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Citations:

Bluebook 21st ed.  
Bazorkina v. Russia, 16 HUM. Rts. Case DIG. 1219 (2006).

ALWD 6th ed.  
, Bazorkina v. russia, 16(Issues 11 and 12) Hum. Rts. Case Dig. 1219 (2006).

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**BAZORKINA v. RUSSIA**

<b>Right to life – violation</b>	<b>Article 2</b>
<b>Prohibition of torture – violation/no violation</b>	<b>Article 3</b>
<b>Right to liberty and security – violation</b>	<b>Article 5</b>
<b>Right to an effective remedy – violation</b>	<b>Article 13</b>

Anguish and distress resulting from the “disappearance” in Chechnya of the applicant’s son and the ineffectiveness of the ensuing investigation.

In a judgment delivered on 27 July 2006 in the case of *Bazorkina v. Russia*, the European Court of Human Rights held unanimously:

- that there had been a violation of Article 2 (right to life) of the European Convention on Human Rights in respect of the disappearance of the applicant’s son, Khadzhi-Murat Yandiyev;
- that there had been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Mr Yandiyev disappeared;
- that there had been no violation of Article 3 (prohibition of inhuman or degrading treatment) in respect of the failure to protect Mr Yandiyev from ill-treatment;
- that there had been a violation of Article 3 in respect of the applicant, Ms Bazorkina;
- that there had been a violation of Article 5 (right to liberty and security) with regard to Mr Yandiyev’s detention; and
- that there had been a violation of Article 13 (right to an effective remedy) in respect of the violations of the applicant’s rights under Articles 2 and 3.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant EUR 35,000 for non-pecuniary damage and EUR 12,241 for costs and expenses, to be paid to the applicant’s legal representatives.

This judgment became final on 11 December 2006 in accordance with Article 44(2)(c) of the Convention, when the panel of the Grand Chamber rejected the request to refer the case under Article 43.

## 1. Principal facts

The applicant, Fatima Sergeyevna Bazorkina, is a Russian national who was born in 1938 and lives in the town of Karabulak, Ingushetia (Russia). She complained on her own behalf and on behalf of her son, Khadzhi-Murat Yandiyev, born on 27 August 1975.

The applicant submitted that in August 1999 her son went to Grozny, Chechnya, and that she had not heard from him since.

On 2 February 2000, she saw her son being interrogated by a Russian officer in a television news programme about the capturing of the village of Alkhan-Kala (also called Yermolovka). She later obtained a full copy of the recording, made by a reporter for NTV (Russian Independent TV) and CNN. At the end of the questioning the officer in charge gave instructions for the soldiers to “finish off” and “shoot” the applicant’s son. The CNN journalists who filmed the interrogation later identified the interrogating officer as Colonel-General Alexander Baranov, the commander of the troops which captured Alkhan-Kala.

Immediately after 2 February 2000 the applicant began a search for her son, visiting detention centres and prisons and applying to various authorities. In August 2000 she was informed that her son was not being held in any prison in Russia.

In November 2000 a military prosecutor issued a decision not to open a criminal investigation into Mr Yandiyev’s disappearance. A month later the same prosecutor stated that there were no reasons to conclude that military servicemen were responsible for the actions shown in the videotape.

In July 2001 a criminal investigation was opened by the Chechnya Prosecutor’s Office into the abduction of Mr Yandiyev by unidentified persons. It later transpired that he had been placed on a missing persons list.

In November 2003 Ms Bazorkina’s application to the European Court of Human Rights was communicated to the Russian Government. Following the Court’s decision on admissibility, the Government submitted a copy of the criminal investigation file.

The investigation established that the applicant’s son had been detained on 2 February 2000 in Alkhan-Kala. Immediately after arrest he was handed over to servicemen of the Ministry of Justice for transportation to a pre-trial detention centre. Mr Yandiyev did not arrive at any pre-trial detention centre and his subsequent whereabouts could not be established.

Colonel-General Baranov was questioned twice about the events and stated that he had not given an order to “shoot” Mr Yandiyev, but that he had intended to stop his aggressive behaviour and to prevent possible disturbances. He stressed

that the servicemen surrounding him were not his subordinates and thus could not have taken orders from him.

Between July 2001 and February 2006 the investigation was adjourned and reopened six times. The majority of documents in the case file were dated after December 2003.

At different stages of the proceedings several orders were issued by the supervising prosecutors, setting out the steps to be taken by the investigators. In particular, in December 2003 one prosecutor, noting that no real investigation had taken place, ordered that action be taken to identify the detachments of federal forces that could have been involved in the special operation in Alkhan-Kala in early February 2000 and to establish what had happened to the detained persons.

## **2. Procedure of the Court**

The application was lodged with the European Court of Human Rights on 11 April 2001 and declared admissible on 15 September 2005. A hearing took place in public in the Human Rights Building, Strasbourg, on 8 December 2005.

## **3. Summary of the Judgment**

### **Complaints**

The applicant submitted that her son was ill-treated and killed by federal forces and that no effective investigation was carried out into the circumstances of his ill-treatment and “disappearance”. She also maintained, for herself, that she suffered anguish and emotional distress in connection with the “disappearance” of her son. She relied on Articles 2, 3, 5, 6, 8 and 13.

### **Decision of the Court**

#### *Article 2 of the Convention*

##### The presumed death of Mr Yandiyev

The Court recalled that detained persons were in a vulnerable position and that the authorities were under a duty to protect them. The obligation on the authorities to account for the treatment of a detained individual was particularly stringent where that individual died or disappeared after being taken into police custody.

The Court observed that it was undisputed that Mr Yandiyev was detained during a counter-terrorist operation in the village of Alkhan-Kala on 2 February 2000. It further took into account the videotape and numerous witness statements contained in the criminal investigation file confirming that he was interrogated by

a senior military officer who, at the end of the interrogation, said that he should be executed. It finally noted that there had been no reliable news of the applicant's son since that date.

In the absence of any plausible explanation submitted by the Russian Government, and taking into account that no information has come to light concerning his whereabouts for more than six years, the Court was satisfied that Mr Yandiyev had to be presumed dead following unacknowledged detention. Noting that the authorities did not rely on any ground of justification in respect of use of lethal force by their agents, it followed that liability is attributable to the Russian Government. Accordingly, the Court found that there had been a violation of Article 2.

#### The inadequacy of the investigation

The Court noted that, the investigation was opened a year and five months after the events at issue and was plagued by inexplicable delays. Furthermore, it appeared to the Court that most of the actions necessary for solving the crime occurred only after December 2003, when the applicant's complaint was communicated to the Russian Government. The Court found that those delays alone compromised the effectiveness of the investigation and could not but have had a negative impact on the prospects of arriving at the truth.

The Court also noted a number of serious omissions including, in particular, the failure to identify or question some of the servicemen in charge of the detainees. Many of the omissions were evident to the prosecutors, who ordered certain steps to be taken. However, their instructions were either not followed or were followed with an unacceptable delay.

In the light of those circumstances, the Court found that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance and presumed death of Mr Yandiyev and held that there had been a violation of Article 2.

#### *Article 3 of the Convention*

Concerning the applicant's complaint regarding the suffering inflicted upon her in relation to her son's disappearance, the Court noted that the applicant was Mr Yandiyev's mother, and had seen her son, on video, being questioned and led off by soldiers following remarks inferring that he would be executed. Furthermore, despite her requests, the applicant had never received any plausible explanation or information as to what became of her son following his detention. The Court found that those facts caused her to suffer distress and anguish. It further considered that the manner in which her complaints had been dealt with by the

authorities could be construed as amounting to inhuman treatment. The Court therefore concluded that there had been a violation of Article 3 in relation to the applicant.

However, the Court held that there was insufficient evidence to support her allegation that her son had been subjected to ill-treatment in detention and held that there had therefore been no violation of Article 3 in that respect.

*Article 5 of the Convention*

The Court observed that although it was established that the applicant's son was detained on 2 February 2000 by the federal authorities, his detention was not logged in the relevant custody records and there existed no official trace of his subsequent whereabouts or fate. The Court considered that fact in itself to be a most serious failing since it enabled 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 and was incompatible with the very purpose of Article 5.

The Court further considered that the authorities should have been alert to the need to investigate more thoroughly and promptly the applicant's complaints that her son was detained by the security forces and taken away in life-threatening circumstances. Instead they failed to take prompt and effective measures to safeguard Mr Yandiyev against the risk of disappearance. Moreover, the Court noted that as late as December 2000 the authorities continued to deny the involvement of federal servicemen in Mr Yandiyev's apprehension.

Accordingly, the Court found that Mr Yandiyev was held in unacknowledged detention in the complete absence of the safeguards contained in Article 5 and that there had been a violation of the right to liberty and security of person guaranteed by that provision.

*Article 13 of the Convention*

In view of its findings with regard to Articles 2 and 3, the Court found that the applicant should 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. However, in view of the fact that the criminal investigation was ineffective, the Court found that the State had failed in its obligation under Article 13. Consequently, it found that there had been a violation of Article 13 in connection with Articles 2 and 3.

The Court considered that no separate issues arose in respect of Article 13 in connection with Article 5, which in itself contained a number of procedural guarantees related to the lawfulness of detention.

*Other Articles of the Convention*

The Court found that no separate issues arose under Articles 6 and 8 and that there had been no failure on the part of the Russian Government to comply with Articles 34 and 38, Section 1(a).

*Article 41 of the Convention*

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant EUR 35,000 for non-pecuniary damage and EUR 12,241 for costs and expenses, to be paid to the applicant's legal representatives.

*Judgment was given by a Chamber of seven judges, composed as follows:*

Christos Rozakis (Greek), President, Loukis Loucaides (Cypriot), Françoise Tulkens (Belgian), Peer Lorenzen (Danish), Nina Vajić (Croatian), Anatoli Kovler (Russian), Elisabeth Steiner (Austrian), Judges.