The death of Bilkis Askhabayeva

6. On 26 December 2002 a projectile struck the applicants' house, hit Bilkis Askhabayeva and severely wounded her. She died on the same day from the injuries.

2. The official investigation into the death of Bilkis Askhabayeva

7. On 27 December 2002 the district prosecutor's office instituted an investigation into the death of Bilkis Askhabayeva under Article 105 § 2 of the Criminal Code (aggravated murder). The case file was given number 59281.

8. On 29 December 2002 the first applicant was granted victim status in the criminal case. On 30 December 2002 the investigative authorities ordered a forensic examination of Bilkis Askhabayeva's body.

9. At some point between January 2003 and November 2004 the investigation of the criminal case was transferred to the military prosecutor's office of military unit no. 20116 (the military prosecutor's office), where the case file was given number 34/35/0191-03.

10. On 25 November 2004 the military prosecutor's office terminated the proceedings in the criminal case. The decision stated that the investigation had established that on 26 December 2002 military unit no. 23132 had participated in a special operation against illegal armed groups. At about 8 p.m. an illuminating shell launched by a cannon 2C3 No. 221 from the position of the military unit, due to a technical malfunction, had hit the house at 41 Kirova Street in Belgatoy, Chechnya. The death of Bilkis Askhabayeva was a result of an accident and therefore no personal responsibility could be established for it. The decision further stated that the

criminal investigation in case no. 34/35/0191-03 should be terminated for lack of *corpus delicti* in the actions of the military servicemen.

11. On 7 December 2004 the military prosecutor's office informed the first applicant about the decision to terminate the criminal proceedings. The applicants did not appeal this decision.

12. On 13 June 2005 the military prosecutor's office took another decision to terminate the proceedings in the criminal case on the grounds of lack of *corpus delicti* and the amnesty act applied to the military officers. The applicants did not appeal this decision either.

3. Civil proceedings initiated by the applicants in connection with the death of Bilkis Askhabayeva

13. On 29 March 2005 the first applicant brought proceedings against military unit no. 23132. He demanded compensation for pecuniary and non-pecuniary damage caused by his wife's death.

14. On 13 June 2005 the Shali town court partially granted the claim. The court granted the applicant 168,105 Russian roubles (RUB - about 5,000 euros (EUR)) in respect of pecuniary damage and RUB 10,000 (about EUR 300) in respect of non-pecuniary damage.

15. On an unspecified date the first applicant lodged a request with the town court asking for an extension of the time-limits for appeal of the judgment. The applicant submitted that he had not complied with the time-limits for the appellate procedure because of illness.

16. On 25 August 2005 the Shali town court rejected his request. The court stated that the applicant had failed to provide any evidence, such as a medical certificate, to justify his failure to comply with the statutory time-limits for the appeal.

17. On an unspecified date the first applicant again brought proceedings against military unit no. 23132 demanding compensation for pecuniary and non-pecuniary damage caused by the actions of the military in December 2002.

18. On 23 June 2008 the Shali town court granted the applicant's claim and awarded him a total of RUB 532,000 (about EUR 15,200) in damages, of which RUB 232,000 were granted in respect of pecuniary damage and RUB 300,000 in respect of non-pecuniary damage suffered in connection with the death of Bilkis Askhabayeva. The applicant did not appeal against this decision.

19. On 3 September 2008 the judgement was enforced and the applicant received the amount due.

B. Events related to the disappearance of Sarali Seriyev

1. The applicants' account

a. Abduction of Sarali Seriyev

20. In 2000 as a result of an accident Sarali Seriyev (also spelled as Sar-Ali Serbiyev) lost his right hand, three fingers on the left hand and vision in his right eye. At the material time he was wearing a prosthesis.

21. On 1 June 2004 the applicants, Sarali Seriyev and their relative Imali Seriyev were at home at 41 Kirova Street in Belgatoy, Chechnya. The area was under the full control of the Russian federal forces; military checkpoints were located on the roads leading to and from the village.

22. At about 5 p.m. eight or nine silver-coloured vehicles, including a van and VAZ cars, arrived at the applicants' house. Only one of them had a registration number, which was 516 95.

23. About thirty heavily-armed masked servicemen in uniforms got out of the vehicles. Two or three of them were in helmets. The men neither identified themselves nor produced any documents. They communicated in Russian, although a few spoke Chechen. The applicants thought that the intruders were federal servicemen as the vast majority of them spoke unaccented Russian and just a few spoke Chechen.

24. Upon entering the applicants' yard, the servicemen demanded that the residents of the house hand their weapons to them and state who had spent the night in the house. After that the men forced the second applicant and her brother Imali into different rooms.

25. The intruders sprayed some kind of thick liquid into the room where the second applicant was placed. Two of the officers entered Imali's room, where he was forced to stay, beat him and searched the place.

26. Meanwhile other intruders took Sarali out from the house, forced him into the yard and then into one of the cars in the street. As this was happening the first applicant was trying to explain to the servicemen that Sarali was a disabled person and to show them his and Sarali's identity documents. One of the servicemen took them from the first applicant and told him that they did not need any identity documents.

27. The second applicant and Imali ran after the servicemen in an attempt to prevent them from detaining Sarali, but one of the intruders pushed the applicant and sprayed her with the thick liquid, causing her eyes to burn. They also sprayed Imali in the left eye and he ran to rinse his eye under an outdoor water tap. The first applicant also attempted to prevent the soldiers from taking Sarali away. The applicant threw himself onto one of the cars, but a soldier sprayed a liquid into his eyes. A group of the applicants' neighbours witnessed the abduction of Sarali Seriyev.

28. The first applicant followed the abductors' vehicles by car with an officer from a local department of the interior. They drove up to the local military checkpoints; however, the applicant could not obtain any information there about Sarali's abductors.

29. The description of the circumstances surrounding Sarali Seriyev's abduction is based on an account by the first applicant dated 20 May 2005, on an account by the second applicant, dated 6 February 2006, and on documents submitted with the application.

b. The search for Sarali Seriyev and the official investigation

30. On 1 June 2004 the applicants started their search for Sarali Seriyev. They contacted, both in person and in writing, various official bodies, such as the Shali administration, the Chechen administration, the Shali district military commander's office and the prosecutors' offices at different levels, describing in detail the circumstances of their relative's abduction and asking for help in establishing his whereabouts. The applicants retained copies of a number of their complaints and the authorities' replies and submitted them to the Court. An official investigation had been opened by the local prosecutor's office. The relevant information is summarised below.

31. Immediately after his son's abduction, in the late afternoon of 1 June 2004, the first applicant invited the investigators of the Shali district prosecutor's office (the district prosecutor's office). They arrived at the house about half an hour after the events. In the yard they took down the statements of the applicants, their relatives and neighbours and drew a map of the house. When the second applicant told the investigators about the spray used to disable her, one of them dismissed her statement as irrelevant. The investigators refused to go inside and examine the house for evidence.

32. On 2 July 2004 the district prosecutor's office instituted an investigation into the abduction of Sarali Seriyev under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case file was given the number 36076.

33. On 2 July 2004 the district prosecutor's office granted the first applicant victim status in the criminal case.

34. On 21 July 2004 the Chechnya prosecutor's office informed the first applicant that the investigation in the criminal case was taking operational search measures to establish the whereabouts of Sarali Seriyev and identify the perpetrators of his kidnapping.

35. On 21 July 2004 the Chechnya prosecutor's office forwarded the first applicant's request for assistance in the search for his son to the district prosecutor's office for examination.

36. On 17 September 2004 the head of the criminal search division of the Chechnya department of the interior (the Chechnya MVD) informed the first applicant that his son's abduction was being investigated by the district prosecutor's office.

37. On 20 September 2004 the first applicant requested the military prosecutor office's of the United Group Alignment (the military prosecutor's office of the UGA) to assist in the search for his son.

38. On 15 October 2004 the military prosecutor's office of the UGA informed the first applicant that information concerning the investigation into his son's abduction was available either at the district prosecutor office or the Chechnya prosecutor's office. The letter also stated "... it has been established that federal military servicemen were not involved in your son's abduction".

39. On 1 December 2004 the district prosecutor's office informed the first applicant that his complaint about the abduction had been included into the investigation file.

40. On 2 February 2005 the first applicant addressed the Shali district military commander's office (the district military commander's office) with a request for assistance in the search for his son.

41. On 3 February 2005 the district military commander's office informed the first applicant that they had forwarded information requests concerning Sarali Seriyev's whereabouts to a number of law enforcement agencies.

42. On 5 February 2005 the Chechnya prosecutor's office informed the first applicant that the investigation in the criminal case had been resumed on an unspecified date.

43. On 22 February 2005 the military prosecutor's office of military unit no. 20116 informed the first applicant that they had not received his request.

44. On 8 March 2005 the district military commander's office provided the first applicant with a copy of their information request concerning the search for Sarali Seriyev.

45. On 14 March 2005 the first applicant complained to the district military commander's office about the lack of information concerning the investigation into his son's abduction.

46. On 6 June 2005 the applicants' representatives wrote to the district prosecutor's office. They asked about the measures taken in the criminal case and the progress of the investigation and requested that the first applicant be provided with copies of documents from the investigation file.

47. On 29 June 2005 the Chechnya prosecutor's office informed the applicants' representatives that the investigation into the abduction of Sarali Seriyev had taken all measures to identify the perpetrators; that the first applicant was entitled to familiarise himself with the documents in the investigation file; that he could obtain information on the progress of the investigation and receive copies of the requested documents at the district prosecutor's office.

48. On 28 July 2005 the Chechnya prosecutor's office informed the applicants' representatives that information concerning the investigation in the criminal case was a secret and was not a subject to disclosure.

2. Information submitted by the Government

49. The Government submitted that "... at about 5 p.m. on 1 June 2004 in Kirov Street in Belgatoy, in the Shali district of Chechnya, about fifteen unidentified persons in camouflage uniforms and masks, armed with automatic weapons, abducted Sarali Seriyev and took him away to an unknown destination in a VAZ-21099 vehicle. The whereabouts of S. Seriyev have not been established since". In connection with this, the district prosecutor's office had opened criminal case no. 36076 under Article 126 § 2 of the Criminal Code (aggravated kidnapping).

50. On 10 June 2004 the investigators conducted the crime scene examination at 41 Kirova Street, Belgatoy. Nothing was collected from the scene.

51. On 2 July 2004 the first applicant was granted victim status in the criminal case. The text of the decision included the following:

"...the investigation established: on 1 June 2004 unidentified persons in camouflage uniforms, with firearms, had arrived during the daytime in VAZ-21099 cars at the house of S. Seriyev in Kirova Street, Belgatoy and detained him; after that they had taken him away to an unknown destination..."

52. On the same date, 2 July 2004, the applicant was questioned by the investigators. According to a partial copy of his witness statement furnished by the Government, in the late afternoon of 1 June 2004 he had been at home with his relatives. His son Sarali was in the house while his daughter, the second applicant, was in the yard. At about 5 p.m. a masked man in camouflage uniform armed with an automatic weapon had entered the room where the first applicant was resting. The man asked the applicant in Russian whether any other men were in the house. The applicant responded that his children were on the second floor of the house and then followed the man outside. In the yard he saw a group of about eight masked men in camouflage uniforms, armed with automatic weapons; the second applicant was showing her brother's documents to them. One of the men sprayed the second applicant's face with a liquid from a spray can and took Sarali Seriyev to a VAZ-21099 car which was parked in the street. The applicant did not see how many cars were in the street. He further stated that his son had a first-degree disability owing to the amputation of his hand.

53. On 5 July 2004 the investigators questioned the second applicant. According to a partial copy of her witness statement furnished by the Government, she stated that Sarali Seriyev had a disability: he had lost his hand as a result of a mine explosion. On 1 June 2004 she had been at home when she had heard from the hallway an order to put her hands up. She saw a man in camouflage uniform holding a machine gun, and her brother Sarali next to him. The man asked whether anyone else, other than the family members, were in the house. When the applicant responded that only family members were in the house, the man asked what had happened to her

brother's hands. The applicant explained that a mine had exploded in his hands and that there were medical documents certifying it. Several more men entered the house and asked her to fetch the documents. After the applicant returned with the papers, they sprayed her in the eyes with tear gas, pushed her into a room and dragged her brother downstairs. She attempted to follow them, but one of the abductors pointed his gun at her and ordered her to get back in the room. Then the applicant decided to call for help from the window; from there she saw several more armed men in camouflage uniforms in the yard and five or six VAZ-21099 cars. All the vehicles were silver-coloured, except for one, which was white. The intruders put Sarali into one of the cars and drove away.

54. On 5 July 2004 the investigators questioned the applicants' neighbour, Mr V.S. According to a partial copy of his witness statement furnished by the Government, he stated that on 1 June 2004 he had been at home when he had heard screams coming from the applicants' house. He went outside and heard the second applicant screaming. Then the witness went to the applicants' house. On the way there he saw a boy who told him that Sarali Seriyev was being taken away. A silver VAZ-21099 with tinted windows was in the street; its registration number was 516, region 95. Four masked men in camouflage uniforms, armed with 5.45 mm machine guns and APS pistols ("*automatic Stechkin pistol*") walked towards the car from the vegetable garden. Judging by the way the men moved, the witness concluded that they were about twenty to twenty-five years old; they were wearing white training shoes. Three men got in the VAZ-21099 car, whereas the fourth one pointed his gun at the witness and said in Russian: "Stop or I will shoot". After that the man also got into the car, which drove away down the street in the direction of the Rostov-Baku auto route. According to the witness, three more silver VAZ-21099 cars, a white VAZ-2110 car and a white minivan GAZ, all with tinted windows, had been parked next to the Seriyevs' house; these vehicles followed the VAZ-21099 in the direction of the Rostov-Baku motorway.

55. On an unspecified date the investigators questioned Mr M.K. who stated that in June 2002 he and other residents of Belgatoy had been on their way back to the village from haymaking. On the road they had seen some objects. Sarali Seriyev picked up one of them. The object exploded in his hands. He was immediately taken to the nearest military checkpoint and from there to the hospital. As the result of the incident Sarali Seriyev had lost his hand.

56. On 8 July 2004 the investigators requested that the Road Traffic Department of the Chechnya Ministry of the Interior (the Chechnya GIBDD) informed them about the owners of vehicles which had numbers 516-95 on their registration plates. According to the response from the authorities, four persons, Mr I.B., Mr S.M., Mr L.Yu. and Mr Kh.V., owned cars with the numbers 516-95 on the plates.

57. In response to the investigators' request, in July 2004 the Shali district department of the Federal Security Service (the FSB) submitted that they had not conducted special operations on 1 June 2004 in Belgatoy and had no information which discredited Sarali Seriyev. A similar response was received in August 2004 from the Security Service of the Chechen President.

58. On 28 July 2004 the investigators forwarded a request to the military prosecutor's office of the UGA and the Shali district department of the interior (the Shali ROVD) asking whether they had conducted a special operation in Belgatoy on 1 June 2004 and whether Sarali Seriyev had been detained in either the UGA detention centre or the ROVD premises. According to their replies, these authorities had no information either concerning a special operation in Belgatoy on 1 June 2004 or detention of the applicants' relative.

59. In February 2005 the investigators forwarded requests to the Achkhoy-Martan district prosecutor's office and the Shelkovskoy district prosecutor's office asking the authorities to question the owners of the four vehicles. According to their responses, it was impossible to question Mr I.B. as his whereabouts had not been established; a neighbour of Mr Kh.V. had stated that the latter had moved to the Shatoi district of Chechnya and therefore could not be questioned. Mr S.M. stated that for three months in 2002 he had owned a dark red 1976 VAZ-21099 with the registration number X516 AX-95, which he had sold to Mr A. from the Samashki village, Chechnya. As for Mr L.Yu., he stated that in December 2003 he had purchased a silver 2003 VAZ-21099 with the registration number T 516 PC95. In February 2004 he had sold the car to a man from Dagestan who had been introduced to him by the owner of a local service station, Mr M.

60. On an unspecified date the head of the criminal search division of the Shelkovskoy ROVD informed the investigators that they could not establish the identity of the new owner of the car which had belonged to Mr L.Yu.

61. The investigators forwarded a number of requests to various detention centres and the district prosecutors' offices in Chechnya asking whether these authorities had detained Sarali Seriyev and whether they had opened criminal proceedings against him. According to the replies received by the investigation, the applicants' relative had not been detained and no criminal proceedings had been opened against him.

62. On an unspecified date the investigation received a letter from the Special Group of the Ministry of the Interior (the MVD) which stated that Sarali Seriyev was listed by the criminal search police as a member of an illegal armed group.

63. According to the Government, the investigation failed to establish the whereabouts of Sarali Seriyev. The investigating authorities sent

requests for information to the competent State agencies and took other steps to have the crime resolved. The investigation found no evidence to support the involvement of Russian military servicemen in the crime, nor did they find any evidence that the applicants' relative was dead.

64. The Government further submitted that the investigation had been suspended and resumed on a number of occasions and that the applicants had been duly informed of all decisions taken during the investigation.

65. Despite specific requests by the Court the Government did not disclose most of the contents of the investigation file in criminal case no. 36076. They provided copies of only a few documents, including only partial copies of the applicants' witness statements to the investigators, and requested the Court to apply Rule 33 § 3 of the Rules of Court concerning confidentiality of the submitted documents and to restrict public access to the submitted documentation. In their request the Government stated that the criminal investigation was still in progress and that public disclosure of the documents could be detrimental to the interests of participants in the criminal proceedings.

66. The Government further stated that a copy of the entire investigation file could not be submitted to the Court owing to the absence of any guarantees on the part of the Court of non-disclosure of the secret data contained in the investigation file. In this respect the Government referred to Article 161 of the Criminal Procedure Code, since the file contained information concerning participants in criminal proceedings. They also cited, by way of comparison, the Rome Statute of the International Criminal Court of 17 July 1998 (Articles 70 and 72) and the Statute of the International Criminal Tribunal for the former Yugoslavia (Articles 15 and 22) and argued that these instruments provided for personal responsibility for a breach of the rules of confidentiality.

II. RELEVANT DOMESTIC LAW

67. 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 IN RESPECT OF THE ABDUCTION

A. The parties' submissions

68. 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 Sarali Seriyev had not yet been completed.

69. The applicants contested that objection. They stated that the only effective remedy in respect of their complaints concerning Sarali Seriyev's abduction was a criminal investigation which had proved to be ineffective.

B. The Court's assessment

70. 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).

71. As regards criminal law remedies, the Court observes that the applicants complained to the law enforcement authorities immediately after the abduction of Sarali Seriyev and that an investigation has been pending since 2 July 2004. The applicants and the Government dispute the effectiveness of the investigation of the kidnapping.

72. 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 applicants' 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 IN RESPECT OF THE ABDUCTION

A. The parties' arguments

73. The applicants maintained that it was beyond reasonable doubt that the men who had abducted Sarali Seriyev were State agents. In support of their complaint they referred to the following facts. At the material time Belgatoy had been under the total control of federal troops. There had been Russian military checkpoints on the roads leading to and from the settlement. Most of the armed men who had abducted Sarali Seriyev had spoken Russian without accent, which proved that they were not of Chechen origin and belonged to the federal forces. The men, who were armed and wearing specific camouflage uniforms, had arrived in a convoy of several vehicles during the daytime, which demonstrated that they had been allowed to drive around and pass through the checkpoints. The abductors were a large group and they acted in a manner similar to that of special forces carrying out identity checks. The applicants further submitted that since Sarali Seriyev had been missing for a very long time 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. Finally, the applicants contended that the Government had failed to provide a satisfactory explanation of the circumstances under which their relative had disappeared.

74. The Government submitted that unidentified armed men had kidnapped Sarali Seriyev. They further contended that the investigation of the incident was pending, that there was no evidence that the men were State agents and that there were therefore no grounds for holding the State liable for the alleged violations of the applicants' rights. They further argued that there was no convincing evidence that the applicants' relative was dead. The Government raised an objection to the applicants' presentation of facts alleging that the applicants' description of the circumstances surrounding the abduction was inconsistent. In particular, they referred to inconsistencies in the applicants' statements provided to the investigation and to the Court in respect of the precise sequence of events during the abduction and the first applicant's submission to the Court concerning his attempts to follow the abductors by car. Referring to the applicants' witness statements given to the investigation, they pointed out that the first applicant had not informed the investigators about his attempt to follow the abductors by car and that both applicants had not mentioned the presence of their relative Imali in the house during the abduction. The Government further submitted that fact that the majority of the abductors spoke unaccented Russian, were wearing

camouflage uniforms and drove around in several vehicles did not mean that these men could not have been members of illegal armed groups or criminals pursuing a blood feud. They asserted that the crime could have been attributable to illegal armed groups and pointed out that groups of mercenaries from Ukraine had committed crimes in the Chechen Republic. They further emphasised that members of illegal armed groups could have passed through the checkpoints in the area under the full control of the Russian federal forces.

B. The Court's evaluation

75. The Court observes that in its extensive jurisprudence it has developed a number of general principles relating to the establishment of the facts of matters 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).

76. The Court notes that despite its requests for a copy of the investigation file into the abduction of Sarali Seriyev, the Government produced only a few documents from the case file, of which some were only partial copies. 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-VIII (extracts)).

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

78. The applicants alleged that the persons who had taken Sarali Seriyev away on 1 June 2004 and then killed him were State agents.

79. The Government suggested in their submissions that the abductors of Sarali Seriyev may have been members of paramilitary groups or criminals pursuing a blood feud. However, these allegations were not specific, and the Government did not submit any material to support them. The Court takes note of the Government's allegation that the firearms and camouflage uniforms had probably been stolen by insurgents from Russian arsenals in the 1990s. Nevertheless, it considers it very unlikely that several vehicles with a number of armed men could have moved freely in broad daylight in an area under the full control of the federal forces and could pass

through military checkpoints without being unnoticed. The Court would stress in this regard that the evaluation of the evidence and the establishment of the facts is a matter for the Court, and it is incumbent on it to decide on the evidentiary value of the documents submitted to it (see *Çelikkilek v. Turkey*, no. 27693/95, § 71, 31 May 2005).

80. The Court notes that the applicants' allegation is supported by the witness statements collected by the investigation. It finds that the fact that a large group of armed men in uniforms was able to drive around and move freely through military roadblocks in several vehicles in broad daylight and proceeded to check identity documents and took the applicants' relative away from his home strongly supports the applicants' allegation that these were State servicemen conducting a security operation. The domestic investigation also accepted factual assumptions as presented by the applicants (see paragraph 38 above); however, it does not appear that they took any serious steps to check whether any state representatives were involved in the abduction.

81. The Government questioned the credibility of the applicants' statements in view of certain discrepancies relating to the exact circumstances of the arrests and the description of the hours immediately following the detention. The Court notes in this respect that no other elements underlying the applicants' submissions of facts have been disputed by the Government. In the Court's view, the fact that over a period of a few years the applicants' 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 their statements.

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

83. Taking into account the above elements, the Court is satisfied that the applicants have made a *prima facie* case that their relative was abducted by State servicemen. The Government's statement that the investigators had not found any evidence to support the involvement of the federal servicemen in the kidnapping or their general reference to the possibility of the involvement of illegal insurgents or criminals in the abduction is insufficient to discharge them from the above-mentioned burden of proof. Having examined the documents submitted by the parties, and drawing inferences from the Government's failure to submit the remaining

documents which were in their exclusive possession or to provide another plausible explanation for the events in question, the Court finds that Sarali Seriyev was arrested on 1 June 2004 by State servicemen during an unacknowledged security operation.

84. There has been no reliable news of Sarali Seriyev 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.

85. Having regard to the previous cases concerning disappearances in Chechnya which have come before it (see, among others, *Bazorkina*, cited above; *Imakayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-... (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; *Akhmadova and Sadulayeva*, cited above; and *Alikhadzhiyeva v. Russia*, no. 68007/01, 5 July 2007), the Court finds that in the context of the conflict in the Republic, when a person is detained by unidentified servicemen without any subsequent acknowledgment of the detention, this can be regarded as life-threatening. The absence of Sarali Seriyev or of any news of him for more than five years supports this assumption.

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

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

87. The applicants complained under Article 2 of the Convention that Bilkis Askhabayeva and Sarali Seriyev had been deprived of their lives by Russian servicemen and that the domestic authorities had failed to carry out an effective investigation of the incidents. 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

88. The Government contended that the domestic investigation had obtained no evidence to the effect that Sarali Seriyev 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 Sarali Seriyev met the Convention requirement of effectiveness, as all measures available under national law were being taken to identify those responsible.

89. The applicants argued that Sarali Seriyev had been detained by State servicemen and should be presumed dead in the absence of any reliable news of him for more than five years. The applicants also argued that the investigation had not met the effectiveness and adequacy requirements, laid down by the Court's case-law. The applicants pointed out that the district prosecutor's office had not taken some crucial investigative steps. The investigation into Sarali Seriyev's kidnapping had been opened a month after the events and then had been suspended and resumed a number of times, thus delaying the taking of the most basic steps, and that the relatives had not been properly informed of the most important investigative measures. The fact that the investigation had been pending for such a long period of time without producing any known results was further proof of its ineffectiveness. They also invited the Court to draw conclusions from the Government's unjustified failure to submit the documents from the case file to them or to the Court.

B. The Court's assessment

1. Admissibility

(a) The alleged violation of the right to life of Bilkis Askhabayeva and the alleged inadequacy of the investigation of her death

90. As for the applicants' allegations concerning the responsibility of State agents for the killing of Bilkis Askhabayeva, the Court observes that the applicants neither challenged the investigators' decision that her death was a result of an accident (see paragraph 10 above), nor their subsequent decision to terminate the criminal case on the grounds of lack of *corpus delicti* and the amnesty act which applied to military officers (see paragraph 12 above). It should be further noted that the applicants successfully brought civil proceedings against the military unit responsible for her death (see paragraphs 18 and 19 above). The Court finds that in bringing these civil proceedings for damages the applicants have used the local remedies available and that in accepting and receiving compensation the applicants have effectively renounced further use of these remedies.

They may no longer in these circumstances claim to be victims of a violation of the Convention within the meaning of Article 34 of the Convention (see *Caraheer v. UK* (dec.), no. 24520/94, ECHR).

91. As for the procedural limb of the applicants' complaint that the investigation into the circumstances of Bilkis Askhabayeva's death was ineffective, the Court observes that the first applicant was granted victim status in the criminal case, which allowed him to participate in the proceedings. However, the applicant did not attempt to take any steps to appeal the authorities' decision to terminate the criminal investigation (see paragraphs 11 and 12 above). In these circumstances the Court notes that the applicants failed to exhaust domestic remedies available to them (see *Yildiz v. Turkey* (dec.), no. 34542/03).

92. The Court concludes that the applicants' complaint under Article 2 of the Convention in respect of the death of Bilkis Askhabayeva must therefore be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

(b) The alleged violation of the right to life of Sarali Seriyev and the alleged inadequacy of the investigation of his disappearance

93. 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 72 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 Sarali Seriyev

94. The Court has already found that the applicants' relative 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 Sarali Seriyev.

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

95. 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).

96. In the present case, the kidnapping of Sarali Seriyev was investigated. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

97. The Court notes at the outset that most of 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.

98. The Court notes that the authorities were immediately made aware of the kidnapping by the applicants' submissions. The investigation in case no. 36076 was instituted on 2 July 2004, that is, a month after Sarali Seriyev's abduction. Such a postponement *per se* was liable to affect the investigation of the kidnapping in life-threatening circumstances, where crucial action has to be taken in the first days after the event. It appears that after that a number of essential steps were delayed or not taken at all. For instance, the investigators did not question the Russian federal servicemen who had been on duty at the checkpoints on the day of the abduction; they had not questioned the applicants' neighbours apart from Mr V.S., who could have also witnessed the abduction (for example, see paragraph 54 above) and they had failed to question any of the local law-enforcement or military officers about their possible involvement in the abduction. 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 matter (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 94, ECHR 2004-XII).

99. The Court also notes that even though the first applicant was granted victim status in the investigation concerning his son's abduction, he 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.

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

101. The Government argued that the applicants could have sought judicial review of the decisions of the investigating authorities in the context of the exhaustion of domestic remedies. The Court observes that the

applicants, having no access to the case file and not being properly informed of the progress of the investigation, could not have effectively challenged acts or omissions of investigating authorities before a court. Furthermore, the Court emphasises in this respect that while the suspension or reopening of proceedings is not in itself a sign that the proceedings are ineffective, in the present case the decisions to adjourn were made without the necessary investigative steps being taken, which led to numerous periods of inactivity and thus unnecessary protraction. Moreover, owing to the time that had elapsed since the events complained of, certain investigative measures that ought to have been carried out much earlier could no longer usefully be conducted. Therefore, it is highly doubtful that the remedy relied on would have had any prospects of success. Accordingly, the Court finds that the remedy cited by the Government was ineffective in the circumstances and dismisses their preliminary objection as regards the applicants' failure to exhaust domestic remedies within the context of the criminal investigation.

102. 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 Sarali Seriyev, in breach of Article 2 in its procedural aspect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

103. The applicants relied on Article 3 of the Convention, submitting that as a result of the death of Bilkis Askhabayeva and Sarali Seriyev's disappearance and the State's failure to investigate these incidents properly they 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

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

105. The applicants maintained their submissions.

B. The Court's assessment

1. Admissibility

a. The applicants' complaint in respect of Bilkis Askhabayeva

106. Firstly, the Court notes that this complaint does not raise a separate issue as the Court has consistently refused to extend the application of Article 3 to the relatives of persons who have been killed by the authorities in violation of Article 2, as opposed to the relatives of the victims of forced disappearances (see *Yasin Ateş v. Turkey*, no. 30949/96, § 135, 31 May 2005). Secondly, it should be noted that the applicants had already been awarded non-pecuniary damages by domestic courts for the mental and emotional suffering they endured in connection with the death of Bilkis Askhabayeva (see paragraphs 18 and 19 above). In these circumstances, the Court concludes that the applicants' complaint under Article 3 of the Convention in respect of the death of Bilkis Askhabayeva must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

b. The applicants' complaint in respect of Sarali Seriyev

107. 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

108. The Court has found on many occasions that in a situation of forced 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).

109. In the present case the Court notes that the applicants are close relatives of the disappeared person, who witnessed his abduction and were involved in searching for him. For several years they have not had any news of the missing man. During this period the applicants have made enquiries of various official bodies, both in writing and in person, about their missing relative. Despite their attempts, the applicants have never received any plausible explanation or information about what became of Sarali Seriyev following his detention. The responses they received mostly denied State responsibility for their relative's arrest or simply informed them that the

investigation was ongoing. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here.

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

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

111. The applicants further stated that Sarali Seriyev 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

112. The Government asserted that no evidence had been obtained by the investigators to confirm that Sarali Seriyev 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.

113. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

114. 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

115. 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).

116. The Court has found that Sarali Seriyev was abducted by State servicemen on 1 June 2004 and has not been seen since. His detention was not acknowledged, was not logged in any custody records and there exists no official trace of his subsequent whereabouts or fate. In accordance with the Court's practice, this 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).

117. The Court further considers that the authorities should have been more alert to the need for a thorough and prompt investigation of the applicants' complaints that their relative 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.

118. In view of the foregoing, the Court finds that Sarali Seriyev 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 6 OF THE CONVENTION

119. In their initial submission the applicants complained that the proceedings related to compensation of damages caused by the death of Bilkis Askhabayeva were unfair. They relied on Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

120. In their observations on the admissibility and merits of the application the applicants stated that they no longer wished to maintain this complaint.

121. The Court finds that the applicants do 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) .).

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

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

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

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

A. The parties' submissions

124. The Government contended that the applicants had had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using them. The applicants had had an opportunity to challenge the acts or omissions of the investigating authorities in court. The Government also stated that participants in criminal proceedings could also claim damages in civil proceedings. They further pointed out that the applicants had successfully applied to domestic courts for compensation for damage caused by the death

of Bilkis Askhabayeva. In sum, the Government submitted that there had been no violation of Article 13.

125. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

a. The applicants' complaint in respect of the death of Bilkis Askhabayeva

126. In so far as the complaint under Article 13 concerns the existence of a domestic remedy in respect of the applicants' complaints under Articles 2 and 3 raised in connection with the death of Bilkis Askhabayeva, the Court notes that these complaints were found inadmissible in paragraphs 92 and 106 above. Accordingly, the applicants did not have an “arguable claim” of a violation of a substantive Convention provision and, therefore, Article 13 of the Convention is inapplicable. It follows that this part of the application should be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

b. The applicants' complaint in respect of the abduction of Sarali Seriyev

127. As for the applicants' complaint concerning the lack of effective remedies in respect of the disappearance of Sarali Seriyev, 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

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

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

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

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

131. 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

132. The applicants did not submit any claims in respect of pecuniary damage. As regards non-pecuniary damage, the applicants claimed 100,000 euros (EUR) jointly in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family members Bilkis Askhabayeva and Sarali Seriyev, the indifference shown by the authorities towards them and the failure to provide any information about the fate of Sarali Seriyev.

133. The Government found the amounts claimed exaggerated.

134. The Court notes that it has found inadmissible the applicants' complaints concerning the death of Bilkis Askhabayeva and that in respect of their complaints concerning Sarali Seriyev a violation of Articles 2, 5 and 13 of the Convention was established. The applicants themselves have been found to have been victims of a violation of Article 3 of the Convention in connection with their relative's disappearance. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the applicants jointly EUR 60,000 plus any tax that may be chargeable thereon.

B. Costs and expenses

135. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews in Ingushetia 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 applicants' legal representation amounted to EUR 9,450.

136. The Government did not dispute the reasonableness and justification for the amounts claimed under this head.

137. The Court has to establish first whether the costs and expenses indicated by the applicants' representatives were actually incurred and, second, whether they were necessary (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 220, Series A no. 324).

138. Having regard to the details of the information and legal representation contract submitted by the applicants, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representatives.

139. As to whether the costs and expenses incurred 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 applicants' representatives submitted their observations on the 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.

140. Having regard to the details of the claims submitted by the applicants, the Court awards them EUR 6,500 together with any value-added tax that may be chargeable to the applicants, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

C. Default interest

141. 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 applicants' complaint under Article 6 of the Convention;
2. *Decides* to join to the merits the Government's objection as to non-exhaustion of domestic remedies and rejects it;
3. *Declares* the complaints under Articles 2, 3 5 and 13 of the Convention lodged in respect of Sarali Seriyev's disappearance admissible and remainder of the application inadmissible;
4. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Sarali Seriyev;
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 Sarali Seriyev disappeared;

6. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
7. *Holds* that there has been a violation of Article 5 of the Convention in respect of Sarali Seriyev;
8. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of the Convention;
9. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
10. *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 60,000 (sixty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicants jointly;
 - (ii) EUR 6,500 (six thousand five hundred euros), plus any tax that may be chargeable to the applicants, 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;
11. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President