

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

FIRST SECTION

CASE OF ALBAKOVA v. RUSSIA

(Application no. 69842/10)

JUDGMENT

STRASBOURG

15 January 2015

FINAL

01/06/2015

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Albakova v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Mirjana Lazarova Trajkovska,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 9 December 2014,

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

PROCEDURE

1. The case originated in an application (no. 69842/10) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Ms Petimat Khozhakhmetovna Albakova ("the applicant"), on 17 November 2010.

2. The applicant was represented by EHRAC/Memorial Human Rights Centre, a non-governmental organisation based in Moscow and London. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that her son had been abducted, tortured and killed by unidentified State agents in the Ingushetiya Republic.

4. On 14 December 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1956 and lives in Ordzhonikidzevskoye, Ingushetiya Republic.

A. Disappearance and death of Batyr Albakov

6. According to the applicant, on 10 July 2009 she was at her flat with her two daughters, her son Batyr Albakov and his wife. At about 5.30 a.m. four men arrived at the flat to carry out a passport check. They introduced themselves as officers of the Nazran District Department of the Interior. The men were armed, some were wearing camouflage uniforms and the rest were in civilian clothes. They spoke Russian, Chechen and Ingush. They checked the passports of the applicant's family members and then announced that they were taking Batyr Albakov to the police station to complete the identity check. There were four other men waiting outside the building. At the time, Batyr Albakov was wearing black trousers and a black-and-white striped shirt with short sleeves. The applicant was not allowed to accompany him.

7. The men and Batyr Albakov left in two silver VAZ 2110 cars. The applicant's neighbour, Ms M. Galayeva, witnessed their departure. The applicant was able to remember part of the registration number of one of the cars, which appeared to have been registered in the Chechen Republic.

8. On the same day the applicant saw several silver VAZ cars parked at the premises of the operational search unit (hereinafter "the ORB-2"). She also saw a group of men in camouflage uniforms exit the building. Among them she identified three of the men who had fetched her son. The men got into one of the cars and left before the applicant was able to talk to them.

9. On 21 July 2009 the applicant read on the internet that her son had been shot dead by State servicemen in the course of a counter-terrorist operation in a forest close to Arshty, a village in the Ingushetiya Republic. According to the website, Batyr Albakov had been a member of an illegal armed group and had been offering active armed resistance to the federal forces. It was claimed that a number of items including a Kalashnikov machine gun and its ammunition, one bullet shell, fragments of a spent grenade, a backpack containing clothes and the deceased's passport were found at the scene. Mr M. Albakov, the uncle of the deceased, identified Batyr Albakov's body in the morgue in Nazran. The deceased was then dressed in a camouflage uniform.

10. On the same day medical forensic expert O. conducted a forensic examination of Batyr Albakov's body. He documented seven gunshot wounds which the deceased had sustained shortly before his death and considered them to be the cause of his death. He further noted five bruises on the deceased's legs and arms, which the latter could have sustained shortly before his death. The camouflage uniform was removed, packed, sealed and admitted as evidence. The report made no mention of the presence of gunshot residue on the deceased's body.

11. On 22 July 2009 the deceased's naked body wrapped in a cellophane bag was taken to the applicant's flat. The applicant, one of her daughters,

her son's wife and some other relatives saw multiple injuries on his body, including a gunshot wound to his chest, stab wounds, fractured bones, burns and bruises. His left arm was partially severed. The applicant's daughter took photographs of Batyr Albakov's body and injuries.

B. Investigation into Batyr Albakov's abduction and death

12. On 10 July 2009 the applicant addressed a complaint to the Suzhenskiy District prosecutor's office in respect of her son's disappearance. In her statement she expressed doubts as to whether the persons who had taken Batyr Albakov had been State agents and asked the prosecutor to open a criminal investigation into his disappearance. She also contacted the Suzhenskiy District department of the interior, alleging that her son had been abducted by unidentified State agents. On the same day she asked the Ministry of the Interior of the Ingushetiya Republic and the Ingushetiya Republic department of the Federal Security Service to provide her with information about her son's detention. In response, the applicant was informed that her son had not been in the custody of the said authorities and that they had no information as to his whereabouts.

13. On 13 and 14 July 2009 an investigator at the prosecutor's office questioned the applicant and her two daughters, L. and Z. Albakova, about the events of 10 July 2009. They gave some information as to the registration number of one of the vehicles used by the alleged abductors and claimed that they could identify the perpetrators.

14. On 23 July 2009 a senior investigator, G., of the district prosecutor's office refused to open a criminal investigation into Batyr Albakov's alleged abduction. In his decision the investigator summed up the statements provided by the applicant's family as regards the events of 10 July 2009. He further noted that he had not yet received any materials concerning the operation conducted by law-enforcement officers at the applicant's residence and concluded that there was no evidence to support her allegations.

15. On 24 July 2009 the applicant provided a statement to the prosecutor's office of the Ingushetiya Republic, alleging that law-enforcement agents were implicated in her son's abduction, torture and unlawful killing. Referring to the traces of decomposition on his body, she considered that her son had been executed by the law-enforcement agents before 21 July 2009.

16. On 27 July 2009 the head of the Sunzhenskiy district investigative division of the prosecutor's office of the Ingushetiya Republic quashed the decision of 23 July 2009, noting that the inquiry conducted by the investigator was incomplete, and remitted the matter to him for further inquiry.

17. On 1 August 2009 the Sunzhenskiy District prosecutor's office opened a criminal investigation concerning an unidentified person on charges of attempted killing of State agents, unlawful possession of firearms and participation in an illegal armed group. The criminal case file was given number 09600099.

18. On 24 August 2009 the investigator ordered a new forensic examination of Batyr Albakov's body.

19. On 28 August 2009 O. conducted a new forensic examination of Batyr Albakov's body. He reproduced verbatim the summary of his findings in his previous report of 21 July 2009, according to which the deceased had been wearing a camouflage uniform at the time of the examination.

20. On 10 September 2009 the investigator questioned forensic expert O., who confirmed that he had observed a number of penetrating gunshot wounds on the deceased. He added that he had seen bruises on the deceased's arms and legs, which could have been caused by blows by, or collisions with, a blunt object. O. denied that the left arm of the deceased had been partially severed. Lastly, he concluded that the cause of death had been multiple gunshots which the deceased must have sustained some four to six hours prior to the examination of the body on 21 July 2009.

21. On 14 September 2009 the applicant again asked the prosecutor's office of the Ingushetiya Republic to open a criminal investigation into the abduction and unlawful killing of her son by law-enforcement agents.

22. On 24 September 2009 the applicant was notified that her application had been added to criminal case no. 09600099.

23. On 1 November 2009 the investigator closed criminal case no. 09600099. Referring to the crime-scene examination report, forensic evidence (examination of the bullet shell, the machine gun and its ammunition and the fragments of the spent grenade found at the crime scene, and the examination of the deceased's body) and the statements made by the applicant and her family, the investigator concluded that sufficient evidence collected in the course of the criminal investigation indicated that Batyr Albakov had attempted to kill a law-enforcement agent and the case should be closed in view of his death.

24. On 3 November 2009 the head of the Sunzhenskiy district investigative division of the prosecutor's office of the Ingushetiya Republic quashed the decision of 1 November 2009 and re-opened the criminal investigation. In particular, he stated that the investigator had failed to verify the circumstances of Batyr Albakov's abduction (the alleged perpetrators had not been questioned, the cars used by the persons who had abducted the deceased had not been identified, and Batyr Albakov's alleged involvement in a terrorist organisation had not been confirmed).

25. On 1 December 2009 the investigator refused to institute criminal proceedings into the abduction of the deceased. The investigator concluded that Batyr Albakov had been released by "the persons who had abducted

him" and that he had been a member of an illegal armed group who "had threatened the life of State agents" on 21 July 2009.

26. The applicant appealed against the decision of 1 December 2009. According to her, her son had been kidnapped by State agents. He had then been tortured and killed by them. In order to disguise those crimes, the agents had taken her son's body to the forest and left it there together with a Kalashnikov machine gun, alleging that he had been killed when attempting to assault them. When the applicant had received her son's body, it had already started to decompose and was covered with numerous injuries such as bruises, burns and cuts. His arm had been almost completely severed.

27. On 29 March 2010 the Sunzhenskiy District Court of the Ingushetiya Republic dismissed the applicant's allegations as unsubstantiated, upholding the investigator's findings of 1 December 2009. On 18 May 2010 the Supreme Court of the Ingushetiya Republic upheld the decision of 16 January 2010 on appeal.

28. According to the Government, in the course of the investigation into the activities of an illegal armed group, one of the suspects testified that Batyr Albakov had been a leading member of the group.

29. On 14 May 2012 the criminal investigation into the circumstance of Batyr Albakov's death was re-opened. The investigator questioned two military officers, I. and M., who had participated in the operation conducted by Ministry of the Interior forces on 21 July 2009. They submitted that in the course of the operation Batyr Albakov had opened gunfire against their military unit and they had had to put an end to his attack and had shot back at him. He had died in the exchange of gunfire. The investigator also noted that he had been unable to determine whether the vehicles used by the alleged abductors had belonged to the State in view of the destruction of the relevant documentation.

30. On 15 June 2012 the investigator closed the investigation into the events of 21 July 2009.

C. Independent forensic examination

31. On 12 October 2010 the applicant submitted the digital photographs of Batyr Albakov's body taken by his sister to an independent expert centre.

32. On 1 November 2010 forensic medical experts examined the photographs. They considered that some of them could not be examined in view of their poor quality. From the remainder of the photographs, the experts discerned four wounds: a gunshot wound on the right side of the chest; a deep wound on the left shoulder joint, probably resulting from a blow by a blunt solid object; a surface wound on the left side of the chest (the experts ruled out the possibility of its being a gunshot wound); and a wound on the left side of the back, possibly caused by a hollow rectangular box-shaped object. In addition to the bruises documented in the official

forensic report, the experts noted abrasions and bruises on the deceased's chest. Lastly, they concluded that all the injuries visible in the photographs of Batyr Albakov must have been caused while he was still alive.

II. RELEVANT DOMESTIC LAW AND PRACTICE

33. For a summary of the relevant domestic law and practice see *Aslakhanova and Others v. Russia*, (nos. 2944/06, 8300/07, 50184/07, 332/08 and 42509/10, §§ 43-59 and §§ 69-84, 18 December 2012).

THE LAW

I. THE COURT'S ASSESSMENT OF THE EVIDENCE AND THE ESTABLISHMENT OF THE FACTS REGARDING THE ALLEGED ABDUCTION AND DETENTION OF THE APPLICANT

A. The parties' submissions

34. Referring to her account of the events of 11 July 2009 (see paragraphs 6-8), the applicant maintained that her son Batyr Albakov had been abducted, detained, tortured and executed by State agents. The Russian authorities had falsely accused him of being a member of an illegal armed group in an attempt to cover up State agents' unlawful actions.

35. The Government denied any involvement of its agents in Batyr Albakov's abduction. They argued that Batyr Albakov had been a member of an illegal armed group and considered that the abduction had been staged by his co-conspirators. In their opinion, the applicant's allegations concerning her son's abduction, detention and torture lacked any evidentiary basis.

B. The Court's assessment

36. A number of principles have been developed in the Court's case-law as regards cases where the Court is faced with the task of establishing facts on which the parties disagree. As to the facts that are in dispute, the Court refers to its jurisprudence requiring the standard of proof "beyond reasonable doubt" in its assessment of evidence (see *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII (extracts)). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of

the parties when evidence is being obtained has to be taken into account (see *Tanış and Others v. Turkey*, no. 65899/01, § 160, ECHR 2005–VIII).

37. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Articles 2 and 3 of the Convention, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336; and *Avşar*, cited above, § 283), even if certain domestic proceedings and investigations have already taken place.

38. The Court reiterates that it has noted the difficulties for applicants to obtain the necessary evidence in support of allegations in cases where the respondent Government are in possession of the relevant documentation and fail to submit it. Where the applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to the lack of such documents, it is for the Government to convince the Court that 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).

39. The Court has previously found the Russian State authorities responsible for extra-judicial executions or disappearances of civilians in the Chechen Republic in a number of cases, even in the absence of final conclusions from the domestic investigation (see *Khashiyev and Akayeva*, cited above; *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-XIII (extracts); *Estamirov and Others v. Russia*, no. 60272/00, 12 October 2006; and *Baysayeva v. Russia*, no. 74237/01, 5 April 2007). It has done so primarily on the basis of witness statements and other documents attesting to the presence of military or security personnel in the area concerned at the relevant time. It has relied on references to military vehicles and equipment, on witness accounts, on other information on security operations and on the undisputed effective control of the areas in question by the Russian military. On that basis, it has concluded that the areas in question were "within the exclusive control of the authorities of the State" in view of military or security operations being conducted there and the presence of servicemen (see, for example, *Zubayrayev v. Russia*, no. 67797/01, § 82, 10 January 2008).

40. However, on the basis of the account of the events given by the applicant in the present case, the Court has little evidence on which to draw such conclusions.

41. The Court observes that the documents submitted by the Government provide no evidence of a security operation having taken place on 10 July 2009. As to the applicant's submissions, she and her relatives witnessed the abduction of Batyr Albakov. In support of her argument that her son had been abducted by State agents, she argued that the men who had taken her son had been armed, spoke Russian, Chechen and Ingush and that some of them had been wearing camouflage uniforms and had arrived in civilian VAZ cars.

42. The Court is not convinced, however, that those details necessarily prove that the men were State servicemen. The applicant did not allege that the camouflage uniform some of the men had been wearing had borne any of the insignia characteristic of the uniform of State agents. It cannot be ruled out that the uniform, as well as the firearms carried by the men, could have been obtained by them via various, possibly illegal, channels. Furthermore, there are no witness statements confirming that Batyr Albakov was taken to any State agency after his abduction. In this connection, the Court also takes into account the applicant's own statement to the prosecutor's office in which she expressed doubts as to the affiliation of the kidnappers with any State agency (see paragraph 12 above).

43. Accordingly, the information in the Court's possession does not suffice to establish that Batyr Albakov was kidnapped and held in detention by State agents. In such circumstances, the Court cannot attribute responsibility for the unlawful acts in the present case to the respondent State without additional evidence to that effect.

44. It has not, therefore, been established to the required standard of proof "beyond reasonable doubt" that State agents were implicated in the abduction and ensuing detention, if any, of Batyr Albakov.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

45. The applicant complained that her son, Batyr Albakov, had been unlawfully killed by State agents and that the domestic authorities had failed to carry out an effective investigation in that connection. She relied on Article 2 of the Convention, which reads as follows:

> "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."

46. The Government conceded that Batyr Albakov had been deprived of his life by State agents. They argued, however, that the use of lethal force against him had been lawful. Batyr Albakov had been a member of an illegal armed group. On 21 July 2009 he had opened fire at the servicemen attempting to arrest him. The law-enforcement officers had been constrained to put an end to the unlawful actions of Batyr Albakov, who had been armed with a machine gun, and to protect their own lives. In so doing, they had acted in accordance with domestic law.

47. The applicant maintained her complaint. She denied the Government's allegations that her son had belonged to an illegal armed group. She submitted that her son had been abducted and killed by State agents. In her opinion, at the time of his death he had been in the State's custody and it had been impossible for him to offer active armed resistance to the federal forces. Furthermore, the fact that only one bullet shell had been found at the crime scene refuted the Government's allegation of an exchange of gunfire between her son and the State agents. Nor did the photographs of Batyr Albakov's body taken by her family confirm the Government's allegations as regards the injuries sustained by her son or the time of his death. The applicant also rejected the Government's argument that the use of force against her son had been lawful. She noted that they had not put forward any argument capable of justifying the use of lethal force against the deceased. Lastly, she argued that the domestic authorities had failed to carry out an effective investigation into the circumstances of her son's death. In particular, she pointed out the following deficiencies and omissions on the part of the authorities: the investigation into her son's abduction had been delayed; the investigator had failed to take any measures in order to establish Batyr Albakov's whereabouts, to identify the alleged perpetrators or the vehicles used by them; and the authorities had done nothing to establish whether the use of lethal force employed by law-enforcement agents against the deceased had been justified or to question the witnesses to the shooting. The applicant had not been afforded any procedural status and had been excluded from the investigation. As a result, she had been unable to obtain access to certain materials until after her present application had been communicated to the Government for observations.

A. Admissibility

48. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. General principles

49. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances in which deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. The situations where deprivation of life may be justified are exhaustive and must be narrowly interpreted. The use of force which may result in the deprivation of life must be no more than "absolutely necessary" for the achievement of one of the purposes set out in Article 2 § 2 (a), (b) and (c). This term indicates that a stricter and more compelling test of necessity must be employed than that normally applicable when determining whether State action is "necessary in a democratic society" under the second paragraphs of Articles 8 to 11 of the Convention. Consequently, the force used must be strictly proportionate to the achievement of the permitted aims (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-50, Series A no. 324; *Andronicou and Constantinou v. Cyprus*, § 171, 9 October 1997, *Reports of Judgments and Decisions* 1997-VI; *Oğur v. Turkey* [GC], no. 21594/93, § 78, ECHR 1999-III; and *Bazorkina v. Russia*, no. 69481/01, § 103, 27 July 2006).

50. In determining whether the force used is compatible with Article 2, it may therefore be relevant whether a law-enforcement operation has been planned and controlled so as to minimise to the greatest extent possible recourse to lethal force or incidental loss of life (see *McCann and Others*, cited above, § 194; and *Ergı v. Turkey,* 28 July 1998, § 79, *Reports* 1998-IV).

51. In addition to setting out the circumstances in which deprivation of life may be justified, Article 2 implies a primary duty on the State to secure the right to life by putting in place an appropriate legal and administrative framework defining the limited circumstances in which law-enforcement officials may use force and firearms, in the light of the relevant international standards (see *Makaratzis v. Greece* [GC], no. 50385/99, §§ 57-59, ECHR 2004-XI; and *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 96, ECHR 2005-VII). Furthermore, the national law regulating policing operations must secure a system of adequate and effective safeguards against arbitrariness and abuse of force, and even against avoidable accident (see *Makaratzis*, cited above, § 58; and *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 209, ECHR 2011 (extracts)). In particular, law-enforcement agents must be trained to assess whether or not there is an absolute necessity to use firearms, not only on the basis of the letter of the relevant regulations, but also with due regard to the pre-eminence of respect for human life as a fundamental value (see *Nachova*, cited above, § 97).

2. Application of the above principles to the present case

(a) Killing of Batyr Albakov

52. The Court notes from the outset that it has not been established to the required standard of proof "beyond reasonable doubt" that the security forces were implicated in the abduction and detention of Batyr Albakov (see paragraphs 41-44 above). On the other hand, it takes into account that the parties do not dispute that Batyr Albakov was killed by the Russian military. Accordingly, the Court's task in the present case is to determine whether the use of force against Batyr Albakov by State servicemen on 21 July 2009 was compatible with Article 2 of the Convention.

53. In this respect, the Court notes that the information presented to it is rather scarce. The Government have not submitted any documents pertaining to the planning and control of the operation carried out by the military unit of the Ministry of the Interior of the Ingushetiya Republic in a forest near the village of Arshty on 21 July 2009. Nor is there any detailed information in the materials of the investigative case file submitted by the Government pertaining to the events in question. The Court concedes that the forensic evidence collected at the crime scene may be said to support, in part, the Government's allegation that Batyr Albakov took part in an exchange of gunfire with State servicemen. However, apart from that, the Government submitted few materials suggesting that necessary steps had been taken to minimize the recourse to lethal force against Batyr Albakov. The statements of the two officers who had participated in the operation disclosed no specific details as to the course of the operation (see paragraph 29 above).

54. In such circumstances, the Court is precluded from adequately assessing the planning-and-control phase of the security operation. Nor is there a sufficient evidentiary basis on which to establish that the servicemen took appropriate care to ensure that any risk to the life of Batyr Albakov was kept to a minimum.

55. The above considerations are sufficient to warrant the conclusion that the respondent State has not discharged its burden of proof to show that, at the relevant time, the authorities did all that could be reasonably expected of them to avoid the real and immediate risk to life which they knew was likely to arise in the course of the operation in question (see, *mutatis mutandis*, *Makaratzis*, cited above, § 71, and *Leonidis v. Greece*, no. 43326/05, § 66, 8 January 2009).

56. Accordingly, the Court finds that there has been a violation of Article 2 of the Convention in respect of the killing of Batyr Albakov.

(b) The alleged inadequacy of the investigation into the killing

57. 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 *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, carried out with reasonable promptness and expedition, effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances or otherwise unlawful, and afford a sufficient element of public scrutiny of the investigation or its results (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-09, ECHR 2001-III (extracts); and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

58. The Court observes that the authorities did carry out an investigation into the circumstances of Batyr Albakov's killing. They conducted an initial inquiry and then instituted an official criminal investigation. It is not convinced, however, that the investigation met the requirements of Article 2 of the Convention.

59. Firstly, the Court observes that the prosecuting authorities did virtually nothing to verify the applicant's allegations as regards the alleged abduction and unacknowledged detention of Batyr Albakov. In particular, the Court notes that the investigator did nothing to elucidate the fact of law-enforcement officers' involvement in the alleged abduction, even though the applicant and members of her family claimed that they could identify the alleged perpetrators if they had a chance to see them and had even seen three of them at the ORB-2 premises. It appears from the materials in the case file that the investigator attached such significant weight to the assumption that the applicant's son had been a member of an illegal armed group that he considered it unnecessary to follow up on any exculpating evidence presented to him.

60. The Court further observes that the national authorities took few investigative measures in connection with the shooting of Batyr Albakov. Between 2009 and 2011 no actual witnesses of the shooting were identified. It was only after the present application had been communicated to the Government for observations – that is, almost three years after the events in question – that the investigator located and questioned two servicemen who had taken part in the military operation of 21 July 2009 which resulted in Batyr Albakov's shooting. The Court also notes the fact that nothing was done in connection with the applicant's allegations as to the validity of the medical forensic examination of Batyr Albakov's body. In particular, the

Court finds no explanation in the materials presented by the Government as to why the second forensic examination – conducted approximately a month after Batyr Albakov's body had been released to his family and the camouflage uniform in which he had been found had been sealed and admitted as evidence – reproduced verbatim the expert's findings of 21 July 2009, including that the body of the deceased was again dressed in a camouflage uniform. The Court notes that no fingerprints were taken from the machine gun found next to his body and his hands were not swabbed for gunshot residue (see paragraph 10 above).

61. The Court also notes that the applicant was not promptly informed of significant developments in the investigation. It therefore considers that the investigators failed to ensure that the investigation received the required level of public scrutiny, and to safeguard the interests of the next of kin in the proceedings (see *Oğur*, cited above, § 92).

62. Lastly, the Court notes that the investigative authorities did not grant the applicant the procedural status of a victim. As a result, she could not exercise the procedural rights accompanying that status or participate in the proceedings effectively. As pointed out by the applicant, the materials of the investigation were not disclosed to her in full and she did not become aware of their content until after her application had been communicated to the Government.

63. In the light of the foregoing considerations, the Court finds that the domestic authorities failed to carry out an effective criminal investigation into the killing of Batyr Albakov, in breach of the procedural aspect of Article 2.

III. ALLEGED VIOLATION OF ARTICLES 3 AND 5 OF THE CONVENTION

64. The applicant complained that her son had been abducted, detained and subjected to torture while in the custody of the State. She referred to Articles 3 and 5 of the Convention, which read as follows:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 5

"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:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation 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;

supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

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

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

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."

65. The Government contested the applicant's allegations.

66. The Court observes that it has not found it established "beyond reasonable doubt" that Batyr Albakov was abducted by State agents (see paragraphs 41 to 44 above). Similarly, it cannot presume that following his kidnapping the deceased was placed in detention under the control of State agents and subjected to ill-treatment while in custody.

67. It follows that this part of the application is manifestly ill-founded and should be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

68. The applicant further complained that she had been deprived of effective remedies in respect of the aforementioned violations, contrary to Article 13 of the Convention, which provides as follows:

"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."

69. The Government contended that the applicant had had effective remedies at her disposal, as required by Article 13 of the Convention. She had had an opportunity to challenge the actions or omissions, if any, on the part of the investigative authorities, and had, in fact, made use of those remedies.

70. The applicant maintained her complaint.

71. The Court observes that the complaint made by the applicant under this Article has already been examined in the context of Article 2 of the Convention. Given that it has found a violation of the procedural aspect of Article 2 (see paragraph 63 above), the Court considers that, whilst the complaint under Article 13 taken in conjunction with Article 2 is admissible, there is no need to make a separate examination of this complaint on its merits (see, *mutatis mutandis*, *Makaratzis*, cited above, §§ 84-86; and *Anık and Others v. Turkey*, no. 63758/00, § 86, 5 June 2007).

72. As to the applicant's allegations that the State authorities did not conduct an investigation into her complaint that Batyr Albakov had been subjected to ill-treatment while in State custody, the Court reiterates its findings above in respect of the applicant's complaint under Article 3 of the Convention. It follows that the applicant did not have an "arguable claim" under Article 3 of the Convention and her complaint does not attract the guarantees of Article 13. The complaint is accordingly rejected under Article 35 §§ 3 (a) and 4 of the Convention.

73. Lastly, in so far as the applicant might be understood to rely on Article 13 in respect of her grievances under Article 5 of the Convention, the Court reiterates that, in accordance with its established case-law, the more specific guarantees of Article 5, being a *lex specialis* in relation to Article 13, absorb its requirements. Accordingly, a separate issue under Article 13 of the Convention does not arise in the present case. It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. 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

75. The applicant claimed 80,000 euros (EUR) in respect of non-pecuniary damage. She considered that the Russian authorities should carry out a fresh investigation into the killing of her son, Batyr Albakov.

76. The Government considered the applicant's claim excessive. They submitted that, should the Court find a violation of her rights under the Convention, in the circumstances of the case, a finding of a violation would constitute sufficient just satisfaction.

77. The Court observes that it has found a violation of Article 2 of the Convention on account of the killing of the applicant's son and the ineffective investigation into the matter. The applicant must have suffered anguish and distress which cannot be compensated for by a mere finding of a violation. Having regard to those considerations, the Court awards the applicant, on an equitable basis, EUR 60,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to her.

B. Costs and expenses

78. The applicant also claimed 1,800 pounds sterling (GBP) in respect of legal costs and expenses, and GBP 3,397.90 for office costs (work of an administrative assistant, postage, telephone and stationery) and expenses incurred before the Court.

79. The Government considered that the applicant's claim for costs and expenses was excessive and that she had not demonstrated that they had been necessarily incurred.

80. In accordance with the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,300 covering costs under all heads, to be paid into the representatives' UK bank account as indicated by the representatives.

C. Default interest

81. The Court considers it appropriate that the default interest rate 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. *Declares* the applicant's complaints under Articles 2 and 13 of the Convention in respect of the killing of Batyr Albakov and the ensuing investigation admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 2 of the Convention under its substantive limb;

3. *Holds* that there has been a violation of Article 2 of the Convention under its procedural limb;

4. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention in conjunction with Article 2;

5. *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:

(i) EUR 60,000 (sixty thousand euros) to the applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(ii) EUR 3,300 (three thousand three hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the representatives' bank account in the UK;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 15 January 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President