



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

FIRST SECTION

CASE OF ALIKHADZHIYEVA v. RUSSIA

(Application no. 68007/01)

JUDGMENT

STRASBOURG

5 July 2007

FINAL

30/01/2008

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

In the case of Alikhadzhiyeva v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 14 June 2007,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 68007/01) 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, Mrs Zura Chiiyevna Alikhadzhiyeva (“the applicant”), on 23 March 2001.

2. The applicant was represented by the lawyers of the NGO EHRAC/Memorial Human Rights Centre. The Russian Government (“the Government”) were represented by their Agent, Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that her son had disappeared after being detained by Russian servicemen in Chechnya in May 2000. She relied on Articles 2, 3, 5 and 13 of the Convention.

4. By a decision of 8 December 2005 the Court declared the application admissible.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1941 and lives in Shali, Chechnya.

7. The submissions by the parties are summarised below in Part A. The documents submitted by the parties, notably the criminal investigation file provided by the Government, are summarised below in Part B.

A. The submissions of the parties

1. The circumstances of the applicant's son's detention

8. The applicant lives in Shali, a town about 40 km to the south-east of Grozny, in her own house at 97 Suvorova Street. Her son Ruslan Alikhadzhiyev, born in 1961, lived at the same address, together with his wife and four minor children. Their other relatives also lived at the same address.

9. From 1997 to 1999 the applicant's son Ruslan Alikhadzhiyev was the speaker of the Chechen Parliament (“the Parliament of the Chechen Republic of Ichkeria”). The applicant submitted that in 1999, following the resumption of hostilities, her son had not taken part in them and had tried to organise peace talks.

10. On 17 May 2000 Ruslan Alikhadzhiyev was at home with the applicant, who had been sick. At about 11.15 a.m. several armoured personnel carriers (APCs) of the Russian forces arrived at the house. About 20 armed servicemen in camouflaged uniform surrounded the house and neighbouring buildings, while two helicopters were hovering above the district. Masked men in camouflage entered the applicant's house and ordered all those present to lie face down on the floor. After that they put handcuffs on the applicant's son and forced him into an APC. During the arrest no documents were produced and no reasons for the arrest were explained.

11. Together with Ruslan Alikhadzhiyev, five of the applicant's neighbours were taken away from at their homes: three men from the D. family, who lived at 88 Suvorova Street; B., who had come to repair a car at the D. family's house; and M., who lived at 98 Suvorova Street. Those five men were released the following day and told the applicant what had happened after their arrest.

12. They testified in writing that initially four of them had been placed in one APC, together with Ruslan Alikhadzhiyev, while M. was in the

second APC. They were blindfolded, and a black bag was placed on Ruslan Alikhadzhiyev's head. The APCs travelled in the direction of Grozny.

13. Once they passed the village of Germenchuk, they stopped and M. was transferred into the same APC as the other five men. The detainees were forbidden to talk. After a while Ruslan Alikhadzhiyev asked a masked officer to loosen his handcuffs because his hands had gone numb, but his request was refused. After a while he asked a second time. The officer checked his hands and also took his watch, documents and money from his pocket. After an hour or two of travelling they arrived at a place where they were ordered to descend.

14. The detainees remained blindfolded and were led into some underground premises. There they were ordered to squat along the walls. Each of them was hit on the head with an iron rod and told to keep silent. Three of the detainees, but not Ruslan Alikhadzhiyev, were called one by one for questioning, which took place outside the cellar, in a sort of barn. The questioning was carried out by several servicemen in camouflage and masks who did not identify themselves. The detainees were asked similar questions about their identity, whether they had taken part in the hostilities and what they knew about Ruslan Alikhadzhiyev.

15. After the questioning they were taken to another cellar, where they were permitted to take off the blindfolds. The five neighbours were all taken to that cellar, but Ruslan Alikhadzhiyev was not. They spent the night in the cellar and in the morning they were blindfolded again, taken out and put into an APC. After about one and a half hours' ride they were ordered to get out and to lie on the ground. The military told them to remain motionless for another 20 minutes, otherwise they would be shot. They heard the noise of the APC departing and after a while lifted their blindfolds. They found themselves not far from the road leading from Shali to the village of Avtury. They were picked up by passing transport and returned to Shali.

16. The applicant and other members of the family have had no news of Ruslan Alikhadzhiyev since 17 May 2000.

2. Subsequent investigation

17. Immediately after the detention of Ruslan Alikhadzhiyev the applicant, along with her other son and Ruslan Alikhadzhiyev's wife, started to search for him. On numerous occasions, both in person and in writing, they applied to prosecutors at various levels, the Ministry of the Interior, the administrative authorities in Chechnya, the Special Envoy of the Russian President in the Chechen Republic for rights and freedoms, the media and public figures. In their efforts they were supported by several NGOs and public figures.

18. In their letters to the authorities the family stated the facts of Ruslan Alikhadzhiyev's detention and asked for assistance and details of the

investigation. They also personally visited detention centres and prisons in Chechnya as well as further afield in the Northern Caucasus.

19. The applicant's family received hardly any substantive information from the official bodies about the investigation into Ruslan Alikhadzhiyev's disappearance. On several occasions they were sent copies of letters stating that their requests had been forwarded to different prosecutors' offices. At first officials seemed to confirm Mr Alikhadzhiyev's detention, but, following well-publicised rumours in August 2000 about his death in a detention centre they denied any involvement in his arrest and detention.

20. On 25 May 2000 Lieutenant-General Manilov, first deputy to the Chief of Staff of the Russian Armed Forces, announced at a press conference that a number of commanders of illegal armed groups had been detained or killed. Listing the names, he said that on 20 May 2000 Ruslan Alikhadzhiyev had been captured.

21. On 1 June 2000 the State news agency RIA Novosti reported that "as a result of a special operation agents of the Federal Security Service (FSB) have captured one of the closest allies of Maskhadov, Ruslan Alikhadzhiyev". Referring to unnamed sources, the agency reported that Mr Alikhadzhiyev was being detained and questioned at the FSB detention centre in Chechnya and had given statements about Maskhadov's further plans.

22. On 8 September 2000 the Moscow-based pre-trial detention centre of the FSB stated in reply to a lawyer hired by the applicant that Ruslan Alikhadzhiyev had never been detained there.

23. On 21 September 2000 during parliamentary hearings in the State Duma on the situation in Chechnya, the Deputy Prosecutor General, Mr Biryukov, was asked a question about the whereabouts of Ruslan Alikhadzhiyev. He replied that in May 2000 the latter had been kidnapped from his home in Shali by a group of unknown armed people. According to operational information, these were fighters who had killed him in August 2000.

24. On 8 December 2000 the Chechnya Prosecutor replied to an enquiry by the Special Envoy of the Russian President in the Chechen Republic concerning a number of complaints about disappearances. The letter stated that on 7 July 2000 the Shali District Prosecutor's Office had opened criminal investigation no. 22025 into the detention by unidentified persons in camouflage of the former speaker of the Chechnya Parliament, R. Alikhadzhiyev. The investigation had been opened under Article 126 of the Criminal Code (kidnapping). The whereabouts of Mr Alikhadzhiyev had not been established. The letter stated that the investigation was under the special supervision of the Chechnya Prosecutor.

25. Attached to the letter of 8 December 2000 was a brief information note concerning criminal case no. 22025. This note stated that the criminal case had been opened on 7 July 2000 under Article 126 of the Criminal

Code. The investigation had established that on 17 May 2000 a group of unidentified men in camouflage had arrived in several APCs at the Alikhadzhiyevs' house, broken into it and taken away Ruslan Alikhadzhiyev and several other persons who had been in the house. On the following day other persons had been released, but they could not give any information concerning the place of their detention or Mr Alikhadzhiyev's whereabouts. The investigators sent requests for information to the FSB and the Ministry of the Interior, in reply to which the Shali District Temporary Department of the Interior (VOVD) denied that Mr Alikhadzhiyev had ever been arrested or detained by its officers.

26. On 24 February 2001 the Chechnya Prosecutor's Office replied to the NGO Memorial concerning the investigation into several cases of disappearances. In relation to Ruslan Alikhadzhiyev, the Deputy Prosecutor wrote that in the course of the investigation of criminal case no. 22025 requests for information had been forwarded to the FSB, the Ministry of the Interior and the Ministry of Defence. None of these agencies had detained Mr Alikhadzhiyev, and the investigation continued.

27. In August 2004 the application was communicated to the Russian Government, who were requested at that time to submit a copy of investigation file no. 22025. In their memorials submitted in reply the Government gave some details of the investigation, without specifying the dates of the investigative measures. However, they did not submit any copies of the documents to which they referred. The Government stated that the investigation was pending and that the disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure because the file contained information of a military nature and personal data concerning the witnesses. At the same time, the Government suggested that a Court delegation could access the file at the place where the preliminary investigation was being conducted with the exception of "the documents [disclosing military information and personal data of the witnesses], and without the right to make copies of the case file and transmit it to others".

28. In December 2005 the Court declared the application admissible and reiterated its request for the documents. In response, the Government submitted a detailed update of the investigation and the documents from the criminal investigation file (see Part B below).

29. According to this information, the investigation was opened on 27 July 2000 (not on 7 July, as stated before) by the Shali District Prosecutor's Office. It established that on 17 May 2000 the applicant's son had been detained at his house by unknown armed men wearing camouflaged uniforms of the Russian armed forces and masks, using two APCs, UAZ vehicles and helicopters. Five other men were also detained and taken, supposedly, to either the Argun grain elevator or a meat-packing factory. On the following day the five men were released.

30. It appears from the information submitted by the Government and some documents contained in the case file that in October 2000 the police questioned four of the five men who had been detained together with the applicant's son. The fifth man was questioned in March 2001. According to the Government, on 17 March 2001 the applicant was questioned and granted victim status. Also on 17 March 2001 the investigation questioned Ruslan Alikhadzhiyev's wife as a witness. In September 2001 another eyewitness to Mr Alikhadzhiyev's arrest was questioned. However, the case file submitted by the Government does not contain copies of any of the witness statements. These transcripts are also not mentioned in the list of documents contained in the investigation file.

31. Various detention centres and military and law-enforcement bodies denied that Ruslan Alikhadzhiyev's name had ever been in their records. The investigation did not establish his whereabouts or the identities of the persons who had kidnapped him. It does not appear that any separate information was sought about the details of the special operation carried out in Shali on 17 May 2000. No one was charged with any crime. Between July 2000 and April 2004 the investigation was adjourned 11 times. The applicant was informed of some of the decisions to adjourn and to reopen the proceedings.

B. Documents submitted by the Government

32. The Government submitted about 90 documents (about 120 pages) comprising criminal investigation file no. 22025 and a list of documents contained therein. They can be summarised as follows.

1. Decision to open criminal investigation

33. On 27 July 2000 a prosecutor from the Shali District Prosecutor's Office opened a criminal investigation into the abduction of Ruslan Alikhadzhiyev from his house at 97 Suvorova Street, Shali by unidentified armed persons on 27 May 2000 at about 11.15 a.m. The decision referred to Article 126, paragraph 2, of the Criminal Code (kidnapping).

2. Information from the lawyer and family members

34. On 13 June 2000 the lawyer instructed by the applicant to represent her son in criminal proceedings requested the Chechnya Prosecutor to grant him access to Ruslan Alikhadzhiyev and to investigate the legality of his detention. He referred to the information from Mr Alikhadzhiyev's family about the circumstances of his detention and the news of it that had been broadcast on the ORT TV channel on 1 June 2000 at 6 p.m.

35. The investigation attempted to question Ruslan Alikhadzhiyev's brother R., who did not live at home, but the applicant refused to indicate

his whereabouts. In February 2004 an investigator from the Shali District Prosecutor's Office noted that "the relatives and friends of Alikhadzhiyev had categorically refused to give statements and explained that they were tired of dealing with the law-enforcement bodies on the same matters again and again".

3. Search for Ruslan Alikhadzhiyev

36. The investigation tried to obtain information about Ruslan Alikhadzhiyev from different sources. A number of law-enforcement agencies and detention centres in Chechnya, the Northern Caucasus and further afield in the Russian Federation, including pre-trial detention centre no. 20/02 in Chernokozovo, denied that he had ever been arrested or detained by them. They also denied that they had ever carried out any "operational and search measures" in respect of Ruslan Alikhadzhiyev or that he had ever been charged with a crime.

37. On 28 August 2001 the investigation requested the Shali VOVD to identify the units that had been involved in the special operation aimed at Mr Alikhadzhiyev's capture.

4. Witness statements

38. On 27 February 2001 officers from the Shali VOVD forwarded to the investigating prosecutors copies of transcripts of the witness statements made by two men who had been detained together with Ruslan Alikhadzhiyev, and by the applicant. They also listed three other eyewitnesses to the arrest. It is unclear whether they were questioned, as the case file submitted by the Government does not contain any of the statements mentioned.

5. Information from the media

39. In October 2001 the investigation questioned a journalist from the newspaper *Moskovskiye Novosti*, the author of the article "Clearing-Up", published on 20 June 2000. The journalist stated that he had received information about Ruslan Alikhadzhiyev's detention by special forces from some Chechens and from Mr Alikhadzhiyev's lawyer.

40. In February 2003 the legal service of the ORT informed the investigation that the channel's news programme broadcast at 6 p.m. on 1 June 2000 had not contained a story about Mr Alikhadzhiyev's detention.

6. The prosecutors' orders

41. At different stages of the proceedings several orders were issued by the supervising prosecutors enumerating the steps to be taken by the investigators. On 23 October 2000 a prosecutor from the Chechnya Prosecutor's Office noted that "the investigation was unsatisfactory... In

fact, the investigator did not carry out any procedural steps.” He ordered, among other things, that a plan of action be drawn up, that the applicant and Ruslan Alikhadzhiyev's wife be questioned, that other detainees be questioned again and steps be taken to identify the place where they had been detained, and that other eyewitnesses be identified and questioned. Similar orders were given on 20 February 2001.

42. On 8 July 2003 the Shali District Prosecutor ordered all the circumstances of Ruslan Alikhadzhiyev's disappearance to be fully investigated. In particular, the investigation body was requested to obtain answers to the information requests and to collect information from the law-enforcement bodies about Mr Alikhadzhiyev's possible involvement in illegal activities.

43. The investigation was adjourned and reopened 11 times. The latest decision to adjourn the investigation owing to the failure to identify the culprits was taken on 29 April 2004.

II. RELEVANT DOMESTIC LAW

44. Until 1 July 2002 criminal-law matters were governed by the 1960 Code of Criminal Procedure of the Russian Soviet Federalist Socialist Republic. From 1 July 2002 the old Code was replaced by the Code of Criminal Procedure of the Russian Federation (CCP).

45. Article 161 of the new CCP establishes the rule of impermissibility of disclosing data from the preliminary investigation. Under paragraph 3 of the Article, information from the investigation file may be divulged only with the permission of a prosecutor or investigator and only so far as it does not infringe the rights and lawful interests of the participants in the criminal proceedings and does not prejudice the investigation. Divulging information about the private life of participants in criminal proceedings without their permission is prohibited.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION AS TO EXHAUSTION OF DOMESTIC REMEDIES

1. Arguments of the parties

46. The Government requested the Court to declare the case inadmissible as the applicant had failed to exhaust domestic remedies. They submitted that the investigation into the abduction was continuing in

accordance with the domestic legislation. The applicant had not applied to a court with a complaint against the actions of the investigating authorities or against her son's illegal detention. The Government also referred to the Constitution and other legal instruments which permitted individuals to appeal to the courts against actions of the administrative bodies which infringed citizens' rights. The applicant had not applied to a court in Chechnya or further afield in the Northern Caucasus with any complaints, and had therefore failed to use the domestic remedies available.

47. The applicant disagreed with the Government's objection. First, she argued that the Russian Federation had failed to satisfy the requirement that the remedy was "an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaint and offered reasonable prospects of success" (she cited *Akdivar and Others v. Turkey*, judgment of 30 August 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1210, § 68). She stated that there was no suggestion that any remedy was available to her which could satisfy these criteria.

48. She further argued that the civil remedies referred to by the Government could not establish the perpetrators of the crime in the absence of conclusions from the criminal investigation. She regarded other references by the Government as manifestly implausible and asked the Court to dismiss the Government's preliminary objection.

2. *The Court's assessment*

49. In the present case, the Court took no decision about the exhaustion of domestic remedies at the admissibility stage, having found that this question was too closely linked to the merits. It will now proceed to examine the arguments of the parties in the light of the provisions of the Convention and its relevant practice (for a recent summary, see *Estamirov and Others v. Russia*, no. 60272/00, § 73-74, 12 October 2006).

50. 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.

51. 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. A civil court is unable to pursue any independent investigation and is incapable, without the benefit of the conclusions of a criminal investigation, of making any meaningful findings regarding the identity of the perpetrators of fatal assaults, still less to establish their responsibility (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 applicant was not obliged to pursue civil remedies. The preliminary objection in this regard is thus dismissed.

52. As regards criminal-law remedies, the Court observes that the applicant complained to the law-enforcement agencies immediately after Ruslan Alikhadzhiyev's arrest and that an investigation has been pending since July 2000. The applicant and the Government dispute the effectiveness of this investigation.

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

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

54. The applicant alleged that her son had been unlawfully killed by agents of the State. She also submitted that the authorities had failed to carry out an adequate investigation into the circumstances of his arrest and death. She relied on Article 2 of the Convention, which 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 alleged violation of the right to life of Ruslan Alikhadzhiyev

1. Arguments of the parties

55. The applicant argued that there could be no reasonable doubt that the Russian servicemen had detained Ruslan Alikhadzhiyev on 17 May 2000 and then deprived him of his life. In support of her complaint she referred to the following evidence that was not challenged by the Government: the eyewitness statements about her son's detention by uniformed servicemen who had used APCs and helicopters, the statements by the men who had been detained along with him that they had been detained and questioned by

servicemen, and the statement by Lieutenant-General Manilov on 25 May 2000 about Ruslan Alikhadzhiyev's capture by the federal forces. Almost six years later no information had been obtained about his whereabouts. She submitted that her son must be presumed dead in circumstances engaging the responsibility of the Russian authorities. She argued that situations of unacknowledged detention in Chechnya should be regarded as life-threatening, seen within the context of the armed conflict in Chechnya which had already claimed thousands of lives. She also referred to the rumours that her son had either been killed or had died in custody.

56. The Government submitted that there was no conclusive evidence to support the applicant's allegations that the authorities were responsible for the detention of Ruslan Alikhadzhiyev or that he was dead. The identity of the persons who had detained him remained unknown. Numerous military and law-enforcement bodies had replied that they had no information about Mr Alikhadzhiyev's detention or whereabouts.

2. *The Court's assessment*

57. 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). In the light of these principles, the Court will identify certain crucial elements in the present case that should be taken into account when deciding whether Ruslan Alikhadzhiyev can be presumed dead and whether his death can be attributed to the authorities.

58. The applicant submitted that Ruslan Alikhadzhiyev had been detained by servicemen during a security operation and then killed. In support of her version of events she referred to a number of factual elements, none of which has been disputed by the Government. In particular, the parties do not contest that Ruslan Alikhadzhiyev was detained on 17 May 2000 at his home in Shali by a large group of armed men in camouflage uniform. The group used at least two military APCs and other vehicles, such as UAZ all-terrain vehicles, as well as the support of helicopters. It is further uncontested that five other men living in the neighbouring houses were detained at the same time and were later able to submit details of their detention. The detainees had been blindfolded, placed in two APCs and taken to a nearby location, where they had last seen Ruslan Alikhadzhiyev. At that location they were questioned by masked men in camouflage about their identity, whether they had taken part in the hostilities and what they knew about Ruslan Alikhadzhiyev (see paragraphs 14-15 above). The five men had spent the night at that location and on the following day they had been blindfolded again, put into an APC and released in a forest not far from Argun.

59. The Government at no point suggested that the persons who had detained Ruslan Alikhadzhiyev and five other men were members of paramilitary groups and there is no material available to the Court to support such an assertion. On the contrary, the fact that a large group of armed men in uniform, equipped with military vehicles and helicopters, proceeded in broad daylight to apprehend several persons at their homes in a town area strongly supports the applicant's allegation that these were State servicemen. Although the exact units of the special or military forces that carried out the operation have never been established, the detainees' accounts of their detention, questioning and release support this conclusion. It appears that at first Ruslan Alikhadzhiyev's detention was not disputed, and the relatives invited a lawyer to ensure his defence in criminal proceedings. The Court also notes that information about the arrest by the security forces of Ruslan Alikhadzhiyev, who was a known public figure, was disseminated by the media, with reference to official sources (see paragraphs 20 and 21 above). The domestic investigation also accepted these factual assumptions and proceeded to verify the involvement of law-enforcement bodies in Mr Alikhadzhiyev's detention. The Court therefore considers it established that on 17 May 2000 Ruslan Alikhadzhiyev was apprehended during an operation carried out in Shali by State agents.

60. There has been no reliable news of the applicant's son since 17 March 2000. His name was not found in any of the detention facilities' records. Finally, the Government did not submit any plausible explanation as to what had happened to him after his detention.

61. The Court notes with great concern that a number of cases have come before it which suggest that the phenomenon of "disappearances" is well known in Chechnya (see, for example, *Bazorkina*, cited above; *Imakayeva v. Russia*, no. 7615/02, ECHR 2006-...; and *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-...). A number of international reports point to the same conclusion. The Court agrees with the applicant that, in the context of the conflict in Chechnya, 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 Ruslan Alikhadzhiyev or any news from him for over six years supports this assumption. Moreover, the stance of the prosecutor's office and the other law-enforcement authorities after the news of his detention had been communicated to them by the applicant significantly contributed to the likelihood of his disappearance, as no necessary steps were taken in the crucial first days or weeks after his detention. The authorities' behaviour in the face of the applicant's well-substantiated complaints gives rise to a strong presumption of at least acquiescence in the situation and raises strong doubts as to the objectivity of the investigation.

62. For the above reasons the Court considers that it has been established beyond reasonable doubt that Ruslan Alikhadzhiyev must be

presumed dead following his unacknowledged detention by State servicemen. Consequently, the responsibility of the respondent State is engaged. Noting that the authorities have not relied on any grounds to justify the use of lethal force by their agents, it follows that liability for his presumed death is attributable to the respondent Government.

63. Accordingly, there has been a violation of Article 2 on that account in respect of Ruslan Alikhadzhiyev.

B. The alleged inadequacy of the investigation into the abduction

1. Arguments of the parties

64. The applicant alleged that the authorities had failed to conduct an effective investigation into the circumstances of Ruslan Alikhadzhiyev's detention and disappearance, in violation of their procedural obligations under Article 2 of the Convention. She argued that the investigation had fallen short of the standards set down in the Convention and national legislation. She contended that the investigation had not been prompt because of the delay in opening it and in taking important steps. Referring to the Government's submissions, she argued that it appeared that certain important steps had never been taken, such as reviewing custody records and operational plans, identifying and questioning those responsible for the arrest of Ruslan Alikhadzhiyev, and examining the alleged place of detention. The authorities had systematically failed to inform her of the proceedings and she had no information about important procedural steps. The Government's failure to disclose in full the materials of the investigation to her or to the Court served, in her view, as further proof of the ineffectiveness of the investigation.

65. The Government retorted that the investigation was being carried out in accordance with the domestic legislation and Convention standards. They argued that the applicant had been granted victim status, was represented by a lawyer and had had every opportunity to participate effectively in the proceedings.

2. The Court's assessment

66. The Court has on many occasions stated that the obligation to protect the right to life under Article 2 of the Convention also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. It has developed a number of guiding principles to be followed for an investigation to comply with the Convention's requirements (for a recent summary, see *Bazorkina*, cited above, §§ 117-119).

67. In the present case, an investigation was carried out into the kidnapping and subsequent murder of the applicant's son. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

68. The Court first notes that the authorities were immediately made aware of Ruslan Alikhadzhiyev's arrest because the applicant and other family members informed and personally visited the offices of the law-enforcement bodies in the days following 17 May 2000. Despite their applications and the lack of information about Mr Alikhadzhiyev's alleged arrest, the investigation was not opened until 27 July 2000, more than two months after the arrest.

69. When the investigation started, it was plagued by inexplicable delays in performing the most essential tasks. It appears that the applicant and other family members who had witnessed the detention were not questioned until March 2001. The applicant was granted the status of a victim in the proceedings only in March 2001. The neighbours who had been detained together with Ruslan Alikhadzhiyev were questioned in October 2000 and in March 2001. An attempt to find the units that had participated in the arrest was made in August 2001.

70. Such delays by themselves compromised the effectiveness of the investigation and could not but have had a negative impact on the prospects of arriving at the truth. While accepting that some explanation for these delays can be found in the exceptional circumstances that prevailed in Chechnya at the relevant time, the Court finds that in the present case they clearly exceeded any acceptable limitations on efficiency that could be tolerated in dealing with a crime such as abduction, where crucial action must be taken in the days and weeks immediately after the event.

71. Other important investigative measures, it appears, were never taken. The investigation failed to question the local administration or military and police officers about the operation carried out in Shali on 17 May 2000. No real effort was made to identify the units that had participated in the operation. The investigators did not take any steps to identify the location to which the detainees had been transported and to identify the units that could have used the location. It appears that no questions were asked about the announcement by a high-ranking military officer at a press conference on 25 May 2000 concerning Mr Alikhadzhiyev's capture.

72. Finally, as to the manner in which the investigation was conducted, the Court notes that in a period of less than four years the investigation was adjourned and reopened at least 11 times. The applicant, notwithstanding her procedural status, was not duly informed of its progress, and the only information occasionally communicated to her concerned the adjournment and reopening of the proceedings. Some of these defects were obvious to the supervising prosecutors, who on several occasions criticised the

investigation and ordered that certain steps be taken. However, it appears that these orders were either ignored or followed after unacceptable delays.

73. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance and presumed death of Ruslan Alikhadzhiyev. It accordingly dismisses the Government's preliminary objection as regards the applicant's failure to exhaust domestic remedies within the context of the criminal investigation, and holds that there has been a violation of Article 2 on this account also.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

74. The applicant contended that her son had been subjected to treatment in violation of Article 3, in view of the known circumstances of his arrest, and that the authorities had failed to effectively investigate this complaint. Referring to the Court's established case-law, the applicant claimed that she was a victim of treatment falling within the scope of Article 3 of the Convention as a result of the anguish and emotional distress she had suffered as a result of the disappearance of her son and the response of the authorities to her complaints. She relied on Article 3, which provides:

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

75. The Government argued that the investigation, which was being carried out in accordance with domestic legislation, had not obtained information to support the allegation that the applicant's son had been subjected to treatment in violation of Article 3. The State authorities had given detailed answers to all her letters and there was nothing to support the applicant's allegations of a violation of Article 3 in respect of herself.

A. Alleged violation of Article 3 in respect of Ruslan Alikhadzhiyev

76. The applicant complained of a violation of both the material and procedural aspects of Article 3 of the Convention in relation to her son. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt” but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161 *in fine*).

77. The Court has found it established that the applicant's son was detained on 17 May 2000 by State agents and that no reliable news of him has been received since that date. The Court has also considered that, in

view of all the known circumstances, he can be presumed dead and that the responsibility for his death lies with the State authorities (see paragraphs 57-63 above). However, the exact way in which he died and whether he was subjected to ill-treatment have not been elucidated. The witness statements produced by the applicant do not contain sufficient evidence to support the allegations that Ruslan Alikhadzhiyev was ill-treated following his arrest.

78. Since the information before it does not enable the Court to find beyond all reasonable doubt that the applicant's son was subjected to ill-treatment, the Court cannot conclude that there has been a violation of Article 3 of the Convention on this account.

79. In the absence of any reliable information about the alleged ill-treatment or about the manner in which Ruslan Alikhadzhiyev died, the Court does not deem it necessary to make a separate finding under Article 3 in respect of the alleged deficiencies of the investigation, since it has examined this aspect under the procedural aspect of Article 2 (see above) and under Article 13 of the Convention (see below).

B. Alleged violation of Article 3 in respect of the applicant

80. The Court reiterates that the question whether a member of the family of a “disappeared person” is a victim of treatment contrary to Article 3 will depend on the existence of special factors which give the suffering of the applicant a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human-rights violation. Relevant elements will include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries. The Court would further emphasise that 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. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities' conduct (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002).

81. In the present case, the Court notes that the applicant is the mother of the individual who has disappeared, Ruslan Alikhadzhiyev. She was an eyewitness to his arrest. For more than six years she has not had any news of him. During this period the applicant has applied to various official bodies with enquiries about her son, both in writing and in person. Despite her attempts, the applicant has never received any plausible explanation or information as to what became of her son following his detention on 17 May 2000. The responses received by the applicant mostly denied the

State's responsibility for his arrest or simply informed her that an investigation was ongoing. The Court's findings under the procedural aspect of Article 2 are also of direct relevance here (see paragraphs 67-73 above).

82. In view of the above, the Court finds that the applicant suffered, and continues to suffer, distress and anguish as a result of the disappearance of her son and her inability to find out what happened to him. The manner in which her complaints have been dealt with by the authorities must be considered to constitute inhuman treatment contrary to Article 3.

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

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

84. The applicant submitted that Ruslan Alikhadzhiyev had been subjected to unacknowledged detention, in violation of the principles defined by Article 5 of the Convention, which provides:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(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;

(d) the detention of a minor by lawful order for the purpose of educational 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.”

85. The Government stressed that the investigation had failed to establish that Ruslan Alikhadzhiyev had in fact been detained by law-enforcement bodies. The identity of those responsible remained unknown.

86. The Court has previously noted the fundamental importance of the guarantees contained in Article 5 for securing 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).

87. The Court has found it established that Ruslan Alikhadzhiyev was detained by State servicemen on 17 May 2000 during a security operation in Shali and has not been seen since. His detention 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, 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).

88. The Court further considers that the authorities should have been more alert to the need for a thorough and prompt investigation of the applicant's complaints that her son had been detained and taken away in life-threatening circumstances. However, the Court's findings above in relation to Article 2 and, in particular, the conduct of the investigation leave no doubt that the authorities failed to take prompt and effective measures to safeguard Mr Alikhadzhiyev against the risk of disappearance.

89. Consequently, the Court finds that Ruslan Alikhadzhiyev 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 READ IN CONJUNCTION WITH ARTICLES 2, 3 AND 5

90. The applicant complained that she had had no effective remedy in respect of the violations alleged under Articles 2, 3 and 5 of the Convention. She referred 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.”

91. The Government disagreed. They stated that the investigation had been conducted in accordance with the domestic legislation, and that the applicant had been granted victim status and had every means of participating effectively in the proceedings.

92. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. Given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and infliction of treatment contrary to Article 3, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-162, ECHR 2002-IV; *Assenov and Others*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3293, § 117; and *Süheyla Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005). The Court further reiterates that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see *Orhan*, cited above, § 384, and *Khashiyev and Akayeva*, cited above, § 183).

93. In view of the Court's above findings with regard to Articles 2 and 3, these complaints are clearly “arguable” for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52). The applicant should accordingly have been able to avail herself of effective and practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation, for the purposes of Article 13.

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

95. Consequently, there has been a violation of Article 13 of the Convention in conjunction with Articles 2 and 3 of the Convention.

96. As regards the applicant's reference to Article 5 of the Convention, the Court refers to its above finding of a violation of this provision. In the light of this, it considers that no separate issue arises in respect of Article 13 read in conjunction with Article 5 of the Convention, which itself contains a number of procedural guarantees relating to the lawfulness of detention.

VI. OBSERVANCE OF ARTICLE 34 AND ARTICLE 38 § 1 (a) OF THE CONVENTION

97. The applicant argued that the Government's failure to submit the documents requested by the Court at the communication stage disclosed a failure to comply with their obligations under Article 34 and Article 38 § 1 (a) of the Convention. The relevant parts of those Articles provide:

Article 34

“The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

Article 38

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

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

...”

98. The applicant invited the Court to conclude that the Government had failed in their obligations under Article 38 on account of their refusal to submit the documents from the investigation file in response to the Court's requests at the communication stage. In her view, through their handling of the Court's request for documents, the Government had additionally failed to comply with their obligations under Article 34.

99. The Government submitted the investigation file after the case was declared admissible.

100. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications (see *Tanrikulu v. Turkey* [GC], no. 23763/94, § 70,

ECHR 1999-IV). This obligation requires the Contracting States to furnish all necessary facilities to the Court, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of applications. Failure on a Government's part to submit such information which is in their hands, without a satisfactory explanation, may not only give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a) of the Convention (see *Timurtaş v. Turkey*, no. 23531/94, § 66, ECHR 2000-VI). The same applies to delays by the State in submitting information, which prejudice the establishment of facts in a case, both before and after the decision on admissibility (see *Bazorkina*, cited above, § 171).

101. In accordance with the principles set forth in its case-law, the Court agrees that in certain cases delays in submitting information which is crucial to the establishment of facts may give rise to a separate finding under Article 38 of the Convention. In a case where the application raises issues of grave unlawful actions by State agents, as well as where the adequacy of the investigation is in question, the documents from the criminal investigation are fundamental to the establishment of the facts and their absence may prejudice the Court's proper examination of the complaint at both the admissibility and the merits stage.

102. In the present case, the Government refused to submit the documents from the criminal investigation file in response to the communication of the complaints. In December 2005 the Court declared the application admissible and reiterated its request. In February 2006 the Government submitted the documents from the case file (see paragraph 30 above).

103. The Court would first remark that it has already found in a number of previous cases that the provisions of Article 161 of the Code of Criminal Procedure, to which the Government initially referred, do not preclude disclosure of the documents from a pending investigation file, but rather set out a procedure for and limits to such disclosure (see, for similar conclusions, *Mikheyev v. Russia*, no. 77617/01, § 104, 26 January 2006).

104. As to Article 38, the Court reiterates that it is applicable to cases which have been declared admissible. Taking into account the Government's compliance with the Court's request after the admissibility decision, the Court cannot find that the delays in submitting the information requested were such as to prejudice the establishment of facts or to otherwise prevent the proper examination of the present case. In these circumstances, the Court considers that there has been no breach of Article 38 of the Convention as regards the timing of the submission of the documents requested by the Court.

105. As to Article 34 of the Convention, its main objective is to ensure the effective operation of the right of individual petition. There is no indication in the present case that there has been any hindrance of the applicant's right of individual petition, either through interference with her communications with the Court or representation before the Convention institutions or through the exertion of undue pressure on her. The Court is of the opinion that the delay in submitting a full set of the documents requested raises no separate issues under Article 34.

106. The Court thus finds there has been no failure on behalf of the respondent Government to comply with Article 34 and Article 38 § 1 (a) of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

107. 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.”

108. The applicant did not submit any claim in respect of pecuniary damage.

109. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage for the disappearance of Ruslan Alikhadzhiyev. She also requested the Russian authorities to carry out an effective investigation into the disappearance.

110. The Government considered the claims for damage excessive.

111. The Court notes that, as concerns Ruslan Alikhadzhiyev's disappearance, it has found a combination of violations of Articles 2, 5 and 13. The applicant herself was found to be the victim of a violation of Article 3. The Court accepts that she suffered non-pecuniary damage which cannot be compensated solely by the finding of a violation. In such circumstances, and acting on an equitable basis, the Court awards her EUR 40,000, plus any tax that may be chargeable on that amount.

Costs and expenses

112. The applicant was represented by lawyers from the NGO EHRAC/Memorial Human Rights Centre. She submitted that the representatives had incurred the following costs:

(a) EUR 500 for 20 hours of research in Chechnya and Ingushetia at a rate of EUR 25 per hour;

(b) EUR 400 in travel expenses for the field workers;

(c) EUR 2,250 for 45 hours of drafting legal documents submitted to the Court and the domestic authorities at a rate of EUR 50 per hour by the lawyers in Moscow;

(d) 1,000 pounds sterling (GBP) for 10 hours of legal work by a United Kingdom-based lawyer at a rate of GBP 100 per hour.

113. The Government disputed the reasonableness and the justification of the amounts claimed under this heading. They also objected to the representatives' request for the award for legal representation to be transferred directly to their account.

114. 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 v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, p. 63, § 220).

115. The Court notes that from the outset of the proceedings before it the applicant was represented by the lawyers of EHRAC/Memorial. It is satisfied that the rates set out above were reasonable and reflect the expenses actually incurred by the applicant's representatives.

116. Further, it has to be established whether the costs and expenses incurred by the applicant for legal representation were necessary. The Court notes that the case was rather complex, involved perusing a large quantity of factual and documentary evidence, including the criminal investigation file, and required a fair amount of research and preparation. The Court also notes that it is its standard practice to rule that awards in relation of costs and expenses are to be paid directly to the applicant's representative's accounts (see, for example, *Toğcu v. Turkey*, no. 27601/95, § 158, 31 May 2005; *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 175, ECHR 2005-VII; and *Imakayeva*, cited above).

117. In these circumstances, and having regard to the details of the claims submitted by the applicant, the Court awards the following sums as claimed under this heading: EUR 3,150 and GBP 1,000, exclusive of any value-added tax that may be chargeable, the net award to be paid in pounds sterling into the representatives' bank account in the United Kingdom, as identified by the applicant.

118. 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. *Dismisses* the Government's preliminary objection;

2. *Holds* that there has been a violation of Article 2 of the Convention in respect of the disappearance of Ruslan Alikhadzhiyev;
3. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Ruslan Alikhadzhiyev disappeared;
4. *Holds* that there has been no violation of Article 3 of the Convention in respect of the failure to protect the applicant's son from inhuman and degrading treatment;
5. *Holds* that no separate issues arise under Article 3 of the Convention in respect of the investigation into the allegations of ill-treatment;
6. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant;
7. *Holds* that there has been a violation of Article 5 of the Convention in respect of Ruslan Alikhadzhiyev;
8. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violations of Articles 2 and 3 of the Convention;
9. *Holds* that no separate issue arises under Article 13 of the Convention in respect of the alleged violation of Article 5;
10. *Holds* that there has been no failure to comply with Article 38 § 1 (a) of the Convention;
11. *Holds* that there is no need to examine separately the applicant's complaint under Article 34 of the Convention;
12. *Holds*
 - (a) that the respondent State is to pay the applicant, 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 40,000 (forty thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (ii) EUR 3,150 (three thousand one hundred and fifty euros) and GBP 1,000 (one thousand pounds sterling) in respect of costs and expenses, the net award to be converted into pounds sterling at the rate applicable at the date of settlement and paid into the representatives' bank account in the United Kingdom;

- (iii) any tax that may be chargeable on the above amounts;
- (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;

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

Done in English, and notified in writing on 5 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President