



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

FIRST SECTION

CASE OF ALAPAYEVY v. RUSSIA

(Application no. 39676/06)

JUDGMENT

STRASBOURG

3 June 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 Alapayevy 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,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 11 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 39676/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Russian nationals, Ms Lidiya Alapayeva and Ms Tamila Alapayeva (“the applicants”), on 12 September 2006.

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 Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 17 June 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 it 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 the documents from the criminal investigation file deposited with the Registry in connection with the application publicly accessible (Rule 33 of the Rules of Court).

4. The Government objected to the joint examination of the admissibility and merits of the application and to the application of Rule 41 of the Rules of Court. Having considered the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1961 and 1984, respectively. They live in the village of Sernovodsk, in the Sunzhenskiy District, the Chechen Republic.

6. The first applicant is the mother and the second applicant is the wife of Mr Salambek Alapayev, born in 1982.

A. Disappearance of Salambek Alapayev

1. The applicants' account

7. At the material time the first applicant, Salambek Alapayev, the second applicant and their son, and Salman Alapayev (Salambek Alapayev's 75-year old grandfather, now deceased) lived together at 24, Demiyana Bednogo Street, in the village of Sernovodsk, in the Sunzhenskiy District, the Chechen Republic.

8. Salambek Alapayev was employed in a private company trading in medical equipment, "Med-Intel", until November 2004. The company's seat was in Nalchik, in the Kabardino-Balkariya Republic.

9. On the night of 26 December 2004 the family, except the first applicant, who was attending funerals in another village, was sleeping in their house at the above address. At about 3 a.m. on 27 December 2004 the second applicant and Salambek Alapayev were woken up by a noise coming from the front door. A group of eight to twelve armed men in camouflage uniforms burst into the house. They were not wearing masks and were speaking Russian. They neither introduced themselves nor presented any documents. The second applicant inferred that they were servicemen.

10. Three servicemen started kicking Salman Alapayev, while four others grabbed Salambek Alapayev and started beating him with rifle-butts and their boots. The servicemen ordered the second applicant to stay in her room; two of them guarded her. From there the applicant heard the sound of her husband being beaten and begged the servicemen to stop. She also heard the intruders binding Salambek Alapayev's hands with adhesive tape. The servicemen ordered the second applicant to fetch her husband's passport. When she brought it over, together with his driving licence, they took it away. After that the servicemen conducted a quick search of the house. They did not provide any explanation for their actions or reply to her questions as to where and why they were taking her husband.

11. Having spent a short time in the applicant's house, the intruders went outside, dragging Salambek Alapayev, bound and barefoot, with them. Despite the servicemen's orders, the second applicant followed them outside. At the front door she saw Salman Alapayev lying on the ground. He was bleeding and unconscious. At the entrance to the house the servicemen had left the claw hammer with which they had taken the door off its hinges. Outside the second applicant saw the servicemen leave with Salambek Alapayev in a grey UAZ vehicle and a white Gazel vehicle. The abductors' vehicles passed through the roadblock located at the exit from the village to the Baku motorway.

12. A number of neighbours witnessed the abduction of Salambek Alapayev. In particular, at about 3 a.m. on 27 December 2004 L.U. and M.T. saw an APC (armoured personnel carrier) and other vehicles stop at the applicants' house. Both women heard screaming and noise coming from the house, and people speaking Russian. At about 3 a.m. on 27 December 2004 Kh.Kh., who was at her grandmother's house at 22, Demyana Bednogo Street, and Zul.A., another neighbour, were woken up by noise coming from the applicants' house. When they rushed outside, they saw Salambek Alapayev, being taken away tied up and barefoot by unidentified persons. The abductors had several vehicles, including a grey UAZ vehicle and a white Gazel vehicle. The applicants' neighbour Zur.A., who was woken up at about 3 a.m. on 27 December 2004 by noise coming from the applicants' house, tried to go outside but was prevented from doing so by several armed men in camouflage uniforms and masks who ordered her to get back inside her house.

13. Shortly after the armed men had left, the neighbours gathered at the applicants' house. There they saw that the front door had been forced and that Salman Alapayev was lying on the ground, unconscious and bleeding. Zal.A. and Z.B. immediately went to the local department of the interior and alerted the police officers about the abduction of Salambek Alapayev. The servicemen on duty at the entry to the ROVD told them that their vehicles had not left for any operations on that night and that no one had been brought to the ROVD. At the women's request the servicemen called the Achkhoy-Martanovskiy District Department of the Interior. The latter body informed them that they had no relevant information.

14. The applicants have had no news of Salambek Alapayev since 27 December 2004.

15. The above description of the events is based on written statements by the first and second applicants made on 5 February and 1 March 2006 respectively; interview transcripts of the first and second applicants' interviews by their representatives, conducted on 20 February and 11 May 2005 respectively; written statements by Zul.A., Zal.A., Zur.A. and Z.B., made on 4 February 2006, and written statements by L.U., M.T. and Kh.Kh., made on 5 February 2006.

2. Information submitted by the Government

16. The Government submitted that on the night of 27 December 2004 unidentified persons wearing camouflage uniforms had abducted Salambek Alapayev from his house at 24, Demyana Bednogo Street, Sernovodsk, and had taken him to an unknown destination.

B. The search for Salambek Alapayev and the investigation

1. The applicants' account

17. Since 27 December 2004 the applicants have repeatedly applied in person and in writing to various public bodies. They have been supported in their efforts by the NGO SRJI. In their letters to the authorities the applicants referred to their relative's abduction and asked for assistance and details of the investigation. These enquiries mostly remained unanswered, or purely formal replies were given stating that the applicants' requests had been forwarded to various prosecutors' offices. The applicants submitted some of the letters to the authorities and the replies to the Court, which are summarised below.

18. On 28 December 2004 investigators of the Sunzhenskiy District Department of the Interior (the ROVD) arrived at the applicants' house. They conducted a crime scene examination and seized the claw hammer left by the abductors.

19. On the same day the first applicant complained about the abduction of Salambek Alapayev to the Security Council of the President of the Chechen Republic.

20. On 30 December 2004 the prosecutor's office of the Chechen Republic ("the republican prosecutor's office") forwarded the first applicant's complaint about her son's abduction to the Achkhoy-Martanovskiy district prosecutor's office ("the district prosecutor's office") for examination.

21. On 30 December 2004 the district prosecutor's office instituted an investigation into the abduction of Salambek Alapayev under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The criminal case file was given number 59000.

22. On 16 February 2005 the first applicant wrote to the district prosecutor's office. In her letter she described in detail the circumstances of her son's abduction by a group of armed men in camouflage uniforms. She also stated that the abductors, who had arrived in military vehicles, had beaten her relatives and refused to provide any reasons for her son's apprehension. The applicant also pointed out that on the night of the abduction a number of her neighbours had witnessed the vehicles pulling up to her house and leaving with Salambek Alapayev. Lastly, she stated that

her numerous complaints to various law enforcement authorities had failed to produce any results.

23. On 26 March 2005 the first applicant wrote to the prosecutor of the Chechen Republic. She described in detail the circumstances of her son's abduction by a group of armed men in camouflage uniforms, who had arrived in military vehicles, had beaten her relatives and refused to provide the reason for her son's apprehension. The applicant also pointed out that on the night of the events a number of her neighbours had witnessed the vehicles pulling up to her house and leaving with Salambek Alapayev. She further stated that while her son had been working in Nazran, the flat of colleagues of his in that town had been robbed. Salambek Alapayev had allegedly told the first applicant that he had succeeded in obtaining some unspecified information on that incident. The first applicant suggested that that information might have been relevant for the investigation. Lastly, she stated that her numerous complaints to various law enforcement bodies had failed to produce any results.

24. On 17 June 2005 the republican prosecutor's office forwarded the first applicant's complaint about her son's abduction to the district prosecutor's office for inclusion in criminal case no. 59000.

25. On 30 June 2005 the Chechen department of the Federal Security Service ("the Chechen department of the FSB") replied to the first applicant's request. The letter stated that they were undertaking unspecified measures to identify Salambek Alapayev's abductors and establish his whereabouts.

26. On 8 July 2005 the first applicant wrote to the Chechen department of the FSB. She described in detail the circumstances of her son's abduction by a group of armed men in camouflage uniforms. She also stated that the abductors, who had arrived in military vehicles, had beaten her relatives and refused to provide the reason for her son's apprehension. The applicant also pointed out that on the night of the events a number of her neighbours had witnessed the vehicles pulling up to her house and leaving with Salambek Alapayev. Lastly, the applicant stated that her numerous complaints to various law enforcement bodies had not produced any results.

27. On 9 July 2005 the Chechen department of the FSB replied to the first applicant that her complaint about her son's abduction had been forwarded to the district prosecutor's office for examination.

28. On 16 July 2005 the republican prosecutor's office informed the first applicant that her complaint to the Chechen department of the FSB had been included in the criminal case file. The letter also stated that operational-search measures aimed at solving the crime were under way.

29. On 3 August 2005 the first applicant wrote to the district prosecutor's office. She described in detail the circumstances of her son's abduction by a group of armed men in camouflage uniforms. She also stated that the abductors, who had arrived in military vehicles, had beaten her relatives and

refused to provide the reason for her son's apprehension. The applicant also pointed out that on the night of the events a number of her neighbours had witnessed the vehicles pulling up to her house and leaving with Salambek Alapayev. Finally, the applicant stated that her numerous complaints to various law enforcement bodies had failed to produce any results.

30. On 14 October 2005 the applicants' representatives wrote to the district prosecutor's office. They requested information on the progress and the results of the investigation in criminal case no. 59000 and the investigative measures undertaken by the authorities. They also asked that the first applicant be granted the status of a victim in the criminal proceedings and be allowed to familiarise herself with the case file.

31. On 29 December 2005 the applicants' representatives filed a repeated request to the district prosecutor's office. They asked for information concerning the progress and the results of the investigation in criminal case no. 59000 and the investigative measures undertaken by the authorities. They also requested the authorities to grant the first applicant the status of a victim in the criminal proceedings and to provide for her access to the case file.

32. On 11 January 2006 the district prosecutor's office granted the first applicant victim status in connection with the proceedings in criminal case no. 59000.

33. On 2 February 2006 the first applicant wrote to the prosecutor of the Chechen Republic. She again described in detail the circumstances of her son's abduction and the ill-treatment of her relatives by the abductors.

34. On 13 February 2006 the republican prosecutor's office forwarded the first applicant's complaint to the district prosecutor's office for examination.

35. On 28 February 2006 the republican prosecutor's office informed the first applicant that on an unspecified date the investigation in criminal case no. 59000 had been suspended.

36. On 1 March 2006 the district prosecutor's office informed the first applicant that their investigative measures had failed to establish the whereabouts of her son, but that operational-search measures aimed at solving the crime were under way.

37. On 17 January 2007 the first applicant complained to the district prosecutor's office about the unlawfulness of the suspension of the investigation in criminal case no. 59000. She requested the authorities to undertake additional investigative measures to establish the whereabouts of Salambek Alapayev.

38. On 20 January 2007 the district prosecutor's office replied to the applicant, stating that they had allowed her complaint in full and decided to resume the investigation in criminal case no. 59000.

39. On 28 February 2007 the district prosecutor's office informed the second applicant that on 28 February 2007 the investigation in criminal case

no. 59000 had been suspended owing to the failure to establish the perpetrators.

40. On 9 July 2007 the Achkhoy-Martan district department of the Federal Security Service informed the first applicant that her complaint about her son's abduction had been forwarded to the district prosecutor's office for examination.

2. Information submitted by the Government

41. Following the second applicant's complaint to the ROVD, on an unspecified date the district prosecutor's office instituted an investigation into the abduction of Salambek Alapayev under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case file was given the number 59000.

42. On 27 December 2004 an investigator of the ROVD examined the crime scene and seized the claw hammer left by the abductors. The claw hammer was appended to the criminal case file materials.

(a) Witnesses interviewed by the investigators

43. On 27 December 2004 an investigator of the ROVD took a written statement from the second applicant. She stated that at about 3 a.m. on 27 December 2004 she had been woken up by a noise coming from the front door. Shortly after she had sent Salambek Alapayev to check what was going on, a group of armed men in camouflage uniforms and without masks had burst into the room. Having pushed the second applicant aside, they had grabbed Salambek Alapayev and started beating him up. They had tied him up with adhesive tape and dragged him outside, where several vehicles had been parked. The second applicant had been able to describe two of them from memory – a grey UAZ vehicle and a white Gazel vehicle. The armed men had left in those vehicles, taking Salambek Alapayev with them.

44. On the same date the investigator collected written statements from the applicants' neighbours, A.B., Z.B. and M.K. According to an incomplete and partly illegible copy of A.B.'s statement, he had not witnessed the abduction but had heard that the abductors had come in several military vehicles, including a UAZ vehicle. According to Z.B.'s statement, at about 3 a.m. on 27 December 2004 she had heard noise coming from the applicants' house; after a while the second applicant had run to her to tell her that Salambek Alapayev had been abducted. M.K. gave a similar statement.

45. On 6 February 2005 an investigator of the ROVD interviewed as witnesses the first applicant and her neighbour L.U. The first applicant stated that upon her return on 27 December 2004 from funerals in another village the second applicant had told her that at about 3 a.m. on the previous night a group of eight to ten armed men in camouflage uniforms had forced the front door to their house, had tied Salambek Alapayev up with adhesive tape and had taken him away, leaving in several vehicles. According to a

copy of L.U.'s interview record, at about 3 a.m. on 27 December 2004 she had been woken up by the noise of vehicles moving on her street. Having looked outside the window, L.U. had seen a white Gazel vehicle and an APC, which had stopped outside her house for a while and had then moved on. The men inside the vehicles had spoken Russian. L.U. had inferred that they were soldiers. The vehicles had left some fifteen minutes later and L.U. had subsequently learnt that those soldiers had abducted Salambek Alapayev.

46. By a decision of 11 February 2005 the district prosecutor's office granted the second applicant victim status in connection with the proceedings in case no. 59000 and interviewed her. According to a barely legible copy of the interview record, the second applicant submitted that at about 3 a.m. on 27 December 2004 a group of armed men in camouflage uniforms had burst into their house, had beaten her husband up, tied him up with adhesive tape, taken his identity card and taken him away. The abductors had come in a white Gazel vehicle, a grey UAZ vehicle and an APC, none of which had registration plates.

47. Between 15 January and 22 February 2005 an investigator of the district prosecutor's office interviewed as witnesses several residents of Sernovodsk. Insofar as the barely legible copies of the relevant interview records may be deciphered, those witnesses stated that they had not witnessed the abduction but had learnt from their fellow villagers that at about 3 a.m. on 27 December 2004 a group of about ten armed men speaking Russian and driving a white Gazel, a grey UAZ vehicle and an APC without licence plates had abducted Salambek Alapayev from his home at 24, Demyana Bednogo Street.

48. On 24 February 2005 the prosecutor's office of the town of Nalchik interviewed as witnesses R.D. and Z.N., a deputy director and a personnel manager of the company "Med-Intel", where Salambek Alapayev had been employed. R.D. and Z.N. stated that the applicants' relative had been employed in that company as a sales manager and that he had not had any conflicts at work.

49. Between 11 February and 9 April 2005 investigators of the ROVD and the district prosecutor's office interviewed as witnesses a number of residents of Sernovodsk. According to copies of the witness' interviews and in so far as those copies are legible, the witnesses submitted that they had not witnessed the abduction of the applicants' relative but had learnt on 27 and 28 December 2004 from their fellow villagers that at about 3 a.m. on 27 December 2004 a group of eight to ten armed men in camouflage uniforms, who had arrived in a grey UAZ vehicle, a white Gazel vehicle and an APC without licence plates, had abducted Salambek Alapayev from his home at 24, Demyana Bednogo Street in Sernovodsk.

50. Between 31 January and 11 February 2007 the district prosecutor's office interviewed as witnesses other residents of Sernovodsk. According to

copies of their interview records, on 27 December 2004 the witnesses had learnt from their fellow villagers and Salambek Alapayev's relatives that on the previous night a group of eight to twelve armed men in camouflage uniforms had burst into the applicants' house. The intruders had been speaking Russian. They had not introduced themselves and had taken Salambek Alapayev to an unknown destination. The armed men had arrived in a grey UAZ vehicle, a white Gazel vehicle and an APC.

(b) Further investigative steps

51. On unspecified dates unspecified authorities inspected checkpoints nos. 186, 188 and 190; no objects were seized during the inspection.

52. On unspecified dates the investigating authorities instructed their colleagues in the Chechen Republic and several other regions in Russia to verify whether officers of any law-enforcement authorities had arrested Salambek Alapayev or remanded him in custody or whether his body had been discovered. No relevant information was received as a result of those investigative steps.

53. On unspecified dates the investigating authorities requested various authorities, including the prosecutor of military unit no. 20102 and the military commander of the Achkhoy-Martanovskiy District, to inform them if any special operations had been conducted in Sernovodsk on 26-27 April 2004 and whether Salambek Alapayev had been detained by any law-enforcement authorities under their command. No relevant information was received.

54. On 20 January 2007 the district prosecutor's office granted the first applicant's request and resumed the investigation in case no. 59000.

55. According to the Government, the investigation into the abduction of the applicants' relative was pending.

(c) The Court's request for a copy of case file no. 59000

56. Despite specific requests by the Court the Government did not disclose most of the contents of criminal case no. 59000, providing only a copy of the crime scene inspection report, a decision to grant the second applicant victim status and copies of the witness' interview records summarised in paragraphs 43-50 above. Most of the documents furnished by the Government were either partly or fully illegible. The Government submitted 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 and would run counter to the interests of unidentified participants in the criminal proceedings.

(d) Documents from the case file concerning the robbery of Salambek Alapayev's colleagues

57. The Government furnished copies of interview records of victims and witnesses in criminal case no. 33706 opened into the robbery of Salambek Alapayev's colleagues from the company "Med-Intel" in Nazran, Ingushetiya. From those documents it follows that on 29 November 2004 two armed persons wearing camouflage uniforms without insignia and masks had burst into the flat rented by S.D. and A.T. and had taken their money, personal belongings and their car.

II. RELEVANT DOMESTIC LAW

58. 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

59. 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 Salambek Alapayev had not yet been completed. They further argued that it had been open to the applicants to challenge before higher-ranking prosecutors and courts any acts or omissions of the investigating or other law-enforcement authorities, but that the applicants had not availed themselves of that remedy. They also pointed out that the applicants had not lodged a claim for compensation for non-pecuniary damage under Articles 1069-70 of the Civil Code.

60. The applicants contested that objection. They stated that the criminal investigation had proved to be ineffective and that their complaints to that effect had been futile. With reference to the Court's practice, they argued that they were not obliged to apply to civil courts in order to exhaust domestic remedies.

B. The Court's assessment

61. 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).

62. The Court notes that the Russian legal system provides, in principle, two avenues of recourse for the victims of illegal and criminal acts attributable to the State or its agents, namely, civil and criminal remedies.

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

64. As regards criminal law remedies provided for by the Russian legal system, the Court observes that the applicants complained to the law enforcement authorities immediately after the kidnapping of Salambek Alapayev and that an investigation has been pending since 30 December 2004. The applicants and the Government dispute the effectiveness of the investigation of the kidnapping.

65. 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. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

66. The applicants complained under Article 2 of the Convention that their relative had been deprived of his life by the 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

67. The Government contended that the domestic investigation had obtained no evidence that the applicants' relative had been abducted or killed by State agents or that the State authorities had conducted a special operation in Sernovodsk on the night of his abduction. There had been no eyewitnesses to the abduction, apart from the second applicant. The majority of the persons interviewed by the investigation had testified that they had learnt about the abduction of the applicants' relative from third parties. Before the domestic authorities the applicants themselves had suggested that their relative's abduction might have been connected to his attempts to investigate the robbery of his colleagues. Although the robbers of Salambek Alapayev's colleagues had also been wearing camouflage uniforms and masks and had been armed, the applicants had not suggested that they were State agents. Lastly, there had been inconsistencies in the applicants' and witnesses' submissions. In particular, whilst in her written statement the second applicant stated that the abductors had come in a UAZ vehicle and a Gazel vehicle, in her statement appended to the application form she had mentioned a Gazel vehicle and two UAZ vehicles. At the same time, witnesses interviewed by the authorities had referred to a UAZ vehicle, a Gazel vehicle and an APC.

68. The Government further argued that the investigation into the disappearance of Salambek Alapayev was being conducted by an independent authority which had checked various versions of the abduction, interviewed numerous witnesses and made numerous requests for information. The applicants had been duly notified of the developments in the investigation. Although the investigation had been suspended on several occasions, it did not mean that it was ineffective.

69. The applicants argued that Salambek Alapayev had been detained by State agents and should be presumed dead in the absence of reliable news of him for several years. They pointed out that the Government did not dispute that their relative had been detained by about twelve persons wearing uniforms, speaking Russian and driving a UAZ and a Gazel vehicle. Contrary to the Government's assertion, the second applicant and Zul.A. had eyewitnessed the abduction of Salambek Alapayev. The fact that the applicants had informed the investigating authorities about the robbery of Salambek Alapayev's colleagues had simply meant that they had been

cooperating with the investigation by furnishing information which might have been relevant for the investigation. Lastly, they invited the Court to draw conclusions from the Government's failure to submit a copy of the entire case file no. 59000 to the Court.

70. The applicants further submitted that the investigation into their relative's abduction had not met the effectiveness and adequacy requirements laid down by the Court's case-law. In particular, the authorities had failed to take all the necessary investigative steps, such as looking for tyre tracks, foot- or fingerprints during the crime scene inspection. Despite the evidence of involvement of State agents in the abduction, no representatives of the State had been interviewed in the course of the investigation. The witness' statements produced by the Government were almost identical in content, which showed the superficial nature of the interviews. The applicants had not been properly informed about the progress of the investigation.

B. The Court's assessment

1. Admissibility

71. 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 65 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 Salambek Alapayev

(i) General principles

72. The Court reiterates that, in the light of the importance of the protection afforded by Article 2, it must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Detained persons are in a vulnerable position and the obligation on the authorities to account for the treatment of a detained individual is particularly stringent where that individual dies or disappears thereafter (see, among other authorities, *Orhan v. Turkey*, no. 25656/94, § 326, 18 June 2002, and the authorities cited therein). Where the events in issue lie wholly or in large part within the exclusive knowledge of the authorities, as in the case of persons under their

control in detention, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Çakıcı v. Turkey* [GC], no. 23657/94, § 85, ECHR 1999-IV).

(ii) *Establishment of the facts*

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

74. The applicants alleged that at about 3 a.m. on 27 December 2004 their relative, Salambek Alapayev, had been abducted by servicemen and had then disappeared. They invited the Court to draw inferences as to the well-foundedness of their allegations from the Government's failure to provide the documents requested from them. They submitted that the second applicant and several other persons had witnessed their relative's abduction and enclosed their written statements to support that submission.

75. The Government conceded that Salambek Alapayev had been abducted by unidentified armed men on 27 December 2004. However, they denied that the abductors had been servicemen, referring to the absence of conclusions from the ongoing investigation.

76. The Court notes that despite its requests for a copy of the investigation file into the abduction of Salambek Alapayev, the Government refused to produce most of the documents from the case file, referring 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-XIII (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.

78. Contrary to the Government's assertion, the Court does not find any major inconsistencies in the description of the events of 27 December 2004 by the applicants and witnesses. In particular, in her statement submitted to the Court the second applicant clearly referred to one grey UAZ vehicle and one white Gazel vehicle. This was confirmed by the statements of other witnesses (see paragraph 13 above). Furthermore, in their statements, whose accuracy was not contested by the Government, L.U. and M.T. submitted to have seen an APC and "other vehicles" near the applicants' house at the

time of the abduction (*ibid.*). In sum, the Court considers that the applicants presented an overall coherent and convincing picture of Salambek Alapayev's abduction on 27 December 2004.

79. The applicants submitted that the abductors, who had been driving in a convoy of several vehicles, had left the village through one of its checkpoints located at the exit from the village to the Baku motorway. The Government did not challenge that submission as inaccurate or unreliable. They stated that the investigating authorities had inspected checkpoints nos. 186, 188 and 190. However, they refused to provide any further information in that respect or to furnish any related documents.

80. In the Court's view, the fact that a large group of armed men in uniform, moving in a convoy of military vehicles, including an APC, was able to pass freely through checkpoints, proceeded to check documents in a manner similar to that of State agents and spoke unaccented Russian strongly supports the applicants' allegation that those persons were State servicemen.

81. The Court notes that in their applications to the authorities the applicants consistently maintained that Salambek Alapayev had been detained by unknown servicemen and requested the investigating authorities to look into that possibility. It further notes that after more than five years the investigation has produced no tangible results.

82. In so far as the Government argued that the applicants' relative's abduction on the night of 26 December 2004 might have been connected with the robbery of his colleagues in Nazran on 29 November 2004, they furnished no evidence to suggest that the investigators had genuinely pursued that hypothesis, if at all. The documents concerning the robbery and produced by the Government pertain to another criminal case and nothing permits the Court to surmise that that information had been verified within the framework of criminal case no. 59000 opened into the abduction of Salambek Alapayev.

83. 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 (extracts)).

84. 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 investigation had not found any evidence to support the involvement of servicemen in the

kidnapping and their vague and unsupported reference to the possibility that Salambek Alapayev's abduction might have been connected with the robbery of his colleagues is insufficient to discharge them from the above-mentioned burden of proof. 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 Salambek Alapayev was arrested on 27 December 2004 by State servicemen during an unacknowledged security operation.

85. There has been no reliable news of Salambek Alapayev 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.

86. 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-VIII (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 Salambek Alapayev or of any news of him for more than five years supports this assumption.

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

(iii) *The State's compliance with Article 2*

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

89. The Court has already found it established that the applicants' relative must be presumed dead following unacknowledged detention by State servicemen. Noting that the authorities do not rely on any ground of justification in respect of any use of lethal force by their agents, it follows

that liability for his presumed death is attributable to the respondent Government.

90. Accordingly, the Court finds that there has been a violation of Article 2 in respect of Salambek Alapayev.

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

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

92. The Court notes at the outset that the Government refused to produce the majority of the documents from case file no. 59000 and furnished mostly copies of witness' interview records, most of which were partly or fully illegible (see paragraph 56 above). It therefore has to assess the effectiveness of the investigation on the basis of the very scarce information submitted by the Government and the few documents available to the applicants that they provided to the Court.

93. Turning to the facts of the present case, the Court observes that the applicants notified the authorities of the abduction immediately after it had occurred. The investigation was opened on 30 December 2004. Thus, the Court is satisfied that it was instituted with sufficient promptness.

94. The Court further has to assess the scope of the investigative measures taken. From the documents furnished by the Government it follows that the investigating authorities inspected the crime scene and interviewed a significant number of residents of Sernovodsk and also some of Salambek Alapayev's colleagues in Nazran. The Government also submitted that the investigation had taken other steps, such as inspecting the checkpoints and enquiring of various law-enforcement authorities whether

they had conducted a special operation in Sernovodsk or had arrested Salambek Alapayev. However, they have produced no documents, such as copies of the inspection reports or requests to the authorities and replies to those requests, to corroborate their submissions. Accordingly, not only is it impossible to establish how promptly those measures were taken, but whether they were taken at all.

95. Furthermore, it appears that a number of crucial steps were never taken. In particular, there is no indication that any attempts have been made to identify the owners of the APC and other vehicles by establishing which military units or other law-enforcement authorities were equipped with APCs, where those vehicles had been located at the time of the abduction and on whose orders they had been used. It does not appear that any attempts have been made to establish the itinerary of the vehicles. There is also no evidence that any officials of local law-enforcement and military authorities were questioned in that connection.

96. It is obvious that, if they were to produce any meaningful results, these investigative measures should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation commenced. The delays and omissions, 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).

97. The Court further notes that while the second applicant was granted victim status on 11 January 2005, it was only on 11 January 2006 that the district prosecutor's office decided to recognise the first applicant as a victim in the proceedings in case no. 59000. It also transpires from the applicants' repeated and mostly unanswered requests for information addressed to the investigating authorities that they were hardly informed of any developments in the investigation. 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.

98. Finally, the Court notes that the investigation was adjourned and resumed on numerous occasions. It also appears that there were lengthy periods of inactivity on the part of the prosecuting authorities when no investigative measures were being taken.

99. Having regard to the limb of the Government's preliminary objection that was joined to the merits of the complaint, inasmuch as it concerns the fact that the domestic investigation is still pending, the Court notes that the investigation, having been repeatedly suspended and resumed and plagued by inexplicable delays, has been pending for many years with no tangible results. Furthermore, the applicant, having had no access to the case file and not having been properly informed of the progress of the investigation,

could not have effectively challenged any acts or omissions on the part of the investigating authorities before a court. Moreover, owing to the time which 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 prospect of success. Accordingly, the Court finds that the remedies relied on by the Government were ineffective in the circumstances and dismisses their preliminary objection.

100. 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 Salambek Alapayev, in breach of Article 2 in its procedural aspect.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

101. The applicants relied on Article 3 of the Convention, submitting that as a result of their relative's disappearance and the State's failure to investigate it 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

102. 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.

103. The applicants maintained their complaints.

B. The Court's assessment

1. Admissibility

104. 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

105. 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*, cited above § 358, and *Imakayeva*, cited above, § 164).

106. In the present case the Court notes that the applicants are the mother and the wife of the disappeared person. The second applicant witnessed his abduction. For more than five 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 Salambek Alapayev. Despite their attempts, the applicants have never received any plausible explanation or information about what became of him following his abduction. 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.

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

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

108. The applicants further stated that Salambek Alapayev 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

109. The Government asserted that no evidence had been obtained by the investigators to confirm that Salambek Alapayev had been deprived of his liberty.

110. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

111. 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

112. 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).

113. The Court has found that Salambek Alapayev was apprehended by State servicemen on 27 December 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 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).

114. 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.

115. In view of the foregoing, the Court finds that Salambek Alapayev 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.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

116. 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

117. 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. They also pointed out that it was open to the applicants to lodge a claim for compensation for non-pecuniary damage under Articles 1069-70 of the Civil Code. In sum, the Government submitted that there had been no violation of Article 13.

118. The applicants reiterated the complaint.

B. The Court's assessment

1. Admissibility

119. 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

120. 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).

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

122. 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).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

123. 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

124. The applicants claimed that they had sustained damage in respect of the loss of Salambek Alapayev's earnings following his apprehension and disappearance. The first applicant claimed a total of 510,914.76 Russian roubles (RUB) under this head (approximately 12,873 euros (EUR)). The second applicant claimed RUB 717,573.27 (approximately EUR 18,079).

125. The applicants submitted that at the material time Salambek Alapayev had been unemployed and that in such cases the calculation should be made on the basis of the subsistence level established by national law. With reference to the relevant provisions of the Civil Code and the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary Department in 2007 (“the Ogden tables”), the applicants calculated Salambek Alapayev's earnings with an adjustment for 10% yearly inflation and submitted that the first applicant should be entitled to 25% of the total amount of his earnings. The second applicant claimed that she would be entitled to the same percentage as the first applicant and that until they reached the age of majority her two children would be entitled to a further 20% of her husband's income each.

126. The Government argued that the applicants' claims were unsubstantiated and that they had not made use of the domestic avenues for obtaining compensation for the loss of their breadwinner.

127. 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 conclusions above, it finds that there is a direct causal link between the violation of Article 2 in respect of the applicants' relatives and the loss to them of the financial support which he could have provided.

128. Having regard to the applicants' submissions and the fact that Salambek Alapayev was not employed at the time of his apprehension, the Court awards EUR 4,000 to the first applicant and EUR 7,000 to the second applicant in respect of pecuniary damage plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

129. The applicants claimed EUR 40,000 each in respect of non-pecuniary damage for the suffering they had endured as a result of the loss of their family member, the indifference shown by the authorities towards him and the failure to provide any information about the fate of their close relative.

130. The Government found the amounts claimed exaggerated.

131. 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 applicants' relative. The applicants themselves have been found to have been victims of a violation of Article 3 of the Convention. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards EUR 15,000 to the first applicant and EUR 45,000 to the second applicant plus any tax that may be chargeable to them.

C. Costs and expenses

132. 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 the SRJI lawyers and EUR 150 for the SRJI senior staff, as well as administrative expenses, translation and courier delivery fees. The aggregate claim in respect of costs and expenses related to the applicants' representation amounted to EUR 6,485.54, to be paid into the applicants' representatives' account in the Netherlands.

133. The Government pointed out that the applicants should be entitled to the reimbursement of their costs and expenses only in so far as it had been shown that they had actually been incurred and were reasonable as to quantum (see *Skorobogatova v. Russia*, no. 33914/02, § 61, 1 December 2005).

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

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

136. As to whether the costs and expenses incurred for legal representation were necessary, the Court notes that this case was rather complex and required a certain amount of research and preparation. It notes, however, that the case involved little documentary evidence, in view of the Government's refusal to submit most of the case file. Furthermore, 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 the case involved the amount of research claimed by the applicants' representatives.

137. Lastly, the Court notes that it is its standard practice to rule that awards in relation to costs and expenses are to be paid directly into the applicants' representatives' accounts (see, for example, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 175, ECHR 2005-VII, and *Imakayeva*, cited above).

138. Having regard to the details of the claims submitted by the applicants, the Court awards them EUR 5,000, together with any value-added tax that may be chargeable to the applicants; the net award is to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;
2. *Declares* the application admissible;
3. *Holds* that there has been a substantive violation of Article 2 of the Convention in respect of Salambek Alapayev;

4. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Salambek Alapayev disappeared;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants;
6. *Holds* that there has been a violation of Article 5 of the Convention in respect of Salambek Alapayev;
7. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2;
8. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5;
9. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the date of settlement, save in the case of the payment in respect of costs and expenses:
 - (i) EUR 4,000 (four thousand euros) to the first applicant and EUR 7,000 (seven thousand euros) to the second applicant, plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 15,000 (fifteen thousand euros) to the first applicant and EUR 45,000 (forty five thousand euros) to the second applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) EUR 5,000 (five thousand 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;
10. *Dismisses* the remainder of the applicants' claim for just satisfaction.

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

Søren Nielsen
Registrar

Christos Rozakis
President